

# Unpacking False Sexual Assault Cases

From the First Phone Call to “Not Guilty”

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# Just Too Easy to Accuse

## Successful Navigating

Early Advice to Client

Defense Investigation

Discovery

Constitutional Motions

Motions in Limine

404(B)

Directing the Jury Trial

The 5th Amendment

Special Jury Instructions

## Initial Advice to the Client

“Take care of yourself but consider counseling”

Beware of counseling & mandated reporters

Marriages suffer - plug in domestic lawyer

Spousal Privilege

Controlled Calls & Controlled Texts

Polygraph

Exhaustive Interviews with our Private Investigator

Establishing “Credibility”

Mining the Alleged Victim’s Lack of Credibility

# Defense Investigation

## Don't wait for the State

- FOIA requests for reports, 911, BWC
- Subpoena school records
- Subpoena GAL records
- Review domestic relations docket if allegations arise from custody case
- Subpoena her cell phone
- Subpoena her Facebook, Instagram, social media accounts
- Will you need an expert?

# Motions in Limine

## Evid.R. 403: Think, think, think

- Battle for any GAL reports - overcome statutory confidentiality
- Focus on every potential theme, witness & exhibit for a 403 challenge
- Don't file too early
- Have your bullet point motion & caselaw ready to file & serve before void dire

# Defense Investigation

## **Credibility is the Alleged Victim's Weak Spot**

- Inconsistent Social media
- Prior Lies & Exaggerations
- Identify Witnesses to testify to her prior lies & exaggerations
- Interview witnesses, interview witnesses, interview witnesses, etc.
- Go to the scene(s)
- Drive the routes
- Re-create the alleged environment and walk through it

# State's Discovery

## Handling what the State gives you

- Share discovery with client that is permitted to be disclosed
- Watch and notate every interview of all witnesses, client and alleged victim
- Inspect all “counsel only” and take copious notes
- Watch every BWC video and take notes
- Make sure you understand the SANE and medical examination

# Constitutional Pre-trial Motions

- 4th Am.: Search of devices without consent or a warrant
- 5th Am.: Keep an eye on Miranda at all times (Police & Children's Services)
- 6th Am.: Pre-indictment Delay, Speedy Trial, Bill of Particulars, Confrontation, Compulsory Process & "Effective Counsel" (don't get jammed up)
- Plead Ohio constitutional protections as well
- Venue is an element protected by Ohio constitution (correct county)



# Evid.R. 404(B)

## Make sure the State follows this rule

- Understand what “Character” evidence is & keep it out if it is bad
- “Reasonable Notice” requirement is on the State. Research 404(B) in that specific appellate district and Ohio S.Ct.
- Read the cases the State cites and distinguish them
- Give the judge a better argument than the State as to why it should be out

# Directing the Jury Trial

## Leading up to Trial

- Subpoena everyone on State's witness list at least 3 weeks before trial to be present on day 1. Don't release them.
- Take your client to the courtroom and put him at defense counsel table. Show him how to sit & what not to do during trial.
- If he is going to testify, have him practice for a few minutes at the witness stand
- Hook up your AV if you are using it.
- Find out best spot to put your easel & flip chart
- Make sure there are plugs for your laptop
- Get in town 2 days early to work with the client & his family
- Consider special jury instructions

# Directing the Jury Trial

## During trial

- Request special jury questionnaire on prior sexual assault experience
- Client is always “testifying” while seated. Have him take notes and shake his head when taking incoming missiles.
- Voir Dire: “Why do you think the prosecutor asked you about . . .” get them talking about how the State is trying to lower its expectations.
- Use jury instructions in voir dire, opening and close
- Slow down your cross
- General Rule: your guy is going to have to take the stand
- Make sure he knows every prior statement he’s made

# Preparing the Client to Testify

**Just tell the truth!**

- Not much else you can do but hold your breath and pray the jury likes him

# Preparing Closing

## How I do it may not be the best way for you

- “Proof Beyond a Reasonable Doubt” Chart (innocent, maybe, possible, probably, highly likely all equal Not Guilty)
- “Most Important of Your Personal Affairs” - get names of a few of their kids and weave those names back into closing
- Take notes on Flipchart during cross - refer back to Flipchart during closing when summarizing witness testimony. Keep it 2-6 items per State witness.
- Take notes on State’s cross of client and use that during closing. “They got nothing”
- If you want to get home sooner than later, may I suggest you go to page 7 for “beyond a reasonable doubt” and “most important of your personal affairs” then read the instruction that says “you must find the defendant not guilty”