

TURNING A BLIND EYE: PERJURY IN DOMESTIC VIOLENCE CASES

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INTRODUCTION

Accurate testimony is essential to maintaining integrity and justice in the criminal system.¹ As the Supreme Court stated in *In re Michael*, all “perjured relevant testimony is at war with justice, since it may produce a judgment not resting on truth. Therefore it cannot be denied that it tends to defeat the sole ultimate objective of a trial.”² Perjurious testimony poses one of the greatest threats to the judicial system. Although perjury³ charges would seem a logical and uncontroversial solution for addressing false statements, the issue becomes murky when false statements arise in domestic violence cases. Expressing frustration over domestic violence cases generally, Judge Atlas commented, “[i]t is simply unacceptable for our process to turn a blind eye to the dangers of such abuse by shrugging our shoulders and saying that nothing can be done within the framework of existing law.”⁴

False statements in domestic violence cases are a significant problem and considered an epidemic with an estimated 40 to 90 percent of domestic violence victims recanting.⁵ Recanting refers to the act of trying to take back or withdraw a prior statement.⁶ Because recanting involves an attempt to withdraw a prior statement, it almost always involves falsity in either the original or latter statement.

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1. See Joseph A. Shifer, *Perjury*, 43 AM. CRIM. L. REV. 799, 799 (2006).

2. *In re Michael*, 326 U.S. 224, 227 (1945).

3. Perjury is defined as “deliberately making false or misleading statements while under oath.” BLACK’S LAW DICTIONARY 1175 (8th ed. 2004). A person does not have to testify at trial to commit perjury. One of the more common forms of perjury in domestic violence cases occurs when victims recant prior sworn statements made to police officers or grand juries.

4. *People v. Santiago*, No. 2725-02, 2003 WL 21507176, at *16 (N.Y. App. Div. Apr. 7, 2003).

5. Tom Lininger, *Prosecuting Batterers After Crawford*, 91 VA. L. REV. 747, 768 (2005) (“Victims of domestic violence are more prone than other crime victims to recant or refuse to cooperate after initially providing information to the police. Recent evidence suggests that 80 to 85 percent of battered women will recant at some point.”); see also Douglas E. Beloof & Joel Shapiro, *Let the Truth Be Told: Proposed Hearsay Exceptions to Admit Domestic Violence Victims’ Out of Court Statements As Substantive Evidence*, 11 COLUM. J. GENDER & L. 1, 3 (2002) (describing non-cooperation by recantation and failure to appear as “an epidemic in domestic violence cases”); Lisa Marie De Sanctis, *Bridging the Gap Between the Rules of Evidence & Justice for Victims of Domestic Violence*, 8 YALE J. L. & FEMINISM, 359, 367–68 (1996) (“[V]ictims of domestic violence are uncooperative in approximately eighty to ninety percent of cases....[T]he victim will usually recant her prior statements....”). Most of the estimates regarding recanting appear anecdotal, since there is no known study measuring victim recanting. Certainly, some domestic violence victims are eager to assist in the prosecution of their batterers. There is, however, a consensus in the literature that recanting is a significant problem in domestic violence cases.

6. BLACK’S LAW DICTIONARY 1295 (8th ed. 2004).