This webinar is part of the Legal Assistance for Crime Victims: An OVC Capacity Building Initiative.

As part of that Initiative OVC TTAC and the National Crime Victim Law Institute are working collaboratively to expand the availability of pro bono and no-cost legal assistance for victims of crime nationally.
Victims’ Rights Year in Review: Top Cases from 2012

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Flow of the Webinar

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Goals for the Session

1. Provide an overview of some of the key victims’ rights cases of 2012;
2. Identify strategies for responding to new legal landscape created by key victims’ rights cases of 2012; and
3. Identify open questions of law or issues on the horizon illuminated in the wake of key victims’ rights of 2012.
In re Amy Unknown (Paroline), 701 F.3d 749 (5th Cir. 2012)

• Facts
  • Amy was raped by her uncle when she was 8 and 9 years old; he was arrested and convicted but now thousands of possession cases regarding the child abuse images that he distributed on the Internet are under way.
  • Amy requested and received 3.4 million in damages from possessor of several of her images in one such case.

• Discussion/Holding
  • Victims of the distribution/possession of child abuse images are entitled to full restitution under 18 U.S.C. § 2259.
  • 2259’s proximate result language only applies to the final catch-all category of loss.

• Why it matters
Facts
- At D’s restitution hearing (convicted of 1 count of driving under the influence of intoxicants and two counts of assault in the 4th degree) the court found that the victims were jaywalking and therefore mostly at fault for the collision. Applying civil comparative fault principles, court ordered D to pay restitution in an amount equal to 10% of victims’ economic damages.
- Victims sought appellate review.

Discussion/Holding
- Court held that there is no state constitutional right to “full restitution” but failed to reach whether civil principles of comparative fault are appropriate in a criminal restitution case.

Why it matters
Three “Accommodation” Cases

- **State v. Dye**, 283 P.3d 1130 (Wash. Ct. App. 2012);

- Facts
- Discussion/Holding
- Why they matter

• **Facts**
  • Defendants were charged with a number of crimes and the government sought to move the trial from Denver to Grand Junction on the basis that untold number of victims would be inconvenienced (citing the Crime Victims’ Right Act provision affording victims the right to be present).

• **Discussion/Holding**
  • Trial court denied the motion, noting that Rule 18 analysis controlled and victims were only one part of the analysis, that Ds had shown Denver was more convenient, but government had failed to specifically identify any victim who would be inconvenienced.

• **Why it matters**

- **Facts**
  - D is charged with shooting and killing or injuring a large number of victims at a movie theatre; charges name 82 different victims.
  - Pursuant to state rule of evidence 615, D moved the court to sequester all of the state witnesses.
  - Separately the state moved to allow all of the victims to be present based upon the victims’ state constitutional right to be present.

- **Discussion/Holding**
  - Noting that defendants do not have a constitutional right to exclude witnesses from the courtroom, the court held that excluding victims from the courtroom during criminal stages is not necessary to protect defendant’s fair trial rights.
  - Court used a broad definition of “victim.”

- **Why it matters**

Facts

• D appealed from his conviction on charges of 1st degree sodomy and 2nd degree sexual abuse, arguing that the trial court erred in excluding evidence that the child-victim had applied for a U Visa.

Discussion/Holding

• Court agreed with D and remanded for a new trial.
• Court noted that a party is entitled to impeach a witness with evidence regarding bias or interest and that this is “particularly true for a defendant in a criminal case[.]”
• The court stated “Simply put, [the child-victim] had applied for an opportunity to stay in the country on the ground that she had been abused; based on that fact, a jury could reasonably infer that she had a personal interest in testifying in a manner consistent with her application for that opportunity.”

Why it matters
Scope of Prosecutorial Control

• Facts
  • D and other members of gang were indicted. While incarcerated and awaiting trial one of the co-D’s, who had become a cooperating witness, posted status updates on Facebook. Defendant moved to compel the government to obtain the posts, arguing that now that co-D was a cooperating witness he was part of the prosecution team and Brady applied.

• Discussion/Holding
  • Court rejected the argument saying law “does not require the gov’t to act as a private investigator and valet of the defendant, gathering evidence and delivering it to opposing counsel.”

• Why it matters

**Facts**
- D was charged with 3 counts of fraudulent transactions and 1 count of 2nd degree grand theft.
- The state filed a nolle prosse, dismissing all 4 counts.
- Victim filed a petition for a writ abating the nolle prosse based upon rights to be informed, present, and heard.

**Discussion/Holding**
- Writ Denied.
- To harmonize victims’ constitutional rights with the separation of powers doctrine the court concluded “a prosecutor’s decision to file charges or discontinue prosecution with a nolle prosse is not a ‘stage’ of the criminal proceeding”.

**Why it matters**
Facts
- D pleaded guilty to misdemeanor domestic assault under TN law, which requires as an element bodily injury; subsequently he was charged with a violation of 18 U.S.C. § 922(g)(9), which prohibits anyone “who has been convicted in any court of a misdemeanor crime of domestic violence” from possessing a gun. The misdemeanor crime of DV is defined as requiring the “use or attempted use of physical force.”
- The district court dismissed the count in the indictment, reasoning that the misdemeanor domestic assault conviction did not qualify under 922(g)(9) because “bodily injury” could be caused without physical force.
- The government moved for reconsideration and appealed.

Discussion/Holding
- The court determined that TN’s domestic assault statute didn’t categorically qualify as a misdemeanor crime of DV; and affirmed.

Why it matters
Facts
• D, who was charged with sexually assaulting a former employee, requested an evidentiary hearing under state rape shield statute and asked that such hearing be held in open court.

Discussion/Holding
• Concluding that rape shield statute’s in camera procedure does not violate state constitution’s open courts clause nor does it violate defendant’s rights to a public trial.
• Court observed that “a rape victim who is examined about the details of her personal sexual background may be less likely to be forthcoming if forced to discuss the matter in open court.”

Why it matters
Standing

Standing –

oh standing

• Facts
  • D was charged with a number of offenses, including sexual assault on a child by one in a position of trust.
  • Prior to the preliminary hearing, defendant subpoenaed the child-victim’s parents, seeking that they appear at the preliminary hearing and bring the child-victim with them. The prosecution moved to quash but the trial court refused to consider the motion until the preliminary hearing. The prosecution sought review in the supreme court.

• Discussion/Holding
  • Court affirmed that the prosecution had standing to move to quash the subpoena and held that when a child-victim could suffer harm “simply by being required to attend the preliminary hearing,” it is an abuse of discretion to fail to consider the motion in advance of the hearing.

• Why it matters
Facts

• D was charged with raping a female Airman.
• Victim was appointed counsel who entered appearance and asked for copies of motions filed under Rules 412, 513, and 514. Military judge held that the victim had no standing to move for copies of motions, to be heard through counsel, or to seek any exclusionary remedy.
• Victim sought appellate review first to the Air Force Court of Criminal Appeals and then the US Court of Appeals for the Armed Forces.

Discussion/Holding

• Noting that there are “many examples of civilian federal court decisions allowing victims to be represented by counsel at pretrial hearings,” held that the victim had the right to be heard through counsel on legal issues rather than as a witness at 412 and 513 hearings.

Why it matters
Questions? Comments?
For More Information

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As part of the *Legal Assistance for Crime Victims: An OVC Capacity Building Initiative*, OVC TTAC and the National Crime Victim Law Institute (NCVLI) are working collaboratively to expand the availability of pro bono and no-cost legal assistance for victims of crime nationally.

Part of that collaboration includes developing and delivering a series of Webinar trainings designed to assist attorneys around the country with the tools needed to increase their knowledge base about crime victim issues, and increase their capacity to provide pro bono or no-cost legal representation to crime victims.

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