

The gravity of abuse

Part IV: Three Strikes

The conclusion of our series on one family's struggle to survive domestic violence

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The caller

9 11. What are you reporting?"
"I need to talk to a police officer. I got really beat up."
"OK. Where are you?"

Brandy Sweeney sat in the lobby of Hope Place, a shelter for women and families at 3802 S. Othello St. in south Seattle. It was April 29, 2010, 11:31 p.m. She'd been physically assaulted by her boyfriend, Richard James Duncan, in an apartment three blocks away.

Immediately after the assault, Richard grabbed his jacket and ran. After waiting 90 minutes, Brandy bundled up Ian, their infant son, and raced to Hope Place. The security guard there lent her his cell phone.

"How bad are you injured?" the operator asked.

"I don't know," Brandy said.
"I can send someone to look at you. What did he do to you to assault you?"

"He hit me in the face."
Brandy's left cheek was swollen, and a purple hematoma formed under her left eye. A cut lined her lower lip, a red mark visible on her throat. Brandy tried to explain her injuries, but her sore, bloody lip made it difficult to talk.

"We're going to have police and medics come out and take a look at you, so we can document this."

"OK," Brandy said.
The operator gathered Brandy's personal information. "Was there anyone else in the apartment with you when he assaulted you?"
Brandy told him her son, Ian, was there.
"Now did Richard, uh, assault your son at all?"

"No," Brandy said. "He just hurt me."
The operator took down Richard's description, Brandy having said he'd left on foot.

"And how long ago was that?" the operator asked.

"Like probably an hour and a half or so," Brandy said. "I don't know. The cops are here right now."

"I'm going to go ahead and release you from the line so you can go talk to them. OK?"

"OK, thank you."
"You're welcome," the operator said. "Bye bye."

"OK," Brandy said. "Bye bye."
The security guard at Hope Place had given Brandy an ice pack, which she held to her face. The police asked her, if she could, to recount the assault: She had been hit so many times, she'd lost count. She thought, maybe, Richard had knocked her unconscious. Brandy remembered being knocked to the floor, strangled, kicked. He'd taken the rent money, broken her cell phone. A phone jack in the apartment only provided Internet.

Police photographed her injuries. Medics arrived, and they thought Brandy's right cheek might be broken. But before an ambulance sped her to a hospital, Brandy gave police Richard's description. When

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responding to a call of domestic violence assault, Seattle police officers must arrest the alleged perpetrator. Now they knew what Richard looked like.

All they had to do was find their suspect.

The suspect

An area check began for a suspect with the following description: white male, bald, goatee, tattoos, around 5 foot 6 inches, 180 pounds, black shirt, black pants, black jacket.

Searching for Richard, three officers responded to 4222 S. Othello St., a squat, gray apartment building across the street from a construction site.

He wasn't in Apartment 21, but Brandy and Richard's roommate, Francisco Mitchell, was. Richard and Francisco worked general labor at the construction site. After work that evening, Francisco had gone out for a beer, came home, heard screaming from the hallway and opened the door. That's when he walked in on "them fighting," he said.

Richard ran to Francisco, saying Brandy had stabbed him, but Francisco took Richard's keys and kicked him out.

Police performed a sweep of the building's perimeter. Nothing. On foot, officers backtracked in the direction of Hope Place, moving toward the intersection of South Othello Street and Martin Luther King Jr. Way South. On the northeast corner was a restaurant-bar. They searched inside for Richard. Nothing. They entered the Safeway near Hope Place. Nothing.

With their leads running out, the officers started to return to their squad cars, but one of the officers heard a noise in the bushes west of the building. "It sounded bigger than our usual Rainer Valley cat," one officer remembered. The officers, now four in number, decided to investigate.

They made their way through a small, open field near a taco truck. As soon as the officers approached the bushes, they could tell someone was there, lying on the ground. One officer swung out to the left. They drew their guns. None of them could really see the person on the ground, so they shined their flashlights. White male, bald, with a goatee, tattoos, black pants. "He fit the description to a T," one officer said later.

The officers identified themselves. Come out, one said, and lie down on the ground with your hands on your head.

Richard lay still.

Two officers went crawling in after him and pulled Richard out. He resisted. One officer stretched out over Richard's legs, while two others took hold of his arms. They



Brandy, 29, plays with Ian, 2, in early April 2012. She recently obtained a protection order that prohibits Richard from seeing her and their son until June 2013.

PHOTOS BY KATE BALDWIN

pulled Richard's arms behind his back. One officer snapped on the cuffs.

It took two officers to hoist him from the ground. After reading Richard his Miranda rights, they escorted him to the squad car, and an officer drove him to the south precinct for booking.

Suspect apprehended.

The shelter

At Harborview Medical Center, CT scans revealed no fractures or dislocations in Brandy's face or jaw. She received a prescription for 800 mg of ibuprofen. But the pills only touched the physical pain. To address emotional well-being, an ER social worker speaks to all assault victims. Brandy told her social worker she wanted to go to a domestic violence shelter.

In King County, at least 20 agencies or shelters assist women facing domestic violence. Every shelter the social worker called was full. A shelter in Snohomish County, north of Seattle, had space, but it didn't take clients at night. Still, she gave Brandy a list.

Brandy was tired, sore and frightened. Travelling in a taxi with Ian, she rode to the only place where she knew she could stay: Apartment 21.

Francisco told her she could stay as long as she wanted ... but the rent: They had to cover the rent. The day following the assault was Friday, payday, so Francisco got Richard's check, and Brandy signed it — she'd done it before — and used the money to help out.

The case

But the end of the violence marked the beginning of a court case: The State of Washington v. Richard James Duncan.

After booking him, officers transported Richard to the King County Jail. At his arraignment on May 12, Richard heard the

initial charges against him: assault in the second degree — domestic violence, for the alleged strangulation of Brandy; and felony harassment, for a drunken outburst Richard made to officers in the squad car. At a subsequent hearing, bail was set for \$150,000.

As the case developed, a state prosecutor realized the attempted April 29, 2010, strangulation of Brandy wasn't Richard's only assault against her: in mid-August 2009, he'd been arrested for domestic violence assault in the fourth degree, a misdemeanor, that occurred in a Seattle motel when Brandy was eight months pregnant; three months later, he committed another assault in a Renton transitional housing unit but he had evaded police. That equaled three assaults, two of which had occurred when a no-contact order was in effect, which required he stay 500 feet away from her. Along with those assaults, he had two outstanding arrest warrants.

And the prosecutor discovered more. Richard's criminal history from Nevada included convictions for assault with a deadly weapon in 2005, possession of a stolen vehicle in 2002 and a domestic battery charge in 1998, plus others.

The prosecutor felt if the court released Richard, he'd commit another violent offense. At a subsequent hearing, the prosecutor asked for increased bail. The judge agreed.

The court raised Richard's bail to \$500,000.

"He went for it," Brandy recalls. Richard wanted a trial.

The wait

Time leading up to a trial travels at two speeds: neutral and overdrive.

In June, a few weeks after the judge set bail, a guard escorted Richard from the jail through a sky bridge to King County Superior Courtroom E-1201. He sat in a holding cell until a prosecutor called his name for a hearing. His defense lawyer asked the judge to continue the case to a later date; the judge granted the motion. The whole process lasted barely five minutes. Richard signed his court documents with an "X," so his signature could not be linked to any court documents he'd signed in Nevada, then returned to his cell, his mind revved up on one word: life.

In July, in August, then in September, too, he repeated the routine: the hearing, the signing of documents, the waiting. Life, life, life.

Brandy pushed the trial and her potential testimony out of her mind. It wouldn't happen. She concentrated on Ian and contacted Karen Ciruli, a woman who had assisted her during Ian's birth. They celebrated Ian's first birthday at Chuck E. Cheese's. Brandy went to church and prayed with her good friend Morgan Price. They raised their hands to God.

Since Richard couldn't afford legal counsel, he was assigned lawyers from SCRAP, Society of Counsel Representing Accused Persons, a nonprofit public defense law firm. Attorneys Matthew Pang and Alison Warden would handle his case. Richard met with them for maybe five, 10 minutes at a time. More hearings, more waiting. Life.

The state chose deputy prosecuting attorney (DPA) Stephen Hershkovitz. He met Brandy and talked to her about what could happen on the stand. Brandy prayed.

Before Christmas, she and Ian moved out of Hope Place and into a barren two-bedroom in south Seattle, her church providing furniture, a Christmas tree, gifts. Brandy rarely thought about the assault.

More hearings, more waiting, more worrying, more praying.

And then, more than 13 months after the assault, the trial was on the docket. Brandy would testify. Richard faced life in prison.

No more waiting.

The Trial: Day 1

On Sunday, June 6, 2011, The State of Washington v. Richard James Duncan was heard in King County Superior Courtroom W-928, Honorable Judge Mary Yu presiding.

Sitting at the defense table, Richard, wearing a button-down gray shirt and slacks, looked pale, gaunt. He'd lost almost 40 pounds since his arrest, worrying about a life sentence. But by the trial's start, he was reconciled to what fate would prescribe.

The morning began with counsel discussing what information would be included in the trial. Since DPA Hershkovitz knew a defendant could only be tried on the charges in a case and not judged on his past, he wanted to exclude evidence pertaining to Richard's felony convictions from Nevada. Excluding this evidence meant the jury would never know that Richard could face a third strike, with a potential life sentence, if convicted. Judge Yu granted the motion.

In the afternoon, potential jurors entered the courtroom, the judge informing them what selected jurors might experience. She emphasized that when defendants opt for a jury trial, they're voicing an important message: "They are saying they trust you." She added that a trial is a very methodical process, a deliberately designed process. A human process. "And it's not perfect," Judge Yu said.

Then she outlined the final charges against Richard:

The decision

Brandy started to raise Ian alone in Hope Place. Operated by the Union Gospel Mission, the shelter offers housing to women and their children. Brandy and Ian had their own room, and, as summer progressed, Ian went from rolling on the floor to crawling to pulling up on furniture.

At Hope Place, every woman, whether Muslim, Jewish, Mormon, Protestant or Catholic, participated in an individually crafted curriculum imbued with a Christian flavor. Chores in the morning, classes in recovery, morning devotions, Bible study and more. During Brandy's first stay there, before the April assault, she had taken part because it was required. But by summer 2010, while Richard sat in jail, Brandy participated because she felt called. By then, she had found God.

This separated her even more from Richard. He practiced Odinism, a belief system that honors the Norse god Odin. Richard discovered Odinism in the Nevada prison system. But his fellow Odinist inmates also subscribed to white supremacy, and, falling in with them, Richard had acquired prison tattoos that proclaimed his beliefs: a swastika, a likeness of Adolf Hitler and, spelled out across his upper fingers, "SKINHEAD." Brandy, part Shoshone-Bannock Indian, was never drawn to Odinism's racist bent. She knew their different spiritual beliefs would keep them at odds.

Shortly after the assault, a domestic violence advocate linked to the state prosecutor's office asked Brandy a question: If the case against Richard went to trial,

would she testify against him? "I told her I'd pray about it," Brandy recalls.

She mulled it over for weeks before deciding she'd testify, though Brandy doubted it would ever happen. "I was thinking, 'If I were him, I would probably take a plea agreement,'" she remembers.

Perhaps state history gave her confidence. Back in 1993, Washington voters had passed an initiative providing that a persistent offender convicted of three serious felonies could be sentenced to life in prison — with no chance of parole. The first such legislation enacted in the country, it became known as the three-strikes law.

A state prosecuting attorney reviewed Richard's complete criminal history. In Nevada, Richard had been convicted of assault with a deadly weapon, a serious felony. A potential first strike. He'd also been convicted of attempted battery causing substantial bodily harm in Nevada, another serious felony. A potential second strike. If Richard was found guilty of the second-degree assault against Brandy, it would qualify as a serious felony conviction. A potential third strike.

That meant, if the prosecutor's office could ascertain that the Nevada convictions were on par with Washington convictions for similar crimes, a prosecutor could argue before a judge that Richard had earned his third strike. Of course Richard's defense team could challenge. But a judge would decide if Richard's sentence would be life.

Richard could avoid a potential life sentence in prison, however, if he took a plea bargain. But he surprised everyone, even himself. He didn't opt for a plea.