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Admissibility of Evidence of Battered Woman's Syndrome Evidence of Issue of Self-defense

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Research Guides

Admissibility of Evidence of Battered Woman's Syndrome Evidence on Issue of Self-defense

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Topic Overview

Battered woman's syndrome is a term used to describe the effects of the physical and psychological abuse a woman suffers at the hands of her abuser, with whom she shares a personal, intimate relationship. Battered woman's syndrome can be characterized as a post-traumatic stress disorder which emphasizes a woman's economic and emotional dependency on her abuser. The abuser typically employs control tactics over his battered partner which include, but are not limited to, physical and sexual abuse, isolation, humiliation, threats, and deprivation of money. These control tactics make it seem virtually impossible for an abused woman to leave her abuser, whether she wants to or not. Though she may engage in efforts to stop the abuse, the battered woman often finds herself held hostage in a vicious cycle of violence which tends to intensify over a period of time, leaving her helpless and hopeless.

Scope

Courts have consistently refused to create an independent defense based on the battered woman's syndrome. However, the admissibility of evidence relating to battered woman's syndrome has lied solely in defense counsel's ability to establish a claim of self-defense. If self-defense can be established, courts will, largely, admit evidence relating to the battered woman in an effort to prevent stereotypes and myths which could interfere with a fair and impartial trial.

There are two types of cases where battered woman's syndrome evidence is offered during criminal cases: 1) Non-confrontational cases and 2) Confrontational cases. Non-confrontational cases are those where the battered woman attacks her abuser during a period where there is no imminent harm (i.e. abuser is sleeping). Because there is no imminent harm, courts have generally found insufficient evidence to raise a self-defense claim, thereby making battered woman's syndrome evidence inadmissible. On the other hand, confrontational cases describe those situations where a battered woman attacks her abuser in the midst of being abused by her partner. Here, a self-defense claim can be offered and most courts will admit battered woman's syndrome evidence.

This research guide will provide information relating the admissibility of battered woman's syndrome evidence in both types of cases.

About the Author

Dana N. Jackson is a third year student at Georgia State University College of Law, graduating with a JD in May 2010. As a student, Ms. Jackson has worked as a Judicial Clerk, under Judge Rosemarie Rhodes, at the U.S. Equal Employment Opportunity Commission and as a law clerk for the U.S. Army JAG Corps. Presently, Ms. Jackson works as a Registered Civil Mediator at Fulton County Superior Court in Atlanta, GA and anticipates a successful career in litigation.

Disclaimer

This research guide provides a non-exhaustive list of the arguments relating to the admissibility of Battered Woman's Syndrome evidence. It only serves as a starting point for law students, attorneys, judges, scholars, and others interested in this topic. This guide should not act as legal advice nor provide any legal opinions on any specific facts or circumstances related to this topic. Please consult an attorney for any specific legal questions concerning Battered Woman's Syndrome evidence.

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Primary Sources

U.S. Code

The United States Code Annotated has some sections that are relevant to the issues of the admissibility of "battered woman's syndrome."

42 U.S.C.A. § 14013

Statutes and Regulations

O.C.G.A. § 16-3-20

The fact that a person's conduct is justified is a defense to prosecution for any crime based on that conduct. The defense of justification can be claimed:

(1) When the person's conduct is justified under Code Section 16-3-21

O.C.G.A. § 16-3-21 (a)

A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that such threat or force is necessary to defend himself or herself or a third person against such other's imminent use of unlawful force; however, except as provided in Code Section 16-3-23, a person is justified in using force which is intended or likely to cause death or great bodily harm only if he or she reasonably believes that such force is necessary to prevent death or great bodily injury to himself or herself or a third person or to prevent the commission of a forcible felony.

O.C.G.A. § 24-9-67

In criminal cases, the opinions of experts on any question of science, skill, trade, or like questions shall always be admissible; and such opinions may be given on the facts as proved by other witnesses.

O.C.G.A. § 24-2-2

The general character of the parties and especially their conduct in other transactions are irrelevant matter unless the nature of the action involves such character and renders necessary or proper the investigation of such conduct.

GA Procedure

Ga. Unif. Super. Ct. R. 31.4

Evidence of the battered woman syndrome is admissible for the purposes of establishing (1) reasonable fear of the wife in connection with a claim of self-defense, and (2) general character for violence of the husband.

11 Ga. Proc. Criminal Procedure § 25:75

Evidence and witnesses. Behavior of defendant--Battered-woman syndrome. The admissibility of testimony on the battered woman's syndrome does not require, as a foundational matter, that the expert have examined the victim or the defendant.

Case Law

U.S. COURT OF APPEALS

United States v. Whitetail, 956 f.2d 857 (1992): Although defendant claimed self-defense and alleged that she suffered from battered-woman syndrome, she was convicted of the second-degree murder of her long-time, live-in boyfriend. the court found that the district court erred as a matter of law when it did not exercise its discretion in determining whether to grant a downward departure based upon battered-woman's defense because, although the jury rejected the defense, the district court still could have considered the defense under a broader standard of proof.

Paine v. Massie, 339 F.3d 1194 (2003): Petitioner killed her husband after suffering 12 years of abuse. After her habeas petition was denied, the appellate court found that counsel failed to do something that the district court said was necessary to mount an effective self-defense claim given the jury's likely misconceptions about battered woman syndrome. Although an expert could not testify to the ultimate fact, testimony about battered woman syndrome from an expert was necessary to equip the jury to properly assess the reasonableness of petitioner's fear.

Hess v. Macaskill, 1995 U.S. App. LEXIS 27699 (1995): When petitioner asserted an affirmative defense of self-defense based on the battered woman's syndrome, the court had the power to compel the petitioner to submit to a mental evaluation, but only for use during the rebuttal phase of the trial.

United States v. July, 1992 U.S. App. LEXIS 6394 (1992): District court had authority to order mental exam of defendant who presented battered spouse defense and exam did not violate Fifth or Sixth Amendment rights when information obtained was not unfairly used and she was aware of the time and scope.

GEORGIA CASES

Smith v. State, 247 Ga. 612 (1981): Where defense counsel attempted to introduce testimony from a clinical psychologist regarding "battered woman syndrome" in the trial of a woman invoking self-defense to charge of murdering boyfriend, the refusal to allow such testimony was reversed.

Smith v. State, 268 Ga. 196 (1997): Voluntary manslaughter conviction was reversed where defendant was entitled to a specific jury instruction on the battered person defense to explain to jury how her experiences as a battered person affected her state of mind at time of killing.

Clenney v State, 256 Ga. 123 (1986): Defendant was convicted of killing her lover following an altercation in which she claimed that she had been severely beaten by him. The trial court sentenced her to life imprisonment. On appeal, the court found that, in reviewing the evidence in the light most favorable to the jury's verdict, a rational trier of fact could have found defendant guilty beyond a reasonable doubt. The court determined that it was not error to have excluded evidence of defendant's 28 years of physical and psychological abuse by her two former spouses, because evidence regarding a justification defense should have been based solely upon the circumstances which occurred between defendant and the victim. The court found that the exclusion of evidence of the battered woman/wife syndrome was not erroneous and affirmed.

Chapman v State, 258 Ga. 214 (1998): On appeal of a murder conviction, defendant contended that the trial court erred by excluding testimony concerning the victim's general character for violence. On remand, the court reasoned that defendant's claim of self-defense was supported by expert testimony on the battered woman syndrome. Expert testimony regarding the battered woman syndrome authorized a jury to find that, notwithstanding any lapse in time since her husband's last assault, defendant honestly was trying to defend herself although her husband was not at the moment physically attacking her. A defendant claiming self-defense based on the battered woman syndrome could, by her own testimony, coupled with that of an expert, make the prima facie showing required for the admission of the victim's general character for violence. Defendant made the required prima facie showing and the trial court erred by excluding that testimony. The court rejected the state's contention that any error in excluding the testimony was harmless.

Chester v. State, 267 Ga. 9 (1996): Defendant was properly refused a jury charge on the battered person syndrome as a defense to his murder conviction because his victim's mere verbal threats did not qualify defendant as a battered person. Thus, the requested charge was irrelevant.

Pugh v. State, 191 Ga. App. 394 (1989): Court reversed the grant of state's motion in limine to exclude defendant's evidence of battered woman syndrome for any purpose. Court stated that under appropriate circumstances a woman who killed her husband or boyfriend and raised the self-defense claim might, as evidence of whether she acted in dear of her life, have an expert witness describe the battered woman syndrome, apply that model to the facts, and conclude that the woman fell within the profile. Hence, if defendant intended to raise the defense of self-defense, evidence of the battered woman syndrome was relevant and evidence of the battered woman syndrome was independently admissible in conjunction with a claim of self-defense.

Adame v. State, 244 Ga. App. 257 (2000): Battered person syndrome evidence was properly excluded because no evidence suggested victim was abusive mate. Similar transaction evidence was properly admitted as sufficiently similar and showed bent of mind.

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Secondary Sources

Books

- The Battered Woman by Lenore Walker
  ISBN: 0060907426This book brings domestic violence and its devastating effects to the public eye.
- More Than Victims: Battered Women, The Syndrome Society, and the Law (Morality and Society Series) by Donald Alexander Downs
  ISBN: 0226161600A substantive look at the uses of syndrome excuses.
- Terrifying Love: Why Battered Women Kill & How Society Responds by Lenore E. Walker
  ISBN: 0060920067A dramatic study of women who murder their abusive partners in self-defense--and what happens to them afterward.

Treatises & Journals

- Handbook of Psychology, Forensic Psychology, Vol. 11 by Alan M. Goldstein & Irving B. Weiner
  ISBN: 0471383215Presents the nature, origin, implications, an future course of major unresolved issues in the area.
- Psychology, Psychiatry and the Law: The impact of expert testimony in trials of battered women who kill by Regina Schuller, Blake McKimmie, Teresa JanzApril 1, 2004 Pg 1(12). Description of the usage of expert testimony in battered woman's syndrome murder trials.
- American Bar Association Journal: Driven to kill: 'Battered women' strike back by Cheryl Frank70 A.B.A.J. 25 (1984). Women who attack or kill their sleeping or unsuspecting mates often claim they had to do it to save their own lives or to protect their children.

American Law Reports

A.L.R. provides an objective, in-depth, analysis of many specific legal issues, together with a complete list of every case—in every jurisdiction—that discusses it. With thousands of attorney-authored articles covering the entire breadth of U.S. law, A.L.R. can save hours of research time when trying to quickly get familiar with an area of law. This series has been cited by more courts than any other secondary resource, and can be found on Westlaw or LexisNexis.

- Cynthia L. Barnes, J.D., Admissibility of expert testimony concerning domestic-violence syndromes to assist jury in evaluating victim's testimony or behavior, 57 A.L.R.5th 315

- Erin M. Masson, J.D., Admissibility of expert or opinion evidence of battered-woman syndrome on issue of self-defense, 58 A.L.R.5th 749
- Gregory G. Sarno, J.D., Ineffective assistance of counsel: battered spouse syndrome as defense to homicide or other criminal offense, 11 A.L.R.5th 871

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Legal Encyclopedias

AMERICAN JURISPRUDENCE

31A Am. Jur. 2d Expert and Opinion Evidence § 180: In some jurisdictions, expert testimony as to domestic-violence syndromes, such as the battered-woman syndrome, is inadmissible, regardless of the purpose for which it is offered. In other jurisdictions, expert testimony on the battered-woman syndrome is admissible if it is proffered by a defendant on the issue of self-defense, although it may not be admissible to explain a victim's conduct. In still other jurisdictions, such testimony is admissible to explain a victim's conduct.

31A Am. Jur. 2d Expert and Opinion Evidence § 182: Rationale for admissibility of expert testimony concerning domestic violence syndromes to assist jury in evaluating victim's testimony or behavior.

31A Am. Jur. 2d Expert and Opinion Evidence § 367: Battered Woman's Syndrome, in general.

40 Am. Jur. 2d Homicide § 134- X. Defense of Person, Habitation, or Property. A. Self-Defense: The right of self-defense is one's privilege to defend oneself against personal attack. A valid claim of self-defense is legal justification for an otherwise criminal act.

40 Am. Jur. 2d Homicide § 144- X. Defense of Person, Habitation, or property. A. Self-Defense. 2. Invocation of Doctrine under Particular Circumstances. Battered Spouse Defense.

CORPUS JURIS SECUNDUM

22 C.J.S. Criminal Law § 60- IV, Defenses and Circumstances Barring Prosecution or Conviction. B. Justification or Excuse. Defense of self or another.

23 C.J.S. Criminal Law § 1449- XLVI. Opinion Evidence. B. Expert Opinion. 2. Subjects of Expert Opinion. d. Profile or Syndrome Evidence. § 1449. Battered woman's syndrome.

41 C.J.S. Homicide § 501- X. Trial. C. Instructions. 3. Defenses and Mitigating Factors. b. Self Defense.

GEORGIA JURISPRUDENCE

20 Ga. Jur. Criminal Law § 5:84- Battered woman's syndrome. The trend is to refer to this evidence, offered to show a pattern of prior conduct explaining the defendant's fears and introduced to justify the defendant's acts, as evidence of a battered person syndrome

Law Review Articles/Notes/Comments

David L. Faigman, Article, ***To Have and Have Not: Assessing the Value of Social to the Law as Science and Policy.*** 38 Emory L.J. 1005 (1989).

Article on the relevance that social science research has to legal decisionmaking depends upon the validity of this claim. ... When valid social science research is unavailable, suppositional scientific views can provide helpful insights to judges (as policy makers) as well as legislators who must make predictions about human behavior, and who typically listen to the subjective views of all interested parties regarding the factual issues underlying such policy questions. ... Nonetheless, the possibility that jurors will be overwhelmed by the aura of scientific certainty, combined with the more troubling infusion of policy views associated with expert testimony based on suppositional science, necessitates the adoption of a threshold admissibility standard based on the validity of the proffered research.

Terri A. Forehand, Note and Comment, ***Open Season on Batterers in Georgia? Georgia Supreme Court Allows Jury Instructions on Battered Person Syndrome in Self-defense Cases: Smith v. State.*** 15 Ga. St. U.L. Rev. 821 (1999).

Note on the court's requirement of a separate jury instruction if (1) the defendant makes a proper evidentiary showing of BPS and (2) the defendant properly requests a separate jury instruction regarding the relevance of that evidence to a justification defense.

Sherry M. Hall, Note, ***Smith v. State: The Georgia Supreme Court Mandated Jury Instructions in Battered Person Syndrome Cases.*** 49 Mercer L. Rev. 1141 (1998).

Note on the court's holding that "when a battered person syndrome self-defense claim has been properly established, the court should give specific jury instructions on justification by self-defense which are tailored to explain how the defendant's experiences as a battered person affected that defendant's state of mind at the time of the killing."

Emily L. Miller, Comment, ***(Wo)Manslaughter: Voluntary Manslaughter, Gender, and the Model Penal Code.*** 50 Emory L.J. 665 (2001).

The Oregon Supreme Court upheld a jury instruction on "extreme emotional disturbance," thus permitting the mitigation of murder to voluntary manslaughter. ... The ALI rejected the sexist legacy of property law, and instead cast "the issue in phrases that have no common law antecedents and hence no accumulated doctrinal content. ... To fully understand how the doctrine of voluntary manslaughter affects women, an analysis of the common law origin of the heat of passion defense is necessary. ... During this period, did the MPC formulation of voluntary manslaughter improve upon the common law approach? Did the doctrinal expansion provided by EED serve the goals of public policy? Have juries been able to strike the appropriate balance in evaluating the objective and subjective elements of the defendant's situation? Most importantly, does the MPC formulation of voluntary manslaughter adequately protect women from violence at the hands of intimates? Unfortunately, it appears that the answer to each of these questions is no. ... By failing to fully condemn a man who kills a woman in the heat of passion, the doctrine of voluntary manslaughter sanctions the notion of man as an aggressor.

Blogs

- Why Women Stay: Understanding the Battered Wife
  http://annveilleux.com/articles/why-women-stay-understanding-the-battered-wife/
  Post regarding the battered woman's pattern of helplessness.
- Domestic Violence and the Battered Woman's Syndrome
  http://www.kostrolaw.com/NJFamilyIssues/2010/03/05/domestic-violence-and-the-battered-womans-syndrome/
  Blog from the eyes of an expert on domestic violence.
- Battered Woman Syndrome Key Elements
  http://uaadvnewsblog.blogspot.com/2009/07/battered-woman-syndrome-key-elements.html
  Trauma and violence. A description of the key elements of battered woman's syndrome.

In the News

- The New York Times: Battered Women, Battered Justice
  http://www.nytimes.com/1991/03/13/opinion/battered-women-battered-justice.html?pagewanted=1
  A 1991 opinion piece on how the justice system handles battered woman's syndrome.
- Los Angeles Times: Parent to Use Spousal Fear in Her Defense of Baby's Death
  http://articles.latimes.com/2001/feb/25/local/me-30204
  Interesting case on a mother's usage of the battered woman's defense: "The condition known as "battered-woman syndrome" has been used in the defense of women who kill their husbands, but rarely in cases in which women face charges in the death of their children."

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Interest Groups and Associations

Federal Agencies

- U.S. Department of Agriculture: Safety, Health and Employee Welfare Division
  http://www.dm.usda.gov/shmd/aware.htm
  Domestic Violence Awareness Handbook
- U.S. Department of Justice: Office on Violence Against Women
  http://www.ovw.usdoj.gov/
  Provides national leadership in developing the nation's capacity to reduce violence against women through the implementation of the Violence Against Women Act (VAWA). Created in 1995, OVW administers financial and technical assistance to communities across the country that are developing programs, policies, and practices aimed at ending domestic violence, dating violence, sexual assault, and stalking.

Interest Groups

- National Coalition Against Domestic Violence
  http://www.ncadv.org/
  Organization that deals with the concerns of battered women and their families. Their programs support and involve battered women of all racial, social, religious and economic groups, ages and lifestyles. NCADV opposes the use of violence as a means of control over others and support equality in relationships and the concept of helping women assume power over their own lives.
- S.A.F.E.- Stop Abuse For Everyone
  http://www.safe4all.org
  Created to address problems of family abuse and violence for all, regardless of gender, sexual identity, and age, with an emphasis on under-served groups.
- The Women's Legal Defense and Education Fund
  http://www.legalmomentum.org/
  Legal Momentum is the nation's oldest legal defense and education fund dedicated to advancing the rights of all women and girls.
- The National Center for Victims of Crimes
  http://www.ncvc.org/ncvc/Main.aspx
  The nation's leading resource and advocacy organization for crime victims and those who serve them. Since its inception in 1985, the National Center has worked with grassroots organizations and criminal justice agencies throughout the United States serving millions of crime victims.

Georgia Resource Centers

- Women's Resource Center to End Domestic Violence

http://www.wrcdv.org/
Atlanta, GA

- Georgia Domestic Violence Shelters
  http://www.sboard.org/SHELTERS/GA.HTM
  List of domestic violence shelters throughout the State of Georgia

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