

## Digital Photos Give the Police a New Edge in Abuse Cases

September 3, 2002

By SARAH KERSHAW - NY Times Article

The New York City Police Department, which handles about 90,000 domestic violence cases annually -- roughly a third of which lead to arrests and enter the courts -- is starting to gather evidence using digital photography, a tool that experts say could drastically reshape the way these cases are prosecuted.

Domestic violence is among the most complex crime to prosecute, because the cases often pit the victim's word against the batterer's or make their way into court with no cooperation from the victim and little evidence. Photographs of bruises or broken furniture, if taken at all, are usually shot with Polaroid cameras. Those snapshots, which are often blurry and fail to make the injuries visible, can take days or even weeks to reach the courts.

But with digital photography, evidence that has been practically impossible to gather quickly or gather at all -- clear and detailed images of injuries like swollen eyes, bruised cheeks and handprints around the neck -- can be transmitted by computer to prosecutors and judges at the earliest stages of a case.

That way, a judge can have evidence in hand at the arraignment, even before the suspect is charged and before a judge decides whether to grant bail or issue an order of protection to safeguard the victim.

"This is a major, major change," said Robyn Mazur, associate director of domestic violence programs at the Center for Court Innovation, a public-private partnership in New York that acts as the research and development arm of New York State's court system. "By having these pictures instantaneously go directly to the key players, cases can potentially move much faster in those very early precious days."

Although digital photography is widely used by the public, law enforcement agencies have only recently started to use it in domestic violence cases, and for the most part in small cities like Boulder, Colo., and Largo, Fla. New York is the first major city to adopt the technology throughout its police department, according to the Center for Court Innovation - a move likely to encourage other cities to do the same.

Many police departments around the country, including New York's, use digital cameras to take fingerprints or mug shots, but they do not generally have the technology to transmit those photographs to prosecutors and the courts. Experts say the reasons are partly financial -- the computer systems needed to send photos require an investment -- and partly a result of the justice system's slowness to take on new technology.

"Many courts are facing technology issues," Ms. Mazur said. "That's what is so creative about what New York is doing."

A year ago, police and prosecutors in Queens began experimenting with digital photography in domestic violence cases. The technology will soon be in place across the rest of the city, starting with Brooklyn next month, officials said.

The new advances have drawn criticism -- from those who worry that digital photographs are too easily manipulated, and from others who fear it will give prosecutors more license to pursue a case against the wishes of the victim. Physical evidence like photographs is particularly crucial to prosecutors in domestic abuse cases, because victims often decide not to press charges and may even testify on behalf of a defendant in court.

But prosecutors in Queens say the innovation is helping victims. Since all 16 police precincts in the borough began using digital photography, sending the photographs straight into prosecutors' computers, convictions in domestic abuse cases have risen sharply and dismissals have plummeted, according to the Queens district attorney's office.

"The use of digital photography has had a critical impact," said the district attorney, Richard A. Brown, who said that as a judge in Brooklyn years ago, he often arraigned accused abusers with little or no physical evidence before him. "This makes it impossible for the defendant to deny the seriousness of the crime."

Within the next few months, the Police Department also plans to begin using digital 911 tapes, transmitting by computer the recordings of emergency telephone calls from victims and others. The technology will be used for all types of crimes, not just domestic violence cases, officials said. The tapes of 911 calls are another critical piece of evidence that can take up to 90 days to travel through the bureaucracy and into the courtroom.

Although no major legal challenges have been mounted to the use of digital photos in domestic violence cases, some people are questioning their admissibility in court because they can be doctored, enhanced or manipulated on a computer. "There are serious concerns," said Susan L. Hendricks, deputy attorney in charge of the criminal defense division of the Legal Aid Society, the main public defender in New York.

"I would be shocked if the result is that they are never admitted as evidence," she went on, "but I think that given the ability to manipulate them, the courts are going to have to be careful, or they should be."

Many prosecutors say that they think the photographs will withstand challenges, and that it is easy to tell if a photograph has

been altered.

They say the use of Polaroid snapshots, standard practice for gathering evidence of injuries in New York and elsewhere, is problematic. Often all but the most serious injuries are unrecognizable, they say, especially if the victim has a dark complexion. And because of the time and paperwork required to get a photograph -- like any piece of evidence -- from the police to prosecutors, those snapshots often do not make it to court in time for arraignment, which is typically held within 24 hours of an arrest.

In a recent case in Queens, Felix Rondon, 31, was accused of biting the face and ear of his girlfriend, 21. Before digital photography, the judge handling the arraignment would have relied on a verbal description of the woman's injuries from a police officer or detective.

In this case, 20 digital photographs taken of the woman at the hospital showed deep, bloody wounds across her face and ears and a potentially permanent injury to her left eye. They were sent by computer to prosecutors and then submitted to the judge as evidence at the arraignment. Mr. Rondon, who ran a car service and lived in South Ozone Park, was arraigned -- and later indicted -- on a charge of attempted murder in the second degree, as well as on assault charges. The judge ordered him held without bail.

Prosecutors said that without the digital photographs, they might have sought only the lesser assault charges and that bail may have been granted. (If he is convicted of the more serious charge, Mr. Rondon could be sentenced to up to 25 years in prison. Mr. Rondon pleaded not guilty at his arraignment; his lawyer was on vacation this weekend and could not be reached.)

"Without the photographs, all you have is a person biting another individual," said Scott E. Kessler, who is the domestic violence bureau chief for the Queens district attorney and who helped lead the drive to use digital photography there. "The extent of the biting -- that it was a person trying to kill another person -- is really only shown in those photographs."

The Queens district attorney handles 4,500 domestic violence cases annually, and prosecutors say the digital photographs have had a significant impact at every point, from bail to arraignment to conviction. Queens began using digital photography in the spring of 2001, and convictions -- the easiest statistic to measure -- rose swiftly, to 60.9 percent from 51.7 percent during the first six months the photographs were used.

In 1997, the Queens district attorney received a federal grant of more than \$3 million over four years. The money is paying for additional staffing, technology and other improvements to its domestic violence bureau. Since 1997, the bureau has more than doubled its conviction rates and in 2001, reported a 25 percent dismissal rate in domestic violence cases, compared with 50 percent in the rest of the city, Mr. Brown said.

Because digital photography makes it easier for prosecutors to move a case forward without a victim's consent, it is fanning a long-brewing debate over the role of victims in prosecuting their abusers.

Prosecutors around the country have embraced an increasingly common approach known as evidence-based or mandatory prosecution: They pursue accused abusers whether or not the victim participates in the prosecution.

Critics of mandatory prosecution say digital photography may give law enforcement agencies more license to disregard the wishes of victims who change their minds after calling the police.

"We need to encourage a dialogue, not discourage it with these mechanisms that trump a victim's voice," said Linda G. Mills, a professor at New York University's Ehrenkranz School of Social Work, who is working on her second book about domestic violence and the law. "If they have a photograph, the prosecutors can just sit down, throw it on the table and say, 'Either you are with us or you aren't,' and it doesn't matter what the woman wants."

Professor Mills also predicted that by making stronger cases against accused batterers, digital photography might discourage some victims from coming forward.

"This kind of thing sends women underground," Professor Mills said. "There's no turning back. When women call the police, they want the violence to stop, they don't necessarily want their husband to go to prison."

But some advocates for domestic violence victims disagreed, and said the digital photographs were powerful tools they could use to help keep a victim safe. One way might be showing a victim photographs weeks or months after an incident as a reminder of the ordeal.

"It has been really beneficial in terms of letting the victim see herself," said Rita Asen, director of the Queens Criminal and Supreme Court counseling program for Safe Horizon, a citywide advocacy group that, among other services, assigns court counselors to victims. "We think this makes victims more willing to go ahead and cooperate."

Whether the victims cooperate or not, the police are eager to use their new tool. "We cannot wait," said Lucia Davis-Raiford, director of the New York Police Department's domestic violence unit. "The power of the photograph is very strong."