

# Associating the Breach of Understanding of a Traumatized Sexual Assault Victim During the Investigation



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## Opinion

It is four o'clock in the morning on a Friday night. A young woman enters a local emergency room after being brutally raped (sexually assaulted) by an acquaintance a few hours prior. She admitted to having been drinking at a party, chatting, and flirting with people. She is single and in her early twenties. The only thing she can recall is having a drink and then blacking out shortly after arriving. When she awoke, she discovered an acquaintance, the suspect, still sexually assaulting her and covering her mouth with his hand, so she could not scream out for help. After the suspect ejaculated, he immediately got off the victim and left the bedroom where he assaulted her. Nothing like this has ever happened to the victim before.

In a state of shock, the victim got dressed and left the party quietly out the front door. She got into her car and drove to a local hospital. The victim was not aware of how long she had been driving or how she ended up at the hospital. Her demeanor was disconnected and had an observable flat affect when answering questions in the emergency room. The admitting nurse immediately determined that the victim had been sexually assaulted. The police were called to investigate. Soon after their arrival a sexual assault investigation was launched.

Due to the acute nature of this crime, officers arrived and started to question the victim about specific details about the sexual assault. The victim traumatized and embarrassed, shutdown on the line of questioning. Her refusal to answer the officers' questions led the officers to believe the victim was lying or somehow provoked the assault. This was a mistake. The officers need to be aware of the trauma that the victim is enduring at the time of contact and use a victim centered approach for the investigation. The purpose of this article is to examine best practices on how best to approach and interview a victim of sexual assault or rape when the assault has recently occurred and explain how the demeanor and emotional trauma of the victim can increase a prosecutorial outcome.

One of the most difficult calls that police investigate is sexual assault (or rape). Aside from meeting the statutory criteria of what constitutes a sexual assault, careful attention needs to be paid when interacting with a victim in order to proceed forward. From a forensic point of view the victim is a "walking crime scene" and investigators, sexual assault nurse examiners, medical personnel, and anyone who has contact with the victim needs to be cognizant of that and avoid losing or contaminating any evidence off the victim. In addition, further observable evidence of trauma can be reported and the later explained by an expert witness as to what the victim endured emotionally, mentally, and psychologically, beyond the acquiring of any trace evidence and a sexual assault examination [1].

Campbell, et al. [2] reported in 2009 in Detroit, Michigan approximately 11,000 rape kits were found in a police property storage facility dating back to the early 1980s (p 380). In 2011, the Texas Legislature passed a bill that created an audit for sexual assault kits (SAKs) that revealed that there were approximately 18,000 untested rape kits submitted for analysis [1].

Typically, cases of sexual assault are a "he said, she said" type of investigation in which trying to establish whether the sexual encounter from either party was consensual is difficult. However, to obtain the most detailed information about the assault and develop solid probable cause for either a search warrant or an arrest warrant, a clear understanding of the victim-centered approach, or trauma informed practices, are needed. Sexual assault is a traumatic event. Therefore, it stands to reason that first responders should have a working knowledge of the types and symptoms of trauma that can be expected from a sexual assault or rape victim. According to the Sexual Violence Justice Institute (2008), victim center means that the victim is at the center of all decisions regarding recovery and any involvement with the criminal justice system [2].

The Campbell, et al. [2] study further reported that the choice, safety, and well-being are the focus; and the needs of the

victim and everyone's concern and a collective effort (p. 381). Understanding this provides better guidance on how to proceed with a traumatized victim. The victim centered approach is one in which the needs of the victim are put first, and the intricate parts of the investigation are obtained on the victim's schedule and not that of the officers or advocates. Therefore, approaching this type of investigation slowly and methodically can produce a robust amount of additional evidence and information to better assist the trier of facts that this crime did in fact occur. In order to accomplish this, officers need to understand that people react differently to trauma. A lack of emotion, or the presence of emotion is not an indicator of the legitimacy of the assault, and either is common [3]. It is recommended that unless there are exigent circumstances requiring an arrest or identification, delaying the follow-up interview will generally enhance the investigation and the quality of information obtained [3].

What needs to be done initially to start and preserve the integrity of the investigation? The officer will need to initiate a rapport and record the victim throughout all stages of the initial investigation. The victim maybe experiencing shock, dissociation, or some level of overly expressive behavior such as laughing, crying, anger, or appearing indifferent. Some may simply engage in a long venting process in which details and events are out of sequence. These behaviors may appear to be uncharacteristic as to how a victim is perceived to be behaving under the circumstances. A forensic expert in psychology, psychiatry, or trauma informed care can explain in detail why the victim was behaving that way at the time and offer empirical evidence from various studies to legitimize the victim's behavior to a jury or judge. Furthermore, an expert witness can debunk a weak defense theory in court, testifying that this type of behavior was a theatrical sham or somehow rehearsed. Expert testimony such as this will further deliver and enhance the "CSI Effect" phenomenon that many scholars and attorneys have referred to as the influence of the first crime drama CSI: Crime Scene Investigation, which debuted in 2000 [4].

The addition of a recorded observation(s) of the emotional and mental state of the victim at the beginning and throughout the

sexual assault investigation can be more telling than the retrieval of trace evidence, especially when the suspect is known or an acquaintance of the victim. This type of digital evidence with the aid of a forensic expert can assist with the proof beyond a reasonable doubt that this sexual encounter was not consensual. It could be further argued that a victim centered approach will collect more detailed information from the onset of the investigation so that the officer, detective, or investigator can provide a thorough case report that would encourage a defendant to enter a guilty plea in lieu of having the victim's traumatic interview presented in court in front of a jury.

### Acknowledgment

David Scott, PhD is an assistant professor of criminal justice and public administration at the University of Texas at Tyler, in Tyler, Texas. In addition, Dr. Scott is the policy coordinator over the Domestic Violence High Risk Teams (DVHRTs) program for the Texas Council on Family Violence (TCFV). He also holds three master's degrees in Business Administration (MBA), Criminal Justice (MSCJ) and Public Administration (MPA) from the University of Texas at Tyler. He also earned professional training credentials from Bill Blackwood Institute of Texas Leadership Command College, the F.B.I. Law Enforcement Executive Development Association (LEEDA), and the Texas Commission on Law Enforcement (TCOLE). He is a certified TCOLE instructor for the State of Texas, an instructor and contributor for both the Texas- Sexual Assault Family Violence Investigators Course (SAFVIC) and Advanced Child Abuse instructor.

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