



IN BRIEF:

What Lawyers Should Know about Battered Woman Syndrome

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When survivors of gender-based violence are forced to defend themselves against their abusive partners or are coerced into doing something illegal, they often face criminal charges for having done so. In such cases, expert witnesses on intimate partner violence may be called upon by the defense to help explain facts, behaviors, and relationship dynamics that may otherwise seem perplexing or counterintuitive.¹ The category of evidence these experts testify to is often called “Battered Woman Syndrome” (BWS) evidence.² 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.”³ Although experts on gender-based violence have long since moved away from referring to this category of evidence as “battered woman syndrome⁴,” this terminology has persisted in the legal landscape, and attorneys must understand what BWS is – and is not – in order to effectively represent their survivor clients.

ORIGIN OF THE TERM “BATTERED WOMAN SYNDROME”

Battered Woman Syndrome is a term that was coined in the late 1970s by Dr. Lenore Walker to describe psychological and behavioral traits common to women who are exposed to severe, repeated intimate partner violence. Dr. Walker’s early work focused on some of the phenomena she identified in her research on women accused of killing their abusive partners, such as the “cycle of violence” and “learned helplessness.”

The “cycle of violence” refers to a cyclical pattern Dr. Walker observed in the abusive relationships she studied. This pattern consists of a “honeymoon” stage, in which an abusive partner is either “love bombing” their partner, or expressing contrition and remorse for a previous abusive episode; a tension building phase, in which an abusive partner may display a short temper, moodiness, and increasing anger; an explosion or an acute phase where there may be a physically abusive incident; and finally, remorse by the abusive partner.⁵ Dr. Walker described “learned helplessness” as a characteristic of victims who are exposed to repeated abuse, and eventually believe they lack the power to change their circumstances, leading to passivity and decreased motivation, even when opportunities for change arise.⁶

The complexities of these two concepts are outside the scope of this paper, but survivors and their advocates have found them helpful in understanding and contextualizing their own experiences. But not all survivors, and certainly not all survivors who are charged with crimes,

experience a cycle of violence or learned helplessness. BWS and its use in legal settings has evolved, but the changes have not been straightforward. The terminology itself has drawn criticism for decades, but it continues to be used in many legal settings and is now well-established in criminal cases involving survivors of domestic violence who are either defendants or complainants.

Defense attorneys who want to raise BWS in court must be aware of its potential pitfalls and limitations and strategize ways to ensure that their evidence is properly construed, applied, and considered in legal settings.

CHALLENGES AND LIMITATIONS OF BWS

Prior to the use of BWS in legal settings, it wasn't unheard of for criminalized survivors to raise their experiences of abuse in court to support self-defense claims or other defenses.⁷ But BWS, as defined by Dr. Walker, provided a framework for victim-defendants to more easily introduce the impact of their experiences of abuse into evidence. The existence of BWS as a concept reflected in social science literature and validated by Dr. Walker's research, supported the notion that intimate partner violence had profound consequences beyond visible physical injury. However, BWS was not sufficient to adequately capture the experiences, beliefs, perceptions, and realities of victims' lives, and quickly met with criticism from other scholars on intimate partner violence. Worse yet, the term itself created - and continues to create - confusion in the legal field, fueling damaging misconceptions about those who experience abuse and its relevance to criminal cases.⁸

BWS is not

- **A mental disease, defect, or pathology**
- **A clinical diagnosis**
- **PTSD**
- **An accurate encapsulation of the experiences of all survivors**
- **An affirmative defense**
- **A “get out of jail free” card**

BWS IS NOT A MENTAL DISEASE OR DEFECT

Merriam-Webster defines a syndrome as “1. A group of signs and symptoms that occur together and characterize a particular abnormality or condition; 2. A set of concurrent things (such as emotions or actions) that usually form an identifiable pattern.”⁹ Thus, “Battered Woman Syndrome” sounds like a mental disease or defect, akin to insanity, diminished capacity, or another psychological condition. But BWS is not a clinical diagnosis, or a subsection of PTSD in the DSM V. When raising a defendant’s experiences of abuse in court, the goal is not to call into question the defendant’s capacity to form intent or to understand right from wrong. The goal is to ensure that the factfinder understands the effects and dynamics of intimate partner violence and how the abuse impacted the defendant. In other words, evidence of BWS is meant to help the factfinder accurately assess the evidence presented to them, particularly the context in which the alleged incident occurred. Unfortunately, misunderstandings about the goal and purpose of proffered BWS evidence have led some courts to view it as mental infirmity evidence, which can raise numerous problems for defendants.¹⁰ This is, of course, not to say that evidence of mental capacity is never relevant in cases involving criminalized survivors. It may be critical in some circumstances. But defense attorneys must be equipped to explain the intended scope of their proffered evidence.

Experiencing abuse by an intimate partner does not itself render an individual mentally infirm, incompetent, unable to control her actions, or prone to “snap.” In fact, survivors’ responses to violence are often very rational; their responses are often strategies for de-escalating and reducing violence, informed by their keen ability to read their abusive partner and predict the danger they face. Social science research supports these realities of survivors of IPV.¹¹

Why is treating BWS as a mental health issue problematic in court?

- **Inconsistent with objective reasonableness**
- **Vulnerability of defendant to adverse psychological examinations**
- **Possibility of judge appointing its own “court” expert**
- **Shifting burdens of proof**
- **Evidentiary challenges**
- **Improper and potentially unsafe court-ordered interventions (like unneeded mental health treatment)**
- **Improper/unfavorable assessments of defendants’ credibility**

NO TWO VICTIMS' LIVES OR CASES ARE IDENTICAL

BWS, as originally conceived, was formulaic and implied that all victims of intimate partner violence experience the same kinds of violence and respond similarly to that violence. Yet, relationship dynamics vary, experiences of abuse vary, and there is no single profile of a “battered woman” nor is there one legitimate manner in which “real” survivors respond to violence. Victims of domestic violence are not monolithic. They do not all experience the same kinds of violence or respond to violence in the same manner. While there are some overarching themes that can be identified when looking at abusive relationships, the impact of intimate partner violence cannot be boiled down to a finite set of criteria. By reinforcing the idea that there is a “typology” or a “profile” of survivors of IPV, BWS strengthens harmful ideas about what characteristics are essential to be considered a “real” victim. For instance, many survivors use force or violence towards their abusive partners as a way to mitigate harm to themselves and their children. This reality does not square with the notion that survivors who eventually kill their abusers were helpless to resist their partners’ violence.

THERE IS NO SUCH THING AS THE BWS DEFENSE, OR THE “BATTERED WOMEN’S DEFENSE”

In the legal arena, BWS has been misconstrued as a stand-alone defense, distinct from other defenses that any defendant might raise. Critics of BWS evidence have often referred to it as “the abuse excuse” or akin to a “get out jail free card.” These critics believe defendants are presenting an affirmative “BWS defense” and are being acquitted simply by alleging that they were abused. However, defendants do not prevail at trial merely because they experienced abuse. Evidence of intimate partner violence introduced by the defense supports its theory of the case, whether it is self-defense, duress, sufficiency of evidence, or another legal argument.

Unlike other common areas of expert testimony, such as DNA or firearms ballistics, 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. Jurors may struggle to accept education on topics they think they already know. But when factfinders evaluate cases through a lens tainted by widespread myths and falsehoods, they are unable to accurately evaluate facts, assess credibility, and render just verdicts.

Expert testimony on intimate partner violence is often critical in cases where victims of battering act in self-defense or are coerced into committing crimes; 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.”¹² Therefore, expert

testimony must not only offer the factfinder relevant and accurate information about intimate partner violence, it must also help persuade them that what they think they already know about it is likely wrong.

COMMON USES OF IPV EVIDENCE IN DEFENSE CASES

When offered by the defense, evidence of BWS may:

- **Help to explain the impact of intimate partner violence (IPV) on the behaviors, perceptions, thoughts, and experiences of victims generally, and/or specific victims (i.e., victim-defendants)**
- **Explain and dispel common myths and misconceptions about IPV, IPV victims, and people who use IPV against their partners**
- **Educate factfinders about the psychological and social context in which alleged crimes occurred, so they can better understand the relationship dynamics at play at the time of the incident**
- **Help the jury understand the true risks of lethality involved with intimate partner violence.**
- **Suggest non-culpable explanations for behavior that otherwise seems problematic**

EXPLAINING VICTIM BEHAVIOR

When victims exhibit behaviors that may cause factfinders to make inaccurate assumptions about their credibility or motives, BWS evidence can be helpful in putting those behaviors into context. For example, a homicide defendant arguing self-defense at trial may have never disclosed the decedent's abuse of her to anyone, either before her arrest or upon being questioned by the police. Factfinders are likely to view this with suspicion, thinking that anyone who was actually being abused would have told someone at some point. BWS evidence can be used to explain myriad reasonable explanations as to why survivors of IPV may avoid telling anyone about the abuse, including police and medical personnel. Factfinders may be more likely to let go of their problematic assumptions about the reasons for the defendant's actions if they learn about alternative possibilities common to survivors of IPV.¹³

DISPELLING MYTHS AND MISCONCEPTIONS

BWS evidence can also help to reframe and correct some of the many common harmful stereotypes that jurors may have about the realities of IPV. Many lay people, jurors included, have deliberate or subconscious criteria they use to determine whether or not someone is a “real” victim, and whether they are being truthful about their experiences of abuse. Jurors may disbelieve any defendant who doesn’t display “real” victim characteristics, such as passivity, a small stature, or a fearful affect. They may see displays of anger or jealousy as conclusive evidence that the defendant is lying about experiencing abuse. BWS evidence can help to set the record straight: there is no single profile of a victim. Victims may appear tough and confident. They may be terribly angry. They may even be extremely unlikeable to the people around them. But none of those factors have any bearing on their veracity or on the realities of the characteristics of victims.

SOCIAL CONTEXT

BWS evidence can also help factfinders assess the social and psychological context in which the defendant’s alleged criminal acts took place. For instance, a defendant charged with conspiracy for acting as the “getaway driver” during her abusive boyfriend’s robbery spree may be unsuccessful in raising a duress defense because it appeared that she had several opportunities to flee and notify the police. BWS evidence can help the defense call into question whether she actually could have gotten away safely and cast the defendant’s failure to flee into another light. BWS evidence could give the jury the foundation to consider the potential danger of trying to flee, prior consequences to the defendant for defying her partner, credible threats to the defendant’s loved ones should she fail to cooperate, etc.

ALTERNATIVE EXPLANATIONS

Prosecutors often rely on a defendant’s post-incident conduct as evidence of guilt. For example, a defendant’s failure to consistently recount details of an abusive incident during police interrogation may undermine a claim of self-defense at trial. But BWS evidence may help to illustrate explanations consistent with self-defense. The defense can present evidence about traumatic memory, for example, and teach the jury that victims are often unable to recount abusive incidents in linear fashion, particularly immediately following severe abuse. This alternative explanation of why the defendant may have given inconsistent statements or demonstrated gaps in her memory can be critical to rebut arguments by the prosecution that the defendant is untruthful or deceptive.

COMMON BWS OBSTACLES IN LEGAL SETTINGS

Even when evidence is properly admitted, the application and use of BWS evidence is commonly misunderstood and may create obstacles for the defense.

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 intimate partner violence 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. This false perception may cause judges to improperly limit the defendant’s proffered evidence of intimate partner violence and its effects.

Another common argument made by prosecutors seeking to prohibit or limit the defense’s use of BWS evidence is that it is only admissible in self-defense cases. State laws vary considerably on the permitted uses of BWS evidence, but its relevance goes far beyond self-defense cases. For example, BWS evidence on behalf of the prosecution is admissible to some degree in every state, regardless of whether there is a specific statute as such.¹⁴ Prosecutors often introduce expert testimony on intimate partner violence to explain behavior by the complainant that might otherwise cast doubt on the government’s case. For example, it isn’t uncommon for complainants to recant or minimize earlier allegations of abuse, or inappropriately take responsibility for an abusive incident. Prosecutors can use experts to explain some of the common reasons why victims cover for their abusive partners, so that factfinders have that context when evaluating their credibility. Prosecutors may also call into question the scientific validity of BWS. They may challenge Dr. Walker’s research methodologies, for example, when raising a Daubert or Frye challenge to the reliability of BWS evidence. What is even more common is for prosecutors to question the credibility and methodology of the testifying expert. For example, defense experts often testify about the defendant’s perception of danger at the time of the incident at issue. They may discuss the ways in which the defendant’s assessment of danger was informed by prior instances of abuse, threats, and attempts to avoid or escape harm. Such testimony is often met with robust cross-examination from the prosecution about the basis for the testimony, characterizing any statement by the defendant made to the expert as self-serving and lacking in credibility. Prosecutors also often attempt to impeach such testimony with other evidence, question the experts’ methodology, and otherwise attempt to cast doubt on the expert’s testimony.

When facing these challenges from the prosecution, it is essential to explain to the court that 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 or under duress. Expert testimony about BWS gives factfinders the education 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.¹⁵

CONCLUSION

Battered Woman's Syndrome does not represent a defense to homicide or any other crime in and of itself, but rather, is a construct which may be introduced on the question of the reasonable belief requirement of self-defense or duress and can be offered to negate intent at sentencings for purposes of mitigation. While courts around the country may not adhere to one static understanding of the use of BWS, 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. In turn, this can lead to more fair and just outcomes for criminalized survivors.

Endnotes

- 1 Dutton, M. A. (2009, August). Update of the “Battered Woman Syndrome” Critique. Harrisburg, PA: VAWnet, a project of the National Resource Center on Domestic Violence/Pennsylvania Coalition Against Domestic Violence. Retrieved July 25, 2024, from: <http://www.vawnet.org>.
- 2 For purposes of this discussion, “BWS evidence,” “evidence of battering and its effects,” etc. refer only to expert evidence, and not to fact witness evidence and testimony which is also a crucial component of a criminalized survivor’s case.
- 3 Dutton M. A. (1997), Expert Testimony in Criminal Cases, A Resource Monograph prepared for the National Association of Women Judges
- 4 The use of “battering and its effects” has been used widely since 1996, when the National Institute of Justice published “[Validity and Use of Evidence Concerning Battering and Its Effects in Criminal Trials](#)”, which was a report required by Congress when it passed the Violence Against Women Act in 1994. This three-part report considers “the validity of the battered women’s syndrome in criminal cases, expert testimony on battering and its effects in criminal trials involving battered women, and the impact of battering evidence in court.
- 5 Walker, L. E. A. (1979). The battered woman. Harper & Row. Walker, L. E. A. (1984). The battered woman syndrome. Harper & Row.
- 6 Walker, L. E. A. (1977). Battered women and learned helplessness. *Victimology*, 2(3-4), 525-534.
- 7 McNully, F. (1980). The burning bed: The true story of Francine Hughes—a beaten wife who rebelled. Harcourt.
- 8 See Dutton, *supra*.
- 9 Syndrome. 2024. In Merriam-Webster.com.
Retrieved August 12, 2024, from <https://www.merriam-webster.com/dictionary/syndrome>.
- 10 See Box B, *infra*.
- 11 Osthoff, S., & Maguigan, H. (2005). Explaining without pathologizing: Testimony on battering and its effects. In *The battered woman*. SAGE Publications.
- 12 Perkel, S. E., & Perkel, B. (2015). Jury instructions: Work in progress. *The Jury Expert*, 27(1), 1-3. Schuller, R. A., et al. (2004). The impact of expert testimony in trials of battered women who kill. *Psychiatry, Psychology, and Law*, 11(1), 1-112
- 13 For more information on common areas of IPV expert testimony, see Karla Fischer, [Domestic Violence Expert Witnesses: Overcoming Challenges in Battered Women’s Self-Defense Cases](#)
- 14 For more information, see Cindene Pezzell, [The Use of Expert Testimony on Battering and Its Effects in Criminal Cases: Examining Case Law from 1994-2016](#).
- 15 Fischer, K. Overcoming Challenges in Battered Women’s Self-Defense Cases. (2017). *bwjp.org* [Retrieved on July 26, 2024] <https://bwjp.org>



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