
SUPREME COURT
OF THE
STATE OF CONNECTICUT

S.C. 18134

STATE OF CONNECTICUT

v.

JENNIFER HELMEDACH

**BRIEF OF THE NATIONAL CLEARINGHOUSE
FOR THE DEFENSE OF BATTERED WOMEN,
AMICUS CURIAE,
IN SUPPORT OF DEFENDANT-APPELLANT**

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STATEMENT OF ISSUE

Whether a battered woman's decision to return to or not leave an abusive relationship cannot in and of itself be considered "reckless placement" within the meaning of the exception to duress?

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STATEMENT OF INTERESTS OF THE AMICI CURIAE

THE NATIONAL CLEARINGHOUSE FOR THE DEFENSE OF BATTERED WOMEN files this amicus brief pursuant to this Court's Order granting permission and P.B. § 67-7 in support of Jennifer Helmedach's appeal.¹ The following organizations are joining as Amici to this brief: The Connecticut Coalition Against Domestic Violence, Inc., National Center on Domestic and Sexual Violence, National Coalition Against Domestic Violence, and National Network to End Domestic Violence.

Amici curiae are nonprofit state and national battered women's organizations. Amici have firsthand knowledge about the realities of battered women's lives, including the physical, emotional, and psychological effects of battering. Amici collectively work with thousands of battered women each year, including women who are charged with crimes that result from their experiences of abuse. Amici are committed to ensuring that battered women defendants, like all defendants, receive the full benefit of rights and protections designed to ensure fair trials, verdicts, and sentences.

Based on their collective experience, Amici understand that, all too often, battered women are misunderstood and perceived as responsible for their victimization and their batterers' actions. Such beliefs often interfere with the ability of the criminal justice system

¹ No counsel for a party contributed to the cost, writing, preparation, or submission of this brief. Amicus counsel notes that the initial Applications for amicus counsel to appear *pro hac vice* and for amicus curiae to appear and file this brief, both of which were granted by this Court on July 29, 2009, were filed by original counsel Pamela S. Nagy, whose role was limited to assisting amicus counsel with preparation and filing of these initial pleadings. Amicus counsel believes that the Office of the Defender may have arranged to compensate Ms. Nagy for her time, but does not know if such arrangements or any payments were made. On August 3, 2009, Ms. Nagy notified the Clerk to withdraw her appearance in this case. Connecticut attorney Hope Seeley, Esq., has filed her appearance *in lieu* of Ms. Nagy as counsel in this case. Amicus counsel's understanding is that Ms. Seeley is working on the case *pro bono*.

to treat battered women fairly and according to the legal rules applicable to all defendants. Amici believe that it is essential that juries have the information and guidance needed to ensure that their decisions are based on the law and not on stereotypes and biases about battered women. Otherwise, as happened in this case, the jury cannot reach a fair or reliable determination of guilt. When criminal processes do not afford the same rights and protections for battered women defendants as for all defendants, victims of domestic violence are further victimized by the system itself.

Therefore, Amici respectfully urge this Court to grant Ms. Helmedach a new trial.

National Clearinghouse for the Defense of Battered Women

The National Clearinghouse for the Defense of Battered Women, founded in 1987, works to ensure justice for battered women charged with crimes, where a history of abuse is relevant to the woman's legal claim or defense. The National Clearinghouse is a national, nonprofit organization, located in Pennsylvania, which provides technical assistance to battered women defendants, defense attorneys, battered women's advocates, expert witnesses, and others. The National Clearinghouse works on a wide variety of cases, including those involving self-defense/defense of others, coercion and duress, and cases in which a battered woman's history of abuse helps explain her behavior, reduce culpability and/or mitigate punishment.

The National Clearinghouse seeks to educate those involved in the criminal legal system about battering and its effects, so that legal decisions affecting battered women defendants are not based on biases and/or misconceptions.

The Connecticut Coalition Against Domestic Violence, Inc. (CCADV) was founded in 1978 as the “Battered Women’s Task Force” and incorporated in 1986, as a vehicle for community-based domestic violence shelter programs to provide statewide public policy advocacy, legislative reform, and education on the issue of domestic violence. There are currently 18 member programs, 16 of which have shelter, safe home, or transitional living facilities. As the needs of battered women and their children have changed, the 18 member programs have expanded the types of advocacy and services offered to meet these evolving needs. CCADV broadened its focus to provide training, education and technical assistance to its member programs in order to ensure quality and consistent services throughout the State of Connecticut.

The collaborative projects undertaken by CCADV with governmental and non-governmental stakeholders in addressing the systemic issues of domestic violence, as well as the training, community education and public policy positions taken by CCADV are based on the concepts of victim-defined advocacy and safety planning.

The National Center on Domestic and Sexual Violence, a nonprofit organization located in Austin, TX, addresses domestic and sexual violence, seeking to educate policy makers, including the courts, about the impact of domestic and sexual violence, and challenge potential outcomes that tend to blame or re-victimize survivors of domestic and sexual violence. They design and provide customize training programs and consultations nationwide about domestic and sexual violence, and promote collaboration among diverse professionals, with the goal of ending domestic and sexual violence.

The National Coalition Against Domestic Violence (NCADV) was formed in 1978 to establish and support a network of programs and state coalitions working to serve victims of domestic violence. The network now consists of over 2,000 programs all over the U.S. Headquartered in Denver, CO, NCADV provides technical assistance, general information and referrals, training, and public policy advocacy.

The National Network to End Domestic Violence (NNEDV) is a non-profit membership organization devoted to remedying domestic violence through legal, legislative, and policy initiatives. The members of NNEDV are the state coalitions against domestic violence, who represent their states' local organizations that provide shelter, advocacy, and legal and counseling services to survivors of domestic violence. The member organizations of NNEDV collectively represent thousands of organizations that have hundreds of years of experience working with survivors of domestic violence, including undertaking extensive efforts to improve the justice system's response to victims of domestic violence.

SUMMARY OF FACTS

Amici adopts the facts as described in the Defendant's Brief and recites facts in this Brief when necessary.

SUMMARY OF ARGUMENT

Amici contend that a battered woman who asserts duress as a defense to charges of assisting her batterer in crime, is deprived of her right to present a defense where the jury is permitted or encouraged to erroneously conclude that the defendant's act of remaining in an abusive relationship is, in and of itself, proof that she "recklessly placed [herself] in the situation" pursuant to the statutory exception rendering the duress defense, her sole defense, unavailable.

As a general matter, this case calls upon the Court to address the policy and meaning of the "recklessness" exception to duress.¹ The particular context of this case is what makes Amici's expertise relevant; that is, the application of this exception to a battered woman's decision to remain in an abusive relationship with a batterer who subsequently coerces her to participate in his crime.² The record makes clear that the jury struggled with precisely the question of whether returning to or being in a relationship with a batterer meant that the defendant was per se reckless for purposes of the statutory exception and therefore prohibited from asserting a duress defense. Specifically, the jury asked for instruction and clarification on what was meant by the defendant's "willingness" to

¹ See Conn. Gen. Stat. § 53a-14 (providing in part that "[t]he defense of duress as defined in this section shall not be available to a person who intentionally or recklessly places himself in a situation in which it is probable that he will be subjected to duress").

² As evidenced by many letters between the defendant and her batterer co-defendant, David Bell (hereinafter "Bell"), the relationship continued during a period of time when the batterer was incarcerated. Upon Bell's release, they resumed regular physical contact. The robbery/murder happened months later.

re-enter "the negative situation." See Tr. 10/17/07, at 2-5. Based on their question, it is clear that the jurors considered the "negative situation" as the abusive relationship itself and "re-entering the situation" as the defendant rejoining Bell.³ Despite the confusion of the jurors on this key legal point, the judge refused to provide additional clarification, and advised the jurors to rely on the prior instructions, which were clearly insufficient.

As a result, the jury was left to its own devices to assess the highly complex legal question of the "recklessness exception" with no substantive guidance whatsoever. What the jury did have was the prosecution's "last word" on the issue. In his final rebuttal closing argument, the prosecutor forcefully argued that the defendant herself had made "the conscious decision to go back" to Bell, and therefore had no one but herself to blame.⁴

Accordingly, the jury was allowed to find that the exception applied to the defendant based on the flawed premise that her decision to remain with her batterer was proof of her recklessness.⁵ The premise that battered women are *per se* reckless with regard to this

³ It is apparent at multiple places in the record that the jury's question related specifically to whether or not they should apply the recklessness exception because of the defendant's continued relationship with Bell. The jury's use of the word "reentry" indicates that they were asking for guidance on the implications of her return to Bell; no other "reentry" is evident in the record. Arguments of counsel in response to the jury's request bear this out as well. For example, the prosecutor argued against supplemental instructions on recklessness because they would "charge the State out of this case because the State did make [closing] arguments concerning Miss Helmedach's leaving Middlefield, Connecticut and returning to the defendant in Middletown." See Tr. 10/19/07, at 9.

⁴ The prosecutor argued: "The fact of the matter is that it was Jennifer Helmedach's conscious decision to go back with him. *She can't blame that on anybody except herself.*" Tr. 10/16/07, at 110-11 (emphasis added).

⁵ It should be noted that the defense presented general expert testimony on domestic violence. This testimony was not case specific, and did not focus on the issues underlying the question of recklessness. Additionally, since the jury was not instructed to consider any of the expert testimony, it could not have remedied the judge's refusal to address the jury's confusion. Without an explicit instruction guiding the jury on how to consider and link the expert's testimony to the duress/recklessness inquiry, there is no reason to think that the jury did or could have made that connection.

statutory exception is incorrect. The underlying notion, that a battered woman becomes responsible for any and all of her batterer's subsequent behavior by remaining in or returning to that relationship, has been repudiated by numerous legal and scholarly authorities.

Amici request that the Court examine the fundamentally flawed reasoning that led to Ms. Helmedach's conviction and reaffirm the basic principle that battered women, like all defendants, are entitled to have their issues decided by a properly and adequately instructed jury. Amici respectfully request that the Court rectify the error manifest in the unjust and unreliable verdict of guilt against the defendant, and grant her a new trial.

ARGUMENT

A BATTERED WOMAN'S DECISION TO RETURN TO OR NOT TO LEAVE AN ABUSIVE RELATIONSHIP CANNOT IN AND OF ITSELF BE CONSIDERED "RECKLESS PLACEMENT" WITHIN THE MEANING OF THE EXCEPTION TO DURESS.

A. The Statutory Exception To Duress Was Not Meant To Apply To A Battered Woman's Decisions Regarding Staying In Or Leaving Abusive Relationships. Such An Application Is Inconsistent With The Purpose, Meaning, History And Intended Scope Of The Exception.

Historically, the concept of "reckless placement" in the duress defense meant affirmatively entering into a criminal enterprise, such as joining a gang or conspiring to commit robbery. Once willfully part of that enterprise, the defendant can be held to have recklessly placed him or herself at risk of being coerced into committing further unlawful acts.

The Model Penal Code, containing language identical to the Connecticut duress statute, Conn. Gen. Stat. § 53a-14, is instructive on the issue of recklessness. The Commentary to Model Penal Code § 2.09(2) states: "[The recklessness exception] ... will

have its main room for operation in the case of persons who connect themselves with *criminal activities*, in which case it would be very difficult to assess claims of duress.”

MODEL PENAL CODE AND COMMENTARIES § 2.09, p. 379 (emphasis added). The Commentary goes on to highlight a true example of recklessness: a person agrees to participate in a non-lethal felony with others, while armed, but then claims duress as a defense to murder when his co-participants force him to shoot someone. MODEL PENAL CODE AND COMMENTARIES § 2.09, n.48, p. 379.

Cases construing the recklessness exception based on this language support a similarly strict interpretation of the exception. See, e.g., *Commonwealth v. Allen*, 430 Mass. 252, 256 (1999) (explaining that the recklessness exception would have barred defendant’s claim of duress because defendant recklessly placed himself in the situation by agreeing to join the codefendant in committing a masked armed robbery. Doing so made him subject to the codefendant’s coercion, regardless of defendant’s later change of heart); see also *Commonwealth v. Knight*, 416 Pa. Super. 586, 597-99 (1992) (concluding that the term “recklessly” as defined in the Model Penal Code provision applicable here was meant to have “a particular meaning that was obviously more than negligence” and requires that “a criminal defendant has to consciously create the risk of becoming subject to duress” such as where the defendant connects himself with the criminal activity and had a “full opportunity to avoid coercion” (citing Sheldon S. Toll, *A Practitioner’s Guide to Defenses Under the New Pennsylvania Crimes Code*, 12 Duq. L. Rev. 849, 857 (1974))); *Commonwealth v. Pelzer*, 531 Pa. 235, 248 (1992) (where the defendant admitted to planning and implementing a scheme in which he would help to kidnap and rob the victim (who was ultimately killed by the defendant), and admitted to leaving and returning

numerous times to the crime-in-progress, the court found that he had “recklessly placed” himself in the situation according to the Pennsylvania statute, which is consistent with the Model Penal Code).

In stark contrast to cases applying the exception, a battered woman is someone who entered into an intimate relationship that turned into a nightmare of violence and abuse, not someone who voluntarily joined a criminal enterprise. To equate the two vastly different situations would mean, essentially, that no battered person may ever claim a defense of duress.

Nothing in the record shows that Ms. Helmedach returned to a crime-in-progress; her only “return” was to the abuser himself, after his release from jail. By being in a relationship with Bell, Ms. Helmedach did not recklessly place herself in a situation where she knew, or could even reasonably expect, that she would be part of a criminal enterprise. Her conduct is simply incongruous with the cases to which the recklessness exception was meant to apply. A willing participant in crime, who, in the midst of a criminal scheme, finds himself subject to a threat he did not anticipate cannot be compared to a woman who enters into, not a criminal enterprise, but rather an intimate relationship that turns into a nightmare of physical and psychological brutality. Ms. Helmedach was not a willing participant in a criminal scheme merely by being in a relationship with Bell.

The few cases dealing explicitly with the question of a battered woman’s “recklessness” for the purpose of the duress exception demonstrate concern by the courts that jurors not draw such a conclusion based solely on a woman being in a relationship and without full consideration of the realities of her experiences. *Commonwealth v. Markman* is instructive on this issue. In *Markman*, the defendant was a battered woman who returned

to her abuser long before he committed a brutal murder in which he forced her to participate. *Commonwealth v. Markman*, 591 Pa. 249, 249-265 (2007). The prosecution argued that the defendant should be barred as a matter of law from asserting a duress defense, as the defendant allowed her batterer to move in with her despite her knowledge of his "violent tendencies" and failed to leave him after he killed the victim. *Id.* at 289. The Pennsylvania Supreme Court noted that her "acts or omissions" regarding her relationship with her abuser that had occurred weeks before the crime were too attenuated to keep the issue from the jury, and noted that "neither party contend[ed] that being the victim of domestic violence, in itself, suggests a probability of being coerced into victimizing a third party" *Id.* The Court went on to explain that the recklessness exception is only applicable "if it was probable that the actor ... would be coerced into 'conduct charged to constitute an offense' Accordingly, the recklessness exception is not implicated merely by the probability of becoming a victim of domestic violence; rather, the facts must encompass some probability of coercion to commit a criminal offense." *Id.* at 290.

The New Jersey Supreme Court also addressed these issues. In *State v. B.H.*, the court held that an expert on battering was properly admitted on the "threshold recklessness assessment" in order to dispel potential juror misconceptions about "whether a battered woman should be regarded as having acted recklessly (and thereby be deprived of access to a duress defense) simply because she did not leave the relationship with her abuser ... [and that] such expert testimony allows the jury to consider that failure to leave was part and parcel of her life as a battered woman." *State v. B.H.*, 183 N.J. 171, 195-96 (2005). The court in *B.H.* reasoned that this concern about the defendant's failure to leave is already a fundamental reason for expert testimony in self-defense cases, and no less of a

concern when the issue is the “recklessly placed” inquiry of duress. *Id.*; see also *Ceballos v. United States*, 593 F. Supp. 2d 1054, 1063 (S.D. Iowa 2009) (prosecution filed a motion *in limine* to exclude evidence, including expert evidence on battering, regarding the defendant’s defense of duress; she was arguing that she was coerced by her abusive partner into aiding and abetting him in distributing drugs. The court denied the motion, and held that defendant made a prima facie case that it “was not negligent or reckless for her to be in an abusive relationship where the abuser would later try to force her to commit a crime”).

In other cases in which battered women’s experiences are relevant, decisions of this Court, and many others, confirm that it is wrong to interpret a woman’s not extricating herself from an abusive relationship as evidence of her being responsible for the batterer’s subsequent violence. See, e.g., *State v. Borelli*, 227 Conn. 153, 166-67 (1993) (where this Court permitted expert testimony to explain the conduct of a battered woman complainant, in part, to address inaccurate views and attitudes of jurors about battered women, particularly their skepticism about her fear and inability to leave (citing Neil A. Vidmar & Regina A. Schuller, *Juries and Expert Evidence: Social Framework Testimony*, 52 Law & Contemp. Probs. 133, 154 (1989))); *State v. Freeney*, 228 Conn. 582, 592-93 (1994) (permitting expert testimony by the state to help the jury understand why a victim of sexual or physical abuse who is restrained and assaulted against her will “might not necessarily attempt to escape and might recount the circumstances of the abuse in a disjointed fashion”).

B. Contrary To Popular Belief, A Battered Woman's Act Of Remaining In Or Returning To An Abusive Relationship Does Not Make Her Responsible For Subsequent Victimization And Violence By The Batterer.

As this case unfortunately illustrates, a battered women's failure to exit the relationship is often misunderstood by laypersons, leading them to blame the battered woman for her own victimization, as well as for any and all acts of the batterer, including violence towards others. Despite years of education about battering and its effects by groups such as Amici, many lay people still fail to comprehend the complex realities of battered women's lives. The notion that battered women can stop their batterers' violence towards them or toward others, or just leave at any time,⁶ is simply not true.

Even today, lay people still ask, "Why don't battered women just leave?" This question, in itself, suggests to some extent, "that the battered woman, by remaining in (or returning to) an abusive relationship, is deviant, odd or blameworthy in some way." Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 Hofstra L. Rev. 1191, 1226 (1993).⁷

Studies confirm that laypersons "may actually view [a battered woman's] decision to stay in the relationship as an explanation for her victimization..." Diane R. Follingstad et

⁶ In this case, the prosecutor made much of Ms. Helmedach's behavior after Bell killed Faye Bennett inferring that the defendant could have and should have "just left" and sought assistance. Ms. Helmedach was terrified; she had just seen Bell kill someone; his threats escalated; and she felt she could not leave him without putting her own life in danger.

⁷ See also, Tracy Bennett Herbert, Roxane Cohen Silver & John H. Ellard, *Coping with an Abusive Relationship: How and Why do Women Stay?*, 53 J. of Marriage and the Fam. 311 (1991) (even if they believed she did not provoke the abuse, observers still believed battered women were responsible for finding a solution to it, such as leaving); Nancy Berns, *My Problem and How I Solved It: Domestic Violence in Women's Magazines*, 40 The Soc. Q. 85 (1999) (discussing a study showing that popular women's magazines portrayed the issue of domestic violence as a private problem and, most often, as the *victim's* problem and concluding that by placing the responsibility on the victims of battering, the idea that victims should be held responsible for solving the problem gets normalized).

al., *Justifiability, Sympathy Level, and Internal/External Locus of the Reasons Battered Women Remain in Abusive Relationships*, 16 *Violence and Victims* 621, 622 (2001). "The assumptions underlying [the] beliefs [that battered women should just leave] are likely to fail to account for the complexity of the battered woman's situation while also placing much responsibility for ending the abuse on the shoulders of the woman being abused rather than on the individual who ultimately has control over whether or not he abuses his wife. *Id.*

The belief that the victim is responsible for her own victimization and, in some circumstances, anything and everything bad that her battering partner does is widespread. And it is simply wrong. Courts and scholars have long repudiated any inference that by failing to leave, she is somehow to blame for subsequent violence that occurs. For example, as explained by one court over twenty years ago: "A woman whose husband has repeatedly subjected her to physical abuse does not, by choosing to maintain her family relationship with that husband and their children, consent to or assume the risk of further abuse." *Commonwealth v. Watson*, 494 Pa. 467, 472 (1981); *see also Commonwealth v. Stonehouse*, 521 Pa. 41, 62-63 (1989) (discussing "myths that ultimately place the blame for battering on the battered victim" including a belief by both judge and prosecutor in that case that defendant was unreasonable when defending herself, because of the "continued relationship" with her batterer); *Hernandez v. Ashcroft*, 345 F.3d 824, 836 (9th Cir. 2003) (while enacting the Violence Against Women Act of 1994 (Pub.L. No. 103-322), Congress understood that laypersons' views of battered women's experiences are often comprised of "myths, misconceptions, and victim blaming attitudes" (quoting H.R. REP. NO. 103-395 at

clear up juror attitudes about battered women, noting juror skepticism about her claims of fear, and misunderstanding of her inability to leave).

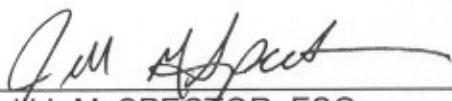
Unfortunately, victim-blaming remains alive and well. Given this reality, it was particularly egregious that the jurors in this case were left to their own devices, including their judgments and biases, when having to decide what was meant by “returning to the negative situation.” They asked for, and needed, additional information in order to fairly assess the “recklessly placed” exception. Without clarification from the court, and with only the prosecutor incorrectly suggesting that “returning to the relationship” was equivalent to “recklessly placing herself in a situation in which it was probable she would be subjected to duress,” Ms. Helmedach was deprived of her sole defense in this case.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the foregoing reasons and those set forth in the Brief of the Defendant-Appellant, Amici respectfully request this Court to grant defendant a new trial.

Respectfully Submitted,

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CERTIFICATION PURSUANT TO P.B. § 67-2

THIS IS TO CERTIFY that this Amicus Brief complies with all of the provisions of Practice Book § 67-2.


HOPE C. SEELEY