DOMESTIC VIOLENCE CASE DIGEST
FOR THE
DISTRICT OF COLUMBIA

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for
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DV LEAP
DISTRICT OF COLUMBIA DOMESTIC VIOLENCE CASE DIGEST

I. CIVIL PROTECTION ORDERS

A. Subject Matter Jurisdiction

- *A.R. v. F.C.,* 33 A.3d 403 (D.C. 2011)
    - Victims of non-intimate sexual assault, stalking, and sexual abuse are entitled to get a CPO under D.C. Code § 16-1001 and § 16-1003 regardless of whether or not their relationship to the defendant falls into the definitions of interpersonal, intimate partner, or intrafamily relationship.
- *Shewarega v. Yegzaw,* 947 A.2d 47 (D.C. 2008)
    - Sharing a mutual residence is sufficient for subject matter jurisdiction.
- *Rogers v. Johnson-Norman,* (not reported) 2005 *******Note this is a memorandum opinion and judgment and was not published.
    - A court has subject matter jurisdiction over a CPO proceeding if the underlying offense occurred in the District of Columbia regardless of the residence of the parties.
    - CPO orders are valid even if they have an extraterritorial effect (i.e. order a defendant to stay away from a place in another state).

B. Definition of Intrafamily Offense

- *Murphy v. Okeke,* 951 A.2d 783 (D.C. 2008)
    - Staying in someone's home after they have asked you to leave constitutes unlawful entry and can be an intrafamily offense.
- *Richardson v. Easterling,* 878 A.2d 1212 (D.C. 2005)
    - The Intrafamily Offense Act is not limited to violent or abusive crimes. The text of the statute applies to any crime.
    - Defamation is not an intrafamily offense because it is not a crime.
- *Hayes v. U.S.,* 707 A.2d 59 (D.C. 1998)
    - "Ex-boyfriend" falls within the definition of people with whom the complaining witness "maintained a romantic relationship" under D.C. Code § 16-1001(5).

C. Purposes of CPOs

- *Karim v. Gunn,* 999 A.2d 888 (D.C. 2010)
    - Where there is evidence to support a finding that the defendant has committed an intrafamily offense and no evidence that the petitioner only petitioned for a CPO in order to gain an advantage in a divorce the CPO is affirmed.
- *Murphy v. Okeke,* 951 A.2d 783 (D.C. 2008)
    - It is improper to issue a CPO against a party, even if they committed an intrafamily offense, if there is no evidence that the other party felt threatened or feared any future violence.
    - Issuance of a CPO to protect a victim from herself (i.e., her provocation purportedly triggering respondent's violence) is unlawful.

D. Mutual Civil Protection Orders

- *Murphy v. Okeke*, 951 A.2d 783 (D.C. 2008)
    - In some circumstances when both parties have been violent mutual protection orders may be appropriate. Courts should, however, use discretion to only issue a CPO consistent with the goals of the Intrafamily Offense Act to protect victims of family abuse from violence and threats of violence, and may not issue a CPO where the opposing party does not fear any violence.

E. Remedies

- **Vacate Order:** *Araya v. Keleta,* 31 A.3d 78 (D.C. 2011)
    - The term marital property should be interpreted liberally and encompasses a family dwelling unit regardless of technical ownership. Even though the deed of the house is solely in one party's name, the house can be considered marital property if the couple has lived in the house since marriage. Therefore, the court may order the party whose name appears on the deed to stay away from the property.
- **Guns, Church:** *Rogers v. Johnson-Norman,* (not reported) 2005 *******Note this is a memorandum opinion and judgment and was not published.
    - Orders forcing a defendant to turn in his guns do not violate the 2nd Amendment of the Constitution.
    - Orders forcing a party to stay away from the petitioner's place of worship do not violate the free exercise of religion or 2nd Amendment of the U.S. Constitution.
- **Stay-Away:** *Robinson v. Robinson,* 886 A.2d 78 (D.C. 2005)
    - A trial court should not give greater weight to a defendant's property rights than to petitioner's safetywhen deciding on appropriate CPO provisions. It is inconsistent with the Intrafamily Offense Act' goal of protecting victims to allow the respondent to live next door to the victim if the violence is likely to continue.
    - A CPO court must consider the "entire mosaic" of facts.
- **Child Support:** *Powell v. Powell*, 547 A.2d 973 (D.C. 1988)
    - A trial court is authorized to award child support in a CPO proceeding if doing so is necessary to the effective resolution of the domestic violence matter (citing statute).

F. Extension of a Protection Order

- *Thomas v. U.S.,* 934 A.2d 389 (D.C. 2007)
    - The Court of Appeals declined to decide whether a trial court could validly extend a TPO beyond 14 days in accordance with D.C. code § 16-1004(d), which at the time only allowed for an issuance of a TPO for not more than 14 days.** D.C. Code § 16-1004 was later amended to allow for the court to extend a TPO in additional 14 day increments. or longer increments with the consent of the parties, to allow for the completion of the hearing. (D.C. Code §16-1004(b)(2)).
- *Adams v. Ferreira,* 741 A.2d 1046 (D.C. 1999)
    - A civil protection order may only be extended on motion of a party to the original action. The trial court may not *sua sponte* extend a civil protection order under D.C. Code § 16-1005(d), which states that a CPO may be extended upon motion of any party to the original proceeding.

- *Maldonado v. Maldonado*, 631 A.2d 40 (D.C. 1993)
    - A trial court may not deny an extension of a CPO based solely on the fact that the defendant is incarcerated; this may be a factor in the judge's decision but not the sole factor.
    - If consent to an extension of a CPO is freely given, the judge should ordinarily issue the order unless there are strong reasons for not granting it.
- *Cruz-Foster v. Foster*, 597 A.2d 927 (D.C. 1991)
    - A trial judge is required to consider the whole past history of violence in the parties' relationship when ruling on an extension of a CPO. The trial judge must consider the "entire mosaic" of facts, not just those that occurred after the grant of the original CPO.

G. Right to a Lawyer/Continuance

- *Karim v. Gunn*, 999 A.2d 888 (D.C. 2010)
    - A trial judge had broad discretion when deciding whether or not to grant a continuance in order for one party to obtain counsel.
    - It is not an error for the trial court to deny a continuance to obtain counsel requested in the middle of the trial, when the defendant (a lawyer himself) had ample opportunity to obtain counsel before the trial.
    - The trial court is not required to be lenient just because a party appears *pro se.*
- *Cloutterbuck v. Cloutterbuck*, 556 A.2d 1082 (D.C. 1989)
    - Defendants in CPO proceedings are not entitled to appointed counsel, even if they cannot afford one on their own, because these are civil proceedings.

H. Evidence at Trial

- *Karim v. Gunn*, 999 A.2d 888 (D.C. 2010)
    - A trial court can grant a CPO even if the violence is not extreme (i.e the defendant pushes the petitioner and holds her down against her will).
- *Rogers v. Johnson-Norman*, (not reported) 2005 *******Note this is a memorandum opinion and judgment and is unpublished.
    - Acquittal of an offense in a criminal trial does not bar a CPO based on the same underlying offense because the standard of proof in criminal cases is much higher than that of civil cases.
    - Defendant cannot argue on appeal that the trial was unfair because he did not get to cross examine the petitioner who did not testify, because defendant can always call petitioner as an adverse witness.
    - The trial court in a CPO proceeding may properly take notice of proceedings in related criminal matters.
- *Ray v. Tate*, unreported (D.C. 2010) *******This decision is unpublished.
    - It is an error for the trial court to base its decision on statements a party makes in closing arguments if they presented no evidence or testimony of these facts during the trial.

- *Tyree v. Evans,* 728 A.2d 101 (D.C. 1999)
    - If a petitioner testifies, the defendant has a right to cross-examine her even if she is not represented by a lawyer. Interrogation by the judge is not a sufficient alternative.
    - It is proper for the defendant to cross-examine a petitioner regarding any possible prior abusive behavior towards the defendant and/or arrests resulting from this behavior, because a judge must base his decision on the entire mosaic of facts, not just on the most recent episode of violence.

I. Defenses to a CPO

- *In Re Robertson,* 940 A.2d 1050 (D.C. 2008)
    - A claim of self-defense cannot stand if there was sufficient time for the defendant to avoid the encounter by walking away.

J. Attorneys' Fees

- *Cave v. Scheulov,* 64 A.3d 190 (D.C. 2013)
    - In order to determine if attorney's fees are appropriate in a CPO case, the Court should follow the 2-step analysis announced in *Rachal v. Rachal,* 489 A.2d 476 (D.C. 2013): (1) determine whether to award a fee and (2) determine the amount of the fee.
    - There is no requirement that the court find litigation to be burdensome or oppressive before it awards attorneys' fees in a CPO action, because the prospect of attorney's fees may be essential in enabling a domestic violence victim to bring a case.
    - The definition of burdensome or oppressive litigation is not based on the higher level of conduct required to prove a bad faith exception to the American Rule.
- *Upson v. Wallace,* 3 A.3d 1148 (D.C. 2010)
    - Attorney, a pro se litigant, cannot be reimbursed for his own time, only expenses actually incurred. An award of attorneys' fee is intended, in part, to encourage plaintiffs to seek legal advice and proceed with competent counsel and the same reasoning applies even to skilled attorney litigants.
    - Pro se attorney also cannot recover attorneys' fees in the form of bad faith sanctions for his own time, only for third party attorneys'.
- *Murphy v. Okeke,* 951 A.2d 783 (D.C. 2008)
    - It is not proper for the court to deny attorneys' fees based on the fact that the civil trial did not accomplish anything more than the criminal stay away order.
    - It might be proper for the trial court to award attorneys' fees when only one party is successful in obtaining a CPO. Attorneys' fees are important in ensuring that victims will have the financial means to pursue a CPO.

K. Mootness of CPO Appeal

- *Robinson v. Robinson,* 886 A.2d 78 (D.C. 2005)
    - The court will not find that an appeal to a CPO is moot just because the original order is extended or superseded by a new CPO because CPO's are capable of repetition yet evade review.
- *McKnight v. Scott,* 665 A.2d 973 (D.C. 1995)
    - An appeal of a CPO is not moot, even if the appellate hearing is not until after the CPO expires, if the defendant's motion to expedite the appeal was denied.

- *Cloutterbuck v. Cloutterbuck,* 556 A.2d 1082 (D.C. 1989)
    - An appeal of a CPO is not moot, even if the hearing is not until after the CPO expires, if the defendant moves to expedite his appeal and the request is denied. These issues are capable of repetition yet evading review.

L. Interstate Full Faith and Credit/Comity

- *J.J. v. B.A.,* 68 A.3d 721 (D.C. 2013)
    - Both the Full Faith and Credit Clause and principles of comity require a superior court judge to refrain from entering a CPO if a judge in another state issued an order requiring the person seeking the CPO to "endeavor to dismiss the CPO."

II. CRIMINAL CONTEMPT

A. Enforcement of CPO – Who Can Enforce

- *In re Patrice Taylor,* --A.3d ---, 2013 WL 3940827 (D.C. 2013)
    - The private beneficiary of a CPO may not prosecute a criminal contempt hearing.
    - Participation of a prosecutor is "essential to the delivery of justice."
    - Follows *Jackson* and reiterates the two-step process set forth in that case: The trial judge should first ask the U.S. Attorney's Office or the Office of the Attorney General to prosecute in the name and on behalf of the United States. If neither is willing to prosecute, the trial judge must appoint a disinterested prosecutor.
- *In Re Jackson,* 51 A.3d 529 (D.C. 2012)
    - A judge may initiate but not prosecute a criminal contempt hearing.
    - DICTA: Only a disinterested prosecutor may pursue a criminal contempt enforcement action. The trial judge should first ask the U.S. Attorney's Office or the Office of the Attorney General to prosecute in the name and behalf of the United States. If neither are willing to prosecute the trial judge must appoint a disinterested prosecutor.
- *In Re Robertson,* 19 A.3d 751 (D.C. 2011) ("*Robertson II"*)
    - The beneficiary of a CPO is allowed bring an action to enforce the CPO and hold the defendant in criminal contempt; however, such action must be brought in the name of the United States.
    - It was not plain error for a trial court to conclude that a plea agreement where the U.S. Government agreed not to bring charges related to an incident in June did not bar a privately prosecuted criminal contempt action based on the same incident.
    - ** *Robertson II reversed decision in In re Robertson,* 940 A.2d 1050 (D.C. 2008) (*Robertson I),* where court upheld right of private party to bring criminal contempt.

- *Robertson v. U.S. ex rel Watson*, 130 S.Ct. 2184 (2010)
    - Justices Roberts, Kennedy, Scalia and Sotomayor dissented from the court's decision to dismiss *cert* as improvidently granted.
    - Dissent emphasized that a criminal contempt action may only be brought in the name and power of the United States, and vigorously criticized the idea of a privately litigated "criminal prosecution."
    - Justices Sotomayor and Kennedy conditioned their joining with Justice Robert's dissent on "the understanding that the narrow holding it proposes does not address civil contempt proceedings or consider more generally the legitimacy of existing regimes for the enforcement of restraining orders."
- *Green v. Green*, 642 A.2d 1275 (D.C. 1994)
    - It is not error for a court to allow petitioner's lawyer to represent the petitioner during a criminal contempt hearing. The defendant has no right to a public prosecutor. [*NB: This decision is presumably implicitly overruled by Robertson, Jackson, and forthcoming decisions.]*

B. Jurisdiction/Procedure

- *In Re Ferguson*, 54 A.3d 1150 (D.C. 2012)
    - The Court of Appeals originally held that a reversal is required if the defendant's lawyer concedes a violation of a CPO without a showing that the defendant was apprised of the consequences of a concession, as a concession is in effect equivalent to a guilty plea. However the Court of Appeals reheard the case *en banc* and held that the conviction should not have been overturned based on this point, because the defendant did not raise this issue in trial court or in his brief so the petitioner did not have adequate time to brief the issue.
- *In Re Shirley*, 28 A.3d 506 (D.C. 2011)
    - The jurisdictional grounds laid out in D.C. Code § 16-1006 only apply to the filing of a CPO petition. Once the CPO is issued the court has the authority to enforce it regardless of whether or not the petitioner lives, works, attends school, or is under legal custody of the District and regardless of whether the alleged incidents giving rise to the claim of contempt occurred within the District.
- *Shewarega v. Yegzaw*, 947 A.2d 47 (D.C. 2008)
    - Even if the trial court lacked subject matter jurisdiction to issue a CPO, this is not a defense to a contempt proceeding. The invalid order has to be obeyed until reversed or vacated.
- *Thomas v. U.S.*, 934 A.2d 389 (D.C. 2007)
    - The defendant must comply with a court order, even if it is later found to be invalid, until it is reversed or vacated.
- *In Re Dixon*, 853 A.2d 708 (D.C. 2004)
    - A defendant is not prejudiced by the trial court's failure to identify which of several violations of a CPO gave rise to a sole charge of criminal contempt. A trial court has authority to reduce a series of contemptuous acts to a single instance of contempt.

- *Ba v. United States,* 809 A.2d 1178 (D.C. 2002)
  - The Court of Appeals may not reverse a trial court's factual findings on a CPO violation unless they are without evidentiary support or plainly wrong. However whether the acts the defendant was found to have engaged in are a CPO violation is a question of law that the court reviews *de novo*.
- *Fields v. United States,* 793 A.2d 1260 (D.C. 2002)
  - The use of summary proceedings to hold a defendant in contempt is only appropriate when the contempt is committed in the presence of the judge and there is an immediate need to take action because the defendant's conduct threatens to disrupt the ongoing procedure.
- *Mabry v. Demery,* 707 A.2d 49 (D.C. 1998)
  - Contempt for violating a CPO is criminal contempt because it punishes someone for violating a judicial order, and therefore the trial court is required to find proof beyond a reasonable doubt that the defendant violated the CPO.
  - A trial court's failure to apply the right burden of proof (beyond a reasonable doubt) is harmful error if it is not apparent from the trial transcript whether the court would have ruled the same way with the more stringent burden of proof.
- *In re T.K.,* 708 A.2d 1012 (D.C. 1998)
  - Where father was not party to neglect proceeding involving mother and was not given notice of application for stay-away order and opportunity to be heard as required by D.C. Code § 16-1004(c), court did not acquire personal jurisdiction and stay-away order was nullity.
    - D.C. Code § 16-1004(d) permits the trial court to enter a temporary protective order upon a showing of imminent danger, but only "upon the filing of a petition under oath…," not on an oral motion.

C. Willful Violation

- *Morgan v. Foretich,* 546 A.2d 407 (D.C. 1988)
  - Defense of necessity does not apply if there existed an opportunity to resort to a reasonable legal alternative to violating the law.
  - Court rejected mother's defense of necessity where mother claimed to have violated visitation order to prevent sexual abuse of daughter by father, because the court determined that there were legal alternatives available to address the mother's concern. (Decision vacated for unrelated reasons.)
- *In Re Jackson,* 51 A.3d 529 (D.C. 2012)
  - Evidence that a defendant left a drug assessment program before completion when participants in the program are allowed to leave at any time and CSOSA was aware that he left (even though he was warned he would be in contempt), is insufficient evidence that he violated the CPO's order to enroll in a drug treatment program.
- *In Re Jones,* 51 A.3d 1290 (D.C. 2012)
  - Violation of a condition contained in the CPO merely as something the defendant must do in order to have unsupervised visitation with his child cannot be used to hold the defendant in contempt if he fails to comply with the condition.

- *Williams v. U.S.,* 51 A.3d 1273 (D.C. 2012)
    - It may be an error for the judge to instruct the jury that, "willfully means that the defendant knew what he was doing, it does not mean that he knew that he was breaking the law," because this could be interpreted to mean that the defendant did not need to understand the terms of the CPO. If, however, the defendant has already stipulated to the fact that he understood the terms of the order, there is no plain error.
- *In Re Ferguson,* 54 A.3d 1150 (D.C. 2012)
    - When the defendant is permitted to contact the petitioner for some purposes, he may not be found in contempt if there is not sufficient evidence that the contact was not for a permissible purpose.
- *Hooks v. United States,* 977 A.2d 938 (D.C. 2009)
    - In order to meet the burden of proof to secure a contempt conviction, the moving party must present sufficient evidence that the defendant was served with or otherwise knew about the CPO. Otherwise there is not sufficient evidence that the defendant "willfully violated" the CPO. *See Williams, supra.*
- *Thomas v. U.S.,* 934 A.2d 389 (D.C. 2007)
    - A defendant can be found in contempt of a TPO even if the parties have just left the courtroom if there is enough space for him to technically comply with the order.
    - Evidence that a defendant is hovering over the petitioner and talking loudly is sufficient to establish a willful violation of an order requiring him to stay away from the petitioner.
- *In Re Sobin,* 934 A.2d 372 (D.C. 2007)
    - A defendant's contact with the petitioner's lawyer urging the lawyer to pass information on to the petitioner, not about the case, is sufficient evidence that the defendant violated a no-contact provision of a CPO by indirectly trying to contact the petitioner.
- *In Re Jones,* 898 A.2d 916 (D.C. 2006)
    - A defendant cannot be found guilty of violating a CPO while in the courtroom if he is not given sufficient notice of the manner in which he should conduct himself in the courtroom and if the courtroom is not big enough for the defendant to comply with the terms of the order (i.e., how far apart the defendant must stay from the petitioner).
- *Hector v. U.S.,* 883 A.2d 129 (D.C. 2005)
    - The government cannot be credited with affirmatively proving that the defendant is aware of the terms of the CPO merely by discrediting the contrary testimony of the defendant. Additional affirmative evidence is required.
- *In Re Dixon,* 853 A.2d 708 (D.C. 2004)
    - The fact that the defendant is served with the CPO on the record in court is sufficient to prove that the defendant knew the terms of the civil protection order.
- *Davis v. U.S.,* 834 A.2d 861 (D.C. 2003)
    - Where there is no evidence that the defendant is informed of or understood a class's policy regarding absences, there is insufficient evidence to establish that the defendant willfully violated a CPO's requirement that he attend domestic violence classes.

- *Ba v. United States,* 809 A.2d 1178 (D.C. 2002)
  - The fact that a defendant unsuccessfully tried to vacate the CPO is sufficient evidence to prove that he knew that the civil protection order was still in effect.
- *Jones v. Harkness,* 709 A.2d 722 (D.C. 1998)
  - Intent to violate a CPO requires only the intent to do that act that violates the CPO, not a specific intent to violate the court's order. *But cf. Williams, Hooks.*

D. Discovery

- *Mabry v. Demery,* 707 A.2d 49 (D.C. 1998)
  - A petitioner does not have to comply with the discovery rules for prosecutors because the petitioner is not acting on behalf of the government.
    *This ruling may have been effectively overruled by *In Re Jackson,* 51 A.3d 529 (D.C. 2012) and *In Re Robertson,* 19 A.3d 751 (D.C. 2011) because these cases indicate that a criminal contempt action must be brought in the name and power of the United States (not by the victim).
- *Green v. Green,* 642 A.2d 1275 (D.C. 1994)
  - A defendant has no right to request discovery materials under Superior Court Criminal Rule 26.2 because the rules have no application in intrafamily proceedings and even if they did their application is limited solely to prosecutors, which would exclude private attorneys.
    * Probably also no longer valid in light of *Robertson* and *Jackson.*

E. Evidence at trial

- *Williams v. U.S.,* 51 A.3d 1273 (D.C. 2012)
  - The fact that the government fails to introduce evidence concerning how long the CPO is in effect for does not necessarily mean that there is insufficient evidence to show that the defendant violated the order. If the evidence shows that the defendant violated the order shortly after it was put in effect, the jury could reasonably find that the CPO was still in effect and that the defendant violated it.
- *Shewarega v. Yegzaw,* 947 A.2d 47 (D.C. 2008)
  - If a trial judge bases his reasoning for finding a defendant in contempt of a CPO on erroneous factual findings, such as the alleged testimony of a party who never actually testified in court or facts that a party allegedly testified to that the party is not on the record as testifying to, the conviction must be reversed.
- *In Re Dixon,* 853 A.2d 708 (D.C. 2004)
  - Statements that the petitioner told the defendant on the phone that his conduct in calling her was violating the CPO are not inadmissible hearsay if offered to show that the defendant was aware of the provisions of the CPO. The statements are inadmissible hearsay to prove the truth of the matter asserted: that the defendant violated the CPO.

F. Consent Defense

- *Clark v. United States,* 28 A.3d 514 (D.C. 2011)
  - Consent is not a valid defense to a violation of a CPO. Even if the petitioner attempted to reconcile with the defendant and subsequently consented to prior contacts with the defendant, this cannot be used as a defense to violations of a CPO.

- *In Re Shirley,* 28 A.3d 506 (D.C. 2011)
    - Consent is not a valid defense to a violation of a CPO. Even if the petitioner attempted to reconcile with the defendant and consented to prior contacts with the defendant this cannot be used as a defense to violations of a CPO.
- *Ba v. United States,* 809 A.2d 1178 (D.C. 2002)
    - The court did not reach the question of whether or not consent is a valid defense to violation of the CPO, holding instead that even if there was consent, consent is not a valid defense if the consent has clearly been revoked prior to the incident giving rise to the contempt violation. *Superseded by *Clark* and *Shirley, supra.*

G. Right to a Lawyer/Jury Trial

- *In Re Robertson,* 19 A.3d 751 (D.C. 2008)
    - A defendant does not have a right to a jury trial for petty offenses. A contempt offense only carries a maximum penalty of 180 days in jail and a $1,000 fine and will therefore usually be a petty offense.
    - The award of restitution in a contempt hearing does not give the defendant a right to a jury trial.
- *Thompson v. Thompson,* 559 A.2d 311 (D.C. 1989)
    - A defendant in an indirect criminal contempt matter has a right to be represented by a lawyer.
    - It is an error for the trial court to deny a newly appointed lawyer's request for a continuance in order to prepare the case if the judge, in denying the request, relies on the fact that the defendant had sufficient time before the hearing to obtain counsel and the defendant was not informed of his right to counsel until the day of the hearing.
- *In re Ti.B.,* 762 A.2d 20 (2000)
    - Where father opposing neglect petition was still only a suspect in a criminal investigation of the disappearance and suspected murder of the children's mother, the Sixth Amendment right to counsel did not come into play. (Reversed for other reasons.)

H. Mootness of Contempt Appeal

- *Green v. Green,* 642 A.2d 1275 (D.C. 1994)
    - An appeal of a contempt conviction is not moot even if the defendant already served his sentences because there are sufficient collateral consequences of the conviction and the issue is capable of repetition yet evading review.

I. Criminal Contempt and Double Jeopardy

- *Clark v. U.S.,* 28 A.3d 515 (D.C. 2011)
    - If the defendant is charged with violating the civil protection order and the underlying crime, which was the subject of the CPO violation, there may be double jeopardy concerns. If however, the violation of the CPO is based on a distinct offense (here violation of the stay away provision) from the crimes charged (here assault) there are no double jeopardy concerns.
- *Dixon v. U.S.,* 509 U.S. 688 (1993)
    - Convictions for criminal contempt and convictions for crimes based on the underlying conduct that constituted the criminal contempt violate the double jeopardy clause unless the criminal offense and the criminal contempt charges each involve a separate element that the prosecution must prove.

J. Obstruction of Justice

- *Green v. U.S.*, 651 A.2d 817 (D.C. 1994)
    - A defendant cannot be convicted of obstruction of justice for sending a letter threatening the petitioner to drop contempt charges without sufficient evidence that the defendant was involved with the mailing of the threatening letter. Circumstantial evidence that the letter contained facts not widely known to people other than the defendant is not sufficient.

III. CHILD CUSTODY AND DOMESTIC VIOLENCE

A. Custody

- *Araya v. Keleta*, 65 A.3d 40 (D.C. 2013)
    - If both parties have committed intrafamily offenses the trial judge should separately evaluate each parent's history of offenses to determine if the presumption in favor of joint custody has been affected. The fact that both parents have committed intrafamily offenses does not mean that they cancel each other out and the presumption of joint custody remains. If one parent's behavior is more reprehensible and likely to repeat, then joint custody or an award of custody to that parent is not warranted.
    - It is not an abuse of discretion for the court to deny custody to a parent even when there is no evidence that they have ever been violent towards the child if there is evidence that the parent pressures the children to be successful and has a record of violence upon being disappointed.
- *Jordan v. Jordan*, 14 A.3d 1136 (D.C. 2011)
    - A trial judge's failure to cite the relevant statute when one parent has been found to have committed an intrafamily offense, D.C. Code § 16-914(a-1), is not reversible error if the record shows that the judge did consider the domestic violence and the required findings can be implied.
    - A trial court may consider evidence of parental alienation to rebut the presumption against awarding an abuser joint custody.
    - Appointment of a *parenting coordinator* may be inappropriate in some cases of domestic violence, but it is not a plain error (where the issue was not raised below), where the court was presented with expert evidence that the husband presented no danger to the wife.
- *P.F. v. N.C.*, 953 A.2d 1107 (D.C. 2008)
    - A trial judge must explicitly evaluate a party's commission of an intrafamily offense before awarding custody to that party.
    - The exception to the presumption that joint custody is in the child's best interests when one parent has committed an intrafamily offense is intended to disfavor the offender for joint *or sole* custody. It is clear that the DC Council, in providing that joint custody is presumed not to be in the best interest of the child when one parent has committed an intrafamily offense, did not intend that parent to be nonetheless entitled to sole custody.
    - A trial judge should give weight to the children's opinion and the Guardian Ad Litem's recommendation, but does not have to follow them.

- *Prost v. Greene (II)*, 675 A.2d 471 (D.C. 1996)
    - If the Court of Appeals remands a case because the judge did not properly consider evidence of an intrafamily offense committed by one party as required under D.C. law, the trial court, on remand, has discretion in deciding whether or not to allow a new hearing and additional evidence on the matter. It is not an abuse of discretion to refuse a new hearing if the court already received extensive evidence on the matter.
    - It is not an abuse of discretion for the trial court to find no intrafamily offense when one party grabs another so hard they leave bruises if there is some evidence that the touching may have been in self defense.
- *Prost v. Greene (I)*, 652 A.2d 621 (D.C 1995)
    - A trial judge's failure to address evidence of domestic violence by one of the parties in a custody dispute is reversible error.
    - It is not an error for a trial judge to consider factors such as which parent would be more likely to cooperate with the other parent regarding visitation.

B. Visitation

- *Wilkins v. Ferguson*, 928 A.2d 655 (D.C. 2007)
    - Once the court finds that a party has committed an intrafamily offense, the court must apply D.C. Code § 16-914 (a-1), which requires that the burden is on the offender to prove visitation will not endanger the child or significantly impair the child's emotional development. Additionally, the court is required to consider whether visitation will be in the best interests of the child, relying on the factors in D.C. Code §16-914 (a)(3).
    - The safety of a child is always the court's priority.
    - Adjudicated past intrafamily offenses, no matter the intervening legal developments, are always statutorily relevant to determinations of visitation and custody under D.C. Code § 16-914 (a-1).
    - The trial court may not arbitrarily ignore un-contradicted expert testimony regarding visitation safety.
- *Matter of M.D.*, 602 A.2d 109 (D.C. 1992)
    - A judge in a neglect trial may not rely simply on findings made in a CPO hearing with respect to visitation of the child, especially when there is conflicting testimony in the cases and the CPO judge specifically states that he is denying visitation to the father unless the judge in the neglect case found visitation to be in the child's best interests.

D. Child Support

- *Mabry v. Demery*, 707 A.2d 49 (D.C. 1998)
    - A court does not have authority to order the defendant to attend a child support hearing if there is no showing that resolution of the support award is necessary for the resolution of the family violence matter or the contempt proceeding.

E. Attorneys' Fees

- *Assidon v. Abboushi,* 16 A.3d 939 (D.C. 2011)
    - There is an exception to the American rule that each party pays their own legal fees when the court finds that counsel was necessary to protect the interests of the children.
    - The fact that a court awards the opposing party visitation rights does not preclude the court from awarding the other party attorney's fees. This is merely one factor that may be considered.
- *Prost v. Greene,* 675 A.2d 471 (D.C. 1996)
    - When the party whose custody the court has deemed to have been in the children's best interests requires counsel, attorney's fees may be granted to that party.

F. Evidence at trial

- *K.R. v. C.N.,* 969 A.2d 257 (D.C. 2009)
    - A report of a domestic violence prevention "training" program may come in as a public record exception to the hearsay rule if the party offering the evidence can show that the facts contained in the document are in the personal knowledge and observation of the recording official and that the document was prepared by a duty imposed by law or implied by the nature of the office.

IV. DIVORCE, DIVISION OF ASSETS, AND DOMESTIC VIOLENCE

A. Division of Assets

- *Young-Jones v. Bell*, 905 A.2d 275 (D.C. 2006)
    - The trial court must provide a sufficient analysis of the factors in D.C. Code §16-910 when dividing marital property so the appellate court will be able to effectively review the trial court's decisions. Mere conclusory statements that the court considered the factors are insufficient.
    - The trial court must consider the circumstances that led to the estrangement of the parties when dividing martial property. This includes instances of domestic violence.
- *Burwell v. Burwell,* 700 A.2d 219 (D.C. 1997)
    - The trial court should consider a party's history of violence and threatening conduct against their partner when assessing each party's contribution to the family unit.
- *Gallimore v. Washington,* 666 A.2d 1200 (D.C. 1996)
    - If one partner kills the other, with whom he holds property as joint tenants, the joint tenancy is converted in a tenancy in common, *with the murderer sharing the property with the estate of the victim.*
        - The Court, however, did indicate that the result might have been different if the property was held as tenants by entirety.

B. Spousal Support

- *Atkinson v. Atkinson*, 730 A.2d 667 (D.C. 1999)
    - It is an abuse of discretion for the trial court to ignore evidence of emotional and physical abuse when deciding whether or not the party had a sufficient justification for leaving the marital residence.
    - A finding that the party is or will be a ward of the state is not required in order to maintain an action for spousal support. It is sufficient that the party is unable to finance their own independent living.

V. SELECTED CRIMINAL CASES

A. Constitutionality of the DV Court

- *Robinson v. U.S.*, 769 A.2d 747 (D.C. 2001)
    - The Chief Justice had the authority to create the Domestic Violence Unit and for the Unit to hear criminal matters.
    - Allowing the same judges to hear criminal and civil cases does not violate due process.

B. Evidence at Trial

- *Egbuka v. U.S.*, 968 A.2d 511 (D.C. 2009)
    - The Intrafamily Offenses Act does not waive marital privilege in a pending criminal case.
    - It is error for the trial judge to fail to inform a spouse of his/her marital privilege not to testify. This error is not harmless if the evidence suggests that the spouse would not have testified had he/she known about the privilege and the government's remaining evidence would have been insufficient to convict.
- *Nixon v. U.S.*, 728 A.2d 582 (D.C. 1999)
    - Expert testimony on Battered Women's Syndrome meets the standards of reliability and is helpful to the jury.
    - Testimony on Battered Women's Syndrome is relevant even if expert did not testify regarding whether or not the victim in the particular case is suffering from it.
- *Flores v. U.S.*, 698 A.2d 474 (D.C. 1997)
    - Trial court may not arbitrarily limit time for cross examination of the government's witnesses, especially when there are problems with interpretation and the witness's understanding of the questions. Such error is not harmless if the other evidence in the case is fairly evenly balanced because further cross-examination of the witness may have been fruitful.

C. Admissibility of Prior Domestic Violence

- *Flores v. U.S.*, 698 A.2d 474 (D.C. 1997)
    - Prior acts of domestic violence are admissible if they are proven by clear and convincing evidence where the defendant puts his state of mind at issue by claiming self defense.

- *Washington v. U.S.,* 760 A.2d 187 (D.C. 2000)
  - The defendant can only offer evidence of victim's prior dropped criminal charges if there is proof that the charges were fabricated.
  - The trial judge may properly take notice of prior CPOs even if they are obtained through consent rather than a contested hearing.
- *Parker v. U.S.,* 586 A.2d 720 (D.C. 1991)
  - Government may not offer evidence of a defendant's prior violence if the incidents are not closely intertwined with the charged offense. The error is harmless if the government's case is still strong without the evidence.

D. Elements of Assault

- *Woods v. US,* 65 A.3d 667 (D.C. 2013)
  - Consent is not a defense to a charge of assault with significant bodily injury.
- *Robinson v. U.S.,* 506 A.2d 572 (D.C. 1986)
  - There are two distinct kinds of assaults: attempted battery assault and intent to frighten assault.
  - Attempted battery assault requires intent to cause a physical injury.
  - Intent to frighten assault requires proof that the defendant intended either to cause injury or create apprehension in the victim by engaging in some threatening conduct; an actual battery need not be attempted. Intent can be inferred from doing the act that constitutes the assault.
- *Joiner-Die v. U.S.,* 899 A.2d 762 (D.C. 2006)
  - To establish assault with intent to frighten the government must show that: the defendant committed a threatening act that would create a reasonable fear of imminent injury; when the defendant committed the threatening act he had the present ability to injure the person; and the defendant committed the act voluntarily.
  - A defendant's actions in reaching into his pocket while saying threatening words is sufficient to establish assault with intent to frighten even if the victim never saw a weapon and the defendant did not in fact have a weapon.
- *Parks v. U.S.,* 627 A.2d 1 (D.C. 1993)
  - Intent to frighten assault includes situations where a gun is used in a manner that justifies the victim's reasonable belief that the weapon may be used against him or her.
- *Smith v. U.S.,* 601 A.2d 1080 (D.C. 1992)
  - The assault of pointing a gun at someone can only be upheld on an intent to frighten theory of assault, not attempted battery assault.
- *Smith v. U.S.,* 593 A.2d 205 (D.C. 1991)
  - The offense of assault, whether attempted battery assault or intent to frighten assault, is a general intent crime that may be proven by showing that the defendant intended to do the acts which constitute the assault.
- *Anthony v. U.S.,* 361 A.2d 202 (D.C. 1976)
  - To prove assault it is not necessary to show that the defendant actually had the ability to inflict the threatened harm.
  - To prove assault is not necessary to show that the victim subjectively feared the defendant. The issue is whether the defendant acted in such a manner as to present a threat of danger to a person of reasonable sensibility.

E. Destruction of Jointly Owned Property

- *Jackson v. U.S.*, 819 A.2d 963 (2003)
    - A joint owner of property may be found guilty for malicious destruction of property if he damages the jointly-owned property.

F. Confrontation Rights

- *Young v. U.S.*, 63 A.3d 1033 (D.C. 2013)
    - The confrontation clause requires calling laboratory scientists who match DNA profiles to the defendant to testify in cases where evidence of DNA matches is introduced.
- *Ward v. U.S.*, 55 A.3d 840 (D.C. 2012)
    - The doctrine of forfeiture by wrongdoing applies when the court finds by a preponderance of the evidence that the defendant procured the witness's death or unavailability to benefit any person, not necessarily himself.
- *Michigan v. Bryant*, 131 S.Ct. 1143 (2011)
    - The court must determine whether the primary purpose of the interrogation is to assist police in responding to an ongoing emergency. An ongoing emergency is not necessarily over when the victim is physically separated from the attacker if there is still a threat to the public at large. Other factors to consider when determining the primary purpose of an interrogation include how formal the interrogation was and the context of the declarant's and interrogator's statements and actions.
    - In this case the court determined that statements a declarant made in a parking lot after being shot were non-testimonial even though the attacker was no longer at the scene. The court noted that there was still an emergency because the attacker was on the loose and was a threat to the public; the interrogation was very informal; the declarant's purpose was to get medical assistance, not provide testimony; and the police officer's questions were all aimed at responding to an ongoing emergency.
- *Zanders v. U.S.*, 999 A.2d 149 (D.C. 2010)
    - The forfeiture by wrongdoing exception to the Confrontation Clause only applies when the state can prove that the purpose of securing the unavailability of the witness was to prevent them from testifying. The fact that the defendant murdered the witness is not sufficient if it cannot be shown that the purpose of murdering the witness was to prevent them from testifying.
    - Admitting testimony relevant to the attacker's identity in violation of the Confrontation Clause is not harmless error, even if the identity of the attacker is not in dispute, if the statement also has implications relevant to proving or disproving a claim of self-defense when that issue is in dispute.
- *Giles v. California*, 554 U.S. 353 (2008)
    - Hearsay statements that are testimonial in nature cannot be admitted under a forfeiture by wrongdoing theory unless it can be proven that the defendant killed the witness with the purpose of preventing her from testifying.

- *Smith v. U.S.,* 947 A.2d 1131 (D.C. 2008)
  - A victim's recorded 911 call is not testimonial, and therefore admissible over a Confrontation Clause objection, when the call is made shortly after the victim has been attacked and the victim does not know where the defendant is or if he might come back.
- *Lewis v. U.S.,* 938 A.2d 771 (D.C. 2007)
  - Statements a victim made to a police officer when he first arrives on the scene and is asking questions in order to effectively respond to an emergency are not testimonial in nature and therefore admission of these statements does not violate the Confrontation Clause.
  - Statements made to a police officer after the police officer has dissipated the emergency and detained the defendant are testimonial in nature and admission of these statements (without opportunity for cross-examination) violates the Confrontation Clause.
- *Long v. U.S.,* 940 A.2d 87 (D.C. 2007)
  - Statements made to a police officer in response to his general questions upon arriving at the scene are non-testimonial in nature because the police officer is seeking to respond to the emergency rather than gather information.
- *Gatlin v. U.S.,* 925 A.2d 594 (D.C. 2007)
  - A defendant forfeits Confrontation Clause objections to the admission of a declarant's testimony when he participates in a conspiracy and the death or unavailability of the witness is in furtherance of the conspiracy and is reasonably foreseeable as a natural consequence of the conspiracy.
  - The burden of proof for establishing forfeiture by wrongdoing claims is preponderance of the evidence.
- *Davis v. Washington,* 547 U.S. 813 (2006)
  - Statements made to the police on a 911 call while the victim was still in danger are non-testimonial in nature.
  - Statements made to the police after the emergency is over are testimonial in nature.
- *Crawford v. U.S.,* 541 U.S. 36 (2004)
  - Hearsay statements that are testimonial in nature may not be admitted unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness. Statements made while in police custody are testimonial in nature.