

**IN THE SUPERIOR COURT OF PENNSYLVANIA WESTERN
DISTRICT**

49 WDA 2023

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

MANEKA PRESSLEY

Appellant

BRIEF FOR AMICUS CURIAE NATIONAL DEFENSE CENTER FOR
CRIMINALIZED SURVIVORS at the BATTERED WOMEN'S JUSTICE
PROJECT

In Support of Appeal from the 1/3/2023 Order of the Allegheny
Court of Common Pleas at No. CP-02-DR-0009187-2019, denying
Appellant's Motion to Dismiss

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Statement of Interest

BWJP is the national leader at the intersection of gender-based violence and legal systems. A collection of seven national policy and practice centers, BWJP consults with and trains advocates, nonprofit service providers, attorneys, and judges to change the trajectory of all legal systems. The National Defense Center for Criminalized Survivors (NDCCS) is a practice center of BWJP and has worked to secure justice for victims of battering charged with crimes since 1987.¹ NDCCS provides customized assistance and technical expertise to victim defendants, defense

¹ NDCCS was formerly the National Clearinghouse for the Defense of Battered Women and was located in Philadelphia, PA. It changed its name upon its merger with BWJP in December of 2022.

attorneys, anti-domestic violence advocates, expert witnesses, and others. It has worked on thousands of cases, helping defense teams ensure that factfinders understand how evidence of defendants' experiences of abuse can support affirmative defenses, explain behavior, reduce culpability, and mitigate punishment.

Over the years, NDCCS has submitted several amicus briefs in Pennsylvania on issues impacting criminalized survivors, including the seminal case of *Commonwealth v. Stonehouse*, in which the Supreme Court of Pennsylvania found that "where a pattern of battering has been shown, the battered women syndrome must be presented to the jury through the introduction of relevant evidence." *Commonwealth v. Stonehouse*, 521 Pa. 41, 66 (1989).²

Amicus Curiae has a significant interest in the outcome of this case because of the detrimental impact on survivors when a

² NDCCS also submitted amicus briefs in *Commonwealth v. Dillon*, 528 Pa. 41 (1991), discussed *infra*, and *Commonwealth v. Markman*, in which the Pennsylvania Supreme Court concluded that the trial court erred in refusing to instruct the jury on the defense of duress. *Commonwealth v. Markman*, 591 Pa. 249 (2007).

court misunderstands evidence of battered women's syndrome (BWS).³ In the instant case, Appellant is at risk of being placed twice in jeopardy for the same allegations because the trial court *sua sponte* declared a mistrial after erroneously characterizing the BWS expert's reference to Appellant's perception as improperly invading the province of the jury, and misquoting the expert's actual testimony when discussing the basis for the mistrial.⁴ A retrial of Appellant would constitute a violation of state and federal constitutional prohibitions against double jeopardy, and would unjustly subject Appellant, a survivor of intimate partner violence, to further retraumatization.

No parties to this action authored or paid for the preparation of this brief.

³ Although *Amicus* typically uses the term "battering and its effects" to describe the substance of lay and expert testimony regarding intimate partner abuse, we will refer to it as "battered woman syndrome" (BWS) in this brief in keeping with the prevailing language in Pennsylvania.

⁴ The trial court re-casted the expert's testimony, saying that the expert testified that what Appellant did "was reasonable." The expert never opined on Appellant's state of mind. See Notes of Testimony (T.T.) 467 and 502-503. This mischaracterization of Appellant's expert's testimony is a clear error and abuse of discretion by the trial court. *Amicus* will defer to Appellant's merits brief on addressing the trial court's abuse of discretion for declaring a mistrial based on expert testimony that did not occur.

Statement of the Scope and Standard of Review

Amicus adopts Appellant's statement of the scope and standard of review.

Questions Presented

Amicus adopts Appellant's statement of the questions presented.

Introduction and Summary of Argument

Intimate partner battering, sometimes referred to as "intimate partner violence" or "domestic violence," is a type of gender-based violence that harms millions of Americans each year. Its impact goes far beyond physical injury—experiencing battering increases the risks of addiction, poverty, and mental health issues. One of battering's most insidious consequences, however, occurs when victims are forced to defend themselves against their abusive partners and are subsequently criminalized for having done so. In such cases, expert witnesses are often called upon to help explain facts and circumstances that may

otherwise seem perplexing or counterintuitive. U.S. Dep't of Justice & U.S. Dep't of Health and Human Services, *The Validity and Use of Evidence Concerning Battering and Its Effects in Criminal Trials: Report Responding to Section 40507 of the Violence Against Women Act*, NCJ No. 160972 (May 1996).

The category of evidence these experts testify to is called evidence of battering and its effects, or "Battered Women Syndrome" (BWS) evidence. BWS evidence is offered to "provide the jury and the judge with both an understanding of general principles of domestic violence and a framework within which to analyze the unique facts of the particular case being heard before the court." Mary Ann Dutton, *Expert Testimony In Criminal Cases, A Resource Monograph* prepared for the National Association of Women Judges (1997) 4-5. More specifically, when offered by the defense, BWS testimony:

1. Helps to explain the impact of intimate partner violence (IPV) on the behaviors, perceptions, thoughts, and experiences of victims generally, and/or specific victims;

2. Identifies and dispels common myths and misconceptions about IPV, IPV victims, and people who use IPV against their partners; and
3. Provides information about the psychological and social context in which alleged crimes occurred.

Id. See also Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 Hofstra L. Rev. 1191 (1993); Kit Kinports, *So Much Activity, So Little Change: A Reply to the Critics of Battered Women's Self-Defense*, 23 St. Louis Pub. L. Rev. 155 (2004).

Battering “is a complex phenomenon that is not easily understood or encapsulated in a syndrome or psychological diagnosis,” and “in cases involving survivors . . . the facts often diverge from common sense understanding and from what the general public believes about survivors of abuse.” Kathleen J. Ferraro & Noël B. Busch-Armendariz, *The Use of Expert Testimony on Intimate Partner Violence*, VAWnet 1 (Aug. 2009), <https://vawnet.org/sites/default/files/materials/files/2016->

09/AR_ExpertTestimony.pdf (citations omitted). To add further complexity, lay persons often don't perceive gender-based violence as an issue "beyond their ken," as stories of domestic violence are all too common. But the ubiquity of domestic violence is exactly why expert testimony on BWS is critical in cases involving victims charged with crimes – "common knowledge" about domestic violence is rife with misinformation about intimate partner violence and the people who experience it. When factfinders evaluate cases through a lens tainted by widespread myths and falsehoods, they lack the tools they need to accurately evaluate facts, assess credibility, and render just verdicts.

As discussed *infra*, the evolution of BWS and its use in legal settings has not been straightforward. The term "Battered Woman Syndrome" itself has drawn criticism for decades. See Kinports, *supra*, Kathleen Ferraro, *The Words Change but the Melody Lingers: The Persistence of the Battered Women Syndrome in Criminal Cases Involving Battered Women*, 9 Violence Against

Women 110 (2003). Even so, the use of BWS expert testimony is well-established in self-defense cases.

Expert testimony is often critical in cases where victims of battering act in self-defense; otherwise “jurors are likely to substitute common sense, prior experiences, easier questions, stereotypes and cognitive shortcuts to facilitate their decision-making. While these adaptive responses to complexity and poor communication are useful in everyday life, they become a problem for jurors because they may or may not be consistent with the law and facts as they were given to them.” Steven E. Perkel & Benjamin Perkel, *Jury Instructions: Work in Progress*, 27 *The Jury Expert* 1, 3 (May 2015) (citations omitted); see also Regina A. Schuller et al., *The Impact of Expert Testimony in Trials of Battered Women Who Kill*, 11 *Psychiatry, Psych. & L.* 1, 112 (2004) (finding based on a mock jury simulation that victim-defendants who present expert testimony on battering and its effects fare better than those who do not).

In legal settings, misperceptions about BWS abound. For example, a common misperception is that BWS evidence is

relevant only to what the defendant actually believed at the time of the incident, and not to the objective reasonableness of that belief. That misunderstanding traces back to the false notion that evidence of battering is evidence of a malady or pathology—the kind of evidence that is only relevant to prove the defendant suffered from diminished capacity or was otherwise mentally infirm. *See generally Dunn v. Roberts*, 963 F.2d 308, 314 (10th Cir. 1992); *Arcoren v. United States*, 929 F.2d 1235, 1239-41 (8th Cir.), cert. denied, 502 U.S. 13 913 (1991); *State v. Kelly*, 478 A.2d 364, 378 (N.J. Sup. Ct. 1984); *State v. Koss*, 551 N.E.2d 970, 972 (Ohio 1990); *State v. Hodges*, 716 P.2d 563, 570 (Kan. Ct. App. 1986), overruled on other grounds, *State v. Stewart*, 763 P.2d 572, 579 (Kan. 1988).

For better or for worse, BWS language has persisted in the legal landscape, as have misunderstandings about its nature and use. Several misconceptions about BWS and its use are apparent in the present case. The trial court did not understand what BWS was, or how to use it, and consequently determined that Dr. Applegate's reference to the defendant's perception robbed the

jury of its factfinding role. The trial court's misunderstanding of BWS led to the court *sua sponte* declaring an unnecessary and unjust mistrial, placing Appellant in danger of being tried twice for the same incident. Amicus urges this court to grant Appellant's appeal to overturn the trial court's denial of her motion to dismiss based on double jeopardy.

Argument

BWS expert testimony about a defendant's perception does not impede the jury's fact-finding duty, nor is it dispositive of whether the defendant acted in legal self-defense.

Expert testimony about BWS gives factfinders the information they need to make an informed assessment of the case before them. In cases where the defendant is a victim of intimate partner violence this expertise is relevant to a defendant's perception of danger, the imminence of that danger, the defendant's objective reasonableness, and the social context needed to interpret evidence. Karla Fischer, *Overcoming Challenges in Battered Women's Self-Defense Cases*, <https://drive.google.com/file/d/1WRZJ->

[ZhWI9amkVj7rpaUZ5igtNzE73j5/view](#) accessed May 3,2023. "(I)n attempting to establish how a battered woman meets the criteria for self-defense, expert witnesses have often introduced BWS testimony. The syndrome, while not a defense, is traditionally offered in a self-defense trial to aid the jury in understanding that, given the defendant's past experience and her perception of danger, her subsequent action was indeed reasonable." Cheryl A. Terrance, et al., *Expert Testimony in Cases Involving Battered Women Who Kill: Going Beyond the Battered Woman Syndrome* 88 N.D. L. Rev. 934 (2012) (internal citations omitted).

In the present case, the trial court *sua sponte* halted the jury trial and called counsel to sidebar after Dr. Applegate started to give testimony about the perception of battered women, and about the perception of Appellant specifically. Dr. Applegate said "Well, for example, in Battered Woman Syndrome the key here is the woman's perception that she is in imminent danger of losing her life. This is her perception. Now, in Maneca's case that's exactly what she perceived." Notes of Testimony from Jury Trial (T.T.) 467:2-9. At this point, the trial judge called a sidebar, concerned

that Dr. Applegate had given inappropriate testimony. *Id.* at 468:1. After calling a lunch break the trial court admonished Dr. Applegate "...you may not impinge upon the jury's role here. You are not to tell the jury that ultimately the decisions or what they are here to decide." *Id.* at 469:15-18. The trial court apparently believed that testimony about the Appellant's perception of imminent danger was an invasion of the province of the jury. Notably, Appellant's perception of danger was already on the record. Appellant had earlier testified to her experiences and perceptions. *Id.* at 377:15-25, 382:1, 402:22-25, 406:8, 17-18, 23-25. In addition, Appellant's perception was but one of the many things relied upon by Dr. Applegate to form her expert opinion. She testified to numerous pieces of discovery, police records, medical records, psychological assessments, and "about 16 pieces of research and literature." *Id.* at 456:7-457:6. Dr. Applegate's testimony regarding Appellant's perception was like any other fact presented in the case – the jury could decide to believe or reject it, in part or in whole. Had Appellant told the Commonwealth's expert, Dr. Wright, during his evaluation of

Appellant that she did not perceive herself to be in danger of losing her life, or if she testified to that during trial, the Commonwealth's expert would certainly be permitted to rely on and testify to that information to form the basis of his opinions and conclusions. See Pa.R.E. 703, 704, and 705.

Even if Dr. Applegate's expert testimony appeared on its face to be a legal conclusion, "ultimate issue" expert testimony is admissible in Pennsylvania. Pa.R.E. 704 ("An opinion is not objectionable just because it embraces an ultimate issue"). Dr. Applegate's testimony of Appellant's perception was one of the factors she relied upon in forming her opinion that Appellant was experiencing BWS.

Although not perfectly analogous, it is instructive to consider the Commonwealth's Medical Examiner's expert testimony, wherein Dr. Luckasavic testified that that the decedent's manner of death was homicide – the very crime for which Ms. Pressley was standing trial:

[Dr. Luckasavic]: There is five manners of death. There is natural, accident, suicide, homicide and the last is

indeterminate, typically used in approximately two percent of our cases. The majority are skeletal remains, severely, severely decomposed bodies where an examination is inconclusive.

[Prosecutor]: And your conclusion here?

[Dr. Lucksavic]: My conclusion is a homicide.

[Prosecutor]: Why not accident?

[Dr. Lucksavic]: My definition -- the medical definition of a homicide is when the acts of one individual directly result in the death of another. So homicide is a cause of death due to the volitional actions of one individual committed by one individual that lead to either fear, harm or death.

[Prosecutor]: So that the manner of death is?

[Dr. Lucksavic]: Homicide.

[Prosecutor]: Okay. And all of your testimony here, is it to a reasonable degree of scientific and medical

certainty, sir?

[Dr. Lucksavic]: Yes, it is.

T.T. 91:10-25, 92:1-5.

Though the prosecution's expert witness testified to a conclusion that is ultimately within the jury's province – that the decedent's death was a homicide, and not an accident or other kind of death – the trial judge did not halt the proceedings. Dr. Luckasavic's testimony was permitted to proceed in accordance with the rules of evidence relevant to expert witnesses; however, with Dr. Applegate the trial court unnecessarily interjected itself and halted the trial. This is further indication that the trial court's declaration of a mistrial was due to a fundamental misunderstanding of the use and application of BWS expert testimony.

In Amicus Curiae's experience, expert testimony on the defendant's perception is a common area of expert testimony and is often met with robust cross-examination from the prosecution about the basis for the testimony, characterizing any statement by the defendant as self-serving and lacking in credibility. Prosecutors also impeach such testimony with other evidence, question the experts' methodology, and otherwise attempt to cast doubt on the expert's testimony. In the instant case the trial court

did not allow for that, nor did it apply any other curative remedies.

The record reflects other common misperceptions about BWS. Although the trial court's thought process is far from clear, it apparently reasoned that Dr Applegate came too close to saying that the defendant had BWS, thus proving legal self-defense. *See discussion supra* p. 5-6. Critics of BWS evidence have often referred to battered women's self-defense theory as "the abuse excuse." These critics take issue with defendants being acquitted simply because of their experiences of abuse. *See Victoria Nourse, The New Normativity: The Abuse Excuse and the Resurgence of Judgement in the Criminal Law*, 50 Stan. L. Rev. 1435 (1998); *see generally* Alan Dershowitz, *The Abuse Excuse: And Other Cop-Outs, Sob Stories, and Evasions of Responsibility*, 3 (1994) (the 'abuse excuse,' the legal tactic by which criminal defendants claim a history of abuse as an excuse for violent retaliation – is quickly becoming a license to kill and maim). These arguments are grounded in error; defendants do not

prevail merely because they are experiencing abuse, in Pennsylvania or anywhere else.

Amicus is not suggesting that there is one static understanding of the use of BWS evidence. On the contrary, courts around the country, sometimes even those within the same jurisdictions, occasionally disagree about the exact parameters of BWS expert testimony. Nevertheless, when understood and applied correctly, BWS evidence can help factfinders reach verdicts that are not based on misconceptions and harmful stereotypes about victims of domestic violence. See *Kinports, supra*.⁵

⁵ Courts around the country have discussed the utility of BWS evidence in self-defense cases, for example; *State v. Curley*, 250 So. 3d 236 (2018) (finding trial counsel ineffective for failing to present BWS evidence); *Boykins v. State*, 116 Nev. 171, 995 P.2d 474 (2000) (holding that the trial court erred in giving insufficient jury instructions that did not explain BWS); *People v. Humphrey*, 13 Cal. 4th 1073, 56 Cal. Rptr. 2d 142, 921 P.2d 1 (1996) (holding that BWS evidence is admissible as to the element of reasonableness); *State v. Kelly*, 478 A.2d 364 (N.J. 1984) (holding that BWS is admissible as to the element of reasonableness); *Porter v. State*, 166 A.3d 1044 (Md. 2017) (holding that the defendant may be entitled to an imperfect self-defense instruction in a third-party killing case); *State v. Peterson*, 857 A.2d 1132 (Md. Ct. Spec. App. 2004) (holding that the trial court erred in failing to instruct the jury on BWS); *People v. Christel*, 449 Mich. 479 (1990) (expert testimony on BWS is admissible as to the element of reasonableness; the trial court must instruct on BWS if there is supporting

On the other hand, fundamental misunderstandings about BWS, such as those seen in the instant case, completely undermine defendants' opportunities for fair and just outcomes.⁶

Pennsylvania courts have been repeatedly explicit about the relevance of BWS evidence in self-defense cases.⁷ "(T)oday we hold that such evidence is admissible as probative evidence of the defendant's state of mind as it relates to a theory of self-defense. The syndrome does not represent a defense to homicide in and of itself, but rather, is *a type of evidence which may be introduced on the question of the reasonable belief requirement* of self-

evidence); *Lalchan v. US*, 282 A.3d 55 (DC Ct. App. 2022) (trial court erred by refusing to instruct jury that BWS was relevant to objective reasonableness).

⁶ Leading researchers, including those cited in her expert report and relied upon during testimony by Dr. Applegate, do not agree about the exact parameters of BWS. See T.T. 457 – 461.

⁷ Pennsylvania courts have allowed expert testimony on BWS in several other contexts as well, such as to support the affirmative defense of duress *Commonwealth v. Markman*, 591 Pa. 249 (2007) (the defense presented BWS expert testimony, and the court's refusal to give a duress instruction was ruled erroneous by the Supreme Court). Additionally, the prosecution is permitted to present expert testimony to assist the trier of fact in understanding the dynamics of domestic violence, the impact of domestic violence on victims during and after being assaulted, and on specific types of victim responses and behaviors. See 42 Pa. C.S. §5920 (2022).

defense in cases which involve a history of abuse between the victim and the defendant.” *Commonwealth v. Miller*, 430 Pa. Sup. Ct. 297 at 313 (1993) (emphasis added). In *Commonwealth v. Kacsmar*, this Court reversed the conviction of the defendant who was precluded by the trial court from presenting expert testimony on battered person syndrome. This Court said “the proposed [expert] testimony would have aided the jury in evaluating appellant's behavior and state of mind in light of his reclusive personality and the abusive environment... The reasonableness of appellant's belief that he was in danger of death or serious injury due to the interplay among appellant's lack of self-esteem and need to live at home and the change in the nature of Francis's abuse on the night of the shooting is not within the understanding of the ordinary juror.” *Commonwealth v. Kacsmar* 421 Pa. Super. 64, 79 (1992). The concurrence in the Pennsylvania Supreme Court case *Commonwealth v. Dillon* is also instructive: “(t)o support the battered woman's argument in a proper case, expert testimony can be introduced to show how a battering relationship generates different perspectives of danger, imminence, and

necessary force. Expert testimony can also explain why the defendant stayed in the relationship, why she never called the police, or why she feared increased violence.” *Commonwealth v. Dillon*, 528 Pa. 417,423 (1991) (new trial granted on other grounds).

Dr. Applegate made a reference to Appellant’s perception of danger. Had Dr. Applegate been allowed to continue her testimony, the jury could have evaluated Appellant’s perception of danger, as well as its objective reasonableness, in keeping with established Pennsylvania law. Had the trial court correctly understood the application of BWS to the elements of self-defense, it would not have needlessly declared a mistrial.

There would have been plenty of opportunities for the Commonwealth to dispute Dr. Applegate’s testimony, had the trial been allowed to continue. If Dr. Applegate had been permitted to complete her testimony under direct and cross examination, the jury would have had the opportunity to apply it to the facts of the case, and decide for itself whether the defendant was telling the truth about her perceptions of danger, and whether that

perception was reasonable. The jury could also have made its own determinations about the veracity of Dr. Applegate.

Additionally, the Commonwealth was prepared to present their own expert, Dr. Wright, in rebuttal, and the jury would have had the opportunity to weigh Dr. Applegate's testimony against that of Dr. Wright. A mistrial was wholly unnecessary here and deprived Appellant of her constitutional right to have her case adjudicated by the first jury empaneled by the trial court.

During the sidebar, the trial court, for reasons not made clear on the record, attempted to bolster the appearance of the need for a mistrial with demonstrably false statements about what Dr. Applegate had testified to. The trial judge said to Dr. Applegate: "You made a conclusion and what you said was people who suffer from Battered Woman Syndrome believe that they are going to die and need to use deadly force." T.T. 473:25-474:1-3. That was not Dr. Applegate's testimony. See T.T. 467. The court again misstates Dr. Applegate's testimony when it ultimately declared the mistrial: "But for an expert to take the stand and basically say that the defendant -- I'm just going to say it, was

basically did this *and it was reasonable* -- I don't know that any instruction I'm going to give is going to make this -- is going to undo this or un-ring this bell.” T.T. 502: 9-15 (emphasis added). The trial court record clearly reflects that Dr. Applegate never mentioned that Appellant needed to use deadly force, nor did she testify to the reasonableness of the defendant’s actions.⁸ It appears as though the trial court was inventing reasons to justify halting the trial, admonishing trial counsel and Dr. Applegate, and subsequently declaring a mistrial. Instead of taking a moment to analyze what was actually testified to, the law regarding the parameters of expert testimony, and Appellant’s constitutional interest in concluding the trial and not being repeatedly subject to the loss of liberty, it declared a mistrial after the jury heard four days of testimony. The unwarranted mistrial was a result of the trial court’s failure to understand the application of BWS evidence, failure to apply the Pennsylvania Rules of evidence, and failure to recount the actual testimony of Dr. Applegate.

⁸ Amicus defers to Appellant’s merits brief regarding the trial court’s textbook abuse of discretion committed when relying upon nonexistent testimony to support its *sua sponte* declaration of a mistrial.

Puzzlingly, the trial court is not even consistent about whether it thought Dr. Applegate had given inappropriate testimony, or was *about to* give inappropriate testimony. “Dr. Applegate, with all due respect was just about to say something that I think probably would have caused a mistrial. And on day four I think my head would have exploded right here on this bench.” T.T. 470:21-25. If this is truly what the court believed, then its *sua sponte* mistrial is based on absolutely nothing.

The record is rife with the trial court’s misunderstanding of BWS. Dr. Applegate asked the court for clarification about the bounds of her testimony:

[Dr. Applegate]: can I ask a question to clarify in my mind?

[Trial Court]: Yes.

[Doctor Applegate]: Maneca made statements to me which I put in my report about what she was thinking as she was going through that whole thing. And she stated I start to think this is it. Are people going to find my body, this kind of statement. Is that allowed to be witness –

[Trial Court]: That's not what you just said. You made a conclusion and what you said was people who suffer from Battered Woman Syndrome believe they are going to die and need to use deadly force. That's exactly what she believes. T.T. 473:14-25, 474:1-5.

Dr. Applegate tried explaining to the judge some of the factors she relied upon when formulating her expert opinion about BWS. For some reason, the trial court countered by doubling down on its contention that Dr. Applegate had testified as to Appellant's belief that she needed to use deadly force. But Dr. Applegate had not yet testified as to whether it was her professional opinion that Appellant was experiencing BWS.

Next, the court questions Dr. Applegate at sidebar about whether or not BWS testimony is even appropriate in the present case, given that Appellant had testified that the night in question was the first time she felt like she was in danger of death. Dr. Applegate explained how the literature reflects that not all victims have a chronic fear of death, but that danger to the victim spikes when there are indications that the relationship is ending. T.T.

474-478. See Maribeth Rezey, *Separated Women's Risk for Intimate Partner Violence: A Multiyear Analysis Using the National Crime Victimization Survey*, 35 *Journal of Interpersonal Violence* 1055 (2020) (concluding that the status of being separated has the strongest effect on risk of intimate partner violence). See also Douglas Brownridge, *Violence Against Women Post Separation*, 11 *Aggression and Violent Behavior* 514 (2006); Walter DeKeseredy, et al, *Separation/Divorce Sexual Assault: The Contribution of Male Support*, 1 *Feminist Criminology* 228 (2006).

Dr. Applegate did not testify that a constant fear of death was an immutable characteristic of BWS. She said "Battered Women Syndrome is the chronic and sometimes persistent experience of a woman in a violent household where there is an implied or a direct threat that if she leaves she could be killed. Doctor Lenore Walker has cited the information that the most dangerous part in a battering relationship is when they come to the point where they are discussing their relationship as separating, as ending."

T.T. 464: 23-25, 465 1-6. Clearly, the trial court shared the common misperception that there is some kind of static criteria

for meeting the definition of battered women's syndrome. As discussed *supra*, victims of domestic violence are not a monolith. They do not all experience the same kinds of violence or respond to violence in the same ways. The court even went on to question whether the chronic fear of death is “the hallmark” of the BWS. T.T. 476:7-9. Once again, the court’s remarks indicate that it incorrectly understands BWS as a set of symptomologies. The court displayed this misperception again when it said “the fact that she had a therapeutic – she reached a therapeutic decision with respect to the defendant and I guess diagnosed her as having battered woman syndrome. Can we agree she can testify to that? . . . Did you—.” Dr. Applegate responded “no, this is not a diagnosis... So this is not related to mental illness or mental disorders. This doesn't happen because of a mental illness. It is a syndrome, a psychological syndrome that involves intermittent battering.” T.T. 478:12 -479:9.

The trial court even expressed contempt and doubt about separation assault, a very real and very serious phenomenon present in many battering relationships, discussed *infra*. When

discussing the Commonwealth's objection as to whether Dr. Applegate could give an expert opinion regarding BWS on the date of the incident, this exchange occurred:

[Appellant's Trial Counsel]: Based on the battered women syndrome I believe she [Dr. Applegate] can say here's why it's relevant to that day. Here's a good example of what I'm saying, judge. The battered woman's syndrome talks about how the most dangerous time for a person to—

[Trial Court]: if I hear that one more time⁹ I'm going to throw myself out the window. Oh my God, I'm sorry but isn't the most dangerous time really according to this really anytime or if-- it really is. ... I don't know that that's necessarily just for battered women, isn't it for any victim of abuse not just people that suffered this battered – isn't this any victim of abuse?

⁹ Appellant's trial counsel had elicited testimony from some of the responding officers that the most dangerous time for a victim of domestic violence is when they are ending the relationship. T.T. 110:25, 111:1-4, 120-121. Additionally, Appellant's trial counsel had highlighted during the course of trial that there was evidence in the form of text messages and physical evidence that Appellant was ending the relationship the day of the incident, and that she made that clear to the decedent directly preceding the fatal confrontation. T.T. 121-122, 283, 322:2-10.

T.T. 483: 3 – 484:6

Here, the trial court resisted Trial Counsel's attempts to explain the substance and relevance of Dr. Applegate's testimony. Had the jury been permitted to hear about separation assault, it would have had the background needed to assess the imminence and severity of the danger faced by Appellant on the night in question. Had the trial court properly understood the nature and application of BWS, as well as the rules of evidence, it wouldn't have *sua sponte* declared an unnecessary and unjust mistrial, placing Appellant in danger of double jeopardy.

Revictimizing Abuse Survivors Does Not Serve "Public Justice"

Navigating the criminal legal system is daunting, even for well-resourced defendants with many options and few vulnerabilities. But for survivors of intimate partner violence who are being prosecuted for protecting their lives, the resulting trauma is especially profound. Survivors, such as Appellant, who have been criminalized as a result of their experiences of abuse

are members of the public that double jeopardy laws and other constitutional rights are designed to protect.

Amicus is not arguing that being retried after an unnecessary mistrial is only harmful to victims of intimate partner violence, or that retrials should only commence against defendants who do not have apparent trauma histories. Rather, this discussion is meant to illustrate some of the ways in which the harm of placing a defendant twice in jeopardy because of a *sua sponte* mistrial made in error is much more significant than any “public justice” served by a retrial.¹⁰

The traumatic impact of incarceration and the ways it can mimic abusive intimate partner relationship dynamics is well documented. Invasive strip searches, confinement, threat of harm from prisoners and staff, and lack of access to needed resources upon reentry are hallmarks of incarceration and reentry that look a lot like the dynamics of a battering relationship. See Dr. Stephanie S. Covington and Dr. Barbara Bloom, *Creating*

¹⁰ The trial court states in its opinion that “the ends of public justice” required its ruling. Tr. Ct. Op. at 4 (2022).

Gender-Responsive Services in Correctional Settings: Context and Considerations, Paper Presented at American Society of Criminology Conference (2004) available at <http://www.centerforgenderandjustice.org/pdf/2.pdf>.¹¹ Given that the crimes that land survivors in jails and prison are often linked to their abuse histories, it follows that this retraumatization is the rule, rather than the exception. See Connie Neal, *Women Who are Victims of Domestic Violence: Supervision Strategies for Community Correction Professionals*, CORRECTION TODAY 39 (August 2007) (survivors' crimes are either directly related to

¹¹ See also Danielle Dirks, *Sexual Revictimization and Retraumatization of Women in Prison*, 32 Women's Studies Quarterly, 102 (2004) ("For women with previous histories of abuse, prison life is apt to simulate the abuse dynamics already established in these women's lives, thus perpetuating women's further revictimization and retraumatization while serving time"); Dr. Stephanie Covington, *A Woman's Journey Home: Challenges for Female Offenders in Prisoners Once Removed*: in THE IMPACT OF INCARCERATION AND REENTRY ON CHILDREN, FAMILIES, AND COMMUNITIES, 67 (Jeremy Travis and Michelle Waul, ed.) (2008) (Discussing that prisoners enter confinement with their histories of trauma, and incarceration is likely to create new trauma, especially given that routine practices such as strip searches may be triggers and increase trauma symptoms); Sally Abrahamson, *Prisons Must Cease Re-Traumatizing Women: A Call for Gender-Responsive Programs that End the Cycle of Abuse*. 3rd Place – 2009 Law Student Writing Competition, ABA Commission on Domestic Violence, Washington, DC: 2009.

domestic violence, such as killing their abuser or indirectly related to the violence, such as failure to protect children from abuse).

In Amicus Curiae's experience, the criminal legal process can do great harm even when incarceration is not a factor, and even when the defendant is acquitted of criminal conduct. Facing interrogation and incredulity by police and being forced to recall and recount devastating life events can worsen existing trauma.¹² Navigating bail conditions, such as home confinement and timed check-ins under threat of severe consequences can feel the same as forced compliance with an abuser's demands. See Barbara

¹² Appellant's gaps in memory and struggles to recount the details of the earlier incident were met with incredulity by the interrogating officers. Notably, these officers are protected by policies that recognize these well-known impacts of trauma: following a fatal incident, police are given a minimum of 48 hours before they may be questioned, per Pittsburgh Bureau of Police Order Number 12-10.

(<https://pittsburghpa.gov/files/police/orders/ch1/12-10-Critical-Incidents-Involving-Police.pdf>) website accessed May 17, 2023. Pittsburgh officer and Fraternal Order of Police president Swartzwelder said that the 48 hour break "improves your memory, so you make a better, cleaner statement...You start to remember details after the incident."

(<https://www.publicsource.org/when-police-shoot-or-kill-who-investigates-pittsburgh-police-union-wrestle-over-process/>) website accessed May 17, 2023.

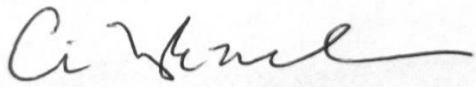
Zust, Assessing and Addressing Domestic Violence Experienced by Incarcerated Women, 14 Creative Nursing 70 (Nov. 2, 2008) (emphasizing that survivors recognize when their abusers' threats are not idle).

In the present case, the trial court emphasized in its opinion that it deemed the mistrial served the "ends of public justice" and of "manifest necessity." *Commonwealth v. Pressley* Tr. Ct. Op. p.5, 8 (2022). However, other than incorrectly stating that the expert's testimony usurped the role of the jury, the trial court did not explain why a mistrial was manifestly necessary, nor how the mistrial serves public justice. Subjecting Appellant to trial a second time would be a public injustice.

Conclusion

For these reasons, Amicus Curiae urges this court to overrule the decision of the trial court and grant Appellant's motion to dismiss.

Respectfully Submitted,



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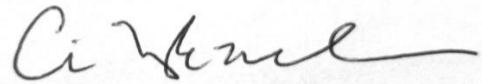
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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

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The undersigned hereby certifies that a true and correct copy of the foregoing Brief by Amicus Curiae was served on the following by:

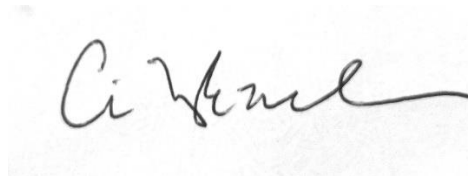
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