**Battered Woman Syndrome Is Not**

**A Self-Defense**

**Introduction**

Battered Woman Syndrome has received a lot of attention in recent years as the number of abused women who kill their abusive mates rises. One might speculate that the rise in these incidents could be because of the widespread acceptance of the syndrome in affirmative defenses such as self-defense. I intend to show here that a woman who is suffering the effects of Battered Woman Syndrome acts under diminished capacity and not in self-defense as legally defined.

Contrary to popular belief, as noted in *Update of the “Battered Woman Syndrome” Critique* (VAWnet: The National Online Resource Center on Violence Against women), there is no legally recognized “battered women’s defense” or “battered woman syndrome defense”. That said however, expert testimony on the effects of domestic violence on women who are its victims can be very useful in support of *already existing* legal defenses when the victim becomes a defendant in a violent crime. This paper will not discuss the validity of Battered Woman Syndrome itself, but will focus on its use as a legal defense in a criminal trial.

**Psychology of the Syndrome**

Battered Woman Syndrome (BWS) has been identified as a subcategory of posttraumatic stress disorder (PTSD) by the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR). The syndrome is defined by Webster’s New World Law Dictionary[[1]](#footnote-1) as “The medical and psychological condition of a person who has suffered (usually persistent) emotional, physical, or sexual abuse from another person… In the case of a woman, her husband or partner inflicts the injuries.” The National Institutes of Health describe PTSD as a condition that develops “after a terrifying ordeal that involved physical harm or the threat of physical harm.” The natural ‘fight or flight’ response is changed or damaged in people suffering from PTSD, who may feel overly stressed or experience heightened fear even when the imminent danger has passed. PTSD can develop in people who have experienced an unusually frightening ordeal or series of events, and in fact PTSD was first brought to the public’s attention in cases of war veterans. It is now known that it can also be the result of any number of traumatic experiences including violent crime, airplane crashes, train wrecks, terrorist attacks, natural disasters, and domestic violence. The psychological effects of such events can directly affect the sufferer’s ability to think and reason rationally as an ordinary person would in stressful situations.

In Battered Woman Syndrome, the effects of PTSD are seen in a woman who has suffered emotional, physical, and/or sexual abuse by someone she trusts. Dr. Lenore Walker, an expert in the field of psychological treatment of battered women, defines a battered woman as any woman "18 years of age or over, who is or has been in an intimate relationship with a man who repeatedly subjects or subjected her to forceful physical and/or psychological abuse."[[2]](#footnote-2) The abuse itself is a traumatic event or series of events, and the fear and intimidation it creates in the victim can cause a psychological reaction known as “learned helplessness”. Learned helplessness, according to U.S. psychologist Martin Seligman whose experiments resulted in the term, is the view that “clinical depression and related mental illnesses can result from a perceived absence of control over the outcome of a situation. Organisms that have been ineffective and less sensitive in determining the consequences of their behaviour are defined as having acquired Learned Helplessness.”[[3]](#footnote-3) Clearly this is a sign of a diminished ability to make the choices an ordinary person would expect, such as leaving an abusive relationship or getting help.

**Expert Testimony**

Over the years, Battered Woman Syndrome has come to be accepted as a basis for a self-defense argument in cases where an abuse victim has attacked her abuser, and expert witnesses are often brought in to provide testimony to explain and establish the syndrome for the jury. An average juror would probably not understand what makes a woman stay with an abuser even when opportunities to leave exist. Experts such as Dr. Lenore Walker explain the cycles of violence, which are often followed by a “honeymoon” period of remorse and promises, only to be repeated with no predictable pattern or warning, often escalating over time. Women in these situations are constantly in a state of “high alert”, never knowing what to expect. There may be threats against her or other family members if she tries to leave. She may be completely isolated by the abuser with no outside resources. An expert witness can explain these patterns of behavior and the effect they have on a victim’s psyche in a way that a jury can understand.

In 1984, the Court in State v. Kelly[[4]](#footnote-4) held that “…the battered woman’s syndrome is an appropriate subject for expert testimony; that the experts' conclusions, despite the relative newness of the field, are sufficiently reliable under New Jersey's standards for scientific testimony; and that defendant's expert was sufficiently qualified.” The lower court’s ruling was reversed and remanded with the stipulation that “If on retrial after a full examination of these issues the evidence continues to support these conclusions, the expert's testimony on the battered-woman’s syndrome shall be admitted as relevant to the honesty and reasonableness of defendant's belief that deadly force was necessary to protect her against death or serious bodily harm.” This case showed the courts’ beginning acceptance of the use of expert testimony in helping the jury to understand the effects of the environment in which the battered woman lives as an explanation for the woman’s distorted sense of danger.

**History in Self-Defense Cases**

The standard legal concept of self-defense requires proof of a clear and present danger and/or threat of physical harm, with no opportunity to retreat safely. But abused women have been able to show that their mental state resulting from the violent cycles in which they live have limited their capacity to rationally view their circumstances, believing that they are in fact in imminent danger even when their abuser is perhaps asleep or otherwise not engaged in any threatening behavior.

Also in 1984, the Court in Hawthorne v. State (1984) held that expert testimony concerning BWS should be admissible for self-defense purposes (rather than just in diminished capacity claims). “The factor upon which the expert testimony would be offered was secondary to the defense asserted. Appellant did not seek to show through the expert testimony that the mental and physical mistreatment of her affected her mental state so that she could not be responsible for her actions; rather, the testimony would be offered to show that *because she suffered from the syndrome, it was reasonable for her to have remained in the home and, at the pertinent time, to have believed that her life and the lives of her children were in imminent danger.”* [[5]](#footnote-5) (Emphasis added) The reasonableness of the victim/defendant’s belief is the standard for deliberating a verdict of self-defense. In the case of Hawthorne, the guilty verdict was reversed and remanded to allow for the testimony on BWS. I would argue that the defense’s own statement concerning the effect of her mental state on what she considered reasonable, points not to self-defense but directly to diminished capacity.

Kelly and Hawthorne helped lay the groundwork for the acceptance of Battered Woman Syndrome in establishing a claim of self-defense. The problem in these cases is twofold: First, the woman’s perception of imminent danger is not in fact “reasonable”, but is due to the emotional and psychological effects of her circumstances. Because her perception and logical thinking capacity is damaged, she suffers from diminished capacity. Her actions are justified in her mind; although an ordinary person would not see such justification. Second: the woman’s perception of imminent danger where none actually existed (i.e., her abuser is sleeping) is more of a mitigating circumstance to explain the action she took, rather than an actual defense of herself in the legal sense. This would point toward diminished capacity as well, or perhaps to extreme duress.

**Diminished Capacity**

In contrast to self-defense, a diminished capacity claim means that “although the accused was not insane, due to *emotional distress, physical condition or other factors* he/she could not fully comprehend the nature of the criminal act he/she is accused of committing, particularly murder or attempted murder. It is raised by the defense in attempts to remove the element of premeditation or criminal intent and thus obtain a conviction for a lesser crime, such as manslaughter instead of murder.”[[6]](#footnote-6) (Emphasis added.) It is easy to see how Battered Woman Syndrome fits into this type of defense, more so than into that of self-defense. An explanation of posttraumatic stress disorder and the phenomenon of learned helplessness would certainly be easier for a jury to link to a diminished capacity claim than to a self-defense claim. It is difficult to make an average person understand a victim staying in an abusive relationship and ultimately killing her abuser, often at times when things seem to be calm in the household. The explanation is that the circumstances of living in an abusive relationship have corrupted the victim/defendant’s ability to reason logically. The victim acts out of a false need for self-defense.

**Duress**

Duress follows very closely on the heels of diminished capacity, but with significant differences. Duress is defined as the result of a person being deprived of his free will by threats of violence or bodily harm against the person himself, or against a third party, typically a near relative. The requirements of a duress defense also include that the threat must be present and imminent, with no reasonable escape but to comply. A person claiming this defense admits to committing the crime, but claims that the action should be excused because he or she was forced to do so under duress. A woman who suffers from Battered Woman syndrome might raise such a defense if charged with a crime against a third party, such as in the case of U.S. v. Ramos-Oseguera in 1997, when defendant’s BWS evidence was introduced to reduce her sentence for drug trafficking. [[7]](#footnote-7) In this case the Appeals Court held that “Coercion or duress was and is a separate ground for downward departure. (U.S.S.G. § 5K2.12).” The duress policy statement allows that "if the defendant committed the offense because of serious coercion . . . or duress, under circumstances not amounting to a complete defense, the court may decrease the sentence." The guideline's statement "directs the sentencing court's attention to the defendant's subjective evaluation of the circumstances in which the defendant was placed…Here the defendant was convicted of drug trafficking, a case in which she claimed she only participated due to being under the control of her husband in a battering relationship.” A defense of duress would not be valid when a woman has murdered the object of her duress. It is illogical that a man could coerce another person to kill him.

**The Contrasts**

Interestingly, duress and diminished capacity are sometimes seen as virtually two sides of the same coin, as in the case of U.S. v. Portman in 1999 when the court declined to adjust the defendant’s sentence for both claims. The district court did in fact agree that the defendant suffered from Battered Woman’s Syndrome when it granted a two-level downward departure of her sentence “on the basis of her vulnerability to coercion and duress.” The district court did not, however, grant an additional departure for diminished capacity. The district court’s opinion held that “With regard to diminished capacity, I think that’s really the same bite of the apple as duress, and it, in my conclusion, is that the duress provision applies and is sufficient unto itself in my findings that she is in fact – does have the syndrome.”[[8]](#footnote-8) The court recognized that as a victim of BWS the defendant did not act completely of her own accord but was under severe emotional and psychological stress, which accounted for a reduced responsibility for her actions.

A major difference between duress and diminished capacity is that in virtually no state is duress available as a defense to the crime of murder, nor can it be used to reduce a murder conviction to manslaughter. In People v. Anderson the Court held that “…the general rule, both at common law and today, is that duress is never a defense to murder; that is, one is never justified in killing another innocent person even if one's own life has been threatened.”[[9]](#footnote-9) This would make such a defense unavailable to a woman charged with murder who raises the issue of Battered Woman Syndrome to justify her actions.   The issues associated with BWS can, however, be a presented as a mitigating factor in sentencing when asking for downward departures from sentencing guidelines.

**Conclusion**

On the basis of the cases and research presented here, it is apparent that Battered Woman’s Syndrome, while recognized as a condition affecting many women in troubling ways, cannot form the basis of a self-defense plea in a criminal case. The very fact that the syndrome is recognized as a condition that alters its sufferers’ perception of reality leads to its falling under the umbrella of diminished capacity. Sometimes in our society women are physically and/or emotionally abused to the point that they no longer function psychologically as an ordinary or average person does; and unfortunately this also can lead to a heightened reaction to perceived danger and an inability to contemplate choices and understand consequences. Although these cases are horrifying, they do not create a position of self-defense. A defense of diminished capacity due to Battered Woman Syndrome should be offered to these abused women who find their only way to end the cycle of abuse is to attack their abuser.

1. Webster's New World Law Dictionary Copyright © 2010 by Wiley Publishing, Inc., Hoboken, New Jersey. [↑](#footnote-ref-1)
2. Walker, Lenore E. (1979) The Battered Woman. New York: Harper and Row. [↑](#footnote-ref-2)
3. Seligman, M. E. P. (1975). Helplessness: On Depression, Development, and Death. San Francisco: W. H. Freeman. [↑](#footnote-ref-3)
4. *State v. Kelly, 478 A. 2d 364 - NJ: Supreme Court 1984* [↑](#footnote-ref-4)
5. *Hawthorne v. State, 408 So. 2d 801 - Fla: Dist. Court of Appeals, 1st Dist. 1982* [↑](#footnote-ref-5)
6. Law.com: The People's Law Dictionary by Gerald and Kathleen Hill, Publisher Fine Communications [↑](#footnote-ref-6)
7. *United States v. Ramos-Oseguera, 120 F.3d 1028, 1040 (9th Cir. Cal. 1997)* [↑](#footnote-ref-7)
8. *United States v. Portman, 1999 U.S. App. LEXIS 32822, 3-4 (10th Cir. Colo. 1999)* [↑](#footnote-ref-8)
9. *People v. Anderson, 8 Cal. 4th 767, 50 P.3d 368, 122 Cal. Rptr. 2d 587 (2002)* [↑](#footnote-ref-9)