



Defending Criminalized Survivors: Annotated Bibliography of Select Post-Conviction Case Law

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The criminalization of victims for their acts of survival represents a major shortfall of the criminal legal system. For countless survivors of domestic violence and other forms of abuse, the acts that led to their convictions were directly related to their experiences of abuse, trauma, or coercion. At trial, these realities are frequently overlooked or obfuscated by inadequate law enforcement investigations, severe evidentiary limitations, failure of defense counsel to recognize the dynamics of abuse and survival, and the conscious and subconscious bias factfinders apply to cases involving intimate abuse. Post-conviction relief often serves as survivor defendants' last chance to access just outcomes.

This annotated bibliography is designed as a research tool for practitioners navigating post-conviction proceedings on behalf of criminalized survivors. Post-conviction practice requires litigating against stringent procedural defaults, strict filing deadlines, and deferential standards of review. This bibliography gives practitioners a snapshot of case law addressing how trauma, coercive control, and abuse intersect with legal doctrines and strategies.

To provide a comprehensive view of the legal landscape, this compilation includes both controlling published decisions and select unpublished orders and opinions:

- **Published Decisions:** Establish the binding doctrinal standards governing procedural thresholds, constitutional violations, and the admissibility of expert testimony on trauma and intimate partner violence.
- **Select Unpublished Dispositions:** While non-precedential, these decisions reveal critical practical insights. They illustrate how trial and appellate courts evaluate specific evidentiary proffers, apply statutory mitigation factors, and assess prejudice claims involving uninvestigated abuse. They serve as valuable blueprints for structuring factual records and persuasive arguments.

Cases in this Bibliography cover topics germane to post-conviction claims including ineffective assistance of counsel, admissibility of expert testimony on battering and its effects,¹ jury instructions, and other cases important or helpful to understanding how the jurisdiction treats abuse evidence.

¹ The term “evidence of battering and its effects” is used in this Bibliography to refer to the substance of the lay and expert evidence regarding the history of abuse and its impact on the victim. This evidence has often been labeled “battered woman syndrome”(BWS), a term that has been widely criticized and is increasingly being replaced by other terms, such as “evidence of battering and its

The annotations are summaries of the relevant aspects of the cases. The summaries include only those facts and issues specifically relevant to information about criminalized survivors, such as legal issues related to evidence of abuse.²

This Bibliography was created from known cases³ and by searching legal databases.⁴ Cases yielded from searches were screened to include specifically those cases touching on the topics described above.

Practitioners must consult local court rules regarding the citation and persuasive use of unpublished authorities within their specific appellate districts. This resource is intended to streamline litigation preparation, sharpen motion practice, and bolster the zealous advocacy required to secure relief for survivors whose incarceration is an extension of their victimization.

This compilation is a work-in-progress. And, of course, cases are only one part of the picture of post-conviction practice. Statutes and rules of each jurisdiction must also be researched and

effects” which more accurately describes the breadth and depth of this evidence without connoting antiquated stereotypes about battered women. For example, “syndrome” language calls forth the mistaken notion that those who experience abuse suffer from a mental defect or pathology. This Bibliography quotes BWS terminology in the case summaries when used by courts.

For a full critique of BWS terminology, see, e.g., Report, U.S. Dep't of Justice & U.S. Dep't of Health & Human Servs., *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* vii (1996), Dutton, M., *Critique of Battered Woman Syndrome* at 17; MaryAnn Dutton, *Critique of the Battered Woman Syndrome Model*, <https://www.aaets.org/traumatic-stress-library/critique-of-the-battered-woman-syndrome-model>, (accessed 1/9/25.)

² The annotations are listed in this document within each state by its highest court and in chronological order; unreported or unpublished cases are listed following the published cases.

³ The National Clearinghouse for the Defense of Battered Women, predecessor organization to the Defense Center, collected annotations of cases relevant to criminalized survivors over the course of several decades. Many of the summaries for older cases are taken from these files.

⁴ Search parameters, for example, included but were not limited to the following:

- “battered woman”
- “battered woman” and “ineffective”
- “battered woman syndrome”
- “battered woman” and “post-conviction”
- “battered woman” and “newly-discovered”
- “battered woman” and “after-discovered”
- “battered person syndrome”
- “battered spouse syndrome”

consulted, especially because states are increasingly enacting statutes and rules relevant to criminalized survivors.

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ALASKA

Ripley v. State, 590 P.2d 48 (Alaska 1979). Defendant convicted of manslaughter for killing ex-boyfriend who had abused and threatened her; claimed self-defense. Affirmed. Court remanded for reduced sentence based on the facts and defendant's good background. Trial court's sentence was excessive and unnecessary to achieve goals of criminal sanctions.

Bingaman v. State, 76 P.3d 398 (Alaska Ct. App. 2003). Defendant convicted of domestic violence crimes; trial court allowed state to introduce sixty incidents of defendant's prior bad acts. Reversed. Trial court failed to assess relevance under evidence rule 402 and abused discretion under rule 403. While relevant evidence rules exempt other acts of domestic violence from the normal bar on bad character evidence, judge is still obliged to assess relevance under 402 and balance prejudice under 403.

Hilburn v. State, 765 P.2d 1382 (Alaska Ct. App. 1988). In rape prosecution, trial court did not err by admitting state's expert testimony from a medical doctor who had experience with native Alaskan tribes. Expert testified about particular reactions of native Alaskan women to traumatic events and opined that defendant's behavior was consistent with that of native women who had undergone trauma.

Russell v. State, 934 P.2d 1335 (Alaska Ct. App. 1997). Defendant convicted of sexually assaulting intimate partner and child. Affirmed. State's evidence of "battered woman syndrome" qualified as admissible expert testimony and was necessary to rebut defendant's claims that the victim's conduct before, during and after the assault was inconsistent with a claim of assault.

Estes v. State, No. A-12103, 2020 Alas. App. LEXIS 7 (Ct. App. Jan. 22, 2020), *Unpublished*. Appeal from denial of post-conviction relief by defendant convicted as an accomplice to her abusive husband's murder of a third person. Affirmed. The defense presented two witnesses to the abuse, and a battered woman's counselor who testified generally to the dynamics of domestic violence. Defendant alleged that the testimony of an expert who had examined her should have been presented. The court compared the two experts' testimony, concluding that the examining expert's testimony would not have significantly differed from that of the general expert, particularly because defendant did not testify and the examining expert's opinion would not have included any information defendant told the expert.

ALABAMA

Bonner v. State, 740 So.2d 439 (Ala. 1998). Appeal by defendant convicted of manslaughter for stabbing abusive husband during confrontation. Defendant claimed self-defense, introduced evidence of prior abuse, and proffered expert testimony by social worker to show battered women's psychological coping mechanisms, why battered women don't leave, and how they try to protect themselves. Trial court excluded testimony because a factual predicate had not been laid, and because the homicide in this case occurred during a confrontation. Reversed. Trial court erred in excluding expert testimony because defendant introduced facts about prior abuse and expert testimony was relevant to self-defense. Contrary to trial court reasoning, most cases involving use of evidence about battering involve confrontational killings. Court notes the fact that defendant fought back in the past by stabbing the batterer does not mean she is not a battered woman.

Ex parte Haney, 603 So.2d 412 (Ala. 1992). Appeal of death sentence in capital murder-for-hire case. Defendant argued that fifteen years of abuse by decedent should preclude imposition of death sentence, and that trial court did not consider abuse as mitigating factor. Affirmed. Defendant had opportunity to present evidence of abuse as motive for killing and trial court could properly decide after consideration that abuse was not a mitigating factor. Court discusses admissibility of expert testimony on "spouse abuse syndrome," noting facts of other cases. Court notes that defendant did not kill husband during argument or when she felt she was in imminent danger, but "came up with the scheme to have him killed" while in another state, several days before the actual killing. Jury could have found her credibility to be questionable.

Harris v. State, 947 So. 2d 1079 (Ala. Crim. App. 2005). Appeal from denial of state post-conviction relief by defendant convicted of capital murder and sentenced to death (by judge override) for hiring co-defendant to kill her abusive husband. Affirmed as to guilt phase; vacated and remanded for new sentencing hearing based on ineffective assistance. Despite the availability of abundant evidence corroborating abuse by decedent including expert testimony and other mitigating evidence, counsel failed to investigate defendant's life history and abusive relationships, instead relying on "residual doubt." Court recites the omitted mitigation, relying on *Wiggins v. Smith* to hold that counsel's investigation was unreasonable and therefore could not be the basis of strategic decisions. Court finds prejudice, noting only one aggravating factor and minimal defense mitigation. Omitted mitigating evidence would have challenged state's portrayal of defendant as "a calculating, devious woman who suffered from no emotional distress and who was not a battered woman," 947 So.2d at 1130, and could have been the basis for court to find non-statutory mitigation and two other mitigators (extreme emotional distress and acting under domination of another.)

Barrett v. State, 918 So. 2d 942 (Ala. Crim. App. 2005). Appeal by defendant convicted of assault after stabbing neighbor. Defendant argued trial court erred in excluding previous history of abuse and expert testimony that she suffered from "battered woman syndrome" (BWS), both integral to her self-defense claim. Affirmed. Trial court did not abuse discretion in precluding expert testimony since expert's report did not document all phases of "cycle of violence," nor establish long-term relationship

between defendant and victim (though they had an intimate relationship), thus failing to lay foundation for BWS. Trial court did not err in excluding defendant's previous history of abuse, including sexual abuse by family members and a gang rape, since abuse by anyone other than victim was irrelevant and prejudicial.

Harrington v. State, 858 So.2d 278 (Ala. Crim. App. 2002). Appeal by defendant convicted of reckless manslaughter for killing abusive husband. Affirmed. Expert testimony that defendant suffered from "battered spouse syndrome" (BSS) should have been admitted as it was not "ultimate issue" testimony, and admissible even if it addressed ultimate issue. Error was harmless given detailed testimony about the history of abuse and expert testimony on defendant's fear of decedent and characteristics of battered women. Court reviews law of other states on evidence of battering and invites state legislature to examine law of self-defense and BSS. Defense-specific instructions about expert testimony on BSS were properly refused since they were argumentative and substantially covered in instructions on self-defense and instruction that BSS could be considered in determining if defendant reasonably believed she was in imminent danger.

Neelley v. State, 642 So.2d 494 (Ala. Crim. App. 1993). Appeal of denial of post-conviction by defendant convicted of kidnapping-murder scheme with abusive partner. Affirmed. Ineffective assistance claim properly rejected as defendant did not show she was prejudiced by attorney's failure to present evidence on "battered woman syndrome" (BWS) as mitigation during sentencing hearing. Trial court made clear that even if BWS evidence was presented, it would not have affected the decision as BWS helps explain why woman would kill batterer in self-defense but not why, acting under duress from abuser, she would kill third party.

Brooks v. State, 630 So. 2d 160 (Ala. Crim. App. 1993). Defendant convicted of murder of abusive spouse; she presented evidence of abuse and state's expert testified she "suffered from battered woman syndrome" (BWS). Affirmed. Court rejected defendant's argument that conviction was against the weight of the evidence of self-defense. While jury could have found self-defense, it could also have found she was not justified because she could have avoided the necessity of such force. Court does not reach question of whether trial court erred by instructing the jury that BWS did not constitute legal provocation sufficient to reduce murder to manslaughter as issue was not preserved.

Hill v. State, 507 So.2d 554 (Ala. Crim. App. 1986). Defendant shot husband while he slept and was convicted of intentional murder. Expert on "battered woman syndrome" (BWS) was permitted to testify at trial but was not allowed to explain what characteristics led her to believe that defendant was a victim of BWS. Since defendant was not hindered in presenting her case by this ruling, conviction was upheld.

Langley v. State, 373 So.2d 1267 (Ala. Crim. App. 1979). Trial court sustained objection by state to defense questions as to the reputation of the deceased for violence and other similar traits of

character. Appeals court affirmed, stating that if the evidence would support a verdict of not guilty under the defense of self-defense, general reputation evidence could be shown. But here the deceased did not “by word or conduct pose immediate danger to the life of the defendant.” Previous violence, real or threatened, will not excuse intentional homicide.

King v. State, 355 So.2d 1148 (Ala. Crim. App. 1978). Defendant convicted of manslaughter for shooting abusive boyfriend. Claimed self-defense. Affirmed. Trial court's exclusion of evidence of deceased's general reputation for being a 'knife toter' was harmless error. Since defendant knew of this habit of deceased, such evidence should have been allowed but since defense counsel later elicited same testimony from another witness, no harm resulted from this error.

ARKANSAS

Brunson v. State, 349 Ark. 300, 79 S.W.3d 304 (Ark. 2002). Defendant convicted of capital murder in the shooting death of his ex-wife and her partner. Reversed. Prosecution expert witness exceeded her expertise by opining that risk factors made it likely defendant's violence against ex-wife would escalate to homicide, e.g., by “profiling batterers who will kill and by conveying to the jury that Brunson fell within that profile.” Such testimony mandated a legal conclusion and was unduly prejudicial.

Thompson (Vina Mae) v. State, 306 Ark. 193, 813 S.W.2d 249 (Ark. 1991). Appeal by defendant convicted of murder in shooting death of abuser. Affirmed. Trial court did not err by refusing to allow foundation testimony for “battered woman syndrome defense” evidence because defense did not commit to calling expert or proffer what expert testimony might be. Trial court did not err in limiting testimony of deceased's violent character to one year before incident because defendant did not proffer testimony concerning specific acts of violence that occurred longer ago.

ARIZONA

State v. Malone, 247 Ariz. 29, 444 P.3d 733 (Ariz. 2019). Defense expert on brain damage was not admissible even though it corroborated existence of impairment showing character trait for impulsivity as it was offered to refute premeditation and was therefore inadmissible under state law prohibiting diminished capacity.

State v. Richter, 245 Ariz. 1, 2-3, 424 P.3d 402, 403-04 (Ariz. 2018). Defendant convicted with batterer of abusing their children, asserted duress defense. Reversed, vacated in part. As intermediate court correctly held, abuser's threats and abuse against defendant constituted ongoing and immediate

threat of physical harm which supported a duress defense. Favorable discussion of “immediacy” for purpose of duress. The trial court erred to the extent it held such evidence was prohibited as “diminished capacity” evidence under *State v. Mott*. But, contrary to appellate court holding below, expert testimony on battering did not qualify as “observation evidence” under *Clark v. Arizona* and therefore was inadmissible on the issue of whether defendant possessed the requisite *mens rea* for child abuse.

State v. Haskie, 242 Ariz. 582, 399 P.3d 657 (Ariz. 2017). Appeal by defendant convicted of domestic violence offenses. Affirmed. Trial court did not err in admitting the state’s expert testimony of a “blind” or “cold” expert on battering and its effects (one who reviewed no case-specific information) and such testimony was not impermissible profile evidence. Expert testimony that explains victims’ seemingly inconsistent conduct is admissible to aid the jury in evaluating credibility. While testimony about victim behavior that also describes perpetrator characteristics could be profile evidence, it is not inadmissible categorically and requires balancing probative value and prejudice. The purpose of the expert testimony was to explain victim behavior. Court notes caution must be taken when victim behavior testimony includes characteristics of the perpetrator. Defendant is entitled to limiting instruction.

State v. Mott, 187 Ariz. 536 (Ariz. 1997). Where defendant and batterer were charged with child abuse and child death, court upheld trial court preclusion of expert testimony on battering offered to negate the *mens rea* element of the crime. Court notes that expert was offered to explain why the defendant lacked capacity to defy the batterer and get the child help. Court interprets the use of expert psychiatric evidence to negate *mens rea* as diminished capacity evidence, prohibited under state law. “Because the legislature has not provided for a diminished capacity defense, we have since consistently refused to allow psychiatric testimony to negate specific intent.” Note: See federal district court decision pasted below which found this ruling violated federal due process.

Note: See Mott v. Stewart, 2002 U.S. Dist. LEXIS 23165 (D. Ariz. 2000). Federal habeas relief granted where state court precluded defense expert on battering who would have provided alternative explanation for why defendant left her child alone with known batterer, and other acts the state used to prove she acted intentionally with respect to child abuse resulting in death. Expert testimony would have negated state’s evidence of specific intent by providing alternative explanations; preclusion of expert testimony violated due process and right to present a defense. Though state could constitutionally preclude the evidence if offered for diminished capacity, that did not warrant preclusion for all purposes. State could not justify exclusion based on efforts to limit insanity defense; insanity defense is a separate issue from defendant’s right to present alternative explanations for her conduct that challenge proof of intent. But see, *Clark v. Arizona*, 548 U.S. 735 (2006), *infra* at 111 (Arizona rule in *State v. Mott*, 187 Ariz. 536 (1997) did not offend due process). *Clark* is summarized below under “Federal Courts.”

State v. Jacobson, 244 Ariz. 187, 418 P.3d 960 (Ariz. Ct. App. 2017). Defendant convicted of murder for killing abuser. Affirmed. Court did not err by precluding evidence that defendant suffered post-arrest from PTSD. *State v. Richter* does not stand for the proposition that diagnoses of PTSD are always admissible as part of a justification defense. In this case, PTSD was offered to inherently vouch for the defendant's credibility as her experts relied only on her accounts of abuse. PTSD diagnoses are therefore inadmissible to prove prior acts of domestic violence occurred. Court also rejects admission of PTSD as observation evidence under *State v. Clark*.

State v. Buot, 232 Ariz. 432, 436 (Ariz. Ct. App. 2013). "In sum, under the applicable Arizona statutes and case authorities, a defendant charged with second-degree murder may not offer evidence that due to a character trait of impulsivity, he did not act knowingly or recklessly because he lacked the power to control his actions."

State v. Vogel, 207 Ariz. 280 (Ariz. Ct. App. 2004). Defendant convicted of murder for killing abuser. Court did not err in instructing the jury that verbal provocation alone was not sufficient to justify the use of physical force in self-defense. Court discusses interplay between character evidence rules, Ariz. Rev. Stat. §§ 13-404(A), (b) and 13-405 (2001).

CALIFORNIA

People v. Collins, 17 Cal. 5th 293, 328 Cal. Rptr. 3d 641, 561 P.3d 801 (Cal. 2025). Appeal by defendant convicted of murder of child on a theory of "failure to protect" the child from the batterer's fatal abuse while she was in another room. Reversed. "Applying the law governing implied malice murder in the distinct context of a prosecution based on a failure-to-protect theory, the evidence fails to establish Collins harbored the requisite *mens rea* to convict her of second-degree murder under either a direct aider and abettor theory or a direct perpetrator theory." *Id.*, 328 Cal. Rptr. 3d 645, 561 P.3d 801, 805. Parents are not required to place themselves in danger of great harm or death in acting to protect children. There are complexities in determining reasonable steps an abused parent took to safely leave the situation of the abusive co-parent. Here, no evidence showed defendant knew to a substantial degree of certainty of batterer's intent to commit the act that caused death, or that she failed to act in conscious disregard, the requisite *mens rea* for direct aider and abettor liability under state law. Nor was there implied malice for a direct perpetrator theory of liability – defendant's failure to act did not involve subjective awareness that her omission endangered the child or a "high degree of probability" that it would result in death. Seminal decision with enlightened concurrence on the predicament of victim-defendants in failure to protect situations.

People v. Riggs, 44 Cal. 4th 248, 79 Cal. Rptr. 3d 648, 187 P.3d 363 (Cal. 2008). In trial of abusive husband for killing a third person, where co-defendant wife testified against defendant, expert testimony on

battering and its effects was highly relevant and properly admitted to enable jury to evaluate wife's testimony unencumbered by misconceptions about why she remained with batterer, and to explain why she didn't prevent the crime. Without such testimony, jury may have mistakenly believed only reasonable explanation for wife's failing to act or leave was because she was the murderer.

People v. Humphrey, 13 Cal. 4th 1073, 56 Cal. Rptr. 2d 142, 921 P.2d 1 (Cal. 1996). Seminal California case on admissibility of expert testimony on battering and its effects. Defendant appealed voluntary manslaughter conviction for killing her abusive partner and claimed self-defense. Reversed. Expert testimony on battering is relevant not only to the subjective belief element of self-defense but also to reasonableness. It is also relevant to credibility. Instruction that allowed the jury to consider the testimony only for subjective belief element, but not reasonableness, was reversible error.

In re D.C., 60 Cal. App. 5th 915, 275 Cal. Rptr. 3d 191 (Cal. Ct. App. 2021). Juvenile, victim of sex trafficking charged with weapon offense, asserted he possessed and concealed weapon in case his trafficker tried again to lock him in the trunk of a car. Juvenile appealed the denial of human trafficking defense of Cal. Penal Code § 236.23 (providing an affirmative defense for non-serious felonies where a person is coerced into crime as a direct result of being a human trafficking victim at the time and had a reasonable fear of harm). Juvenile court would not apply trafficking defense because trafficker did not coerce the juvenile to possess the weapon or even know about it. Remanded; hearing on applicability of the defense ordered. The human trafficking defense of 236.23 does not require that the accused act at the behest of the trafficker or that trafficker be aware of the crime. The coercion suffered must result directly from being a victim but need not be provided by the trafficker. If juvenile court finds that minor was a trafficking victim at the time of the offense, and that he concealed the knife on himself due to reasonable fear that trafficker would find him and force him into trunk of car again, then defense applies.

People v. Gonzalez, 253 P.3d 185 (Cal. 2011). Capital appeal by defendant of conviction of murder of a child with special circumstances. Affirmed. Prosecutor's reference to abuser-codefendant's claims of battering to undercut defendant's battering evidence did not warrant mistrial. Court did not err by ordering defendant to submit to an evaluation by prosecution's expert, as defendant's introduction of evidence of battering constituted a defense based on her mental condition. Not improper for prosecutor to suggest, after defendant introduced evidence of her history of child abuse, that being a victim of child abuse is not inconsistent with going on to abuse children as an adult.

People v. Coffman and Marlow, 34 Cal. 4th 1 (Cal. 2004). Appeal by defendant who was convicted with abusive co-defendant of murder/kidnapping scheme. Codefendant was not prejudiced by defendant's introduction of battering evidence, as the jury was instructed to use the evidence only to evaluate the defendant's mental state, so it was not bad character evidence against the co-defendant.

People v. Brown, 33 Cal. 4th 892, 16 Cal. Rptr. 3d 447, 94 P.3d 574 (Cal. 2004). In prosecution for domestic violence crimes, state's expert testimony on battering was admissible to explain victim behavior of minimization and denial even though there was no proof that defendant abused victim on more than one occasion. Expert testimony was admissible under Evidence Code section 801 because it would assist jury in evaluating credibility of complainant's earlier statements and her trial testimony by explaining the tendency of victims to later recant or minimize. Court does not reach the question of admissibility under section 1107.

People v. Millan, 111 Cal. App. 5th 308, 332 Cal. Rptr. 3d 706 (Cal. Ct. App. 2025). In prosecution of defendant and abusive codefendant for attempted murder of their child, evidence did not establish that defendant personally inflicted great bodily injury on the child. State asserted that she aided and abetted infliction of great bodily harm by failing to fulfill her duty to protect the child, not allowing others to see the child, and delaying medical care. These acts did not suffice to prove she personally inflicted great bodily injury.

People v. Suazo, 95 Cal. App. 5th 681, 313 Cal. Rptr. 3d 649 (Cal. Ct. App. 2023). Where defendant was convicted of second-degree murder, court remanded for resentencing based on Assembly Bill 567 and Assembly Bill 124 amendments to Cal. Penal Code 1170, including the addition of 1170 (b)(6) which provides *inter alia*, that unless contrary to the interests of justice, the court shall order the lower term sentence, "if any of the following was a contributing factor in the commission of the offense: (A) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence. (B) The person is a youth, or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense. (C) Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking." 95 Cal.App.5th at 75. Court reasons that government conceded the statute was retroactive, and defendant made statements in mitigation that suggested he may have a history of childhood trauma, implicating the amendments of Assembly Bill 124.

People v. Tilley, 309 Cal. Rptr. 3d 788, 92 Cal. App. 5th 772 (Cal. Ct. App. 2023). Where defendant failed to seek a lower term sentence based on Cal. Penal Code 1170(b)(6) (requiring court to impose lower term sentence if defendant's experience of psychological, physical, or childhood trauma was a contributing factor), did not object to a middle term sentence or argue that he suffered psychological trauma due to mental illness, he forfeited claim that court erred in imposing middle term sentence.

People v. Kelly, 302 Cal. Rptr. 3d 641, 87 Cal. App. 5th 1 (Cal. Ct. App. 2022), *review pending*, 305 Cal. Rptr. 3d 665, 525 P.3d 639 (Cal. 2023). Defendant could not get a reduced sentence under Cal. Penal Code § 1170(b)(6) (requiring court to impose lower term sentence if defendant's experience of psychological, physical, or childhood trauma was a contributing factor) because her sentence was stipulated and this provision does not apply to negotiated disposition sentences in which there is an

agreed term of imprisonment. The court has no discretion to weigh aggravating and mitigating factors in this situation.

People v. Herrera, 247 Cal. App. 4th 467 (Cal. Ct. App. 2016). Appeal from murder conviction by defendant who stabbed his longtime friend twenty-one times after friend taunted him about homosexuality. Defendant had suffered childhood sexual abuse and a history of abuse and trauma. Reversed. Trial court improperly limited defense PTSD expert by not allowing expert to testify that defendant was in a dissociative state at time of stabbing and suffered from PTSD, or “*anything related to mental state at the time ... of the offense.*” Such testimony did not violate prohibitions on testimony about the ultimate mental state and would have given the jury a basis to find that defendant lacked the requisite mental state. The erroneous ruling “eviscerated” any defense to the elements of premeditation and deliberation.

People v. Cortes, 192 Cal. App. 4th 873 (Cal. Ct. App. 2016). Appeal by defendant from murder conviction for stabbing an individual thirteen times. Reversed. Trial court erred in ruling that expert could testify about PTSD and dissociation in general but could not testify about defendant’s mental condition or mental state at the time of the stabbing. The expert sought to testify that defendant was in a dissociative state in response to the extreme stress of perceived life-threatening events, and after the first stab, was experiencing the kind of unreality that occurs during dissociation, acting more instinctually than out of judgment, premeditation or contemplation. The expert also would have testified about the defendant’s lack of memory and the neurobiological effects of trauma on memory and recall of narrative. *Id.* at 893-4. Court details expert testimony and provides thoughtful analysis of why the expert should have been allowed to testify about the defendant’s diagnosis, dissociative state, past traumatic events and diagnosis, and how they were connected to the offense. The expert testimony would have given the jury a basis to infer that defendant lacked the requisite mental state.

People v. Dowdell, 227 Cal. App. 4th 1388, 174 Cal. Rptr. 3d 547 (Cal. Ct. App. 2014). Defendant was convicted for her participation with batterer-co-defendant in robbery and kidnapping, and presented an expert on battering to rebut the specific intent elements. Affirmed. The trial court instructed that jury could use the battering evidence to support a duress defense but denied defense instruction that battering evidence could be used to consider whether defendant formed specific intent. Court held that trial court committed error by failing to instruct on specific intent, but under the circumstances here the error was harmless. *Id.* at 1417-1421.

People v. Kovacich, 201 Cal. App. 4th 863, 133 Cal. Rptr. 3d 924 (Cal. Ct. App. 2011). In prosecution for murder of defendant’s missing wife, trial court did not err in admitting state’s expert testimony which was necessary to dispel jurors’ misconceptions and explain victim’s behavior. Though expert exceeded limits placed by trial court, error was not prosecutorial misconduct or prejudicial.

In re Walker, 54 Cal. Rptr. 3d 411 (Ca. Ct. App. 2007). Defendant convicted of second-degree murder of batterer sought post-conviction relief under specific state statute providing relief for certain survivors who had no expert at trial. Vacated and remanded for new trial. Had the jury heard expert testimony on battering and its effects, including why battered women may feel that they have to kill the batterer to save themselves, jury may have found lesser included offense of voluntary manslaughter based on imperfect self-defense, e.g., that she shot decedent out of an honest, but unreasonable fear of harm.

People v. Callahan, 124 Cal. App.4th 198 (Cal. Ct. App. 2004). Appeal by state from grant of new trial for defendant convicted of felony murder for her participation in killing of third person. Affirmed. Trial court did not abuse discretion by finding counsel ineffective for failing to present testimony of defendant to support duress instruction as defense to predicate felonies for murder charge. Only defendant could have credibly explained how codefendant coerced her into complying with his orders to dispose of body, threats due to his gang activity, and his particular instances of abuse and threats.

People v. Jaspar, 98 Cal. App. 4th 99 (Ca. Ct. App. 2002). Appeal by defendant convicted of murder of abusive boyfriend. She claimed self-defense and imperfect (unreasonable belief) self-defense and presented expert on battering. Affirmed. Though jury instructions expressly referred to using evidence of battering to consider whether defendant had an "actual and reasonable belief," the jury was not explicitly precluded from considering battering evidence in regard to imperfect self-defense, and the closing arguments of counsel clarified any potential confusion. In a footnote, the court suggests a way to rewrite the confusing jury instructions, to include reference to "an actual and unreasonable belief."

People v. Gadlin, 78 Cal. App. 4th 587 (Cal. Ct. App. 2000). In prosecution for assaulting girlfriend with weapon, state's expert testimony on battering was relevant because there were past battering incidents causing victim to meet definition of a battered woman and testimony explained victim's motive for recantation.

People v. Romero, 13 Cal. Rptr. 2d 332 (Cal. Ct. App. 1992); *rev'd on other grounds*, 35 Cal. Rptr. 2d 270, 883 P.2d 388 (1994). Defendant and abusive boyfriend convicted of second-degree robbery; defendant claimed duress, argued on habeas corpus that counsel was ineffective for failing to present expert testimony on battering. Petition granted, conviction vacated. Also held rule permitting expert testimony on battering in self-defense case applies also to duress cases: "In both cases, the evidence is relevant to the woman's credibility and to support her testimony that she entertained a good faith, objectively reasonable and honest belief that her act was necessary to prevent an imminent threat of greater harm." Counsel failed to follow through to contact expert and present expert testimony on battering. Such evidence would have bolstered defendant's credibility and persuaded jury to accept duress defense.

Doe v. Superior Court, 39 Cal. App. 4th 538, 45 Cal. Rptr. 2d 888 (Cal. Ct. App. 1995). Writ of mandate for appointment of specific expert on battering and its effects. If court's list of experts does not have a

competent, qualified expert on battering and its effects, trial court is ordered to appoint the expert requested by defendant.

In Re Ny Nourn, 145 Cal. App. 4th 820, 52 Cal. Rptr. 3d 31 (Cal. Ct. App. 2006), *Unpublished*. *Review denied and ordered not published*, 2007 Cal. LEXIS 3587 (Cal. 2007). Appeal of denial of habeas petition by defendant convicted of premeditated murder and arson for aiding and abetting her batterer in killing of third party. Alleged ineffective assistance due to trial counsel's failure to investigate/present evidence of "battered woman syndrome" (BWS) to support claim that she was coerced to participate by batterer and lacked specific intent to kill. Judgment vacated. Trial counsel had no reasonable basis to forego psychological evaluations necessary for informed, tactical decisions regarding evidence of BWS. (Decision includes habeas affidavits from several renowned experts on battering.) Defendant was prejudiced as omitted evidence was relevant to duress defense and to challenge to specific intent for aiding and abetting batterer's assault on decedent (the underlying felony for felony murder), and would have bolstered her credibility, Note: Though unpublished, the decision is helpful for illustrating how to support post-conviction arguments regarding the evidence of battering.

People v. Reay, C030923, 2003 Cal. App. Unpub. LEXIS 7957 (Cal. Ct. App. Aug. 21, 2003). *Unpublished*. Defendant was convicted of murder for participating with her batterer in the killing of a third person. She alleged that batterer coerced her into the acts. On first appeal, court reversed her conviction on the ground that duress instructions should have been given. State appealed and state supreme court reversed and remanded the case for consideration in light of *People v. Anderson*, (2002) 28 Cal.4th 767, which held that duress is not a defense to murder. Court determined that *Anderson* is retroactive and therefore affirmed Reay's conviction.

People v. Hernandez, 2d Crim. No. B120703, Cal. Ct. App., 2nd District, filed October 30, 2000, *Unpublished*. Appeal by defendant convicted of murder of child for failing to protect child from batterer's abuse. Reversed. Trial court committed reversible error in excluding expert testimony on battering since evidence was relevant to explain defendant's otherwise inexplicable conduct in failing to intervene to protect her child. Expert testimony was relevant to claims that she acted with implied malice, intentionally facilitated batterer's conduct, and was criminally negligent regarding batterer's abuse of child. Proper remedy to avoid prejudice to codefendant was severance or limiting instruction. Eyewitness accounts of abuse did not cure the error as layperson testimony is no substitute for expert testimony.

COLORADO

People v. Cooper, 2021 CO 69, 496 P.3d 430 (Colo. 2021). In prosecution for assault, court upheld admission of state's generalized expert testimony by licensed professional counselor and discussed

general testimony at length. General testimony (testimony that educates the jury generally without discussing facts of the case) “fits” when it has sufficient logical connection to the factual issues to be helpful to the jury while clearing the Rule 401/403 bar. The fit need not be perfect; fit inquiry needs to be flexible. General expert on battering here was permitted to testify about power and control (e.g., power and control wheel), general dynamics, counterintuitive behaviors, why victims return to abuser, and use of pet as intimidation. Court recites specifics of expert testimony and fit of each area, concluding appellate court took an overly restrictive view and trial court did not abuse discretion.

Ruibal v. People, 2018 CO 93, 432 P.3d 590 (Col. 2018). In prosecution for murder of partner, trial court abused discretion in admitting state’s expert testimony on “overkill” where trial court made no specific findings as to reliability of the theory. Due to overwhelming evidence of guilt, error was harmless.

People v. Garcia, 28 P.3d 340 (Colo. 2001). State appeal from reversal of second-degree murder conviction of defendant for killing her abusive husband. Defendant claimed killing was to prevent sexual assault by batterer, presented evidence of history of abuse and expert on battering. Reversal affirmed. Jury instructions on provocation were erroneous, e.g., inaccurately characterized second-degree murder-provocation as lesser-included offense of second-degree murder and incorrectly placed burden on prosecution to prove elements of provocation rather than to disprove the elements beyond reasonable doubt. Trial court also erred by failing to instruct that defendant had no duty to retreat before using deadly force and had a right to use deadly force to prevent sexual assault. Trial court did not err in refusing defense instruction on prior violence, and it did instruct that “battered woman syndrome” is evidence the jury could use in deciding self-defense.

Hare v. People, 800 P.2d 1317 (Colo. 1990). Appeal by defendant convicted of shooting abusive boyfriend during struggle. Trial court did not err in giving self-defense instruction tracking self-defense statute and rejecting defendant's instruction that jury consider “apparent necessity” for self-defense. Instructions given encompassed proposed defense instruction and permitted the jury to consider from defendant's viewpoint whether she was justified in using physical force in self-defense.

People v. Rodriguez, 209 P.3d 1151 (Colo. App. 2008). In prosecution of defendant for complicity in batterer-husband's sexual abuse of child, trial court did not err in precluding testimony of batterer’s former wife concerning his abuse as such evidence was cumulative.

People v. Wallin, 167 P.3d 183 (Colo. App. 2007). In prosecution of defendant for assaulting ex-wife, trial court did not err in admitting state’s expert testimony on battering as complainant gave different accounts of the facts and expert testimony was relevant to her credibility, a key issue, because it explained inconsistencies in her statements. As expert did not testify about specific incidents between the parties, prejudice resulting from admission of expert did not outweigh probative value.

People v. Darbe, 62 P.3d 1006 (Colo. App. 2002). Where defendant was convicted of killing abusive father, court did not err in refusing instruction tendered by defendant with respect to domestic violence. Court gave statutory self-defense instruction and part of defendant's tendered instruction referring to decedent's history of abusing defendant and family.

People v. Johnson, 74 P.3d 349 (Colo. App. 2002). In prosecution of defendant for attempted murder of estranged wife, trial court did not err in allowing the state to present expert testimony on battering to explain reasons why domestic violence victims recant their stories. Court rejected defense argument that testimony was irrelevant because there was no longstanding history of abuse.

People v. Lafferty, 9 P.3d 1132 (Colo. App. 1999). In assault prosecution of batterer, court did not err in admitting state's expert testimony on domestic violence to explain recantation and inconsistencies. Expert testimony regarding the reasons for victims' recantations is admissible.

People v. Yaklich, 833 P.2d 758 (Colo. App. 1991). State appeal to review trial court rulings instructing the jury on self-defense and duress where defendant was convicted of conspiracy to commit murder in hire-to-kill of her abusive husband. Court disapproves rulings; self-defense instruction is not available in contract-for-hire case even if defendant presents credible evidence that she is victim of "battered woman syndrome" (BWS). Extensive discussion of BWS and review of decisions where battered women claim self-defense to killing during lull in violence or contract killing. Defendant's evidence, even if true, was insufficient as a matter of law to support defense that she feared imminent danger when husband killed.

CONNECTICUT

State v. Helmedach, 306 Conn. 61, 48 A.3d 664 (Conn. 2012). Defendant convicted of felony-murder after abusive partner robbed and killed her friend in defendant's presence and defendant participated in the aftermath. Defendant disputed state theory that she lured her friend to the scene of the crime and claimed she participated in events after the killing under duress from abusive partner. Affirmed. Instruction that duress did not apply if defendant intentionally or recklessly placed herself in the situation in which it was probable duress would occur, was not misleading even if the jury thought (as prosecutor argued) that returning to the situation was returning to the relationship with a known abuser. Even if defendant was subject to duress after the murder, that was not a defense to murder. Therefore, instruction on duress, even if improper, was harmless error.

State v. Vega, 259 Conn. 374, 788 A.2d 1221 (Conn. 2002). In assault prosecution, state's expert testimony on battering by a clinical social worker was relevant and admissible. Court rejected defense arguments that expert was not qualified and that testimony impermissibly addressed credibility. As

defense had attempted to impeach victim's credibility, expert testimony was offered to confirm that victim was a battered woman. Expert testimony was couched in general terms, e.g., experiences commonly shared by battered women, and provided the jury "with a framework within which it could place and possibly explain the victim's alleged behavior."

State v. Freeney, 228 Conn. 582, 637 A.2d 1088 (Conn. 1994). Appeal by defendant convicted of kidnapping and sexual assault of woman he forced to prostitute. Trial court did not err by allowing state to present two experts to testify that complainant's disjointed, sparse version of events given immediately after incident and her behavior during her ordeal were not inconsistent with that of assault survivors. This case is indistinguishable from *State v. Borrelli*, 227 Conn. 153, 629 A.2d 1105 (1993).

State v. Borrelli, 227 Conn. 153, 629 A.2d 1105 (Conn. 1993). Appeal by defendant convicted of kidnapping, assault, unlawful restraint of wife. Affirmed. Expert testimony on "battered woman syndrome" (BWS) by state on rebuttal, to impeach wife's trial testimony and provide possible explanation for her recantation, properly admitted.

State v. Santiago, 187 Conn. App. 350, 351, 202 A.3d 405, 408 (Conn. App. Ct. 2019). "The trial court also did not abuse its discretion in admitting, as relevant evidence, the testimony of defendant's wife concerning uncharged misconduct involving specific instances of domestic violence by defendant because that evidence was probative to explain why defendant's wife feared the defendant and waited 12 years before telling the police about her knowledge of the victim's murder." (Overview).

Carpenter v. Comm'r of Corr., 157 A.3d 1153 (Conn. App. Ct. 2017). Appeal from denial of habeas following conviction for capital felony murder for soliciting the contract killing of defendant's sister's abusive partner. Affirmed. Counsel not ineffective for not seeking a plea bargain when defendant indicated she did not want a plea bargain. Any deficiencies by counsel in plea bargaining were not prejudicial as there was no indication the state would have offered a plea.

State v. Morquecho, 138 Conn. App. 841, 54 A.3d 609 (Conn. App. Ct. 2012). In murder prosecution where defendant had previously stalked victim and she feared defendant, state's expert testimony on domestic violence was relevant and admissible. Expert provided general testimony about domestic violence, traits exhibited by victims of domestic violence generally, and common characteristics of domestic violence. Court rejects contention that expert testimony was not necessary, noting that is not the standard in the rules of evidence, and that the testimony explained dynamics such as why the victim would have interacted with defendant before he killed her. Court rejects contention that testimony about battered women was not relevant because there was no pre-existing physical violence here. Testimony was on the broader topic of conduct of people in relationships characterized by domestic violence, and was not limited to pre-existing physical violence but included tactics aimed at coercing the victim.

State v. Yusuf, 70 Conn. App. 594, 800 A.2d 590 (Conn. App. Ct. 2002). Appeal from conviction of kidnapping and assault. Affirmed. State's expert testimony was properly admitted as it explained why victim did not leave defendant after she was assaulted, did not report assaults to police, and complied with defendant's demands. Defendant's prior misconduct was admissible because it corroborated state expert's testimony about cyclical nature of domestic violence. Recantation was not a condition precedent to admission of state's expert but just "one kind of ... paradoxical behavior that someone might not understand..." *Id.* 800 A.2d at 611. State's expert substantially assisted the jury in understanding whether the victim's actions were consistent with those of a battered woman and did not evaluate victim's credibility. Instead, expert helped jury understand whether victim's actions were consistent with those of a battered woman and provided a framework to explain victim's behavior.

State v. Niemeyer, 55 Conn. App. 447, 740 A.2d 416 (Conn. App. Ct. 1999), *rev'd in part on other grounds*, 258 Conn. 510, 782 A.2d 658 (2001). Appeal by defendant convicted of assault and kidnapping of his girlfriend. Trial court properly admitted state's expert testimony to assist jury in determining whether victim's conduct was consistent with the pattern and profile of a battered woman. Court rejected defense argument that victim was not a battered woman because she had not been battered at least twice. Court rejected contention that expert testimony bolstered victim's credibility, ruling that *State v. Freaney*, 228 Conn. 582, 637 A.2d 1088 (1994) controlled and it was not impermissible to pose hypothetical questions to the expert about the behavior of sexual assault victims to show that the victim's behavior was consistent with typical victims.

Foreshaw v. Commissioner of Correction, 48 Conn. App. 122, 708 A.2d 600 (Conn. App. Ct. 1998). Appeal from denial of habeas. Defendant killed female bystander during verbal altercation with man who insulted and threatened her. Defense asserted extreme emotional disturbance and presented expert regarding defendant's history of abuse and posttraumatic stress disorder (PTSD). Affirmed. Counsel was not ineffective for failing to present defense of self-defense based on "battered woman syndrome" (BWS.) Even if defendant's belief in imminent danger was reasonable given her mental state as a battered woman suffering from PTSD, she had a duty to retreat before using deadly force. Defense experts on battering did not opine on whether she could have safely retreated.

Summerville v. Warden, State Prison, 29 Conn. App. 162, 614 A.2d 842 (Conn. App. Ct. 1992). Appeal of denial of habeas petition by defendant convicted of strangling woman. Affirmed in part. Counsel was not ineffective. Though counsel is obligated to fully investigate case, including getting an expert, counsel's decision not to take continuance to investigate state's rebuttal evidence and possibly offer surrebuttal testimony was matter of trial strategy and exercise of reasonable professional judgment. In light of defense expert's testimony, this is not case where state testimony went un rebutted (unlike *Commonwealth v. Stonehouse*, 555 A.2d 772 (Pa. 1989)).

State v. Watson, 26 Conn. App. 151, 599 A.2d 385 (Conn. App. Ct. 1991). Appeal by defendant convicted of sexual assault of his son's girlfriend. Affirmed. Trial court did not err in allowing state's witness, a victim advocate and counselor at women's center, to testify as expert that it was not unusual for there to be delay between rape and reporting of it. She possessed knowledge superior to laypersons.

DELAWARE

Wonnum v. State, 942 A.2d 569, 573 (Del. 2007). Direct appeal by defendant of murder and firearms convictions arising from her being directed by abusive boyfriend to commit robbery; he was not present during robbery. Reversed. Trial court erred by precluding expert testimony on defendant's life history of abuse and abuse by boyfriend. Trial court ignored that such testimony would have explained why it would be reasonable to perceive the boyfriend as a threat for the purpose of duress. Court also erred by failing to instruct the jury on duress, thereby foreclosing her defense.

State v. Scott, 1989 WL 90613, 1989 Del. Super. LEXIS 291 (Del. Super. Ct. 7/19/89), *Unpublished*. Defendant who pled guilty to manslaughter arising from shooting her abusive boyfriend moved to withdraw plea. Motion granted. Counsel was ineffective in advising her to plead guilty as his advice was based on substantial legal errors including misunderstanding burden of proof on self-defense; viewing "battered woman's defense" as novel and doubting its applicability; and mistakenly believing self-defense was not a defense to manslaughter. Trial court abused discretion by excluding psychological report without understanding it or having detailed written proffer of its contents.

DISTRICT OF COLUMBIA

Lalchan v. United States, 282 A.3d 555 (D.C. 2022). Defendant convicted of manslaughter in shooting death of abusive husband. Reversed. Trial court committed reversible error by declining to instruct the jury that it could consider the effects of battery in assessing whether defendant's perception of danger was objectively reasonable. "We hold that a specific instruction on the effect that intimate-partner violence can have on reasonable perceptions of danger was required in the circumstances of this case." *Id.* at 562.

Earl v. United States, 932 A.2d 1122 (D.C. 2007). In prosecution for assault on his partner, trial court was within discretion in allowing state to present expert on battering who testified about common patterns and tactics in abusive relationships and battered women's reluctance to report abuse. The testimony assisted the jury in assessing complainant's credibility in light of her misrepresentations to police, and in understanding why she did not immediately identify defendant as her assailant. Limiting instruction

clarified that expert testimony was not evidence that defendant was predisposed to domestic violence or assaulted the complainant.

Nixon v. United States, 728 A.2d 582 (D.C. 1999). In prosecution for domestic violence, trial court did not abuse discretion in allowing state to introduce expert testimony on “battered woman syndrome” (BWS). Trial court did not err in finding that expert testimony on battering met the standard of general acceptance in the relevant scientific community or that it was “beyond the ken” of the average layperson. The expert testimony aimed to educate the jury about patterns of behavior that would explain the victim’s conduct and actions. Court also rejected contention that expert testimony was not relevant because the expert had not examined the victim. Comprehensive analysis surveying law of other jurisdictions. Given the expert’s testimony that she had no knowledge of the case specifics, the jury could not have reasonably understood it as opining that the victim was a battered woman or that the defendant was the batterer.

Ibn-Tamas v. United States, 407 A.2d 626 (D.C. 1979). Appeal by defendant of murder conviction for killing abusive husband, claimed self-defense. Trial court precluded defense expert testimony on battering “to describe the phenomenon of wife battering” and explain whether defendant fit characteristics of battered women the expert had studied. Remanded. Trial court erred in precluding expert testimony because it would invade the province of the jury. It would not have run afoul of the ultimate issue rule, rather the expert would have provided background to help the jury make the determination. Nor was the testimony inadmissible because it was not beyond the ken of the jury. The expert testimony would have enhanced defendant’s credibility in responding to government suggestion that defendant’s story was implausible and supported her testimony that she feared imminent danger. Court remanded because it could not determine from the record whether the expert was qualified or whether the state of scientific knowledge was sufficient to have general acceptance in the field and permit an expert opinion.

FLORIDA

Weiland v. State, 732 So.2d 1044 (Fla. 1999), *Superseded by statute as stated in State v. Smiley*, 927 So. 2d 1000 (Fla. 2006). Decision by high court on a certified question -- There is no duty to retreat from residence before justifiably resorting to deadly force in self-defense against a co-occupant. Court thoroughly discusses policy implications of the no retreat rule and comprehensively reviews how imposition of a duty to retreat rule against a co-occupant would adversely impact victims of domestic violence and reinforce the myth that battered women are free to leave. Court also holds that trial court’s exclusion of two eyewitnesses to the abuse was error since the expert testimony on domestic violence did not replace the importance of eyewitness testimony to corroborate the defense claims of abuse.

State v. Hickson, 630 So. 2d 172 (Fla. 1993). “What can an expert testify to when a defendant relies on battered-spouse syndrome evidence to support a claim of self-defense? We answer the restated question by holding that an expert can generally describe the syndrome and the characteristics of a person suffering from the syndrome and can express an opinion in response to hypothetical questions predicated on facts in evidence, but cannot give an opinion based on an interview of the defendant as to the applicability of the syndrome to that defendant unless notice of reliance on such testimony is given and the state has the opportunity to have its expert examine the defendant. We quash the opinion under review.” 630 So.2d at 173.

Oquendo v. State, 420 So. 3d 466 (Fla. 2025). On appeal by defendant convicted of manslaughter for shooting a man in a bar, high court decides whether evidence of a defendant’s PTSD is legally relevant to a self-defense theory, deciding a conflict between the lower court decision, *Oquendo v. State*, 357 So. 3d 214 (Fla. 2d DCA 2023) (holding that PTSD is categorically irrelevant to self-defense given that it turns on reasonableness), and *State v. Mizell*, 773 So. 2d 618 (Fla. 1st DCA 2000) (holding that PTSD evidence was admissible to support a self-defense theory with strict limitations similar to those imposed on “battered spouse syndrome” expert testimony). Here, trial court denied defense request to admit expert testimony from a psychologist who would have opined that defendant suffered from PTSD which made it more likely he would act on impulse and perceive a situation as threatening. Affirmed. Held: Trial court did not abuse its discretion in precluding the evidence of PTSD. Florida self-defense standard contains a subjective component, e.g., that defendant had an actual subjective belief that deadly force was necessary, and an objective component, that the belief was reasonable. Therefore, “state-of-mind” evidence, such as PTSD can be relevant to the subjective component even though irrelevant to the objective component of self-defense. Such evidence bears on the defendant’s actual belief. Therefore, court disapproves lower court’s reasoning that self-defense only includes an objective component and approves the holding in *Mizell*. However, in this case the defendant did not admit to firing the gun but claimed it discharged accidentally. Therefore, the PTSD evidence was not relevant to whether he actually believed he had to fire the gun. Court also disapproves lower court holding that PTSD evidence is necessarily inadmissible diminished capacity evidence though in this case the PTSD evidence was being used to establish diminished capacity and the defense did not establish the predicate for PTSD evidence as set forth in *Mizell*.

Simpson v. State, 276 So. 3d 955 (Fla. Dist. Ct. App. 2019). Appeal by defendant convicted of aggravated battery for shooting incident against abusive boyfriend. Reversed. Trial court abused discretion by not allowing counsel to ask venire panel about “battered spouse syndrome” (BSS) during voir dire. Court notes that two battering experts testified that defendant “suffered from” BSS, and BSS went to the heart of the defense.

Wagner v. State, 240 So. 3d 795 (Fla. Dist. Ct. App. 2017). Appeal by defendant of conviction for attempted murder of abusive husband. Defendant testified after she fled from abuse, she pulled a gun,

told complainant to throw her keys to her, and when she went to get them, the gun went off. Affirmed. While “battered spouse syndrome” (BSS) evidence is admissible to support a claim of self-defense when the defendant is charged with a crime against her batterer, the defense in this case was accident, not self-defense. Court distinguishes *State v. Stewart* where the court allowed evidence of battering in support of a claim that the gun went off. Court rejects defense argument that BSS was admissible to explain the reasonableness of defendant arming herself, stating that she was not charged with illegally possessing or brandishing the gun.

Alexander v. State, 121 So. 3d 1185 (Fla. Dist. Ct. App. 2013). Appeal by defendant convicted of assault with a deadly weapon for firing warning shot to stave off attack by abusive partner. Reversed. Court erroneously instructed the jury on self-defense.

Brewington v. State, 98 So. 3d 628 (Fla. Dist. Ct. App. 2012). Appeal by defendant of conviction for aggravated manslaughter of child for failing to protect child from abusive boyfriend’s abuse and murder. Affirmed. Defense proffered evidence of battering on the issue of *mens rea* (in this case, culpable negligence). Trial court precluded the evidence as not meeting *Frye* test of reliability or being generally accepted to negate *mens rea* element of failure to protect. Court reviews other cases allowing battering evidence to challenge *mens rea* and for purposes other than self-defense.

Slater v. State, 915 So. 2d 618 (Fla. Dist. Ct. App. 2005). Motion for Rehearing following affirmance of denial of post-conviction relief by defendant who plead no contest to second-degree murder and arson. Incident arose out of confrontation with batterer in which she burnt his clothes and bystander was killed. Counsel not ineffective for advising defendant to plead before having the report of an expert on battering because: 1) counsel was aware of battering evidence but did not think the jury would be convinced, and expert report was complete by time of sentencing; 2) expert report said defendant did not “meet the criteria” for a “diagnosis” of “battered woman syndrome;” and 3) counsel’s motivation for the plea to second degree murder of the bystander was to avoid a first degree conviction.

Gonzalez-Valdes v. State, 834 So. 2d 933 (Fla. Dist. Ct. App. 2003). Appeal by defendant convicted of murder for shooting abusive boyfriend. Affirmed. Defendant presented evidence of abuse and expert on battering. Trial court did not err by allowing state to present ex-wife of abuser to testify about the absence of abuse, e.g., in a long marriage, he had not been abusive.

Hidalgo v. State, 689 So. 2d 1142 (Fla. Dist. Ct. App. 1997). Appeal from denial of post-conviction relief by defendant charged with sexual battery of his stepdaughter. Reversed. Counsel was ineffective for failing to object to expert testimony that victim stepdaughter “suffered from BWS” where trial court had ordered pre-trial that the testimony was precluded. Counsel’s failure to enforce the favorable order was prejudicial - consent was the key issue in the case, which hinged on credibility, and the admitted expert testimony weighed against defendant.

Howard v. State, 698 So.2d 923 (Fla. Dist. Ct. App. 1997). Appeal by defendant convicted of manslaughter for killing husband. Defendant argued she suffered from “battered woman’s syndrome” (BWS) and acted in self-defense or by accident when she stabbed husband, claiming he lunged at her, impaling himself. Reversed. Trial court erred by instructing jury only on the justifiable use of deadly force, denying defendant’s request for instruction on justifiable use of non-deadly force. The issue of whether appellant’s act of waving two knives to shield herself from husband’s assault constituted deadly or non-deadly force was a question for the jury.

Humble v. State, 652 So.2d 1213 (Fla. Dist. Ct. App. 1995). Appeal to intermediate court by defendant convicted of murder after stabbing husband. Claimed trial court erred by declining to qualify her witness as expert on ‘battered spouse syndrome’ (BSS). Affirmed. Held, in part: While defense witness had seventeen years of experience operating domestic violence programs, and the only purpose of her testimony was to describe syndrome to jury (not offer opinion as to whether defendant suffered from syndrome), she had no formal education in psychology/mental health field, nor clinical experience studying, treating, or diagnosing BSS. Therefore, no error for trial judge to find her unqualified to describe syndrome.

Andrews v. State, 577 So.2d 650 (Fla. Dist. Ct. App. 1991). Defendant convicted of murder for stabbing abusive husband; claimed self-defense. Reversed. State's evidence was insufficient for jury to return verdict of second-degree murder; evidence was that deceased had beaten defendant in past and that evening; that he had knife and was choking her; and that when knife fell to the ground she got it and stabbed him in self-defense. Also held state had to prove beyond reasonable doubt that defendant did not act in self-defense; state's evidence fell short and defendant's motion for acquittal should have been granted.

Martin v. State, 501 So.2d 1313 (Fla. 1st Dist. Ct. App. 1986). Defense counsel's failure to object to prosecutor's remarks during closing argument about defendant's silence and her failure to fully explain her actions on the day of her husband's death (that shooting was in self-defense), is grounds for a new trial. Conviction reversed and remanded.

State v. Stiles, Case No. 92-16173, Cir. Ct. of 13th Jud. Cir., Hillsborough Co., FL (June 1993), *Unpublished*. Defendant and her son charged with first-degree murder, conspiracy for hiring co-defendant to kill her husband and his stepfather; she claimed self-defense and sought to admit expert testimony on “battered woman syndrome” (BWS). Trial court held in part: when woman kills husband in non-confrontational setting or has him killed, BWS evidence admissible when expert is qualified to testify about BWS and defendant establishes herself as battered woman. “This court realizes that cases involving a contract killing test the bounds of the admissibility of evidence of BWS and the law of self-defense more than cases where the woman killed her husband while he was at rest or asleep.”

Three experts testified defendant suffered from BWS and was in fear of imminent harm when she took actions charged by state.

GEORGIA

McCalop v. State, 316 Ga. 363, 887 S.E.2d 292 (Ga. 2023). Appeal by defendant of malice murder conviction for killing abusive boyfriend, presented expert testimony on battering. Affirmed. Trial court did not err in allowing state's expert to testify about defendant's state of mind, whether her conduct was consistent with "battered person syndrome," even though expert did not interview or evaluate her and was unfamiliar with Georgia law. State expert's testimony that defendant was malingering during police interviews and that her relationship with decedent was mutually abusive also permissible as it did not go to ultimate issue; testimony was not about defendant's mental state at the time she used the knife.

Sullivan v. State, 308 Ga. 508, 842 S.E.2d 5 (Ga. 2020). Appeal by defendant convicted of murder for killing a man who previously threatened and harassed him. Affirmed. Record did not establish counsel's ineffectiveness for failing to produce witnesses to corroborate defendant's testimony about prior difficulties with decedent. At hearing, trial counsel testified he talked with witnesses and they could have had unfavorable information. Defendant presented only one witness at the hearing. Nor was counsel ineffective for failing to produce expert on PTSD to explain how defendant's mental health affected the crime. Counsel testified he procured defendant's mental health records and a psychiatric evaluation confirming that defendant was competent and that defendant's mental health issues did not affect criminal responsibility.

Virger v. State, 305 Ga. 281; 824 S.E.2d 346 (Ga. 2019). Where defendant was convicted of participating with batterer in death of child, expert testimony on battering to explain defendant's conduct and negate intent was properly precluded. Battering evidence is only admissible to support self-defense against the victim and evidence of prior violence against defendant by one other than the victim, including expert testimony about the effects of that abuse, is inadmissible to support justification. 305 Ga. At 300; 824 S.E.2d at 362. Battering evidence offered to negate *mens rea* runs afoul of prohibitions on diminished mental condition evidence. Court disapproves *Pickle v. State* and *Porter v. State*, 243 Ga. App. 498 (532 SE2d 407) (2000), to the extent inconsistent. (Note: Reasoning is arguably erroneous; contact National Defense Center for Criminalized Survivors for more information.)

Martin v. State, 306 Ga. 747, 833 S.E.2d 122 (Ga. 2019). Where defendant was convicted of murder for killing her abusive husband, counsel was not ineffective for failing to call an expert on battering. Counsel testified at the hearing on motion for new trial that he did not think it wise to get an expert on battering because defendant had a history of violence toward others that would have come out. Court

agrees the expert could have opened the door to this unfavorable evidence. Therefore, counsel's strategy was not unreasonable.

Owens v. State, 303 Ga. 254, 811 S.E.2d 420 (Ga. 2018). Counsel was not ineffective for failing to call particular witnesses to corroborate history of abuse suffered by defendant where counsel testified at motion for new trial that she made tactical decision not to call the witnesses given the other evidence of self-defense presented. Also, counsel presented expert testimony on battering. Therefore, the strategic decision not to call those witnesses was not unreasonable. Further, the witnesses did not testify at the motion for new trial, therefore their probative value cannot be assessed.

Puckett v. State, 342 Ga. App. 518, 804 S.E.2d 648 (2017). Appeal by defendant from armed robbery convictions arising from participation with abusive boyfriend. Affirmed. Counsel not ineffective for failing to call an expert on "battered person syndrome" (BPS) or moving the court for funds for an expert to support coercion defense. Not hiring an expert was deficient performance as counsel was unaware he could move the court for funds. But defense failed to show prejudice as a result, as it failed to offer any testimony to show what the expert would have said, e.g., that defendant suffered from BPS and may have felt coerced by abuser.

State v. Hamilton, 299 Ga. 667, 791 S.E.2d 51 (Ga. 2016). Defendant convicted of felony murder for killing abusive husband granted new trial on "general grounds." "Even when the evidence is legally sufficient to sustain a conviction ... a trial judge may grant a new trial if the verdict of the jury is "contrary to ... the principles of justice and equity," OCGA § 5-5-20, or if the verdict is "decidedly and strongly against the weight of the evidence." OCGA § 5-5-21. Trial court did not abuse discretion in granting new trial as it explained its careful review of the evidence and conclusion that the guilty verdicts met the standards here.

Pena v. State, 297 Ga. 418 (Ga. 2015). Where defendant was convicted of murder for killing another man with whom he had previous encounters, court did not err in precluding expert testimony on PTSD or lay evidence of his childhood abuse by others. Defendant was not able to proffer evidence that the two men had a close personal relationship; evidence of abuse by others is not admissible to support justification consistent with the objective standard of reasonableness.

O'Connell v. State, 294 Ga. 379, 754 S.E.2d 29 (Ga. 2014). Appeal by defendant of murder conviction for killing stepmother, presented experts on battering and PTSD and sought to introduce evidence of abuse as a child in Guatemala. Affirmed. Trial court properly precluded experts from testifying about defendant's history of abuse as a child in Guatemala even though the precluded evidence helped form the basis of their opinions. Court reasons that justification requires objective reasonableness, not subjective perceptions, and reiterates law precluding evidence of abuse committed by others in support of justification defenses.

Ballard v. State, 281 Ga. 232 (Ga. 2006). Appeal by defendant of conviction for malice murder, felony murder, and aggravated assault. Trial counsel's decision to focus on defense of justification and not introduce evidence of battering was valid strategy and not prejudicial, as independent psychologist concluded defendant did not have "battered woman syndrome."

Rhodes v. State, 279 Ga. 587, 619 S.E.2d 659 (Ga. 2005) Appeal by defendant convicted of felony murder in beating death of son. Affirmed in part. Trial court did not abuse discretion in failing to sever defendant's case from abusive boyfriend-codefendant's case. Defendant's defense theory involving codefendant's dominance over her was not prejudiced since she was able to present substantial evidence of abuse, including expert testimony on "battered person syndrome."

Nguyen v. State, 271 Ga. 475, 271 Ga. 475 (Ga. 1999). Appeal of conviction of aggravated assault for shooting husband and stepdaughter. Trial court excluded both expert testimony on "battered person syndrome" (BPS) and a cultural expert. Affirmed. While verbal and/or emotional abuse can justify introducing expert testimony and instructing on BPS, the psychological abuse must be of such a nature as to cause a reasonable belief in the imminence of unlawful force. "Psychological abuse which humiliates, embarrasses or abases an individual is deplorable, but such abuse, when unaccompanied by other acts or verbal statements giving rise to a reasonable fear of imminent physical harm, cannot alone justify the admission of expert evidence on the battered person syndrome." The record here did not rise to the level needed to justify expert testimony. Preclusion of cultural expert was not error here (but court leaves open possibility of cultural expert in rare cases.)

Mobley v. State, 269 Ga. 738, 505 S.E.2d 722 (Ga. 1998). Where defendant was convicted of murdering an unrelated individual with whom he lived, trial court did not err in precluding prior violent acts by decedent and expert on battering as there was no close personal relationship. Prior shoving and placing hands on buttock was not pattern of physical or sexual abuse; repeatedly threatening to shoot defendant and asking to have sex with him was not sufficient "to rise to the level of battering necessary to rely on the battered person syndrome as a basis for a self-defense claim."

Freeman v. State, 269 Ga. 337, 496 S.E.2d 716 (Ga. 1998) Appeal by defendant convicted of murdering stepfather and stepfather's friend. Defendant claimed justification based on "battered person syndrome" (BPS), presented lay and expert testimony regarding past abuse by stepfather. Since defendant met requirements established in *Smith v. State*, 268 Ga. 196 (1997), trial court erred in refusing jury instruction on BPS. Conviction reversed, but just as to stepfather's murder (not friend's murder) because BPS is only relevant when close personal relationship to victim exists.

Smith v. State, 268 Ga. 196, 486 S.E.2d 819 (Ga. 1997). Defendant convicted of voluntary manslaughter for killing abusive husband. Reversed. When evidence of battering is presented pursuant to statute, defendant is entitled to a jury instruction that specifically explains the effects of abuse and its relevance to the reasonableness of her belief for self-defense.

Koritta v. State, 263 Ga. 703, 438 S.E.2d 68 (Ga. 1994). Appeal by defendant convicted of manslaughter, claimed error in court's failure to give instruction on self-defense in addition to accident. Reversed. Held: defendant entitled to justification instruction based on his testimony that after he gained control of gun from decedent to prevent harm to self or his children, gun accidentally discharged. Where there is no intent to kill, but death is by act of defendant while attempting to protect self or others, justification charge appropriate "since the acts immediately preceding the allegedly unintentional homicide were intentional, forcible and self-defensive." *Id.*, 438 S.E.2d at 70.

Lewis v. State, 265 Ga. 451, 457 S.E.2d 173 (Ga. 1995). Defendant convicted of murder for killing abusive husband. Affirmed. Defendant argued counsel was ineffective for failing to present evidence of battering. Counsel testified he did not think it would be credible and worried about opening the door to prior acts. Court held defendant met neither prong of ineffective assistance.

McBrayer v. State, 259 Ga. 513, 383 S.E.2d 879 (Ga. 1989). Appeal by defendant convicted of felony murder for shooting abusive husband. Claimed gun discharged unintentionally after she raised it in attempt to get her child and after husband pointed gun at her. Claimed, in part, counsel ineffective for failing to 1) request jury instruction on the "battered wife syndrome," and on physical disparity between defendant and decedent; 2) present justification as sole defense and call witnesses to prior abuse. Affirmed. Held, in part: counsel not ineffective since charge on "battered wife syndrome" and physical disparity concerns justification defense which was not relevant to accident defense; defendant did not show prejudice in failing to present justification defense ("[her] own testimony establishes a want of justification").

Ledford v. State, 254 Ga. 656, 333 S.E.2d 576 (Ga. 1985). Trial court did not abuse discretion in denying funds for expert on battering; trial court ordered defendant be examined by professionals from Forensic Services to determine "her competency to stand trial and her degree of criminal responsibility in relation to the offense charged." This order contemplated exam that could relate to "battered woman syndrome" (although court notes that there is no mention of exam results in record).

McLaughlin v. State, 789 S.E.2d 247 (Ga. App. 2016). Appeal of denial of motion for new trial following conviction of aggravated assault against intimate partner. Reversed. Trial counsel was ineffective for failing to request a continuance to investigate and produce a battering expert to support justification defense. Counsel performed deficiently as failure to request a continuance was based on his mistaken belief that it was too late in the proceedings to request a continuance, not a matter of strategy. Defendant was prejudiced because justification was her sole defense; battering expert could have explained why her conduct and statements (accepting blame, expressing love for the complainant, etc.) were not inconsistent with justification, and such testimony would have entitled her to jury instruction regarding the evidence of abuse.

Brower v. State, 334 Ga. App. 262, 779 S.E.2d 32 (Ga. Ct. App. 2015). Court did not err in precluding expert testimony that defendant suffered from PTSD to negate her intent in a kidnapping scheme as it was prohibited diminished mental condition evidence.

Horne v. State, 333 Ga. App. 353, 773 S.E.2d 467 (Ga. Ct. App. 2015). Appeal by defendant convicted of assault and battery against victim he previously battered; victim recanted at trial and state called battering expert. Affirmed. Counsel not ineffective for failing to more diligently handle motion in limine to preclude state expert or properly challenge expert as state expert testimony on battering was admissible.

Hinds v. State, 296 Ga. 80, 673 S.E. 2d 598 (Ga. Ct. App. 2009). Appeal from denial of post-conviction ineffective assistance claim. Defendant was convicted of child cruelty for failing to protect child from batterer-codefendant's abuse and argued trial counsel should have presented expert on "battered woman syndrome" (BWS) to show she lacked requisite intent. Affirmed. Counsel retained an expert who initially determined that Hinds "met the criteria for battered woman syndrome" but, at new trial hearing, expert testified she hadn't been "entirely comfortable" saying defendant "fit" the "syndrome" due to lack of corroboration from other sources about the abuse. Counsel testified that, given expert's change in opinion, he and defendant had decided expert would have been more harm than help.

Johnson v. State, 640 S.E.2d 644 (Ga. Ct. App. 2006). Appeal from denial of motion for new trial following conviction of child cruelty and related charges stemming from defendant's abusive partner's rape of her daughter. Defendant alleged counsel was ineffective for failing to present evidence of her battering and PTSD at time of rape; defendant and state presented experts. Affirmed. Counsel is not ineffective as defendant did not tell attorney she was battered despite his prompting. Defendant could not have asserted justification when she denied knowing the rape occurred, and she failed to show prejudice.

Hall v. State, 612 S.E.2d 44 (Ga. Ct. App. 2005). Where defendant was convicted of voluntary manslaughter, counsel was not ineffective for failing to move the court for funds for a battering expert because he believed he could not establish a pattern of violence and no prejudice was shown. (Note: Decision contains misguided reasoning that there had to be a certain kind of pattern of violence before battering evidence could be admitted.)

Olarte v. State, 614 S.E.2d 213 (Ga. Ct. App. 2005). Appeal by defendant from conviction of armed robbery and related charges. Affirmed. Counsel was not ineffective. Defendant denied participation in the crimes; accordingly, counsel's failure to offer testimony on battering and PTSD in support of a coercion defense was not prejudicial.

HAWAII

State v. Lavoie, 156 Haw. 250, 573 P.3d 633 (2025). In a case where defendant was convicted of murder for shooting his abusive partner, court discusses expert fees. While expert fees are generally not necessary for regular sentencing purposes to present an adequate defense, there can be unique circumstances that render expert fees necessary. “For example, there may be cases where a victim of domestic violence severely injures or kills their abuser, or where a person with severe post-traumatic stress disorder (PTSD) feels threatened, is unable to regulate their aggressive behavior, harms someone. Where the domestic violence victim or person suffering from PTSD pleads guilty and forgoes trial, the unique mental or physical conditions under which they committed the crime may warrant expert fees for a psychological assessment related to sentencing. Thus, we stress that courts still have discretion to award expert fees ‘necessary for an adequate defense’ under unique, extenuating circumstances. See HRS § 802-7.” *Id.*, 573 P.3d. 633, 641-42.

State v. Clark, 926 P.2d 194 (Haw. 1996). Defendant convicted of attempted murder of wife. Trial court did not err by allowing state to present battered women’s counselor to testify to general characteristics of battered women including recantation, testimony similar to that in *State v. Cababag*.

State v. Cababag, 9 Haw. App. 496, 850 P.2d 716 (Haw. Ct. App. 1993) Appeal by defendant convicted of assault of girlfriend. Affirmed. Trial court did not err by qualifying expert on domestic violence and allowing expert to testify about traits of battered women, including recantation, minimization, etc.

IDAHO

State v. Varie, 135 Idaho 848, 26 P.3d 31 (2001). Defendant convicted of murder for killing abusive spouse. Affirmed. Trial court did not abuse its discretion in prohibiting defense expert on battering from diagnosing defendant with “battered woman syndrome” (BWS). Expert was allowed to testify extensively about domestic violence, including why victims stay, how they perceive themselves and the abuser and how they feel and react during abuse, which testimony followed the lay witnesses to abuse. Trial court reasonably concluded that jury could assess fear which is a matter of common experience. Court also holds that trial court did not err in precluding jury instruction on BWS as jury did not hear a diagnosis of BWS.

State v. Davis, 127 Idaho 62, 896 P.2d 970 (Idaho 1995). “This is a spousal rape case. We do not address whether the trial court properly allowed testimony of a social worker concerning battered woman syndrome and post-traumatic stress disorder, because this issue was not preserved for appeal and would not be fundamental error. We hold that the trial court did not abuse its discretion in denying a

new trial based on newly discovered evidence, and we uphold a fixed three-year sentence as not unreasonable.” *Id.*

State v. Simons, 112 Idaho 254, 731 P.2d 797 (Idaho 1987). Defendant who was fleeing abusive boyfriend in her car and unwittingly dragged him to his death plead guilty to involuntary manslaughter. During sentencing, defense learned that jailer had information about her disoriented state and physical symptoms of recently inflicted injuries at time of arrest; state had not disclosed this exculpatory information. Court finds withheld information was not material. Court says defense had enough information to investigate “battered woman’s defense” without jailer’s testimony, and counsel made tactical choice to use this evidence in mitigation rather than seeking to withdraw plea.

State v. Griffiths, 101 Idaho 163, 610 P.2d 522 (Idaho 1980), *overruled on other grounds*, *State v. LePage*, 102 Idaho 387, 630 P.2d 674 (1981). Where defendant killed her husband during a confrontation and was convicted of Involuntary manslaughter, trial court did not err in disallowing psychiatric expert from testifying whether defendant acted under fear when she shot her husband. Jury is just as capable as psychiatrist to draw that conclusion. In closing argument, prosecutor improperly referred to defendant as coldly and deliberately planning the murder and firing multiple shots, facts not in evidence. But prosecutor’s impropriety did not contribute to the guilty verdict.

ILLINOIS

People v. Petrov, 2023 IL App (1st) 160498, 475 Ill. Dec. 656, 239 N.E.3d 554 (Ill. App. Ct. 2023). Appeal by defendant of murder conviction for death of her infant after abusive partner smothered the child. Reversed and remanded. The trial judge inappropriately used her own personal knowledge about domestic violence to assess defendant’s credibility and reject her testimony that she failed to protect the child and lied to authorities out of fear of abuser. This went above and beyond using common knowledge and life experience, and required expert testimony which was absent in the case. Therefore, the presumption that the judge considers only competent evidence is rebutted and the court violated due process. Court rejects state’s argument that the history of abuse was collateral: “Clearly, the issue of Petrov’s legal duty to protect Angelina from harm was central to this case. Petrov’s testimony of abuse was similarly central to the case to the extent that the alleged abuse by Rodriguez explained her failure to provide the necessary aid to [the child.]” Error was not harmless as the abuse was not collateral to the accountability theory, including whether she failed to act, aided or sanctioned the abuser’s acts. A reasonable finder of fact could conclude that defendant is not liable on accountability theory because, based on history of abuse, she reasonably feared death or great bodily harm if she tried to intervene or did not go along with abuser’s lies. Jury could conclude that the failure to act was motivated not by desire to aid in the death, but instead to protect herself from

abuser. Court rules that double jeopardy does not bar retrial because there was not insufficient evidence to convict defendant of first-degree murder on an accountability theory.

People v. Valdez, 208 N.E.3d 526 (Ill. App. Ct. 2022). Defendant convicted of murder of child for failing to protect child from batterer's violence. Defense offered evidence of intellectual disabilities and history of abuse defendant suffered by child's father (codefendant). Lower court prohibited both types of evidence as inadmissible diminished capacity evidence. Reversed. Though state law disallowed diminished capacity as an affirmative defense, here defendant was attacking the state's proof, the elements of the crime. Whether that evidence is admissible "is not dependent in any way, on whether it satisfies or does not satisfy the elements of some affirmative defense." Court notes that just because defendant's mental illness, short of insanity, is not an affirmative defense, that does not mean such evidence could never be admissible in a particular case to rebut *mens rea*. Here, evidence of intellectual disability admissible as it bore directly on whether the defendant "knew" the danger of leaving her child with the batterer, but battering expert testimony inadmissible since expert focused on "learned helplessness," that her abuse and disability left her in a state of passivity and compliance, which did not bear on whether she had knowledge of the danger.

People v. Williams, 332 Ill. App. 3d 693, 266 Ill. Dec. 168, 773 N.E.2d 1238 (Ill. App. Ct. 2002). In prosecution for assaulting partner, where victim recanted at trial, court reversed due to improper admission of testimony by a police expert about the "cycle of violence." Court held there was no foundation as the cycle of violence lacked a generally accepted scientific basis. It also improperly bolstered the credibility of the complainant and was not harmless error.

People v. Evans, 271 Ill. App. 3d 495, 648 N.E.2d 964 (Ill. App. Ct. 1995) Appeal to intermediate court by defendant who plead guilty to offense involving killing of abusive husband and sought court fees to pay expert on battering. Reversed and remanded for reasonable fee. Defendant proved both indigence and necessity for expert, and was therefore entitled to expert fees.

People v. Evans, 259 Ill. App. 3d 195, 197 Ill. Dec. 278, 631 N.E.2d 281 (Ill. App. Ct. 1994). Where defendant was convicted of murder for stabbing abusive husband in the midst of an attack, court reversed because the state failed to disprove her self-defense claim beyond a reasonable doubt. Defendant was not prohibited from claiming self-defense where decedent was unarmed as he intended to inflict serious bodily harm on her.

People v. Egans, 631 N.E.2d 281 (Ill. App. Ct. 1994). Appeal by defendant from conviction of murder of intimate partner. Reversed. In light of factors including comparative physical size and strength, sobriety, previous threats and abuse, and the existence of "battered woman syndrome," defendant's use of deadly force was necessary and reasonable to save herself.

People v. Beasley, 251 Ill. App. 3d 872, 190 Ill. Dec. 919, 622 N.E.2d 1236 (Ill. App. Ct. 1993). Where defendant shot abusive husband while he slept, and presented expert testimony on battering, jury was justified in rejecting self-defense and finding her guilty of second-degree murder.

People v. Jackson, 180 Ill. App.3d 78, 535 N.W.2d 1086 (Ill. App. Ct. 1989). Defendant wife convicted of murder and related charges in third-party killing death of husband. Court disallows expert testimony on 'battered woman syndrome' because 1) there was no offer of proof made at trial and 2) testimony was not relevant to theory of defense that wife had nothing to do with the murder and believed plots were a game. Since defendant did not claim self-defense (where the court does acknowledge syndrome testimony more commonly used), expert testimony was not allowed.

People v. Minnis, 118 Ill. App. 3d 345, 74 Ill. Dec. 179, 455 N.E.2d 209 (Ill. App. Ct. 1983). Appeal by defendant of murder and dismemberment of her abusive husband. The trial court ruled that evidence of BWS was relevant only to the time of the killing, not the acts afterward. Reversed. While expert testimony was not needed to explain why she used reasonable force in defending herself while decedent was attacking her, it was necessary to explain her reasons for dismembering his body, as the prosecutor used the dismemberment as substantive evidence to prove defendant's consciousness of guilt. The expert reports explained why the battering evidence was relevant to the dismemberment.

People v. Scott, 97 Ill. App. 3d 899, 424 N.E.2d 70 (Ill. App. Ct. 1981). Defendant shot intoxicated husband batterer after he threatened her and motioned for her to wear handcuffs. Court held it was error to refuse self-defense and voluntary manslaughter instructions where the record contained sufficient evidence of subjective belief of the necessity of the use of force likely to cause death. Reversed and remanded.

People v. Wells, 2023 IL 127169, 473 Ill. Dec. 560, 234 N.E.3d 680, *Unpublished* (Ill. 2023). Where defendant who had plead guilty to murder in which she participated at behest of her abuser moved for post-conviction relief pursuant to 735 ILCS 5/2-1401(b-5) (2016) (providing relief to certain victims of domestic violence and gender-based violence), court held the statute does not apply to a defendant who pleads guilty to a fully negotiated plea agreement. The court reasoned that the statute allows only a vacatur of the original sentence and provides no mechanism for vacating a conviction or plea. The Legislature was presumably aware at time of enactment that a guilty plea and sentence go “hand in hand” with a fully negotiated plea agreement (e.g., a defendant who has fully negotiated a guilty plea agreement cannot move for a sentence reduction without also moving to withdraw the plea.) Therefore, the clear legislative intent was to exclude defendants with fully negotiated plea agreements.

People v. Nichols, 2019 IL App (3d) 170554-U. 2019 Ill. App. Unpub. LEXIS 1115 (Ill. App. Ct. 2019), *Unpublished*. In murder prosecution, counsel was ineffective for failing to call an expert witness to testify about defendant's PTSD. PTSD would have explained his conduct of stomping on his wife after

hitting her with a car to rebut the state's theory that defendant engaged in a course of murderous conduct and showed consciousness of guilt.

People v. Lentz, 2015 IL App (2d) 140888-U, 2015 Ill. App. Unpub. LEXIS 2356, (Ill. App. Ct. 2015). *Unpublished*. In prosecution of daughter for murder of abusive father, court rejected claim that counsel was ineffective for failing to hire a mental health expert on battering to explain her history with father, claim of self-defense and why she didn't report the death immediately. Court reasons there is no precedent for applying "battered woman syndrome" in non-intimate context, and that evidence reflected she did not suffer physical abuse over extended period of time.

INDIANA

Marley v. State, 747 N.E.2d 1123, 1125 (Ind. 2001). Defendant charged with murdering uncle who molested her, appealed order granting state motion to preclude testimony of clinical psychologist to opine about impact of uncle's childhood abuse of defendant. Defendant argued such testimony was admissible to challenge *mens rea* of the murder charge. Affirmed. Where evidence of "battered woman's syndrome" is admitted on the ability of the defendant to appreciate the wrongfulness of her conduct, or to show lack of knowledge or intent, it must come in under the insanity provisions.

Isaacs v. State, 659 N.E.2d 1036 (Ind. 1995) In prosecution for defendant's murder of his wife, court upheld admission of battering expert during state rebuttal to explain general dynamics and rebut contention that victim and defendant were friendly.

Higginson v. State, 183 N.E.3d 340 (Ind. Ct. App. 2022). Interlocutory appeal by defendant from trial court ruling precluding battering expert to testify about defendant's PTSD in support of self-defense claim to charge of murder of abusive spouse. Reversed. State "effects of battery" statute permits evidence on battering and its effects to be admitted for the purpose of self-defense (or insanity.) Evidence clearly related to insanity (such as not appreciating wrongfulness of an act or schizophrenia) is not admissible for self-defense. The use of effects of battery evidence in self-defense cases does not run afoul of longstanding rule that mental disease claims can only be alleged as insanity. Defense expert can properly testify to facts relevant to defendant's reasonableness given the psychological trauma of battery but cannot testify to the ultimate fact whether defendant was justified.

Green v. State, 65 N.E.3d 620 (Ind. Ct. App. 2016), (*overruled in part on other grounds, Turkette v. State*, 2020 Ind. App. LEXIS 311, 151 N.E.3d 782, 2020 WL 4198371.) Appeal by defendant convicted of murder of abuser. Affirmed. Held: Trial court did not err in finding that battering expert Dr. Karla Fischer was not qualified to testify about PTSD (trial court found she was a research psychologist with no formal trauma training or ability to diagnose trauma). Defendant could not use expert's testimony to support that defendant did not understand wrongfulness of her actions as that claim would have to be brought under insanity part of effects of battery statute, and defendant had withdrawn that defense.

Collins v. State, 966 N.E.2d 96 (Ind. Ct. App. 2012). Where defendant was convicted of voluntary manslaughter for killing her intimate partner, and presented evidence of battering, admission of a prior arrest for an incident against a co-worker was reversible error. Prior incident was not probative but was highly prejudicial leading to the forbidden inference of guilt due to propensities.

Schmid v. State, 972 N.E.2d 949 (Ind. Ct. App. 2012). Counsel not ineffective for offering insanity defense rather than justifiable force (“effects of battery”) as decedent was tied to a bed when defendant stabbed him and harm was therefore not imminent.

Iqbal v. State, 805 N.E.2d 401 (Ind. Ct. App. 2004). In murder prosecution, trial court did not err by admitting state’s expert testimony to educate the jury on domestic violence. The proffered testimony explained victim’s reason for allowing defendant to enter her home despite the fact that he assaulted her and a protective order was in effect. The expert did not have knowledge of the case or defendant but merely educated the jury on complex behavior of domestic violence victims.

Odom v. State, 711 N.E.2d 71 (Ind. Ct. App. 1999). In prosecution for intimidation, restraint and related crimes, trial court did not err in admitting testimony of state’s expert on battering who explained, via hypothetical question and answer, why victim had recanted allegations in a letter to defendant. In-depth decision analyzes expert testimony, finding that expert testimony that victims may recant to forgive their assailant was not raised by the facts, but its admission was harmless error.

Carnahan v. State, 681 N.E.2d 1164 (Ind. Ct. App. 1997). In prosecution of defendant for battery of wife, where wife recanted at trial, court did not err in admitting state’s expert testimony about cycle of violence and why battered women stay to explain why complainant changed her story. The expert testimony was not offered to show that defendant battered his wife, but why she recanted, and bore directly on credibility of the complainant.

Barrett v. State, 675 N.E.2d 1112 (Ind. Ct. App. 1996), *Superseded by statute as stated in Marley v. State*, 747 N.E.2d 1123 (Ind. 2001). Appeal by defendant from conviction of neglect of dependent, death of her child at the hands of abusive partner while she was at work. Reversed. The trial court erred in precluding defendant’s evidence of “battered woman syndrome” (BWS) to explain how BWS can affect a person’s state of mind and perception of danger. Expert testimony was relevant to the required mental state of knowing or intentional, whether defendant was subjectively aware of high probability that she placed the child in a dangerous situation. “Proof of this subjective awareness requires resort to inferential reasoning to ascertain the accused’s mental state.” [Note: While this case was superseded by statute, at least one court has found that its reasoning survives. See unpublished decision of *State v. Brooks-Brown*, 246 N.E.3d 312 (Ind. Ct. App. 2024), *Unpublished*.]

IOWA

Linn v. State, 929 N.W.2d 717 (Iowa 2019). Appeal by defendant of denial of post-conviction relief following conviction for first degree murder of intimate partner. Conviction vacated. Trial court erred by denying defense request for the appointment of a battering expert for postconviction because such expert was necessary to evaluate defendant's claims regarding abuse. Trial court erred by granting state motion for summary judgment as the record did not show that trial counsel strategically decided not to pursue evidence of battering, and introducing evidence of battering was not inconsistent with defendant's accident defense. Decision is notable for its excellent, comprehensive analysis about evidence of battering and its effects and the many reasons why battering expert is necessary.

State v. Frei, 831 N.W.2d 70 (Iowa 2013), *rev'd on other grounds*, *Alcala v. Marriott Int'l, Inc.*, 880 N.W.2d 699, 2016 Iowa Sup. LEXIS 68. Defendant convicted of murder of longtime boyfriend, presented evidence of battering, argued error for failing to give a justification jury instruction defining "reasonable force" as "only the amount of force a reasonable person *or a person with the Defendant's alleged degree of mental illness* would find necessary to use under the circumstances." Affirmed. Justification statute is both objective and subjective; defendant's proposed instruction is incompatible with the statute.

State v. Rodriquez, 636 N.W.2d 234 (Iowa 2001). In prosecution for kidnapping, assault and related crimes against girlfriend, state's expert testimony on battering explaining the cycle of violence, power and control, and why complainant returned the batterer was properly admitted. Court rejected defense argument that testimony was irrelevant because victim hadn't recanted so as to put her credibility in issue. Defendant asserted he did not intend to do serious harm and attacked victim's contrary testimony. Expert testimony on battering allowed the jury to assess the case in context and gave the jury information needed to understand defendant's conduct and victim's reaction, to assist in resolving disputed issues of confinement and intent.

State v. Griffin, 564 N.W.2d 370 (Iowa 1997). Defendant convicted of kidnapping and related crimes against intimate partner. Affirmed. Trial court did not err in allowing state to present expert testimony on battering. Court rejected defense claims that expert was not qualified and her testimony was improper comment on guilt. Expert testified why battered women recant and protect batterers, which was relevant given victim had recanted prior to trial. Expert did not offer an opinion on victim's credibility but instead testified concerning the "medical and psychological syndrome present in battered women generally."

State v. Frazier, 2021 Iowa App. LEXIS 102, 957 N.W.2d 332, 2021 WL 595624957 (Iowa App. 2021), *Unpublished (Table Format)*. Appeal from conviction for second degree murder for killing abuser. Affirmed. There was sufficient evidence to find the defendant guilty of second-degree murder, as trial

court was justified in its adverse credibility finding against the defendant due to her conflicting statements to police. Court does not find ineffective assistance for failure to investigate evidence of BWS as the record is inadequate to decide this claim on direct appeal.

State v. Arreola-Dominguez, 2013 Iowa App. LEXIS 1297, 842 N.W.2d 680, 2013 WL 6700310842 (Iowa Ct. App. 2013), *Unpublished (Table Format.)* Appeal from denial of motion to withdraw guilty plea. Defendant and abuser were charged with drug offenses. Defendant alleged her guilty plea was involuntary due to duress from codefendant, presented general expert testimony on dynamics of battering. Affirmed. Trial court considered expert testimony but decided to give it no weight because the expert did not say defendant suffered from any condition or tie the testimony to defendant. Though codefendant may have been abusive, defendant was under no direct or implied threat of retribution from abuser to plead guilty.

Shelburn v. State, 2013 Iowa App. LEXIS 734, 837 N.W.2d 680, 2013 WL 3457097837 (Iowa Ct. App. 2013), *Unpublished (Table Format.)* In prosecution of defendant for stabbing death of partner, counsel was not ineffective for failing to properly investigate and advise defendant regarding “a BWS defense.” Counsel reasonably concluded that BWS would have been very difficult as defendant had chased decedent before the stabbing, had knives taken from her in the past, and witnesses identified her as the aggressor. “Because, [defendant] instigated the attack, we find counsel's decision to limit the investigation into the BWS defense to be a reasonable trial strategy.”

State v. Price, No. 8-604 / 07-1659, 2008 Iowa App. LEXIS 1235 (Iowa Ct. App. December 17, 2008). *Unpublished.* Appeal by defendant convicted of voluntary manslaughter for killing abusive partner; expert testimony on battering was precluded at trial. Reversed. Expert testimony would have given the jury information it needed to understand the significance and meaning of decedent’s actions and defendant’s reactions. The defense proved prejudice as the expert testimony would have assisted the jury in determining whether defendant had a reasonable belief of imminent danger or an alternative course of action.

KANSAS

State v. Dinkel, 311 Kan. 553, 465 P.3d 166 (Kan. 2020). Appeal from denial of ineffective assistance claims by teacher convicted of child rape of student. Defendant claimed student physically forced the first sexual event and thereafter blackmailed her, or her conduct was due to mental disease or defect. Court precluded defendant’s expert on theory that her mental state was not relevant to rape of a child. Reversed. Whether defendant was forcibly raped by the complainant affected whether she voluntarily committed the act. Evidence that complainant “physically forced the sexual intercourse and [defendant] did not intend any of the bodily movements that resulted in the sexual intercourse with

[complainant] is legally relevant to the voluntary act requirement of rape of a child under K.S.A. 2012 Supp. 21-5503(a)(3).” Id. 311 Kan. At 560.

State v. Meeks, 301 Kan. 114, 339 P.3d 766 (Kan. 2014). Where defendant was convicted of murder of partner, court did not err in precluding expert testimony on battering and evidence of specific instances of decedent’s violence as defendant expressly stated she was not claiming self-defense, but rather expert testimony went to state of mind. Expert did not find mental defect or that defendant “suffered from battered woman syndrome.”

State v. Smith, 254 Kan. 144, 864 P.2d 709 (Kan. 1993). Where defendant participated in the beating of an intimate partner, she failed to show that she actually or reasonably believed it was necessary to kill him to prevent death or serious injury; therefore she was not entitled to self-defense instruction.

State v. Hernandez, 253 Kan. 705, 861 P.2d 814 (Kan. 1993) Defense of another instruction properly denied where defendant shot his sister’s abuser who had threatened to kill defendant’s sister if she didn’t return to him; court finds there was no imminent danger. Defendant was not prejudiced by court’s limitation of prior history of abuse by decedent against defendant’s sister to six to eight months before the incident.

State v. Stewart, 243 Kan. 639, 763 P.2d 572 (Kan. 1988). Appeal by prosecution on question reserved. Court held it was error to give self-defense instruction since defendant was not in imminent danger when she shot sleeping husband-batterer (no evidence of deadly threat or imminent danger contemporaneous with killing). Jury instruction improperly allowed jury to determine reasonableness of defendant’s belief of imminent danger from her individual subjective viewpoint rather than from viewpoint of reasonable person in her circumstances [disapproving language in *State v. Hodges*, 239 Kan. 63, 716 P.2d 563 (1986) re subjective standard]. Long and articulate dissent on both points.

State v. Hodges, 241 Kan. 183, 734 P.2d 1161 (Kan. 1987). Appeal by prosecution on question reserved. From Syllabus: “Where expert opinion testimony on the battered woman syndrome is admitted into evidence, after a finding that the basis of that opinion is generally accepted as reliable within the expert’s particular field, it is error not to admit expert testimony attacking the reliability of the battered woman syndrome.” . . . “The trial court erred “(1) in not permitting the State’s expert witness to testify in rebuttal; and (2) in not allowing the State to proffer evidence which the trial court ruled was inadmissible.”

State v. Hodges, 239 Kan. 63, 716 P.2d 563 (Kan. 1986). 239 Kan. 63, 716 P.2d 563 (1986), *overruled on other grounds*, *State v. Stewart*, 243 Kan. 639, 763 P.2d 572 (1988). Expert testimony on “battered woman syndrome” (BWS) admissible to counter “common sense” conclusions of jury regarding beatings. Theory underlying BWS has gained substantial scientific acceptance. BWS is not a defense; it is evidence to help jury understand a battered woman’s fear and inability to leave situation. Expert

helps jury dispel lay person's perception that battered woman is free to leave at any time, that she enjoys the abuse and that she provokes the rage of her batterer. Reversed and remanded for new trial. See also *Hodges II*, 241 Kan. 183 (above.)

State v. Hundley, 236 Kan. 461, 693 P.2d 475 (Kan. 1985) Defendant convicted of involuntary manslaughter for killing abusive husband, presented witnesses to abuse. Reversed. Trial court erred by instructing that a person is justified when they reasonably believe conduct is necessary to defend against the aggressor's *immediate* use of force. The statute uses the word "imminent" rather than immediate. Use of the word "immediate" "places undue emphasis on the immediate action of the deceased, and obliterates the nature of the buildup of terror and fear which had been systematically created over a long period of time. "Imminent" describes the situation more accurately." *Id.*, 236 Kan. At 468. Use of "immediate" "impermissibly excluded from the jury's consideration the effect on the appellant of the history of violence toward her by the decedent. This consideration was critical to the appellant's perception of the need to defend herself in this case and thereby caused reversible error."

Boldridge v. State, 185 P.3d 326 (Kan. Ct. App. 2008). Appeal from denial of post-conviction relief by defendant convicted of murder of partner. Vacated and remanded for resentencing. Counsel not ineffective for failing to rebut evidence of defendant's prior bad acts and that she was the aggressor in the relationship. Counsel was ineffective for failing to present mitigating evidence of abuse at sentencing even though it would have contradicted defense theory at trial.

Lumley v. State, 29 Kan. App. 2d 911, 34 P.3d 467 (Kan. Ct. App. 2001). Appeal from denial of post-conviction relief by defendant following conviction of second-degree murder of intimate partner. Affirmed. Counsel was not ineffective for leaving the decision of whether to request lesser offense instructions to defendant. Defense expert testimony was properly excluded, as the expert could only testify to the general characteristics of BWS and could not diagnose the defendant.

State v. Coleman, 19 Kan. App. 2d 412, 414, 870 P.2d 695, 697 (Kan. Ct. App. 1994). Where defendant was convicted of involuntary manslaughter, court did not err in refusing to modify pattern instruction on defenses to mention that defendant was a battered woman and claiming self-defense.

State v. Cramer, 17 Kan. App. 2d 623, 841 P.2d 1111 (Kan. Ct. App. 1992). Appeal by defendant from conviction of involuntary manslaughter of abusive husband; claimed self-defense and presented evidence of battering. Affirmed. Trial court properly allowed state to introduce evidence of defendant's prior specific acts of violence to rebut evidence of battering which opened the door.

KENTUCKY

Springer v. Commonwealth, 998 S.W.2d 439, 453-54 (Ky. 1999). Where defendant and sister-in-law killed defendant's abusive spouse, court rules that on retrial defendant is entitled to self-defense instructions as to both principal and accomplice liability and expands upon "battered woman syndrome" (BWS) in Kentucky. Court notes that in 1992, amendments to KRS Chapter 503, KRS 503.010(3) (defining "imminence" and making admissible evidence establishing prior domestic violence) shortly after the emergence of BWS as an accepted phenomenon reflects legislative intent to allow the defense of self-protection to be premised upon BWS. If the defense presents evidence of battering, creating a jury issue as to whether the victim killed or assaulted abuser when facing imminent harm, defendant is entitled to instruction on self-protection.

Grimes v. McAnulty, 957 S.W.2d 223 (Ky. 1997). Declaration of mistrial was "manifestly necessary" (and therefore retrial not barred) where defendant who killed batterer testified that when she tried to get the gun from batterer for self-protection, it "went off." State was prejudiced by admission of evidence of prior abuse which was relevant only to self-defense theory, not accident. Defendant's claim of unintended discharge of weapon foreclosed instruction on self-defense, which requires "intentional" act. Court broadly holds that: "defenses of self-defense and accident are "mutually exclusive," the former contemplating an intentional act leading to death while the latter negatives such intention."

Commonwealth v. Anderson, 934 S.W.2d 276, 278 (Ky. 1996). Court reinstated trial court order that defendant failed to establish she had been the "victim of domestic" violence as used as an exemption from parole eligibility restrictions under Violent Offender Statute. Trial court used proper preponderance of the evidence standard requiring that defendant prove she was more likely than not a victim of domestic violence to get relief from the parole restrictions .

Dyer v. Commonwealth, 816 S.W.2d 647 (Ky. 1991), (*overruled on other grounds*). Defendant convicted of first-degree sodomy of child. Reversed. Profile evidence alone is not admissible to prove guilt or innocence. Thus, in retrial, no evidence that defendant is pedophile should be admitted "unless there is proof from an expert on the subject qualified to express an opinion about the [defendant's] mental condition." Court states: "Concepts such as a "battered woman syndrome" in the *Craig* and *Rose* cases, or a "pedophile" in the present case, have no conceivable bearing on a criminal case except as they bear on the accused's mental condition at the time of the alleged offense. The proposition that they should be used as evidence to convict or acquit without further testimony from an expert qualified in the field positively establishing that the conditions are a recognized scientific entity, and then tying the accused to this mental state, is indefensible. *Commonwealth v. Craig* was in error, and is overruled to the extent it has overruled *Commonwealth v. Rose* on this point." *Id.*, 816 S.W.2d at 654.

Commonwealth v. Craig, 783 S.W.2d 387 (Ky. 1990), *overruled by Dyer v. Com.*, 816 S.W.2d 647 (Ky. 1991). Masters level social worker with five years' experience in the spouse abuse field should be qualified as an expert and permitted to be questioned regarding her opinion of whether defendant was "suffering from battered woman syndrome" (BWS) at the time she shot husband. Court disallows opinion of

expert on whether the shooting was the result of BWS. Note: This case expressly - but temporarily - overrules prior case law on qualifications and scope of battered woman expert testimony including *Commonwealth v. Rose*, 725 S.W.2d 588 (Ky. 1987), as *Craig* is subsequently overruled by *Dyer v. Commonwealth*, 816 S.W.2d 647 (Ky. 1991), thereby leaving intact the holding in *Rose*.

Lucas v. Commonwealth, 840 S.W.2d 212 (Ky. Ct. App. 1992). Appeal by defendant from conviction of manslaughter for killing abusive husband. Affirmed. Trial court correctly rejected jury instruction references to “reasonably prudent battered woman” and that defendant was “suffering from battered woman syndrome.” Use of force in self-protection instruction adequately covered theory of defense.

LOUISIANA

State v. Coutee, 413 So. 3d 408 (La. 2025). Appeal by defendant of second-degree murder conviction of estranged husband. Defendant claimed she was justified under state “stand your ground” law. Reversed. Jury instruction that first aggressor must withdraw from confrontation reintroduced the duty to withdraw and undermined the stand your ground instruction that provides a legal presumption of the reasonable belief of need to use force.

State v. Curley, 250 So.3d 236, 249 (La. 2018). Landmark Louisiana case. Appeal from reversal of trial court’s grant of post-conviction relief following murder conviction for killing intimate partner. Reversed. Vacated and remanded. Counsel was ineffective for failing to investigate and present evidence of battering and its effects including an expert on battering where defendant presented abundant undisputed evidence of history of abuse. (Court uses the term, “battered woman syndrome,” but notes the term is “inartful” and “likely outdated.”) Court clarifies that state “effects of battery” state statute allows evidence of battering without pleading insanity, explains role of battering expert including to contextualize lay evidence of abuse and help jurors understand state of mind and reasonableness. Trial counsel’s failure to investigate was not reasonable, and defendant was prejudiced by being deprived of a defense. Note: Though *Curley* is a self-defense case, decision is noteworthy for favorable language about evidence of battering for context and state of mind: “[The statute] expressly permits expert testimony ‘as to the effects of the prior assaultive acts on the accused’s state of mind.’ La. C.E. arts. 404(A)(2)(a),(B)(2). . . (citations omitted.) Moreover, expert testimony on BWS may be relevant to contextualizing testimonial and documentary evidence regarding the relationship between the victim and the defendant.” 250 So. 3d at 246-247.

State v. Rodrigue, 734 So. 2d 608 (La. 1999). Appeal by defendant from conviction for murder of intimate partner. Reversed. Trial court’s preclusion of relationship history and violent character of decedent was error. Court interprets Louisiana Art. 404(a)(2), the domestic violence exception to the general rule of no bad character evidence, as applying when the defense is self-defense, there was a

history of assaultive behavior between defendant and complainant/decedent, and the parties are in intimate partner or familial relationship. Once established, specific instances of prior violence are admissible. The standard was met in the instant case.

State v. Serrato, 424 So. 2d 214 (La. 1982). Defendant convicted of murder for killing his wife. Trial court did not err in finding that a belated diagnosis of PTSD did not qualify as newly discovered. Testimony of two psychiatrists was not sufficient because defendant did not display essential symptoms of PTSD, was not duly diligent, and it was doubtful the medical testimony would have made a difference.

State v. Carroll, 374 So. 3d 1049 (La. Ct. App. 2023). Appeal by defendant who plead guilty to participating with her batterer in sex crimes against children. Affirmed. Sentence of fifty years was not excessive as it was within the sentencing range of plea agreement, was much less than the maximum, and resulted in dismissal of other charges. Defendant's claim of ineffective assistance at sentencing failed because she could not prove prejudice, especially in light of the benefits of the plea agreement.

State v. Carter, 762 So. 2d 662 (La. Ct. App. 2000). Where defendant was convicted of manslaughter in death of abusive husband, she presented evidence of sociologist who testified about domestic violence and that defendant was in fear for her life. Court precluded evidence of psychiatrist to testify about her mental state three weeks after the incident as not relevant and notes defendant did not plead insanity or mental defect.

State v. Clayton, 570 So.2d 519 (La. Ct. App. 1990). Trial court properly denied defendant's request for continuance due to unavailability of defense expert on 'battered woman syndrome' because it was not timely filed, did not identify witness or materiality of testimony and defendant failed to subpoena the witness.

State v. Necaize, 466 So. 2d 660 (La. Ct. App. 1985) Where defendant claimed self-defense and attempted to offer testimony on battering, court held that expert testimony on "battered woman syndrome" was inadmissible to show state of mind at time of shooting, absent a plea of not guilty or not guilty by reason of insanity because it would be 'in effect condoning the concept of partial responsibility' which is not acceptable under state law.

State v. Scott, 2019 La. App. LEXIS 1469, 2019 0695 (La. 08/19/19), 2019 WL 3891464 (La. Ct. App. Aug. 19, 2019), *Unpublished*. "WRIT GRANTED IN PART AND DENIED IN PART. Battered woman's syndrome evidence is admissible in a justification/self-defense case and not solely in the insanity context. *State v. Curley*, 2016-1708 (La. 6/27/18), 250 So.3d 236, 246. The text of the domestic battery exceptions expressly permits expert testimony as to the effects of the prior assaultive acts on the accused's state of mind. See La. Code Evid. arts. 404(A)(2)(a) & (B) (2). Moreover, expert testimony on battered woman's syndrome may be relevant to contextualizing testimonial and documentary evidence regarding the relationship between the victim and the defendant. *Curley*, 250 So.3d at 247. Accordingly, the ruling denying the claim that defense counsel rendered ineffective assistance by

failing to present evidence on battered woman's syndrome is vacated, in part, and this matter is remanded for an evidentiary hearing to determine whether the failure to do so prejudiced relator. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984).”

MAINE

State v. Robshaw, 2025 ME 50, 339 A.3d 784 (Me. 2025). Where defendant was convicted of sex crimes against a child, court did not err in allowing state to call a forensic interviewer for children’s advocacy center to testify in general terms, not specific to the case, about the phenomenon of child victims’ delayed disclosure.

State v. Jeskey, 2016 ME 134, 146 A.3d 127 (Me. 2016). Record supported intentional and knowing murder conviction. The state proved the absence of self-defense beyond a reasonable doubt and defendant’s use of force exceeded the bounds of objective reasonableness.

State v. Gagnier, 2015 ME 115, 123 A.3d 207 (Me. 2015). Where defendant was convicted of participating in crimes against child with abusive spouse, court properly refused a duress instruction. Despite the abuse, defendant had many opportunities to get out of the situation such as reporting the abuse or seeking help. No evidence of an imminent threat of harm was present.

State v. Black, 537 A.2d 1154, 1156-57 (Me. 1988). Where defendant was convicted of gross sexual misconduct of a child, trial court erred in allowing state’s expert to testify that “the alleged victim of sexual abuse displayed identifying characteristics in order to show that the child was in fact abused.”

State v. Anaya, 438 A.2d 892 (Me. 1981). Appeal by defendant from manslaughter conviction for killing abusive partner. Reversed. The trial court reversibly erred by excluding expert testimony concerning “battered wife syndrome” since such testimony could bear on defendant's perceptions and behavior at the time of the killing and be central to her claim of self-defense. Testimony of both proffered experts was highly probative and more helpful than confusing to the jury; it would have shown that defendant’s conduct was consistent with her theory of self-defense.

MARYLAND

State v. Elzey, 472 Md. 84, 244 A.3d 1068 (Md. 2021). State appeal from reversal of conviction due to erroneous jury instructions on evidence of battering. Battered woman convicted of manslaughter in death of abusive boyfriend, argued self-defense and presented expert evidence on battering.

Affirmed. Jury instruction told jury it had to decide if the defendant was a victim of repeated abuse by the complainant/decedent, and if so, it then could consider all evidence, including expert testimony, in deciding if she “suffered from BWS.” Instruction was erroneous because it required jury to make a predicate finding that the decedent-complainant, in fact, repeatedly abused the defendant, which predicate is not contained in the statute. Though court admitted evidence of prior abuse of defendant by others, jury instruction directing the jury to consider only that abuse between decedent and defendant gave the jury mixed messages.

Porter v. State, 455 Md. 220, 166 A.3d 1044 (Md. 2017). Appeal by defendant from murder conviction arising from the third-party contract killing of abusive husband. Reversed. Trial court erred in instruction on imperfect self-defense which required the jury to find that defendant used no more force than reasonably necessary even though imperfect self-defense requires only actual beliefs, not reasonable ones. In determining that defendant presented “some evidence” of imperfect self-defense to warrant the instruction, court comprehensively analyzes temporal requirements of “immediate” and “imminent,” finding that allowing the instruction in non-confrontational homicides does not offend those terms. Court rejects state argument that statute does not countenance contract killings because of the planning involved: statute does not require defendant to show she acted spontaneously, her means of defending herself such as by recruiting help does not forfeit her right to claim imperfect self-defense. 455 Md. at 249-252.

State v. Smullen, 380 Md. 233, 844 A.2d 429 (Md. 2004). Child defendant who had suffered abuse at hands of stepfather convicted of murder for killing stepfather after planning to kill him, sneaking up, and stabbing him. Reversed (on ground not included here.) Court holds that BSS statute, § 10-916, applies as well to battered children as part of an expanded scope of the statute. But here, defendant did not present sufficient evidence to warrant expert testimony. The murder objectively appeared premeditated. Defendant did not offer evidence of repeated cycles of violence or provocation, and evidence of abuse offered was hearsay-based and random. “We recognize the doctrine, but there was no evidentiary basis for it in this case.” *Id.*, 380 Md. At 273.

Wallace-Bey v. State, 234 Md. App. 501, 172 A.3d 1006 (Md. App. Ct. 2017). Appeal of murder conviction for shooting death of abusive partner. Reversed. Trial court prejudicially erred by barring *in limine* defendant and defense expert on battering from testifying to any words the decedent spoke to the defendant. Trial court erroneously ruled such words were hearsay and sustained objections and motions to strike throughout defense testimony describing the abuse, thereby impairing its presentation. The total ban on such evidence did not allow for assessments of whether the utterances were actually hearsay; in fact they were being offered for non-hearsay purposes. The barred evidence was also admissible under the “battered spouse syndrome” statute § 10-916 allowing evidence of repeated psychological abuse which can be proven through verbal expression.

Addison v. State, 188 Md. App. 165 (Md. App. Ct. 2009). In prosecution of batterer for assault, trial court did not err in admitting state’s expert testimony on domestic violence to explain victim’s recantation.

Defense could not argue lack of foundation due to no evidence of prior abuse when it sought to keep out prior abuse evidence throughout the trial. Defense did not properly object to scientific validity of testimony, therefore error not preserved.

State v. Peterson, 158 Md. App. 558, 857 A.2d 1132 (Md. App. Ct. 2004). Appeal by state from order granting post-conviction relief based on ineffective assistance of counsel for battered woman convicted of murdering abusive husband. Affirmed. Trial counsel was ineffective for failing to properly investigate and present lay evidence of abuse and expert testimony that defendant “suffered from ‘battered woman syndrome’ (BWS). This evidence was available and necessary to counsel’s “back-up” defense of imperfect self-defense, even though primary defense was insanity. Expert testimony was essential to imperfect self-defense theory, to help explain why she was not initial aggressor and honestly believed danger was imminent, though it occurred during seeming lull in violence as decedent sat watching television. The testimony explained how “years of physical and psychological abuse had made her hyper vigilant to the threat of violence in what otherwise seemed to be non-threatening conduct.”

Banks v. State, 92 Md. App. 422, 608 A.2d 1249 (Md. App. Ct. 1992). Defendant convicted of murder for stabbing drunk, abusive boyfriend; claimed self-defense. Reversed. Trial court erred in admitting hearsay statements by deceased about his prior fear of defendant offered to rebut defense evidence of battering, self-defense, and/or hot-blooded response to provocation. Notes that 1991 MD statute authorizing admission of evidence of past abuse and expert testimony on BSS does not create new defense to murder; rather, evidence is relevant to state of mind element of self-defense. Deceased's fear was not relevant to rebut evidence of battering, self-defense, or provocation; relevance of statements depends on their truth, i.e., defendant's prior violence toward deceased, and thus, they are hearsay, not admissible under any exception.

MASSACHUSETTS

Commonwealth v. Asenjo, 477 Mass. 599, 82 N.E.3d 966 (Mass. 2017). Appeal by defendant from conviction of aggravated rape of child at behest of abusive boyfriend. Reversed. Trial court erred by precluding defense battering expert due to no foundation and improperly reasoned that defendant’s statements to expert were inadequate foundation. Nothing in the statute [G. L. c. 233, § 23F] requires defendant to offer evidence of abuse in order to present expert testimony; where defendant claims certain defenses the statute says defendant *shall* be allowed to introduce evidence. Section 23F is more permissive than common law bases of rule 703. Court also rejects state argument that the statute only applies in cases charging use of force against another.

Commonwealth v. Anestal, 463 Mass. 655, 978 N.E.2d 37 (Mass. 2012). Appeal by defendant from conviction of murder in stabbing death of abusive partner. Reversed. Trial court error in admitting evidence of prior bad acts of defendant (allegedly hitting her son and having her children removed by protective services) which were not relevant and more prejudicial than probative, coupled with court’s

failure to instruct that excessive use of force in self-defense mitigates murder to manslaughter, amounted to reversible error.

Commonwealth v. Williams, 453 Mass. 203, 900 N.E. 2d 871 (Mass. 2009). Appeal by defendant from denial of motion for new trial following conviction of participating with batterer in premeditated murder of a third person. Defendant presented evidence of abuse and expert on battering to explain her fear of batterer, why she fled the state with batterer after the killing, and to rebut consciousness of guilt. Trial counsel was not ineffective for failing to rehabilitate defendant with corroborative evidence of abuse (batterer's guilty pleas to beating defendant) since the substance of the information was already before the court.

Commonwealth v. Pike, 431 Mass. 212 (Mass. 2000). Appeal by defendant of murder conviction for participating with batterer-codefendant in murder of third person. Presented expert testimony on battering at motion for new trial. Affirmed. Hearing court did not err in denying motion for new trial based on after-discovered evidence of "battered woman syndrome" (BWS). Court acknowledges BWS could be subject of newly discovered evidence because failure to recognize or communicate about battering is a characteristic of BWS. Just because a defendant has some knowledge that she has been abused does not bar favorable action on a motion for new trial. Here defense motion fails because hearing judge concluded that defendant's claims of BWS were false.

Commonwealth v. Conaghan, 740 N.E.2d 956, 959-960 (Mass. 2000). Post-conviction relief granted. Defendant entitled to funds for post-conviction examination by an expert on battering to determine whether she voluntarily entered a plea and was able to meaningfully assist her lawyer when she plead guilty years earlier to manslaughter in the death of her child, presumably covering for the batterer who actually committed the crime. This potential evidence considered "after-discovered."

Commonwealth v. Crawford, 706 N.E.2d 289 (Mass 1999). Appeal by defendant of conviction for murder of her intimate partner. Reversed. Court erred in excluding expert testimony on battering at motion to suppress as defendant claimed that statement she gave after she was arrested and in response to questioning by the police was not voluntary because she was a battered woman traumatized by beatings. Nor should the judge have barred that testimony at trial on the issue of the voluntariness of the defendant's statement.

Commonwealth v. Rodriguez, 418 Mass. 1, 633 N.E.2d 1039 (Mass. 1994). Appeal by defendant convicted of stabbing abusive partner. Reversed. Court erred by not admitting full history of abuse. Court reversed on that ground and did not "fully expound" on court's refusal to permit expert testimony on battering, but stated: "[W]here the claim of self-defense is in issue, and there is evidence of a pattern of abuse of the defendant by the victim, expert testimony on common patterns in abusive relationships and the typical emotional and behavioral responses of persons who are battered may be admissible."

Commonwealth v. Lazarovich, 410 Mass. 466, 574 N.E.2d 340 (Mass. 1991). In prosecution of defendant and her abusive husband for injury to their child, where defendant presented evidence of his abuse

and expert testimony on battering, court did not err by not instructing the jury that evidence of battering could be used to determine defendant's intent to maim. Defense theory was that husband caused the injuries, and jury was instructed to consider the evidence of battering for purposes of joint venture liability. Defendant did not argue that she caused the injuries but did not have intent. Therefore, evidence of battering as to her intent was not relevant to defense theory.

Commonwealth v. Martinez, 80 Mass. App. Ct. 1116 (Mass. App. Ct. 2011) Post-conviction relief denied. “[Judge’s] determination that notwithstanding the evidence of BWS, the defendant's 2005 plea of guilty was made intelligently and voluntarily is supported by the record and entitled to deference by this court.” (citations omitted.) Defendant’s ineffectiveness claim based on counsel failure to “discover the BWS claim” also denied as she did not inform plea attorney about abuse and nothing in record would have put him on notice that she was ‘suffering from BWS.’”

Commonwealth v. Adkinson, 80 Mass. App. Ct. 570, 954 N.E.2d 564 (Mass. App. Ct. 2011). Appeal by defendant from denial of motion for new trial for conviction of participating with batterer in sexual abuse of four minor sons. Reversed. Trial court erred by failing to conduct a competency hearing due to evidence of battering and ongoing extreme control by codefendant-batterer throughout the proceeding, including his demanding joint representation, unified defense theory and forestalling defendant from meeting privately with her attorney. Court notes the “startling” and “remarkable” control the batterer exercised over the defendant. Trial judge failed to consider the second prong of competency inquiry -- if she could rationally assist her attorney in her defense. Court rules there is a substantial question of her competency to rationally consult with her lawyer, and therefore competency to stand trial.

Commonwealth v. Fappiano, 69 Mass. App. Ct. 727 (Mass. App. Ct. 2007). Appeal by defendant from denial of motion for new trial following conviction for second degree murder of child. Defendant alleged that her long history of abuse, including abuse by her batterer-codefendant with respect to the incident was “newly discovered,” and argued that she was unable to disclose the abuse to counsel and therefore unable to assist in her own defense. Affirmed. Defendant failed to establish that the evidence of battering was unknown to defendant or trial counsel or not reasonably discoverable at time of trial. It was therefore not newly discovered.

MICHIGAN

People v. Yeager, 999 N.W.2d 490, 511 Mich. 478 (Mich. 2023). Appeal from reversal of trial court’s grant of new trial based on ineffective assistance of counsel for defendant convicted of murder of abusive spouse. Reversed. Counsel’s failure to request an instruction on the lesser included offense of voluntary manslaughter (heat of passion) was objectively unreasonable as the omission was based on counsel’s mistaken view that manslaughter was inconsistent with self-defense. Manslaughter was supported by the evidence of abusive acts culminating in the shooting showing a heightened

emotional state. Failure to instruct was prejudicial as jury was denied opportunity to consider whether defendant had mental state required for manslaughter. That the jury convicted of first-degree murder and rejected second-degree did not automatically mean it would have rejected voluntary manslaughter.

People v. Christel, 449 Mich. 578, 537 N.W.2d 194 (Mich. 1995). In prosecution of batterer for criminal sexual conduct, where he broke into victim's house and raped her, prosecution may introduce expert testimony on "battered woman syndrome" so that an expert may explain "the generalities or characteristics of the syndrome." Court emphasizes that admissibility is "limited to a description of the uniqueness of a specific behavior brought out at trial" where relevant and helpful. "[T]he expert cannot opine that complainant was a battered woman, may not testify that defendant was a batterer or that he is guilty of the crime, and cannot comment on whether complainant was being truthful." In this case, court finds the expert testimony was not relevant and should not have been admitted, but the error was harmless.

People v. Spaulding, 332 Mich. App. 638 (Mich. Ct. App. 2020). Appeal of conviction of stalking intimate partner. Admission of state's testimony of previous incidents of abuse by defendant towards victim was probative, not prejudicial. Evidence of previous abuse was necessary to give context to why victim was scared by defendant's conduct under the circumstances; evidence of prior domestic violence was part of pattern of stalking. Counsel was not ineffective for failure to request *Daubert* hearing on prosecutorial expert evidence, as expert testimony on battering is sufficiently related to a stalking charge.

People v. McFarlane, 325 Mich. App. 507, 926 N.W.2d 339 (Mich. Ct. App. 2018). Appeal by defendant convicted of child abuse. Case noteworthy because it compares proffered testimony to testimony on battering: "For example, in cases involving criminal sexual conduct, an expert may not offer an opinion that the alleged victim had in fact been sexually abused, may not offer testimony that vouches for the victim's veracity, and may not offer an opinion that the defendant is guilty." See *Id.*, 926 N.W.2d at 352. "The same is true for expert testimony on 'battered woman syndrome': the expert may not opine that the complainant was in fact a battered woman, may not testify that the defendant is guilty, and may not comment on the complainant's veracity. See *People v Christel*, 449 Mich 578, 580; 537 NW2d 194 (1995)." 325 Mich. App. 507, 521-22, 926 N.W.2d 339, 349-50.

People v. Wilson, 194 Mich. App. 599, 487 N.W.2d 822 (Mich. Ct. App. 1992). State appeal from interlocutory order granting defense motion to admit expert testimony on "battered spouse syndrome" (BSS) where battered woman claimed self-defense to murder charge arising from shooting abusive husband while he slept. Affirmed in part, reversed in part. Trial court ruling that BSS expert may testify that defendant suffers from syndrome and her specific acts are attributable to it, was too broad. Court holds, in case of first impression, that expert testimony on BSS is admissible as relevant and helpful, but as with child sexual abuse syndrome, the expert may testify only "regarding the syndrome" and the symptoms that manifest it, not whether the individual defendant suffers from the syndrome or acted pursuant to it." 194 Mich. App. At 605.

People v. King, No. 310330, (Mich. Ct. App. Jan. 14, 2014) *Unpublished*. Where defendant convicted of second-degree murder of abuser, court denied claim of ineffective assistance for failing to present expert testimony on battering because defendant offered no affidavits or other proof regarding how a potential expert would have testified and instead relied on speculation as to what an expert would have said. Defendant therefore failed to prove factual predicate for ineffective assistance claim.

People v. Sanford, No. 307747, 2013 Mich. App. LEXIS 1530, 2013 WL 5338575 (Mich. Ct. App. Sep. 24, 2013), *Unpublished*. Appeal by defendant of voluntary manslaughter conviction arising from shooting death of abusive partner. Defense alleged counsel ineffective for failing to call an expert on “battered woman syndrome” (BWS.) Affirmed. Defendant shot abuser during a confrontation in which he violently assaulted and choked her, a “straightforward” self-defense claim based on defendant’s testimony. BWS testimony was not needed to explain her conduct or reasonableness or to rebut inferences that she could have left the scene; likely would not have changed outcome of conviction for heat of passion voluntary manslaughter. Counsel’s presentation of a “straightforward self-defense claim, absent BWS testimony” was not objectively unreasonable. Court rejects defense arguments that BWS testimony could have explained defendant’s initial statements to police and why she did not retreat. While court finds “some merit” in other arguments (such as BWS testimony needed to explain why she stayed with batterer), they are insufficient to establish prejudice.

People v. Hines, No. 295863, 2011 Mich. App. LEXIS 509, 2011 WL 890997 (Mich. Ct. App. Mar. 15, 2011), *Unpublished*. Appeal by defendant convicted of murder for shooting abusive partner as he came at her. Reversed. Trial court erred in precluding defendant’s expert on “battered woman syndrome” (BWS) who would have testified about victims’ non-reporting and willingness to return to abusers. Court rejects theory that the proposed evidence was “common knowledge” and that ordinary principles of self-defense were sufficient. Such arguments ignore jurors’ assessments of credibility and evaluation of self-defense in light of abuse history leading up to the event, the need to explain why she returned to abuser, and the need for the evidence to rebut misconceptions.

MISSISSIPPI

Lentz v. State, 604 So. 2d 243 (Miss. 1992). Defendant convicted of manslaughter for shooting abusive boyfriend; claimed self-defense. Affirmed. Trial court did not err in ruling expert testimony re: “battered woman syndrome” (BWS) inadmissible or in not appointing, at state expense, expert to testify on BWS. Although such expert testimony is admissible in Mississippi, it is not always relevant even if killer is battered wife. Whether killing is justified as self-defense is judged by objective standard. Under circumstances of this killing (defendant shot boyfriend in back), court claims issue of whether she reacted reasonably would not have been made clearer for jury by expert testimony.

Buchanan v. State, 567 So.2d 194 (Miss. 1990). Appeal by defendant convicted of manslaughter for shooting abusive husband. Claimed, in part, no evidentiary basis to support manslaughter/'heat of passion' charge and charge misstated law of manslaughter. Affirmed. Evidence supported manslaughter charge; no reversible error when instructions viewed as a whole.

Francis v. State, 183 S.W. 3d 288 (Miss. Ct. App. 2005). Appeal by defendant from denial of post-conviction motion following conviction for second degree murder of intimate partner. Affirmed. Trial counsel was not ineffective for failing to assert self-defense supported by BWS as it was a valid strategy. Counsel investigated options and found that an accident defense would be stronger.

Taylor v. State, 362 So. 3d 1117 (Miss. Ct. App. 2019). In prosecution of batterer for domestic violence crimes, state expert, director of a battered woman's shelter, was permitted to testify about dynamics of relationship and recantation. Court rejected arguments that expert was not qualified or admissible because she had not met with the witnesses.

MINNESOTA

State v. Hanks, 817 N.W.2d 663 (Minn. 2012). Defendant convicted of murder after shooting romantic partner in the head. Trial court excluded defense evidence of battering. Affirmed. Defense offer of proof showed that decedent "was controlling and had a bad temper, but the proof was insufficient to establish that Hanks was a victim of battered woman syndrome." Court notes that defendant did not claim decedent physically abused her or that she was afraid of him. Trial court properly found that evidence of a "troubled relationship" was "insufficient to establish the type of relationship that would give rise to 'battered woman syndrome' and that, therefore, the expert testimony was irrelevant." *Id.* at 669. (Note: Since the date of publication, 2012, there has been abundant research on coercive control and non-physical aspects of abuse; arguably, this research should dictate a different outcome.)

State v. Obeta, 796 N.W.2d 282, 294 (Minn. 2011). Where the defendant alleges consent to criminal sexual conduct charges, courts have discretion to admit state expert testimony on "the typicality of delayed reporting, lack of physical injuries, and submissive conduct by sexual-assault victims when the district court concludes that such evidence is relevant, helpful to the jury, and has foundational reliability. We reach this conclusion because the mental and physical reactions of an adult sexual-assault victim may be outside the common understanding of an average juror. Like the cases of battered women, battered children, and child- and adolescent-victims of criminal sexual conduct, expert testimony of typical behaviors by adult sexual-assault victims may be helpful to the jury in evaluating the evidence in a particular case."

State v. Greninger, 569 N.W.2d 189 (Minn. 1997). In prosecution of batterer for attempted murder, trial court properly admitted expert testimony on battering in state's case in chief where victim's credibility was in issue due to defense cross examination suggesting victim was incredible. Prosecution's use of expert testimony on battering is admissible after victim's credibility is attacked, when it meets Rule 702 helpfulness to the jury, where it is limited to description of the syndrome and its characteristics, and where it does not opine on ultimate issue of whether victim actually suffered from the syndrome. Court rejects defense arguments that expert testimony was cumulative; it was necessary to explain victim's behavior, e.g., delay in reporting, recantation.

State v. Hennum, 441 N.W.2d 793 (Minn. 1989) (*en banc*). Where defendant killed sleeping abuser, trial court allowed expert testimony on "battered woman syndrome" (BWS) on condition that defendant submit to adverse exam. Intermediate court reversed conviction and remanded for new trial, finding admission of adverse expert testimony to be erroneous. High court affirmed conviction and modified sentence. The court held that BWS testimony is admissible, but scope is limited to general description of BWS and characteristics which are present in individual suffering from BWS; expert may not express opinion or conclusion as to ultimate fact that particular defendant suffers from BWS. In absence of legislative enactment, there is no legal basis for ordering adverse exam. Since experts are limited to testifying only to the general nature of BWS, neither side need examine the defendant.

State v. Valentine, 787 N.W.2d 630 (Minn. Ct. App. 2010). Court did not abuse discretion in allowing police officer to testify for the state as expert on battering in prosecution for domestic violence to explain victim's recantation, her injuries, and initial refusal to cooperate.

State v. Vance, 685 N.W.2d 713 (Minn. Ct. App. 2004). In prosecution for physical and sexual assault on victim, where victim recanted many details of the abuse, court did not err in allowing the state to offer expert testimony on battering as part of its case in chief because by the time it was presented, the victim's credibility was at issue.

State v. Plantin, 682 N.W.2d 653 (Minn. Ct. App. 2004). In prosecution for attempted murder, court properly allowed state to present expert on battering in its case-in-chief. Victim's credibility had been attacked and expert testimony was helpful to the jury to explain victim's recantation and testimony that tended to exculpate defendant. Court properly limited the testimony.

State v. Clark, No. A22-0611, (Mar. 27, 2023) *Unpublished*. Appeal by defendant of murder conviction for shooting abusive partner. Reversed. Trial court materially misstated the law of self-defense: Responding to jury question on definition of "imminence," court erroneously instructed the jury that "imminent" means that "such harm will occur immediately." Court surveys other states' law on definition of imminent vs. immediate harm, reasons that the instruction "telegraphed to the jury that holding a loaded gun to a person's head and threatening harm does not qualify as an imminent

threat.” If properly instructed, the jury may have determined that defendant’s use of force was reasonable in light of the history of violence.

MISSOURI

State v. Copeland, 928 S.W.2d 828 (Mo. 1996), *overruled in part on other grounds*, *Joy v. Morrison*, 254 S.W.3d 885, 2008 Mo. LEXIS 47. Appeal from denial of post-conviction relief by defendant sentenced to death for complicity in multiple murders arising from fraud-murder scheme with severely abusive husband-codefendant. Affirmed. Trial court properly precluded expert testimony on battering because, by statute (§ 563.033), such evidence is only admissible for self-defense or to show a mental disease or defect. Defense disclaimed it was asserting mental defect and did not give required notice. Counsel said the testimony was relevant to defendant’s knowledge, which court rejected.

State v. Worrall, 220 S.W.3d 346, 350 (Mo. Ct. App. 2007). Where defendant offered evidence of “battered woman syndrome” (BWS) that expert described as the “male version,” called “mutual combat,” court did not abuse discretion in denying admission because the condition did not closely track BWS as identified by Dr. Lenore Walker, including three cycles of violence and going through the battering cycle at least twice prior to the shooting. Shooting occurred during violent encounter.

Francis v. State, 183 S.W. 3d 288 (Mo. Ct. App. 2005) Appeal by defendant convicted of murder. Defendant claimed accident. Affirmed. Counsel not ineffective for failing to present expert on battering since trial judge limited defense to either self-defense or accident. It was not an unreasonable trial strategy to choose accident defense given defendant’s repeated statements that both shots were accidental. Notably, appellate court found trial judge’s ruling prohibiting inconsistent defenses to be inaccurate, however, since defendant failed to appeal this issue, it was waived.

State v. Edwards, 60 S.W.3d 602 (Mo. Ct. App. 2001). Appeal by defendant convicted of manslaughter for shooting abusive husband, asserted self-defense and presented expert on battering at trial. Reversed. Jury instructions did not account for evidence of battering in considering whether defendant’s fear and claim of self-defense were reasonable. Instructions given restricted jury’s consideration of battering evidence to determining who was initial aggressor and whether defendant reasonably believed she was in imminent danger. Instructions did not allow jury to consider abuse to decide whether defendant could have retreated or had reasonable cause to believe she was in danger of death or serious injury. Definition of “reasonable belief” referred to reasonable person, did not allow consideration of how “an otherwise reasonable person who is suffering from battered spouse syndrome based on a prolonged history of physical abuse would perceive and react.” *Id.* at 615.

State v. Pisciotta, 968 S.W.2d 185 (Mo. Ct. App. 1998). Appeal by defendant convicted of murder for killing abusive husband. Affirmed. Failure to allow the defense expert to criticize the prosecution expert's report did not "in any way deprive defendant of a fair trial" because the evidence showed overwhelmingly that defendant did not act in self-defense, regardless of whether she was a battered spouse, and because the prosecution expert could have been questioned about his findings on cross examination.

State v. Harris, 864 S.W.2d 12 (Mo. Ct. App. 1993). Defendant alleged ineffective assistance of counsel following conviction of murder of abusive partner. Affirmed. Failure to investigate "battered spouse defense" was not ineffective as counsel discussed the defense with defendant, defendant had denied that decedent ever hit her, was drunk at the time, and counsel's strategy was to avoid a mandatory sentence of life without parole.

State v. Anderson, 785 S.W.2d 596 (Mo. App. 1990). Appeal by defendant of conviction of murder of husband. Affirmed. Trial court properly excluded defense expert testimony on battering because defendant did not make *prima facie* showing of elements of self-defense justifying deadly force where defendant hired or lured killers into the crime and had talked about having husband killed and using insurance proceeds to pay killers. Court interprets state statute as prohibiting battering evidence where defendant has not raised self-defense.

State v. Clay, 779 S.W.2d 673 (Mo. Ct. App. 1989). Defendant convicted of murder for shooting abuser's girlfriend; claimed accident. Affirmed. Trial court did not abuse discretion by excluding proffered expert testimony on battering since statute provides it is only admissible on issue of whether defendant lawfully acted in self-defense or defense of another. Defendant did not claim self-defense here and deceased was not the battering spouse, but his friend.

State v. Branch, 757 S.W.2d 595 (Mo. Ct. App. 1988). Appeal by defendant convicted of murder for shooting abusive husband during argument. Reversed. Trial court abused discretion and prejudiced defendant by excluding evidence of husband's abuse prior to 1980, which prevented her from introducing 1978 hospital records to corroborate claim there was continuous pattern of abuse throughout marriage. Mere passage of time did not make the evidence too remote; was clearly relevant to issue whether she killed in self-defense, to her claim killing was accidental and to degree of homicide. Trial court erred by excluding testimony about abuse by deceased's ex-wife which was relevant to defendant's deliberation and credibility.

State v. Martin, 666 S.W.2d 895 (Mo. Ct. App. 1984). In this case alleging defendant hired someone to kill her abuser, expert testimony on "battered woman syndrome," offered to corroborate theory of self-defense inadmissible because defendant did not make *prima facie* showing of elements of self-defense. Her perception of need to kill to prevent death or serious bodily injury as affected by past

abuse was irrelevant in absence of immediate danger and failure to use less drastic means. Relevance of expert testimony to defendant's mental state cannot be considered since none of expert's testimony on offer of proof addressed this issue.

MONTANA

State v. Palmer, 415 Mont. 150, 543 P.3d 566 (Mont. 2024). In prosecution of defendant for assaulting his girlfriend, court did not err in allowing state to present prior incidents of violence by defendant against victim as they showed the cycle of violence, as testified to by a general expert on battering, and were admissible to show specific motive and to provide context about the potentially unusual reactions of victims, such as why the complainant declined to speak to police about what defendant did to her.

State v. Haithcox, 397 Mont. 103, 447 P.3d 452 (Mont. 2019). In prosecution of defendant for aggravated assault against former girlfriend, court did not err in allowing evidence of defendant's prior bad acts including relationships with other women, his past lies, and specifics of his prior arguments with the victim. The prior conduct was "inextricably intertwined" with the assault. Prior dealings with victim were admissible under the "transaction rule" as part of the broadly defined transaction dating back to beginning of the relationship. The other evidence was important to establish the source of defendant's tension building up to the assault, and motive, and all the evidence was necessary for context, to explain complainant's behavior especially because defense tried to undermine her credibility.

State v. Lotter, 372 Mont. 445, 313 P.3d 148 (Mont. 2013). Appeal by defendant of conviction of attempted murder of partner. Affirmed. Court did not err in excluding defense experts on battering and PTSD as defendant failed to lay a sufficient foundation for the expert testimony, proving only that decedent made demeaning comments to her, trivial demands, tried to isolate her and went into an undefined "rage" every six months. The testimony on PTSD depended on the battering testimony and therefore was also properly precluded.

State v. Ankeny, 358 Mont. 32, 243 P.3d 391 (2010). In prosecution for assault on partner or family member, victim was partner even though it was their first date as the evidence showed a longer relationship and that they were likely intimate. Social worker's expert testimony presented by state which educated the jury about domestic violence and explained complainant's inconsistent statements to law enforcement was properly admitted.

State v. Bonamarte, 351 Mont. 419, 425, 213 P.3d 457, 461 (Mont. 2009). In prosecution for partner or family member assault, trial court did not abuse discretion by admitting state's expert testimony on "battered woman syndrome" (BWS). Expert testified generally about dynamics of abuse, did not testify

about or opine that victim was a battered spouse, provided general information about the unique behavior of victims that may not be commonly known.

State v. Stringer, 271 Mont. 367, 897 P.2d 1063 (Mont. 1995). Appeal from conviction of aggravated felonies against former wife. Reversed. State's expert testimony on battering was irrelevant and should not have been admitted. While prosecution can introduce expert testimony to impeach the credibility of its witnesses and explain recantation, here the state failed to lay an appropriate foundation. Court holds there is no "hard and fast" foundational requirement but party offering such evidence "must lay an appropriate foundation substantiating that the conduct and behavior of the witness is consistent with the generally recognized symptoms of the battered woman syndrome, and that the witness has behaved in such a manner that the jury would be aided by expert testimony which provides a possible explanation for the behavior. It also is important to re-emphasize that the expert may not testify to or comment upon the credibility of the witness." 897 P.2d at 1070. Court notes this foundation may require evidence of other acts and appropriate notices must be filed.

State v. Hess, 252 Mont. 205, 828 P.2d 382 (Mont. 1992). Defendant convicted of mitigated deliberate homicide for shooting abusive husband, claimed self-defense. Affirmed. Trial court did not err in requiring defendant to submit to psychiatric evaluation by state's expert witness to rebut defendant's expert's testimony that she suffered from "battered woman syndrome" (BWS). Defendant put her mental state at issue by claiming defense of justifiable use of force and offering expert testimony to support it, and therefore her right to not incriminate self was not violated. Nor did compelled exam violate Sixth Amendment right to counsel as court order allowed counsel to be present. Adverse expert's testimony (which indicated defendant suffered from post-traumatic stress disorder) did not prejudice BWS defense.

State v. Redcrow, 242 Mont. 254, 790 P.2d 449 (Mont. 1990), *overruled on other grounds*, *State v. Gollehon*, 274 Mont. 116, 906 P.2d 697 (1995). Defendant convicted of killing a third party, argued for new trial based on newly discovered evidence that she "suffered from battered woman syndrome" (BWS) which explained why she took responsibility for the crime to cover for the batterer who was the actual perpetrator. New trial denied; defendant could have discovered the BWS evidence with due diligence.

State v. Dannels, 226 Mont. 80, 734 P.2d 188 (Mont. 1987). Where defendant was convicted of deliberate homicide for participation in getting others to kill her husband, motion for funds for an out-of-town expert on battering was properly denied where defendant did not seek expert to prove she "suffered from battered woman syndrome" and therefore did not have the requisite state of mind. Instead, she wanted an expert to explain her lies to police about how she got bruises, and to buttress her credibility, testimony that would not be relevant or admissible.

NEBRASKA

State v. Thompson, 244 Neb. 375, 507 N.W.2d 253 (Neb. 1993). Appeal by defendant convicted of murder for shooting companion. Defense claimed self-defense, presented evidence of prior threats made by decedent, and proffered evidence of prior abuse by former boyfriend. Affirmed. No error to preclude evidence of prior abuse against defendant. Analyzes issue under rule proscribing 'bad acts' evidence (equivalent of FRE 404), concluding that 'bad acts' must be those of defendant, not third party.

State v. Cox, 21 Neb. App. 757, 842 N.W.2d 822 (Neb. Ct. App. 2014). In prosecution for strangulation and assault, trial court did not abuse its discretion in allowing state to present expert testimony by registered nurse regarding domestic abuse and common characteristics as it helped the jury understand and determine the issues. Nor did court abuse discretion in allowing nurse to testify about strangulation as expert's definition was similar to statutory definition and probative value was not outweighed by prejudice.

State v. Oldenburg, 10 Neb. App. 104, 628 N.W.2d 278 (Neb. Ct. App. 2001). Court reduces excessive sentence of defendant convicted of terroristic threats and using a deadly weapon against batterer but acquitted of assault, holding, in part, that sentencing judge should have considered all evidence, including abuse before and leading to incident, that complainant charged at defendant while she held the gun, and that conduct was "clear effort to defend herself" from violence.

NEVADA

Mitchell v. State, 124 Nev. 807, 192 P.3d 721 (Nev. 2008). In murder prosecution where defendant claimed self-defense based on heightened vigilance and other symptoms of post-traumatic stress disorder, court did not violate his constitutional rights by ordering him to undergo compelled psychiatric examination as he put his mental state in issue and the state could effectively rebut the defense expert only by presenting contradictory expert testimony.

Boykins v. State, 116 Nev. 171, 995 P.2d 474 (Nev. 2000). Where defendant was convicted of murder for killing abusive partner, court found reversible error for failing to give defense instruction on "battered woman syndrome." Court directs at retrial that the following instruction be given: "You have heard expert testimony concerning the effect of domestic violence on the beliefs, behavior, and perception of a woman who may be suffering from battered woman syndrome. The defendant asserts that she was suffering from battered woman syndrome at the time of the killing. This, in itself, is not a legal defense. However, if you believe that the defendant was suffering from battered woman syndrome, you may

consider such evidence when determining the defendant's state of mind at the time of the killing and whether she acted in self-defense. You may also consider such evidence as to the defendant's credibility and the reasonableness of her belief that she was about to suffer imminent death or great bodily harm and the need to slay an aggressor.” 116 Nev. 178.

Larson v. State, 104 Nev. 691, 766 P.2d 261 (Nev. 1988). Defendant's murder conviction reversed due to ineffective assistance of counsel at pretrial plea negotiation stage. Attorney made decisions and recommendations to client to withdraw favorable guilty plea because of his own personal ambitions to gain national attention as a battered women defense attorney.

Schafer v. Dwight Nevin, Warden NDOC, 569 P.3d 210 (Nev. 2025), *Unpublished*. Appeal by defendant from denial of habeas following conviction for participating with abusive partner in burglary, robbery, forgery, and murder of third party. Trial counsel's failure to consult with a battering expert and present expert testimony on “battered woman syndrome” to support a duress defense was not ineffective. Defendant did not show deficient performance as codefendant testified against defendant and trial counsel's strategy was to have defendant testify she had no role in killing the victim. Nor was it deficient not to present expert to explain post-incident conduct where defendant was going to explain it but chose not to testify. Expert testimony would not have supported duress defense to forgery as no threat of harm was established.

Schafer v. State, 2023 Nev. Unpub. LEXIS 432, 530 P.3d 858, 2023 WL 4056925 (Nev. 2023), *Unpublished*. Where defendant was convicted of participating in crimes with her batterer and alleged that counsel was ineffective for failing to consult an expert on battering, investigate the history of abuse, or raise a duress defense, court held that a full evidentiary hearing was required.

Dewey v. Gentry, 133 Nev. 1001, 394 P.3d 212 (Nev. 2017), *Unpublished*. Good cause to overcome procedural bar to successive post-conviction petition not shown where defendant alleged ineffective assistance for failure to investigate and present evidence of battering at trial arguing she could not raise it sooner because, due to trauma, she could only recently disclose details of the domestic abuse. She did not demonstrate “an impediment external to the defense” prevented her from raising this claim in full in earlier petition.

NEW HAMPSHIRE

State v. Hayward, 166 N.H. 575, 101 A.3d 603 (N.H. 2014). Appeal by defendant convicted of robbery as participant with abusive codefendant. Reversed. Trial court abused discretion by ruling that only threats made on the night of the robbery were admissible, and that prior threats and violent acts by codefendant were inadmissible. Prior threats and violence, including his putting a knife to her throat,

made it more probable that defendant acted under a reasonable fear of imminent death or serious bodily injury when codefendant threatened to beat her the night of the robbery. Limitation of evidence deprived jury of evidence needed to assess duress. Court also rejects hearsay arguments.

State v. Daoud, 141 N.H. 142, 679 A.2d 577 (N.H. 1996). Where defendant alleged duress as defense to driving away from abusive boyfriend while she was intoxicated, court held that she had other lawful alternatives and trial court properly precluded the jury from hearing evidence on duress.

State v. Briand, 130 N.H. 650, 547 A.2d 235 (N.H. 1988). State appeal for interlocutory relief in case where defendant gave notice of her intention to present expert testimony on “battered woman syndrome” to support her defense. Court has power to order defendant to submit to examination by state experts where she has submitted to psychological or psychiatric exam by defense experts and indicates intention to rely on that testimony at trial. Defendant who has submitted to defense expert exam and plans to use that testimony at trial waives rights with respect to court-ordered exam by state experts and state’s admission of such testimony in rebuttal.

NEW JERSEY

State v. Hess, 207 N.J. 123, 23 A.3d 373 (N.J. 2011). Appeal from denial of post-conviction relief following guilty plea and thirty-year sentence to aggravated manslaughter in death of abusive husband. Reversed and new sentencing hearing ordered. Counsel was ineffective at sentencing. Defendant agreed to thirty years, conceded aggravators outweighed mitigators, and that she would not seek less time. Despite available evidence of battering, counsel offered no mitigation. Counsel deprived the court of mitigating evidence necessary for a meaningful sentencing and was ineffective for failing to challenge a prejudicial video offered by the prosecution. Plea agreement provisions restricting counsel from arguing for less time were void under state law.

State v. Townsend, 186 N.J. 473, 493, 897 A.2d 316, 328 (N.J. 2006). Where defendant was prosecuted for murder of his girlfriend, state’s expert testimony which provided general information about battering and the characteristics of battered women was admissible and relevant even though victim was not “diagnosed” with “battered woman syndrome.” Expert’s education, training, and experience provided sufficient foundation for her opinions. As expert was offered here to show that victims lie about their injuries so jury could assess credibility of victim’s statement exculpating defendant, trial court should have given instruction that expert was offered for limited purpose of assessing victim’s credibility, but error was harmless.

State v. B.H., 183 N.J. 171, 870 A.2d 273 (N.J. 2005). Where defendant was convicted with abuser of aggravated sexual conduct against her son and asserted duress defense based on the history of abuse, court addressed the appropriate use of expert testimony on “battered woman syndrome” (BWS) with

respect to a duress defense. Court holds that BWS testimony is relevant to whether defendant recklessly placed herself in the situation, and to her subjective belief, e.g., the sincerity of her belief that she perceived a threat of harm. But BWS testimony is not relevant to the objective standard of duress -- whether a person of reasonable firmness in the defendant's situation would be unable to resist. Here, the trial court improperly restricted the content and use of the BWS evidence; court notes charge must properly explain how BWS evidence may be considered.

State v. Kelly, 97 N.J. 178, 478 A.2d 364 (N.J. 1984). Seminal case. Appeal by defendant convicted of reckless manslaughter for stabbing abusive husband. Reversed. It was error to exclude defense expert testimony on "battered woman syndrome" (BWS) since testimony was relevant to honesty and reasonableness of defendant's belief that deadly force necessary. Based on limited record, BWS appears to be an appropriate subject for expert testimony; expert's conclusions were sufficiently reliable and expert was qualified. Court found that prosecution was not given full opportunity to question professional acceptance and scientific reliability of BWS and could do so at new trial. Concurring and dissenting opinion would not allow general admissibility of testimony to be tried anew.

State v. Tierney, 356 N.J. Super. 468, 813 A.2d 560 (N.J. Super. Ct. App. Div. 2003) Appeal by defendant convicted of murder of abusive boyfriend. Defendant claimed self-defense, presented evidence of prior abuse by batterer and expert on "battered woman's syndrome" (BWS). State presented BWS expert who testified that defendant did not suffer from BWS. Trial court instructed the jury on self-defense and passion/provocation manslaughter. Affirmed. Jury instructions gave sufficient significance to BWS evidence. Omission of imperfect self-defense instruction charge was not reversible error because trial court was not required to charge the jury on unspecified degrees of homicide.

State v. Hines, 303 N.J. Super. 311, 696 A.2d 780 (N.J. Super. Ct. App. Div. 1997). Appeal by defendant convicted of theft and aggravated manslaughter in death of abusive father who had sexually abused her in the past. Defense proffered expert testimony on PTSD to explain her response, in light of her prior history and trauma, when father sought to have sex with her. Reversed. Applying *State v. Kelly*, 97 N.J. 178, 478 A.2d 364 (1984), court explains the field of PTSD, why court below erred in holding that the testimony was not beyond the ken of the average juror. Testimony on PTSD was directly relevant to defendant's credibility, her claim of self-defense (the honesty and reasonableness of defendant's belief in the need to use deadly force to prevent being attacked) and the adequacy of provocation for manslaughter.

State v. Vigilante, 257 N.J. Super. 296, 608 A.2d 425 (N.J. Super. Ct. App. Div. 1992). Where defendant was convicted of killing his abusive father, trial court committed reversible error by failing to adequately instruct jury that state had to prove beyond a reasonable doubt that he was not acting in the heat of passion from reasonable provocation. In finding sufficient evidence for provocation finding, court also holds that if jury believed defendant, it could find that past history supported

defendant's fear when decedent threatened to kill him and bent down to pick up a wrench. (But see, *State v. McClain*, 248 N.J. Super. 409, 591 A.2d 652 (N.J. Super. Ct. App. Div. 1991) (failure to correctly charge on passion/provocation was harmless error where defendant presented evidence of prior abuse by decedent and expert testified she killed while in a dissociative state; court found physical abuse was too remote, and that because she claimed not to act purposefully or knowingly, she could not be convicted of passion/provocation manslaughter.)

State v. Frost, 242 N.J. Super. 601, 577 A.2d 1282 (N.J. Super. Ct. App. Div. 1990). In prosecution for assault, state's evidence of "battered woman syndrome" (BWS) was admissible in case-in-chief to bolster credibility of the victim. Court rejected defendant's argument that this was an impermissible extension of *State v. Kelly* and that the expert, a director of clinical services at women's center, was not properly qualified.

State v. Myers, 239 N.J. Super. 158, 570 A.2d 1260 (N.J. Super. Ct. App. Div. 1990). Where defense intends to introduce expert testimony on "battered woman syndrome" (BWS), defendant must submit to examination by appropriate expert selected by the state, the results of which will be admissible to rebut the defense. BWS involves insight into the "operation of the defendant's mind" and the state "must be given the same opportunity to illuminate, through an expert, on defendant's reasonable belief of imminent danger of injury."

State v. Hurley, No. A-0205-23, 2025 LX 1536722025, N.J. Super. Unpub. LEXIS 351, 2025 LX 153672, 2025 WL 747542 (Super. Ct. App. Div. Mar. 10, 2025), *Unpublished*. Where defendant was convicted of strangling her husband, court upholds postconviction court's finding of no ineffective assistance for failing to call expert on battering who had evaluated defendant and wrote a report. Expert testimony would have opened the door to information harmful to defendant.

NEW MEXICO

State v. Vigil, 110 N.M. 254, 794 P.2d 728 (N.M. 1990). Appeal by defendant convicted of murder for shooting abusive husband during struggle; claimed self-defense. Affirmed. Evidence was sufficient that killing was deliberate and defendant was motivated by fact husband molested daughter. Self-defense instructions were adequate. Counsel was not ineffective for failing to call expert witness on "battered woman defense." Counsel was experienced, had used such expert testimony before, and may have deemed expert testimony on battering inconsistent with claim gun discharged accidentally.

State v. Swavola, 114 N.M. 472, 840 P.2d 1238 (N.M. Ct. App. 1992) Where defendant was convicted of murder of estranged husband and presented expert testimony on "battered woman syndrome" (BWS), court rejects series of ineffective assistance of counsel claims noting that counsel decided to assert BWS which opened the door to information that would not ordinarily be admissible. Court rejects

claims related to references to decedent's religious beliefs, secret recordings, references to defendant as an actress, prior bad acts.

State v. Gallegos, 104 N.M. 247, 719 P.2d 1268 (N.M. Ct. App. 1986). Where defendant shot and killed her abusive partner as he was lying in bed, presented long history of his abuse and abuse by others, court erred in refusing self-defense instruction and prohibiting expert from using "battered wife syndrome" terminology. Term "battered woman syndrome" (BWS) and testimony about BWS are admissible due to their "general recognition and acceptance in the field of psychology." Court also holds testimony by former wife about deceased's history of battering should have been admitted.

NEW YORK

People v. Brenda WW., 2025 NY Slip Op 03643, 2025 N.Y. LEXIS 920 (N.Y. 2025). State appeal from grant of Domestic Violence Justice Survivor's Act, N.Y. Penal Law § 60.12 ("DVSJA") resentencing relief. The Appellate Division did not err by failing to defer to county court's determination. The Appellate Division has the same ability as the trial court to find facts and its review is plenary. DVSJA requires a term of post-release supervision and lower court erred in finding that the excess incarceration served could be credited toward a post-release supervision period. Remitted to the Appellate Division.

People v. Rosemary Hernandez, 2025 N.Y. LEXIS 1806, 2025 NY Slip Op 05874 (N.Y. October 23, 2025). Appeal from sentence imposed under DVSJA. Court rejects defendant's assertions that her sentence is illegal due to imposition of five-year term of post-release supervision, and that the lower court erred in holding waiver barred consideration of her excessive sentence claim.

People v. Angela VV., 2025 NY Slip Op 03644, 2025 N.Y. LEXIS 917 (N.Y. 2025). Appeal from denial of resentencing application. Where appellate court denied relief under DVSJA., findings of the appellate court were supported by the record and beyond the scope of review. Court found defendant's testimony was incredible and she failed to meet second and third factors of the statute.

People v. T.P., 2025 NY Slip Op 03642, 2025 N.Y. LEXIS 918 (N.Y. 2025). Where counsel failed to object to prosecutor's misstatement that there was no evidence defendant feared for her life, and to prosecutor's repeated references (fourteen times) that defendant was lying, counsel was ineffective.

People v. Molyneaux, 2026 NY Slip Op 00912 (App. Div. 2nd Dept.), 2026 N.Y. App. Div. LEXIS 996 (N.Y. App. Div. 2026). Appeal from order denying motion to vacate sentence after hearing. Affirmed. "Here, as the County Court held, the defendant's evidence at the hearing did not establish that, at the time of the offense, the defendant was a victim of domestic violence subjected to substantial physical, sexual, or psychological abuse at the hands of the defendant's accomplice."

People v. Welch, 2026 NY Slip Op 00700 (App. Div. 4th Dept.), 2026 N.Y. App. Div. LEXIS 851 (N.Y. App. Div. 2026). Appeal from denial of resentencing without a hearing due to failure to comply with corroborative evidence provisions. Affirmed. Defendant can appeal from that part of the order dismissing his application without prejudice. Court recognizes contrary authority but reasons that the DVSJA should be liberally construed. As to the merits, the application was properly denied without a hearing as defendant failed to submit the required corroborative evidence.

People v. Croney, 2026 NY Slip Op 00630 (App. Div. 1st Dept.), 2026 N.Y. App. Div. LEXIS 703 (N.Y. App. Div. 2026). Appeal from denial of resentencing without a hearing. Court holds defendant can appeal from pre-hearing dismissal. When defendant was twenty years old, he stabbed a stranger in the chest and killed him; claimed he was physically and psychologically abused by family through childhood and adolescence and was victim of attempted sexual assault by his father at age seventeen or eighteen. Affirmed. Application was properly denied because defendant failed to submit evidence establishing a temporal nexus between the abuse and the offense. Also, defendant did not present evidence corroborating his affidavit of sexual abuse by his father; he therefore failed to meet his burden to show an ongoing abusive relationship at the time of the offense, or that the abuse was a significant contributing factor.

People v. Brown-Shook, 2026 NY Slip Op 00172, 246 N.Y.S.3d 576 (App. Div. 3rd Dept.), 2026 N.Y. App. Div. LEXIS 186 (N.Y. App. Div. 2026). Where defendant plead guilty to assault and criminal possession of weapon arising from stabbing her abusive partner, and at post-plea hearing for alternative sentence she stated that the stabbing was in self-defense, the court should have made further inquiry or given her an opportunity to withdraw the plea. Reversed and remanded.

People v. Nymeen C., 2026 NY Slip Op 00144, 2026 N.Y. App. Div. LEXIS 154 (N.Y. App. Div. 2026). An order dismissing a DVSJA petition without prejudice pursuant to CPL 440.47(2)(d), for failure to comply with presentation of corroborative evidence, is appealable as of right. However, because the defendant did not present any evidence "corroborating [her] claim that . . . she was, at the time of the offense, a victim of domestic violence subject to substantial physical, sexual or psychological abuse inflicted by a member of the same family or household," the order below is affirmed. Evidence that she was abused as a child and by her husband until she left him in 2004 did not suffice to corroborate her claim of abuse in 2008 when the crime was committed.

People v. Felix E., 2025 NY Slip Op 07187, 244 A.D.3d 1815, 247 N.Y.S.3d 583 (N.Y. App. Div. 2026). Where defendant plead guilty to assault for shooting his abusive uncle who had abused him as a youth, and with whom he had limited contact in later years, defendant failed to establish that he was a victim at the time of the offense. Defendant also failed to meet burden to show sentence was unduly harsh.

People v. Hannah T., 240 A.D.3d 1260, 239 N.Y.S.3d 706 (N.Y. App. Div. 2025). Where defendant plead guilty to manslaughter, her waiver of appeal rights was valid and would be a bar to youthful offender status. Court undertakes an independent review of the sentence, holding that defendant would have

been entitled to relief under the DVSJA in light of severe history of abuse and proof of each requisite factor. Court therefore modifies the sentence in the interest of justice.

People v. Elmore, 239 A.D.3d 1202, 234 N.Y.S.3d 681 (N.Y. App. Div. 2025). Where defendant plead guilty to kidnapping offenses in which she participated with her abusive codefendant, and received a reduced sentence under the DVSJA, she validly waived her right to appeal the sentence and could not challenge its severity.

People v. Mimms, 239 A.D.3d 891, 236 N.Y.S.3d 301 (N.Y. App. Div. 2025). Defendant was ineligible for relief under the DVSJA because none of his individual sentences were at least eight years; court would not consider aggregate amount of time.

People v. Martinez, 234 A.D.3d 874, 225 N.Y.S.3d 353 (N.Y. App. Div. 2025). Defendant failed to establish he was a victim of domestic violence at the time of the offense. Relief denied.

People v. Ava OO., 233 A.D.3d 1186, 223 N.Y.S.3d 397 (N.Y. App. Div. 2024). Defendant's plea to robbery, which purported to waive her right to appeal, was overbroad and invalid. Reversed and resentenced. When viewed in the surrounding circumstances of the history of abuse defendant suffered at hands of codefendant-abuser leading up to the crime, and during a sex trafficking scheme, the abuse was a significant contributing factor.

People v. Melissa OO., 234 A.D.3d 101, 222 N.Y.S.3d 754 (N.Y. App. Div. 2024). Defendant could not appeal as of right an order dismissing her DVSJA petition without prejudice where the petition had been dismissed because of lack of corroborating evidence. "[I]n enacting the DVSJA, the Legislature expressly authorized appeals as of right to an intermediate appellate court from orders denying resentencing or granting resentencing and imposing a new sentence while providing no express statutory right to appeal from an order dismissing an application for resentencing prior to a hearing." 234 A.D.3d at 106.

People v. Boyd P., 232 A.D.3d 1000, 220 N.Y.S.3d 896 (N.Y. App. Div. 2024). Appeal from denial of motion for resentencing. Affirmed. Defendant convicted of child abuse of infant son presented evidence of childhood abuse but there was no abuse at the time of the offense.

People v. Rebecca XX., 230 A.D.3d 1491, 217 N.Y.S.3d 750 (N.Y. App. Div. 2024). Appeal from denial of resentencing motion. Affirmed. Defendant convicted of murder for shooting abusive boyfriend did not establish by sufficient evidence that around the time of the murder she was subject to substantial abuse. Defendant's evidence was primarily her self-serving testimony and she presented no medical or psychiatric records, police reports, photographs or other evidence. The presentence report said there was no evidence suggesting abuse.

People v. Hudson, 232 A.D.3d 200, 220 N.Y.S.3d 68 (N.Y. App. Div. 2024), *Application for Criminal Leave to Appeal Granted*, 2025 N.Y. LEXIS 251, 42 N.Y.3d 1080, 252 N.E.3d 522, 227 N.Y.S.3d 583. Appeal from denial of hearing for resentencing. Affirmed. Defendant waived her right to file for resentencing as part of negotiated plea agreement. Court holds this right is waivable.

People v. Rivera, 230 A.D.3d 517, 216 N.Y.S.3d 263 (N.Y. App. Div. 2024). Appeal from denial of motion for resentencing after hearing. Affirmed. Where defendant was convicted of murder for shooting someone when he was eighteen, evidence that he was subject to past abuse by his father did not establish abuse at the time of the offense.

People v. Wendy B.-S., 229 A.D.3d 1317, 215 N.Y.S.3d 806 (N.Y. App. Div. 2024). Appeal from denial of resentencing application. Affirmed. Where defendant was convicted of murder for aiding abusive husband in fatal bludgeoning death of witness against them, lower court erred in failing to find that domestic violence by the husband was a contributing factor. But defendant failed to meet the third prong – her sentence was not unduly harsh. Court notes at the time of the hearing, defendant was no longer incarcerated; had received disciplinary infractions while in prison.

People v. Krista M.G., 228 A.D.3d 1300, 211 N.Y.S.3d 712 (4th Dept. 2024). Appeal from denial of application for resentencing. Where defendant was convicted of manslaughter for stabbing abusive boyfriend in the chest, she did not establish that the abuse was a significant contributing factor; she did not offer proof as to how the abuse influenced her behavior on the night of the killing.

People v. Shawn G.G., 225 A.D.3d 1246, 207 N.Y.S.3d 818 (4th Dept. 2024). Where defendant was sentenced to a term of seven years, fact that it was ordered to run consecutive to a prior sentence did not transform it into a crime of eight years or more for the purpose of eligibility for resentencing under the statute.

People v. Liz L., 221 A.D.3d 1288, 201 N.Y.S.3d 514 (N.Y. App. Div. 2023). Appeal from denial of motion for resentencing. Reversed and sentence reduced. Contrary to the findings of the court below, defendant was a victim of domestic violence at the time of the offense. Court notes that the statute does not require survivors to prove they were defending themselves from domestic violence at the time of the offense, nothing in the statute requires contemporaneousness. Defendant also established that the abuse was significant contributing factor. Court below erred in reasoning that domestic violence was already considered in the original plea and sentence; such findings are irrelevant to determining whether the sentence was unduly harsh under DVSJA.

People v. Fisher, 221 A.D.3d 1195, 200 N.Y.S.3d 494 (N.Y. App. Div. 2023). Appeal from denial of motion for resentencing. Affirmed. Where defendant was convicted of assaulting her father with a baseball bat and assaulting her mother, while she established past abuse by father, the abuse stopped before the incident occurred and evidence showed she was motivated by anger over her father's extramarital

affairs. Defendant therefore did not establish she was abused at the time of the instant offense nor that it was a contributing factor. Though contemporaneousness is not required, DVSJA requires a temporal nexus between the abuse and the offense.

People v. Riley, 221 A.D.3d 1162, 200 N.Y.S.3d 150 (N.Y. App. Div. 2023). Counsel was not ineffective for failing to seek a sentence under the DVSJA where domestic violence by child's father against defendant mother months earlier was not a significant contributing factor to her hitting her child and she was motivated by frustration over the child's behavior. Court notes that counsel negotiated a plea within the alternative sentencing range of the DVSJA.

People v. Heft, 220 A.D.3d 806, 196 N.Y.S.3d 177 (N.Y. App. Div. 2023). Appeal from criminal possession of a weapon conviction upon a plea of guilty. Sentence reduced under DVSJA from two years to one year imprisonment followed by post-release supervision. Record did not establish that defendant knowingly, voluntarily and intelligently waived her right to appeal where discussion of appeal waiver did not occur until after defendant admitted guilt. Nor was defendant, who had no prior legal contact, experienced in the law.

People v. Burns, 207 A.D.3d 646, 172 N.Y.S.3d 90 (N.Y. App. Div. 2022). Where defendant plead guilty to manslaughter for killing his abusive father and to murder for killing father's girlfriend, and lower court resentenced on manslaughter conviction only, defendant appealed denial of resentencing for murder of father's girlfriend. Reversed, resentencing granted. "[T]he record also showed that the father's abuse of the defendant was a significant contributing factor to the murder of Johnston [girlfriend.] Considering the cumulative effect of the defendant's abuse at the hands of his father, together with the events immediately surrounding the crimes, and paying particular attention to the circumstances under which the defendant was living, the preponderance of the evidence demonstrates that the father's abuse was a contributing factor to the murder of Johnston (see *People v Addimando*, 197 AD3d at 116-117)." 207 A.D.3d at 648-9.

People v. Williams, 198 A.D.3d 466, 152 N.Y.S.3d 575 (N.Y. App. Div. 2021). Appeal from denial of resentencing motion. Affirmed. Defendant failed to establish that she was the victim of substantial abuse at the time of the offense. Past abuse would not suffice; evidence did not rise to level of psychological abuse. Court notes that temporal requirement proposed by the state, "that the abuse or abusive relationship be ongoing," is most consistent with statute.

People v. Addimando, 197 A.D.3d 106, 152 N.Y.S.3d 33 (N.Y. App. Div. 2021). Appeal from murder conviction. Sentence reduced. Court applies preponderance of evidence standard, finding that lower court misapplied the DVSJA. Defendant established that she was repeatedly sexually and physically abused by decedent, including expert testimony about the impact of the abuse, and established that the abuse was a significant contributing factor and the sentence was unduly harsh. The lower court

based its findings to the contrary on arcane notions about domestic violence, such as that defendant could have left and avoided the murder.

People v. Thompson, 119 A.D.3d 966, 989 N.Y.S.2d 881 (N.Y. App. Div. 2014). Trial court did not err in allowing state to present expert testimony on “battered woman syndrome” as expert did not opine on whether the conduct at issue was domestic violence, and described the general behavior patterns of victims and perpetrators in order to explain battered women’s behaviors beyond the ken.

People v. Hartman, 86 A.D.3d 711, 926 N.Y.S.2d 746 (N.Y. App. Div. 2011). Lower court did not err in precluding expert on “battered woman syndrome” where defendant’s testimony undermined her claim of self-defense. Court notes experts are usually introduced where there is an extensive history of battering, as opposed to the “tumultuous” relationship here in which defendant at times initiated violence.

People v. Nelson, 57 A.D.3d 1441, 871 N.Y.S.2d 535 (N.Y. App. Div. 2008). In prosecution for kidnapping and related offenses, court did not err in allowing state to present expert testimony on “battered woman syndrome” which was relevant to explain the victim’s behavior.

People v. Wilcox, 788 N.Y.S.2d 503 (N.Y. App. Div. 2005). Appeal by defendant from conviction of gang assault and theft for allegedly recruiting others to participate in the crime. Court rejects argument that lower court erred in excluding defense expert testimony on battering, holding that it is not a defense, and is relevant to self-defense, a defense unavailable here because defendant was the initial aggressor.

People v. Rollock, 177 A.D.2d 722, 577 N.Y.S.2d 90 (N.Y. App. Div. 1991). Appeal by defendant from denial of motion to vacate manslaughter conviction. Affirmed. Counsel’s failure to introduce expert testimony on ‘battered woman syndrome’ (BWS) did not constitute ineffective assistance of counsel, where there was no evidence defendant informed counsel that she acted out of belief she was in mortal peril and no showing counsel knew deceased had previously threatened defendant. There was no reason for counsel to conclude BWS was potentially important to justification defense.

People v. Abdur-Razzaq, 60 Misc. 3d 631 (Sup. Ct., Bronx County 2018). In two separate trials involving allegations of sex trafficking, court holds that state’s expert testimony on trauma bonding between sex traffickers and their victims, and coercive control tactics used by sex traffickers, have the scientific foundation for admission, are not within common knowledge and are relevant to both cases, and therefore admissible. Court cites to older cases allowing evidence of “battered woman syndrome,” rape trauma syndrome and child sexual abuse accommodation syndrome. This testimony will help the jury understand the anomalous behavior of victims of sex trafficking, why they endure sexual abuse and stay with their pimps, don’t report and profess love for or lie for their pimps; the testimony will help dispel misconceptions about conduct under these circumstances.

People v. Ellis, 170 Misc. 2d 945, 650 N.Y.S.2d 503 (Sup. Ct., N.Y. County 1996). Where victim recanted, court allowed state to present evidence of “battered woman syndrome,” ruling that it had the scientific foundation, was not within juror’s common knowledge, and the probative value outweighed the prejudicial effect. The testimony would not be offered to show the crime had been committed or to challenge the credibility of the complainant.

People v. Seeley, 186 Misc. 2d 715, 720 N.Y.S.2d 315 (Sup. Ct., Kings County 2000). Court ruling on scope of expert testimony on battering analyzes differences between state introducing such expert testimony and defendant introducing it. Court notes that battering is not a mental defect or defense in itself and discusses split in states that allow or do not allow expert to testify that defendant is a battered person. Court notes state rule does not prohibit testimony on ultimate issue and holds that in this case, the expert may testify that defendant is a battered person.

People v. Torres, 128 Misc. 2d 129, 135 (Sup Ct, Bronx County 1985) Evidence of “battered woman syndrome” was admitted in support of defendant's defense of justification, the court finding "that the theory underlying the battered woman's syndrome has indeed passed beyond the experimental stage and gained a substantial enough scientific acceptance to warrant admissibility."

NORTH CAROLINA

State v. Grant, 343 N.C. 289, 470 S.E.2d 1 (N.C. 1996). Appeal by defendant convicted of murder for stabbing and shooting her abusive husband while he slept. Affirmed. “The arguments the defendant advances as to why evidence that she suffered from the battered woman syndrome entitles her to a charge on self-defense were answered in [State v.] Norman. We see no reason to change our position.”

State v. Norman, 324 N.C. 253, 378 S.E.2d 8 (N.C. 1989). Appeal by defendant of conviction for voluntary manslaughter for killing batterer while he was asleep. Intermediate court reversed, holding that trial court erred by not giving instructions on self-defense. Reversed. Trial court correctly refused self-defense instruction where testimony is of subjective predictions of indefinite future harm and not of imminent death, nor were “imperfect” self-defense instructions warranted. Court would not “substantially relax the requirement of real or apparent necessity to justify homicide for battered women defendants.” Expert's testimony was conclusory, without underlying factual support. Strong dissent.

State v. Owen, 133 N.C. App. 543, 516 S.E.2d 159 (N.C. Ct. App. 1999). Where defendant and abusive husband were convicted of rape of a child, the trial court did not err by excluding testimony of two

defense experts, one who had never met defendant and had no knowledge of the events, and the other whose testimony did little to corroborate that of defendant.

State v. Torres, 99 N.C. App. 364, 393 S.E.2d 535 (N.C. Ct. App. 1990), *reversed on other grounds*, 330 N.C. 517, 412 S.E.2d 20 (N.C. Ct. App. 1992). Where defendant was convicted of murder for shooting abusive husband five times, trial court did not err in failing to give imperfect self-defense instruction. Presenting an expert on the "battered wife syndrome" did not require the sentencing judge to find that defendant suffered from a mental condition as a mitigating factor.

State v. Heidmous, 75 N.C. App. 488, 331 S.E.2d 200 (N.C. Ct. App. 1985). Where defendant plead guilty to voluntary manslaughter, malice could be used as an aggravating factor since it is not an element of voluntary manslaughter.

State v. Temples, 327 S.E.2d 266 (N.C. Ct. App. 1985). Appeal by defendant from conviction of murder for killing abuser. Reversed. State improperly introduced evidence of deceased's general good character. Defendant's undated suicide note mentioning incest, drugs and abortion was improperly introduced. Instructions that defendant was aggressor and provoked abuse with foul language were improper as no evidence supported them. Totality of trial errors warranted reversal.

NORTH DAKOTA

State v. Leidholm, 334 N.W.2d 811 (N.D. 1983). Appeal by defendant from conviction of manslaughter for stabbing abusive husband as he slept. Reversed. The actions of a defendant claiming self-defense are judged by what the defendant themselves honestly and reasonably believed was necessary, not by what a reasonably cautious person might or might not do in the same circumstances. Instruction stating objective rather than subjective standard of reasonable belief was reversible error. No specific instruction on "battered woman syndrome" is necessary if a proper self-defense instruction is given.

OHIO

State v. McKelton, 2016 Ohio 5735, 148 Ohio St. 3d 261, 70 N.E.3d 508 (Ohio 2016). In murder prosecution, trial court did not err in allowing state to present expert testimony of retired police supervisor of domestic violence unit to testify about dynamics of battering and failure to report. Even though she reviewed some of the facts in the case, that information did not affect her testimony.

State v. Goff, 2010 Ohio 6317, 128 Ohio St. 3d 169, 942 N.E.2d 1075 (Ohio 2010). Appeal by defendant who submitted to state mental examination and was convicted of murder of abuser. Reversed. Ordering a defendant to submit to a psychiatric examination by a state expert when the defense raises self-defense supported by expert testimony on “battered woman syndrome” (BWS) does not violate the right against self-incrimination, but the exam and testimony of the state expert must be limited to information related to BWS in general, whether the defendant experienced it, and whether it accounts for the belief of imminent harm. In this case, state’s expert testified mainly about defendant’s inconsistencies and credibility, thus exceeding proper limits.

State v. Haines, 2006 Ohio 6711, 112 Ohio St. 3d 393, 860 N.E.2d 91 (Ohio 2006). In prosecution for domestic violence, state presented expert on “battered woman syndrome” (BWS) to rehabilitate victim-complainant. Affirmed (in part); Reversed (in part); Certified question answered in the affirmative: “When a victim’s credibility is challenged upon cross-examination during the state’s case-in-chief, the state may introduce expert testimony [on BWS] to aid the trier-of-fact in determining the victim’s state of mind, e.g., to explain why she returned to the defendant despite his aggressions toward her.”...“Neither [State v. Koss] nor [statute] R.C. 2901.06 limit the use of [BWS] testimony to self-defense or insanity cases.”

BWS testimony is relevant because it explains anomalies (like why she returned after abuse) that otherwise damage victim’s credibility. Admission requires foundation that victim is a battered woman or presence of factors consistent with battering (though there are no strict “rigid foundational requirements.”) Potential prejudice requires careful tailoring of expert testimony and limiting instructions to avoid opinions about defendant’s culpability or complainant’s truthfulness. As applied here, expert improperly “diagnosed” victim with BWS, which implied that defendant was her batterer. Expert testimony therefore prejudiced defendant, but only as to some counts.

State v. Sallie, 1998 Ohio 343, 81 Ohio St. 3d 673, 693 N.E.2d 267 (Ohio 1998). Appeal by defendant from voluntary manslaughter conviction for shooting abusive boyfriend; defendant claimed she did not intend to kill him, and gun went off accidentally. Affirmed. Counsel not ineffective where he could have reasonably concluded the killing was accidental as defendant denied intending to kill. Because she did not claim self-defense, BWS testimony was immaterial. Court rejects defendant’s argument that expert was necessary to explain why she armed herself in the first place, reasoning that her testimony the shooting happened while decedent was abusing defendant made the expert testimony unnecessary.

State v. Thomas, 1997-Ohio 269, 77 Ohio St. 3d 323, 673 N.E.2d 1339 (Ohio 1997). Appeal by defendant convicted of murder for shooting abuser. Reversed. “There is no duty to retreat from one’s own home before resorting to lethal force in self-defense against a cohabitant with an equal right to be in the home.” Jury was not so instructed. Court also rejects claim that specific jury instruction on “battered woman syndrome” was required, holding that the instructions given were adequate.

State v. Engle, 1996 Ohio 179, 74 Ohio St. 3d 525, 660 N.E.2d 450 (Ohio 1996). Where defendant plead guilty to offenses surrounding her participation with batterer in death of child, and all believed she

could appeal issues of duress and “battered woman syndrome,” when such issues were waived, defendant’s plea was not knowing, voluntary and intelligent and she was allowed to withdraw it. Reversed.

State v. Koss, 49 Ohio St.3d 213, 551 N.E.2d 970 (Ohio 1990). Appeal by defendant convicted of murder for shooting abuser; trial court precluded expert testimony on battering. Reversed. Ohio Supreme Court overturns *State v. Thomas*, 66 Ohio St. 2d 518, 423 N.E.2d 137 (1981) and allows expert testimony on “battered woman syndrome” to be admitted to support affirmative defense of self-defense. “Expert testimony would help dispel ordinary lay person’s perceptions that a woman in a battering relationship is free to leave any time, if the beatings were that bad the woman would have left her husband, or that women really enjoy beatings and provoke their husbands into fits of rage.” Expert testimony helps jury determine if defendant acted on honest belief of imminent death or serious bodily harm, and if deadly force was “only means of escape.”

State v. Rice, 2025 Ohio 2264 (Ohio Ct. App. 2025). Appeal by defendant from assault and related convictions arising from shooting complainant. Affirmed. Though defense argued that defense expert on battering was precluded from testifying as to crucial testimony, noting state’s attempts to exclude expert’s opinion that defendant “suffered from BWS” and otherwise limiting the testimony, court held that almost all the testimony of the expert was admitted. Trial court correctly distinguished state’s authority on the subject, which related to state’s use of expert testimony on battering, not defendant’s use of expert testimony on battering in support of self-defense.

State v. Perry, 2025 Ohio 2054 (Ohio Ct. App. 2025). In assault prosecution where state presented expert on battering who testified about general dynamics of domestic violence, court held that testimony was improper as lacking foundation as state presented no evidence defendant and victim were in a cycle of abuse. Court finds no prejudice under plain error analysis.

State v. Shepherd, 2025 Ohio 1779 (Ohio Ct. App. 2025). Where defendant argued she should be able to withdraw guilty plea to domestic violence charge because she had discovered new information after therapy about the effect abuse had on her mental state, and had been unaware of her “diagnosis” as a battered woman when she entered the plea, court upheld denial of her claim because she presented no evidence, only allegations and conclusory statements of counsel.

State v. Baldwin, 2025 Ohio 398 (Ohio Ct. App. 2025). Appeal from denial of motion to withdraw guilty plea. Affirmed. Defendant did not establish ineffective assistance due to counsel’s failure to investigate or pursue defenses of self-defense and evidence of battering. Counsel reasonably prepared the case; facts showed defendant had not seen the victim in months and orchestrated the premeditated robbery of the victim.

State v. Delehanty, 2023 Ohio 337 (Ohio Ct. App. 2023). Where defendant was convicted of murder of her abusive partner, court held that trial court did not err by denying self-defense instruction as there was no evidence supporting self-defense. Defendant testified about previous abuse by decedent but denied having any memory of events immediately preceding stabbing the decedent or how or why she inflicted thirty-eight knife wounds. Defendant's "battered-woman-syndrome-type argument" is irrelevant because she never claimed to use force against decedent.

State v. McCallum, 2021 Ohio 2938 (Ohio Ct. App. 2021). Where defendant was convicted of shooting her sister's abusive partner, trial court did not err in denying funds for an expert on "battered woman syndrome" (BWS.) Court notes that expert testimony is relevant on an element of self-defense, whether defendant had an honest belief of imminent danger and that using force was her only means of escape, and is admissible by statute (R.C. 2901.06.) But here defendant does not argue that she suffers from BWS, but that her sister does, and therefore helps to explain defendant's use of force in defense of another. Even if defendant could prove that her sister suffered from BWS, defendant does not explain how that state of mind transfers to defendant.

State v. Bost, 2021 Ohio 2190 (Ohio Ct. App. 2021). State appeal from dismissal of indictment due to preindictment delay. Affirmed. Court upholds trial court finding that due to the delay, defendant suffered actual prejudice: among other reasons, she could no longer present medical evidence of injuries caused by decedent, including brain injury as a result of his strangulation. Nor did the state present justification for the delay.

State v. Jarrell, 2021 Ohio 2333 (Ohio Ct. App. 2021). Appeal by defendant of murder conviction for killing abusive stepmother who sexually abused him in the past. Reversed. Trial court erred by limiting evidence of abusive relationship and precluding expert report and potential testimony. Expert report tied together past abuse with events leading to the killing, including decedent making sexual advances on defendant and throwing things at him. Testimony about the abusive relationship between defendant and decedent was relevant to demonstrate the "triggering event" of PTSD, related to defendant's rage and argument in favor of voluntary manslaughter. Omitted evidence was also relevant to rebut state's repeated references to lack of corroboration and suggestion that defendant was lying about the abuse.

State v. McEndree, 2020 Ohio 4526 (Ohio Ct. App. 2020). Appeal by defendant from conviction for murder of intimate partner. Preemptory strike of female juror was not discriminatory as prosecutor had a gender-neutral explanation for using strike. Counsel was not ineffective for failing to request otherwise appropriate jury instruction on BWS, since this was a debatable trial tactic, and it was not demonstrated trial outcome would have been different with this instruction given extensive BWS evidence was introduced to support an insanity plea. Counsel was not ineffective for failing to request jury instruction on self-defense, as self-defense was not supported by the record. State's rebuttal with its own BWS expert was proper.

State v. Hamad, 2019 Ohio 2664 (Ohio Ct. App. 2019). Defense expert testimony on PTSD proffered in support of a self-defense claim to explain defendant's state of mind was properly excluded where the PTSD developed during the events of the crime, not before it; where there was no history of abuse between defendant and decedent; and where defendant was not entitled to a voluntary manslaughter instruction.

State v. Napier, 2017 Ohio 246 (Ohio Ct. App. 2017). In prosecution for assault on a police officer, defendant was properly precluded from presenting expert testimony on PTSD which went to diminished capacity.

State v. Gray, 2016 Ohio 5869 (Ohio Ct. App. 2016). In murder prosecution where defendant claimed self-defense to charge of murder of another man, trial court properly precluded expert testimony about his history of child abuse and how it affected his extreme reaction at the time of the offense. Expert testimony here "does not fit the rationale given" for admitting expert testimony in "battered-syndrome cases." Court notes that the abuse did not involve decedent abusing defendant and expert would not address misconceptions.

State v. Myers, 2014 Ohio 3759 (Ohio Ct. App. 2014). In assault prosecution where state presented expert testimony on "battered woman syndrome," court held the testimony lacked foundation because there was no history of prior abuse, but the error in admitting the expert was harmless.

State v. Baughman, 2014 Ohio 1821 (Ohio Ct. App. 2014). In domestic violence prosecutions, trial court did not err in allowing state to present expert testimony on "battered woman syndrome" to testify about the process of victimization and why the victim may behave counter-intuitively such as by contacting the defendant. Court held expert was proper under *Haines* and other cases; there was evidence of history of domestic violence, the complainant's credibility was attacked, and the expert made only general statements without offering opinions about the evidence in the case.

State v. D'Agostino, 2014 Ohio 551 (Ohio Ct. App. 2014). Where defendant presented testimony of expert on battering, counsel was not ineffective for failing to object to testimony of state's expert in rebuttal who opined that the defense expert's methodology was flawed, that defense expert should not have assumed the truthfulness of defendant, and that he was confident if proper methods had been used, the defense expert would have reached different conclusions.

State v. Harmon, 2013 Ohio 2319 (Ohio Ct. App. 2013). In prosecution for domestic violence and other charges, trial court did not err in allowing state to present expert on battering to explain complainant's recantation. Court rejects defense claim that state did not first establish complainant "suffered from battered woman syndrome," e.g., going through the cycles of violence. Court rejects "rigid foundational requirements" stating that "party seeking to introduce battered woman syndrome

evidence must lay an appropriate foundation substantiating that the conduct and behavior of the witness is consistent with the generally recognized symptoms of the battered woman syndrome, and that the witness has behaved in such a manner that the jury would be aided by expert testimony which provides a possible explanation for the behavior. *Haines*, 112 Ohio St.3d 393, 2006 Ohio 6711, at ¶ 47, 860 N.E.2d 91.” The evidence here provided a sufficient foundation. Court also rejects argument that evidence was improper because it was not rehabilitative in nature.

Note: Additional cases where court upholds testimony on battering offered by the state: *State v. Matthews*, 2012-Ohio-1154 (Ohio Ct. App. 2012); *State v. Long*, 2011-Ohio-1050 (Ohio Ct. App. 2011); *State v. Drew*, 2008-Ohio-2797 (Ohio Ct. App. 2008); *State v. Caudill*, 2008-Ohio-1557 (Ohio Ct. App. 2008); *State v. Kraus*, 2007-Ohio-6027 (Ohio Ct. App. 2007).

State v. Rizer, 2011 Ohio 5702 (Ohio Ct. App. 2011). Appeal by defendant convicted of murder for shooting abusive partner. Affirmed (except as to costs.) Defendant claimed self-defense and presented an expert on battering; was examined by state’s expert on battering and argued that state’s expert testimony exceeded proper limits. Court held that defense expert opened the door to state’s expert testimony on inconsistencies in version of events. Defense expert went beyond diagnosing defendant and offered explanation for variances in defendant’s narratives, testifying about trauma, memory and ability to articulate after a traumatic event. State expert testimony contradicted this testimony offering malingering as an explanation.

State v. Lillo, 2010-Ohio-6221 (Ohio Ct. App. 2010). Where defendant asserted a duress defense to robbery in which she participated with abusive boyfriend, court did not err in denying her jury instruction specifically defining “battered woman syndrome” and telling the jury how to use it. Even if error, the error was harmless in light of duress instruction given.

State v. Miller, 2009-Ohio-4607 (Ohio Ct. App. 2009). Appeal by defendant convicted of murder of abusive boyfriend. Affirmed. Defendant’s right of self-incrimination was not violated by forcing her to testify as to self-defense before allowing her to present expert on battering. “Expert testimony regarding battered woman syndrome is only admissible to support a claim of self-defense, not to establish one.” (*citations omitted.*) Because defendant must offer proof on self-defense, she may be required to testify.

State v. Fagan, 2009-Ohio-3760 (Ohio Ct. App. 2009). Appeal by defendant convicted of domestic violence. Affirmed. Trial court did not err in rejecting evidence (including testimony of defense expert social worker) about “battered woman syndrome” (BWS) where defendant failed to prove she was in fear of bodily harm when she hit and scratched her husband. Court rejected argument that psychological injury could be the basis of BWS, but even if it was, defendant failed to prove self-defense here.

State v. Sorah, 2007 Ohio 5898 (Ohio Ct. App. 2007). Appeal by defendant from conviction for child endangerment for failing to protect her child from batterer's abuse. Defense proffered expert testimony on battering to provide an explanation relevant to whether she acted recklessly. Trial court excluded battering expert on ground it did not meet *Daubert* as this was not a self-defense case. Affirmed. Expert testimony here goes beyond providing context; it goes to the jury question of whether defendant had the culpable mental state. Court notes that testimony ran afoul of *Haines* (but does not mention that *Haines* dealt with state use of battering expert testimony.) Court says it will not extend permissible use of expert testimony to *mens rea* for child endangerment.

State v. Hall, 2005 Ohio 5162 (Ohio Ct. App. 2005). Appeal by defendant from assault conviction for shooting intimate partner. Affirmed. Counsel was not ineffective. Counsel did not fail to prepare expert witness, as witness demonstrated extensive history working with battered women, and counsel reasonably deferred to expert. Counsel adequately addressed BWS evidence in the context of duty to retreat, and decision not to pursue instruction on lesser offenses was a valid strategy.

State v. Donner, 96 Ohio App. 3d 486, 645 N.E.2d 165 (Ohio Ct. App. 1994). Appeal from denial of motion to withdraw guilty plea to attempted murder. Affirmed. Trial court denial of motion to withdraw was not unreasonable, arbitrary, or unconscionable. Court rejects argument that defendant had valid defense based on battering; she did not proffer expert testimony on battering nor did she testify she was in imminent danger of death or great bodily harm. Court also rejects claim that attorney improperly advised her she had no defense, noting testimony of attorney that first psychiatrist did not think she was battered, and they had intended to call an advocate from a domestic violence program.

State v. Daws, 104 Ohio App.3d 448, 662 N.E.2d 805 (Ohio Ct. App.1994), Appeal by defendant convicted of voluntary manslaughter for shooting ex-husband and his girlfriend; claimed self-defense. Reversed. Trial court improperly precluded defense expert on battering from testifying whether defendant reasonably believed that she was in imminent danger and that it was necessary to use deadly force. Expert testimony on 'battered woman syndrome' (BWS) admissible for 'original' purpose of dispelling jurors' misconceptions and 'broader' purpose of helping jury decide reasonableness issues. Court finds it is unclear whether state statute permits 'broader' testimony on accused's mental state and reasonableness issues. Holds expert testimony on BWS regarding defendant's mental state and reasonableness of beliefs not inadmissible because it deals with ultimate issues. Although specific jury instruction on BWS would have been appropriate given its complexity, defendant's proposed instructions were inaccurate and trial court did not err in refusing to accept them. Proper to instruct that BWS not defense in itself and that jury should only consider this evidence if it finds defendant is a battered woman.

State v. Manning, 74 Ohio App. 3d 19, 598 N.E.2d 25 (Ohio Ct. App. 1991). Appeal by defendant convicted of murder for shooting boyfriend while he slept; claimed self-defense. Court rejected

defendant's jury instruction that "battered woman syndrome" arises when a battered woman has a flashback triggering immediate fear and causing her to respond instinctively in self-defense.

OKLAHOMA

Smith v. State, 2006 OK CR 38, 144 P.3d 159 (Okla. Crim. App. 2006). Appeal by defendant convicted of murder of abusive spouse, claimed self-defense. Reversed. Counsel was ineffective for failing to get an expert on "battered woman syndrome" (BWS). Counsel failed to adequately communicate to the defendant the need for and importance of an expert. Counsel could not defend by saying the defendant knew more than he did about BWS; it was his duty to be informed. Nor could counsel defend by saying defendant instructed him not to get an expert. Defendant's indication she could not pay for an expert was not an informed decision that she did not want an expert. Counsel had a duty to petition the court for funds for an expert. Counsel's failure to fully inform the defendant about BWS was professionally unreasonable; counsel was deficient in not having her evaluated to determine the viability of the defense at trial. Note: Expert testimony on battering was presented at the post-conviction evidentiary hearing. This is an unusually strong ineffective assistance decision highlighting the defendant's right to be informed, including the right to court funds.

Perryman v. State, 1999 OK CR 39, 990 P.2d 900 (Okla. Crim. App. 1999). Where defendant, who had been raped at age twelve by a homosexual man, killed another homosexual man who made a pass at him, the trial court did not abuse its discretion in precluding expert testimony on PTSD. Court noted split in authority on admissibility of PTSD evidence to support self-defense, that this was a "classic case" of self-defense with strong evidence of guilt.

Bechtel v. State, 1992 OK CR 55, 840 P.2d 1 (Okla. Crim. App. 1992). Appeal by defendant convicted of murder for killing abusive husband. Reversed. Trial court erred by precluding defense expert testimony on "battered woman syndrome" (BWS) as it is relevant to reasonableness of belief in imminent danger for self-defense claim. Oklahoma's standard is both objective and subjective. In light of admissibility of BWS expert testimony and jury's confusion, court modifies jury instruction for BWS cases to eliminate 'reasonable' from subjective part of standard, and explains the question is not whether danger is in fact imminent, but whether defendant's belief of imminent danger is reasonable.

OREGON

State v. Williams, 321 Or. App. 594, 517 P.3d 308 (Or. Ct. App. 2022). In child sexual abuse prosecution, court upholds trial court's admission of state's expert testimony regarding techniques used by

offenders (grooming testimony) because it was relevant to explain victim behavior and disclosure. Such testimony met requirements of scientific reliability and validity.

State v. Ogden, 168 Or. App. 249, 6 P.3d 1110 (Or. Ct. App. 2000). In domestic-violence prosecution, admission of state's expert on battering who testified about behavior of women in abusive relationships was reversible error. Though evidence regarding "battered woman syndrome" (BWS) could be highly relevant, the state did not establish the critical link here – that complainant "suffers from BWS." Court reasons that BWS is a "diagnosis" requiring expert testimony. It is used to explain behavior and reactions but here it was offered to explain behavior of people in battering relationships generally, which is not adequate to explain why this complainant acted the way she did. Court rejects idea that jurors can reason that complainant was a battered woman. "[T]he diagnosis--in this case, that complainant suffers from BWS--is a predicate to the admissibility of evidence about BWS and behavior attributable to BWS."

State v. Stevens, 147 Or. App. 592, 938 P.2d 780 (Or. Ct. App. 1997), *Affirmed in part and reversed in part*, 328 Ore. 116, 970 P.2d 215 (Or. 1998). Where defendant was charged with death of a child, and implicated his wife, the child's mother, state presented expert testimony that the mother suffered from "battered woman syndrome" to explain mother's conduct such as why she continued the relationship with defendant. Court holds that BWS is an accepted diagnosis, that seventeen states had admitted it at the time, and numerous articles and books demonstrated general acceptance. Expert testimony had adequate foundation. Note: The parties in this case cross-appealed to the Oregon Supreme Court, *State v. Stevens*, 328 Or. 116, 970 P.2d 215 (Or. 1998). The court held that defendant did not preserve objections about the relevance and helpfulness of the expert testimony, and rejected defendant's argument that the probative value of the evidence was outweighed by its prejudicial effect. Court reversed on other grounds.

State v. Moore, 72 Or. App. 454, 695 P.2d 985 (Or. Ct. App. 1985). Appeal by defendant of conviction for assault of her abusive partner. Affirmed. Trial court did not err in precluding domestic violence counselor from testifying as to defendant's contacts to the center because they were too remote in time. Trial court did not err in precluding as unqualified proffered defense expert on battering who had been employed as a crisis center counselor and a private counselor to battered women, had taken courses but had no degrees. Concurring opinion understands majority to mean that testimony of a qualified BWS expert may be relevant to a claim of self-defense, describes BWS and its general acceptance, notes that had an expert testified, the excluded contacts by defendant to crisis center would have been relevant.

State v. Middleton, 294 Or. 427, 657 P.2d 1215 (Or. 1983). In prosecution of father for rape of his daughter, trial court did not err in allowing state to present expert social workers to testify about typical behavior of child rape victims.

PENNSYLVANIA

Commonwealth v. Legg, 551 Pa. 437, 711 A.2d 430 (Pa. 1998). Where defendant had homicidal and suicidal ideation two months before she shot her husband, had sought treatment because she could not control her behavior, and suffered from anxiety and depression at the time of the shooting which distorted her perception, impaired her judgment, and made her incapable of forming specific intent, counsel was ineffective for failing to investigate her mental health history and raise a diminished capacity defense. Court rejects counsel's explanation that he relied on an accident defense.

Commonwealth v. Tyson, 535 Pa. 391, 635 A.2d 623 (Pa. 1993) Defendant who previously litigated claims of ineffective assistance based on counsel's failure to request jury instruction and present expert on battering granted post-conviction relief based on intervening *Stonehouse* decision where court's order previously issued could be construed as allowing permission to seek collateral relief with the benefit of the then pending *Stonehouse* decision.

Commonwealth v. Miller, 430 Pa. Super. 297, 634 A.2d 614 (Pa. 1993). Where defendant was convicted of murder of abusive spouse, alleged ineffective assistance based on counsel's failure to present evidence corroborating history of abuse and expert testimony on "battered woman syndrome," court finds the issues have arguable merit and remands for evidentiary hearing. Court analyzes the *Stonehouse* plurality decision and other relevant opinions.

Commonwealth v. Stonehouse, 521 Pa. 41, 555 A.2d 772 (Pa. 1989). Appeal of murder conviction for shooting death of abusive boyfriend; defendant asserted self-defense. Reversed. Counsel was ineffective for failing to request jury instructions requiring the jury to consider the cumulative effects of the psychological and physical abuse defendant suffered when assessing the reasonableness of her fear of imminent danger. Plurality also found counsel ineffective for 1) not requesting instruction to consider cumulative effects of abuse when assessing if sufficient provocation to support voluntary manslaughter and 2) failing to present expert testimony on "battered woman syndrome." Court discusses myths about battered women that an expert could have addressed. Landmark decision on battering and ineffective assistance.

Commonwealth v. Johnson, 285 A.3d 959 (Pa. Super. Ct. 2022). Appeal from denial of post-conviction relief by defendant who plead guilty to participating with abusive partner in planning and executing the murder of third person. Defendant told police about the killing and admitted participating. She plead guilty before written report of mental health expert was completed, which included information that defendant was suffering from "battered woman syndrome" (BWS) at the time of the killing and had no other choice but to cooperate. Affirmed. The fact that report was not completed before entry of plea did not render counsel ineffective. Nor did defendant show that mitigation evidence contained in report would have resulted in a lower sentence.

Commonwealth v. Pitts, 1999 PA Super 247, 740 A.2d 726 (Pa. Super. Ct. 1999), *overruled by Commonwealth v. Cosnek*, 575 Pa. 411, 836 A.2d 871 (Pa. 2003), *overruled in part by Commonwealth v. White*, 589 Pa. 642, 910 A.2d 648 (Pa. 2006). State appeal challenging denial of state's *motion in limine* to preclude defendant from offering evidence of PTSD based on two prior robberies. Defendant sought to support claim he was defending himself when decedent's car pulled up, he thought decedent reached for a gun and fired a warning shot which accidentally hit victim. Court finds that the psychiatric evidence was relevant and probative of defendant's behavior and state of mind, particularly his subjective belief in the need to defend himself. Court compares the evidence to that related to "battered woman syndrome." Note: *Cosnek* case held that *Pitts* court improperly granted Commonwealth's right to appeal denial of *motion in limine* regarding defendant's psychiatric evidence.

Commonwealth v. Kacsmar, 421 Pa. Super. 64, 617 A.2d 725 (Pa. Super. 1992). Appeal by defendant convicted of voluntary manslaughter for shooting his abusive brother, argued that court erroneously precluded expert testimony regarding the history of abuse by decedent and expert opinion that when he shot brother he was in fear of imminent harm. Reversed. The proffered expert testimony would have assisted the jury in evaluating defendant's state of mind and behavior and falls within the reasoning of *Stonehouse*. The reasonableness of defendant's belief of imminent harm due to interplay of factors, such as defendant's need to live at home with decedent, his lack of self-esteem, and the sudden escalation in violence by decedent, were not within understanding of the ordinary juror.

Commonwealth v. McFadden, 402 Pa. Super. 517, 587 A.2d 740 (Pa. Super. Ct. 1991). Appeal from dismissal of post-conviction relief by defendant convicted of aggravated assault for shooting abusive ex-husband in struggle. Defendant claimed accident and self-defense. Vacated and remanded for evidentiary hearing. Defendant's claims that counsel was ineffective for failing to request self-defense and/or accident jury instruction are cognizable under Post Conviction Relief Act. Self-defense charge is appropriate if accidental injury or death occurred within the course of defending oneself. Self-defense charge does not require that defendant admit she fired weapon purposefully.

Commonwealth v. Singh, Girlie, 372 Pa. Super. 512, 539 A.2d 1314 (Pa. Super. Ct. 1988). Defendant convicted of voluntary manslaughter for shooting death of abusive husband. Affirmed. Trial counsel not ineffective for failing to request jury instruction that explained the relevance of decedent's prior violence to defendant's belief deadly force was necessary. Defendant presented evidence of prior violent acts and her resultant fear; she was not prejudiced by omission of instruction.

Commonwealth v. Collazo, 2015 Pa. Dist. & Cnty. Dec. LEXIS 797 (Pa. Common Pleas Ct., Northampton County 2015). Defendant filed for post-conviction relief following guilty plea to first-degree murder of intimate partner. Defendant claimed ineffective assistance because counsel did not call expert witness on battering or advise defendant on the law regarding evidence of battering. Affirmed. Plea waived right to all direct and collateral appeals. On the merits, claim fails because trial counsel hired a

battering expert who said defendant's claims of abuse could not be substantiated. Not pursuing self-defense and battering evidence were valid strategies.

Commonwealth v. Everett, 2016 Pa. Dist. & Cnty. Dec. LEXIS 13 (Pa. Common Pleas Ct., Somerset County 2011), *affirmed by* 145 A.3d 789 (Pa. Super. Ct. 2016). Where defendant did not claim self-defense in shooting death of her girlfriend, she was precluded from presenting testimony on "battered woman syndrome" (BWS) or PTSD. Even if permissible, defense expert was precluded because she was not qualified – she had no specialized knowledge in the field of BWS and/or PTSD.

Commonwealth v. Tressler, 317 A.3d 576 (Pa. Super. Ct. 2024), *Unpublished*. Post-conviction relief properly denied where defendant alleged ineffective assistance for failure to present an expert on "battered woman syndrome." Defendant failed to present expert testimony at the post-conviction hearing. Court also states defendant's trial attorney correctly advised her she would have to admit to the stabbing before she could present a claim of self-defense based on battering.

Commonwealth v. Delvalle, 315 A.3d 101 (Pa. Super. Ct. 2024), *Unpublished*. Appeal by defendant convicted of murder for stabbing abusive husband. Affirmed. Trial court did not improperly limit "battered woman syndrome" testimony by precluding expert from opining how the history of abuse impacted defendant's state of mind. "Although testimony concerning how battered woman's syndrome *could have* affected Appellant's state of mind would have been proper, the court properly prohibited [the expert] from opining on how battered woman's syndrome *would have/or did affect* Appellant's state of mind when she shot victim."

Commonwealth v. Pressley, 311 A.3d 565 (Pa. Super. Ct. 2023), *Unpublished*. Where defendant's battering expert testified that defendant perceived she was in imminent danger of death, trial court abused discretion in declaring a mistrial as the testimony was appropriate and relevant; denial of motion for double jeopardy reversed and appellant discharged.

RHODE ISLAND

State v. Urena, 899 A.2d 1281, 1288-89 (R.I. 2006). Appeal by defendant convicted of manslaughter in stabbing death of abusive partner, asserted self-defense and presented expert on battering. Affirmed. Trial court did not impermissibly shift burden of proof on self-defense to defendant. Though state has burden on self-defense, defense has burden to prove the existence of "battered woman syndrome" (BWS) by a preponderance of evidence. State does not have to disprove the existence of BWS as it does with self-defense.

State v. McMaugh, 612 A.2d 725 (R.I. 1992). Seminal decision. Defendant and abusive husband convicted of conspiracy and murder of third person. Defendant claimed accidental discharge of gun,

complying with codefendant's demand that she fabricate an accident defense when he was the shooter. Post-conviction relief granted. Defendant argued that evidence of battering and husband's extreme control was newly discovered evidence. She claimed she was unable to assist counsel at time of trial; only after she began serving her sentence, and was seen by an expert on battering at behest of post-conviction counsel, was she able to talk about the abuse and assist counsel in her defense. Due to the abuse and control, she was prevented from coming forward with exculpatory evidence that shooter committed the crime.

State v. Ordway, 619 A.2d 819 (R.I. 1992). Appeal by defendant from manslaughter conviction for stabbing abusive husband. Reversed. Prosecutor suggestion when cross-examining defendant, that she had stabbed another man, was prejudicial error not cured by an instruction.

SOUTH CAROLINA

State v. Jones, 416 S.C. 283, 786 S.E.2d 132 (S.C. 2016). State appeal from grant of immunity to defendant charged with murder of abusive boyfriend. After decedent had punched and hit her, defendant stabbed him in her residence believing he was about to hit her again. Affirmed. "Stand Your Ground" Section 16-11-440(C) phrase "another place" was clearly intended to cover one's dwelling. "By using the language 'but not limited to, his place of business,' we find the Legislature intended the protection of subsection (C) to apply to incidents, provided the other requirements are met, without a geographical restriction." Defendant was authorized to invoke the Act as her residence qualified as "another place" under the statute. Court reviews self-defense and immunity cases from other jurisdictions.

State v. Butler, 407 S.C. 376, 755 S.E.2d 457 (S.C.2014). Where defendant was convicted of voluntary manslaughter of abuser, state did not have to disprove self-defense beyond a reasonable doubt at the directed verdict stage. Affirmed.

Robinson v. State, 308 S.C. 74, 417 S.E.2d 88 (S.C. 1992). Appeal by defendant from denial of post-conviction relief for murder conviction for shooting abusive husband while he slept. Affirmed. Counsel was not ineffective for not properly presenting "battered woman syndrome" (BWS) to establish self-defense. Court notes trial occurred six years before this court first recognized BWS as relevant to self-defense claim (*State v. Hill*, 287 S.C. 398, 339 S.E.2d 121 (1986)). Court discusses relationship between BWS and self-defense; states that "unique perceptions of a defendant suffering from battered woman's syndrome are generally compatible with" self-defense law. Court discusses how self-defense elements can be satisfied even though, for example, the battered woman acts when batterer is not physically abusing her.

State v. Hill, 287 S.C. 398, 339 S.E.2d 121 (S.C. 1986). “Battered woman syndrome” (BWS) is a proper subject for expert testimony to help establish a claim of self-defense. Such testimony is relevant as well as highly probative of the defendant's state of mind at the time of the incident. The court holds that the question of admissibility is within the discretion of the trial judge. Opinion expressly clarifies that BWS is not a separate defense.

State v. Grubbs, 353 S.C. 374, 577 S.E.2d 493 (S.C. Ct. App. 2003), *reversed in part on other grounds*, *State v. Wallace*, 440 S.C. 537, 892 S.E.2d 310, 2023 S.C. LEXIS 169 (S.C. 2023). Appeal by defendant convicted of murder for shooting abusive boyfriend. Reversed. Defendant gave conflicting confessions as to whether perpetrator was an intruder or the batterer, at trial maintained it was an intruder, but received self-defense instructions based on prior claims of self-defense, history of abuse. Defense proffered expert on “battered spouse syndrome” (BSS) to help explain inconsistencies but trial court precluded it because not relevant to “intruder” theory of defense. In reversing, court stated: “Precisely because Grubbs’ trial testimony conflicted with her own defense, and the proffered expert testimony was relevant to explain this conflict, the jury was entitled to consider the testimony. . . (citations omitted). The jury needed the expert's testimony to assist it in evaluating Grubbs' state of mind at the time of the shooting. The expert offered testimony that Grubbs' conflicting statements resulted from the syndrome. Without the expert's testimony, the jury had no way of putting the differing versions of Grubbs' statements into context. We find [the expert's] testimony was necessary to assist the jury in understanding the issues involved in the case, and the trial court erred in excluding the evidence.” 353 S.C. at 381. Court also held jury should have been instructed on heat of passion voluntary manslaughter because one of her statements supported the charge despite conflicting statements/testimony.

State v. Wilkins, 305 S.C. 272, 407 S.E.2d 670 (S.C. Ct. App. 1991). Where defendant was convicted of voluntary manslaughter for shooting abusive partner, court held it was reversible error to preclude defendant’s expert testimony on “battered woman syndrome” on the theory it embraced the ultimate issue as state law permits testimony on the ultimate issue. Expert should have been able to opine as to whether defendant believed she was in danger of death or serious bodily injury at the time she fired the shot. The expert’s opinion on state of mind is admissible.

Seay v. State, No. 2019-UP-160, 2019 S.C. App. Unsub. LEXIS 159 (S.C. Ct. App. May 1, 2019), *Unpublished*. Plea counsel was ineffective for failing to ask the sentencing court to consider whether defendant was eligible for early parole per section 16-25-90 of the South Carolina Code (2015) (allowing parole eligibility after the inmate serves one-fourth of prison sentence if she “present[s] credible evidence of a history of criminal domestic violence...”) Counsel introduced a report of battering expert but did not request early parole eligibility. Lower court conflated “battered woman defense” with parole eligibility under the statute.

SOUTH DAKOTA

State v. Diaz, 2016 S.D. 78, 887 N.W.2d 751 (S.D. 2016). Appeal by juvenile of murder conviction for participating with batterer-codefendant in killing of third person; also challenged transfer to adult court. Defendant presented expert testimony on battering, received instructions that jury could use battering evidence to evaluate claim she feared imminent death or serious injury if she did not do the crimes. Affirmed. Trial court did not err in refusing instruction that jury consider battered juveniles have heightened sense of imminent danger. Court adequately instructed on theory of defense, and by referencing a reasonable person in defendant's situation, connected her juvenile status and abuse history.

State v. Weaver, 648 N.W.2d 355 (S.D. 2002). In prosecution of batterer for assault, where victim recanted and tried to get protective order rescinded, trial court did not err in allowing state to qualify and present expert on battering to testify regarding "battered woman syndrome," recantation and why victims resume cohabitation. State did not have expert testify that complainant was a battered woman; expert testimony had a foundation and reliability.

State v. Frazier, 2002 S.D. 66, 646 N.W.2d 744 (S.D. 2002). Where defendant was convicted of kidnapping-murder for participating in murder with abuser, court rejected argument that evidence of her fear of co-defendant and of "battered woman syndrome" essentially outweighed the evidence that she facilitated or participated in the crime.

State v. Burtzlaff, 493 N.W.2d 1 (S.D. 1992). Appeal by defendant convicted of manslaughter for shooting abusive, drunk husband, claimed self-defense. Affirmed. Trial court did not err in precluding expert testimony as to deceased's personality and behavior on night of offense ("psychological autopsy"). Trial court did not err by precluding defense experts from testifying that defendant, in fact, suffered from "battered woman syndrome" (BWS), although they were allowed to testify about BWS and symptoms she possessed. Whether defendant was battered woman goes to ultimate issue jury must decide.

TENNESSEE

State v. Gurley, 919 S.W.2d 635 (Tenn. Crim. App. 1995). Where defendant was convicted of negligent homicide for killing batterer, and jury rejected self-defense, counsel was not ineffective for failing to present evidence of "battered woman syndrome." That defendant was charged with second-degree murder and convicted of negligent homicide speaks to counsel's effectiveness. Court will not second-guess strategic decisions.

State v. Zimmerman, 823 S.W.2d 220 (Tenn. Crim. App. 1991). Appeal by defendant of murder conviction for stabbing abusive husband during struggle, claimed self-defense. Reversed. Trial court erred by denying defendant's motion for new trial based on ineffectiveness of counsel. Trial counsel's efforts were deficient in that mid-trial he peremptorily abandoned agreed defense strategy providing for testimony of defendant, expert on 'battered woman syndrome' (psychologist) and other proof (which he outlined in opening statement). In effect, no evidence was presented by defense. Errors were exacerbated by counsel's recommendation to defendant not to testify. Cumulative effect was to deprive defendant of meaningful defense.

State v. Furlough, 797 S.W.2d 631, 650-51 (Tenn. Crim. App. 1990). Where defendant was convicted of murder of abusive husband, presented expert testimony on battering, trial court erred in not allowing expert to opine as to defendant's perception of fear and danger based on the ultimate issue rule, though error was harmless.

State v. Leaphart, 673 S.W.2d 870 (Tenn. Crim. App. 1983). Although expert testimony was not at issue in this hire-to-kill case, an unnamed defense "psychology expert" "described the 'battered wife syndrome' and the cycle that typically characterizes physically abusive marriages...[and] noted that a spouse caught up in such a cycle may become helpless and psychologically prevented from leaving the relationship."

Thomas v. State, No. W2022-00887-CCA-R3-PC, 2023 Tenn. Crim. App. LEXIS 467 (Crim. App. Nov. 16, 2023). *Unpublished*. Appeal from denial of post-conviction relief by defendant convicted of premeditated murder for killing abusive boyfriend. Affirmed. Counsel's decision not to call defendant's treating psychiatrist who could have testified she had PTSD, and not to present evidence of battering, were informed strategy decisions. "Although introduction of testimony about the Petitioner's traumatic history was another viable trial approach, Counsel felt strongly that self-defense was the better strategy...." Court finds counsel was not deficient for pursuing self-defense rather than presenting a "mental health diagnosis" to explain her conduct. Defendant failed to present evidence of battering at post-conviction hearing; therefore, claim not reached.

State v. Hagerty, No. E2001-01254-CCA-R10-CD, 2002 Tenn. Crim. App. LEXIS 364 (Crim. App. Apr. 23, 2002), *Unpublished*. Pre-trial appeal of denial of funds for battering expert by defendant charged with premeditated killing of batterer. Reversed. Defendant showed a particularized need for an out-of-town expert on battering, e.g., that decedent inflicted a pattern of abuse which could result in PTSD, impair her ability to assess threatening situations and connection between the homicide and PTSD. Defense presented documents and affidavits regarding specifics of decedent's violence against her, qualified expert physician affidavit stating that the abuse could produce PTSD, and attorney affidavit attesting to need. Lower court erred by requiring that defendant show sanity was at issue before appointing expert.

TEXAS

Moreno v. State, 605 S.W.3d 475 (Tex. Crim. App. 2020). In prosecution for aggravated kidnapping where defendant received duress instruction, trial court did not err in precluding expert testimony on PTSD at the guilt phase to prove defendant was more susceptible and affected by threats than an ordinary person. Court reasons that state duress statute contains an objective standard and that reliance on cases involving battering and duress is misplaced.

Lucio v. State, 351 S.W.3d 878 (Tex. Crim. App. 2011). In capital prosecution of woman for death of child, court upholds trial court preclusion of expert testimony on battering to help explain the voluntariness of defendant's statement to police. Court holds that details of testimony are unclear and inconsistent with argument preserved, that testimony regarding battering had little relevance to voluntariness, and any error was harmless.

Fielder v. State, 756 S.W.2d 309 (Tex. Crim. App. 1988). Appeal by defendant convicted of voluntary manslaughter for killing abusive husband. Reversed. Trial court erred in precluding expert testimony by defense battering expert to explain why woman would remain in violent marriage which was relevant to rebut inference that defendant's conduct was inconsistent with fear. Expert testimony was admissible to show reasonableness of her fear that deceased was about to kill her. Expert can offer opinion based solely on hypothetical question posed at trial, and there is no requirement that defendant establish herself to be battered woman by direct expert testimony before testimony on "battered woman syndrome" is admissible.

Brewer v. State, 370 S.W.3d 471 (Tex. App. 2012). In prosecution of batterer for assault, court did not err in admitting state's expert testimony of individual who worked with domestic violence victims. Her inability to cite empirical information did not render her testimony inadmissible. "Texas courts have found expert testimony concerning the dynamics of domestic violence admissible under Rule of Evidence 702. See *Dixon v. State*, 244 S.W.3d 472 (Tex.App.—Houston [14th Dist.] 2007, pet. ref'd) (police officer trained and experienced in family violence permitted to testify as expert on behavior of victims of family violence)²; *Scugoza v. State*, 949 S.W.2d 360 (Tex.App.—San Antonio 1997, no pet.) (holding admissible similar testimony by program services director of county women's shelter describing cycle of spousal abuse, including "honeymoon stage").³ See also *Duckett v. State*, 797 S.W.2d 906, 907 (Tex.Crim.App. 1990) (testimony of "dynamics of intrafamily child sexual abuse"); *Fielder v. State*, 756 S.W.2d 309 (Tex.Crim.App. 1988) (battered wife expert testimony supporting self-defense contention)." *Id.* at 474. *Accord: Harris v. State*, 133 S.W.3d 760 (Tex. App. 2004); *Salinas v. State*, 426 S.W.3d 318 (Tex. App. 2014), *rev'd other grounds*, 464 S.W.3d 363 (Tex. 2015); *Parson v. State*, 193 S.W.3d 116 (Tex. App. 2006) (state's testimony in aggravated assault prosecution); *Runels v. State*, No. 03-18-00036-CR, 2018 Tex. App. LEXIS 9995 (Tex. App. Dec. 6, 2018), *Unpublished*.

Dixon v. State, 244 S.W.3d 472 (Tex. App. 2007). In prosecution of batterer for assault, court did not err in admitting expert testimony of a police officer regarding propensity of domestic violence victims to return to abusers.

Swails v. State, 986 S.W.2d 41 (Tex. App. 1999). Appeal by defendant convicted of capital murder for participating, at the behest of her batterer, in the murder and robbery of a third person, claimed duress and presented expert testimony on battering. Affirmed. Court did not err in admitting into evidence psychiatric reports relied upon by defense expert. Court did not err in refusing duress jury instruction as defendant knew beforehand that batterer intended to rob and kill decedent, and she was alone for a time when batterer went in with a stun gun but did not take the opportunity to leave before batterer called her inside to participate. Good dissent discusses the unreality of expecting her to leave the situation.

Maestas v. State, 963 S.W.2d 151 (Tex. App. 1998). Appeal by defendant convicted of aggravated assault in the killing of a woman. Claimed duress by batterer. Affirmed. Record contained no overwhelming evidence that batterer forced defendant to get knife that killed decedent by threatening her with imminent death or serious injury. Evidence that defendant had “battered woman syndrome” (BWS) was unpersuasive -- expert spoke only to defense attorney, not to defendant, about her relationship with batterer, and testimony was speculative.

Osby v. State, 939 S.W.2d 787, 792 (Tex. App. 1997). Where defendant shot two people who were unarmed and restrained, and where defendant had a means of retreat, court held that self-defense was not raised by the evidence, and therefore introduction of expert testimony on defendant’s state of mind was not relevant. Court rejected defendant’s argument that any time self-defense is raised, the defendant may introduce evidence of state of mind under *Felder v. State*, 756 S.W.2d 309 (Tex. Crim. App. 1988), holding that such evidence can only be introduced under the statute authorizing admission where there is a history of family violence.

Fowler v. State, 958 S.W.2d 853, 864 (Tex. App. 1997). Where defendant was prosecuted for kidnapping and related charges against his wife, court found that state’s expert testimony by a family violence counselor failed to meet admissibility requirements as state failed to show valid scientific theory or technique. Error was harmless.

Richardson v. State, 906 S.W.2d 646, 648-49 (Tex. App. 1995). Where defendant was convicted of manslaughter in shooting death of abusive husband, asserted self-defense and presented expert testimony on battering, court did not err in rejecting proffered defense instruction referencing previous relationship between defendant and decedent where instructions given permitted consideration of all relevant facts and circumstances and previous relationship.

Cox v. State, 843 S.W.2d 750 (Tex. App. 1992). Where defendant and abusive spouse were charged in murder-for-hire scheme, and defense proffered expert on battering to explain why defendant would go along with abuser, court did not err in precluding expert. Defendant testified abuser could not have forced her to participate in the murders and record showed she could control his violence and extricate herself.

Hernandez v. State, 2006 Tex. App. LEXIS 1388 (Tex. App. Feb. 22, 2006), *Unpublished*. Appeal by defendant convicted of murder of abusive husband while he slept. Affirmed. Trial court did not err in denying self-defense instruction since there was no evidence of imminent danger. Counsel was not ineffective for failing to request expert on “battered woman syndrome” since no evidence in record revealed that counsel’s decision was based on lack of finances, as defendant claimed.

UTAH

State v. Sorbonne, 2022 UT 5, 506 P.3d 545 (Utah 2022). Where defendant’s pointing of weapon at his abusive father was unreasonable, court rejected defense argument that it should apply a “modified objective standard or a subjective standard” of reasonableness due to prior violence by the victim as the Tenth Circuit had in *Paine v. Massie*, 339 F.3d 1194 (10th Cir. 2003).

State v. Lucero, 2014 UT 15, 328 P.3d 841 (Utah 2014), *reversed in part other grounds*, *State v. Thornton*, 2017 UT 9, 391 P.3d 1016 (Utah 2017). Where defendant was convicted of child abuse in the death of her son, and gave inconsistent stories about whether batterer was with the child, counsel was not ineffective for failing to present expert testimony on “battered woman syndrome” (BWS) to explain her inconsistencies, her covering for the batterer and why she stayed with him. Presenting BWS testimony would have been one reasonable strategy, but counsel adopted a different reasonable strategy -- that defendant lied to protect the batterer from feared deportation.

State v. Strieby, 790 P.2d 98 (Utah Ct. App. 1990). Where defendant killed abusive partner in midst of violent attack, the manslaughter verdict was against the clear weight of evidence and state failed to prove manslaughter beyond a reasonable doubt.

VERMONT

State v. Connor, 189 Vt. 587, 19 A.3d 146 (Vt. 2011). In prosecution for domestic assault, where defense aimed to attack credibility of complainant, trial court did not err in admitting prior bad acts history of defendant’s abuse toward complainant. Such evidence provided necessary context for reconciling the

alleged assault with complainant's delayed reporting and reluctance to end the relationship, consistent with expert testimony on battering presented by the state.

State v. Charbonneau, 186 Vt. 583, 980 A.2d 279 (Vt. 2009). In assault prosecution, where state presented testimony of investigator as an expert on domestic violence and recantation, fact that investigator misstated qualifications of an instructor of a training program he attended did not warrant new trial.

State v. Laprade, 184 Vt. 251, 958 A.2d 1179 (Vt. 2008). In prosecution for domestic assault, where complainant did not recant but could have been misunderstood for remaining in the abusive relationship, not reporting prior instances of abuse, not calling police right after the assault, and paying defendant's bail, court did not err in admitting state's expert testimony on "battered woman syndrome" (BWS). In conjunction with prior bad acts testimony about the prior abuse defendant perpetrated on complainant, "this is the sort of superficially inexplicable or puzzling behavior that militates in favor of admitting context evidence. In the circumstances presented here, the testimony was probative of [complainant's] credibility...."

State v. Swift, 176 Vt. 299, 844 A.2d 802 (Vt. 2004). In prosecution for domestic assault, jury instruction about abuse victims' remaining in or returning to abusive relationship was reversible error as the state introduced no expert testimony on BWS.

State v. Sanders, 168 Vt. 60, 63, 716 A.2d 11, 13 (1998). Where defendant was convicted of domestic assault against girlfriend, court did not err in admitting defendant's prior bad acts of domestic violence as they were relevant to put victims' recantation in proper context for the jury.

State v. Verrinder, 161 Vt. 250, 259, 637 A.2d 1382, 1388-89 (Vt. 1993). Appeal by Vietnam veteran from murder conviction for killing abusive man, claimed he had PTSD, ;asserted self-defense, defense of others and that he was defending decedent's wife from attacks by decedent. Affirmed. Court did not err in prohibiting defense expert on "battered woman syndrome" (BWS) from testifying that decedent's wife suffered from BWS. Defense expert was permitted to fully explain the nature and characteristics of BWS, giving the jury a reasonable inference as to why the wife failed to seek help or escape from decedent, and defense argued that wife suffered from BWS. While wife's credibility may have been enhanced had expert been able to testify she suffered from BWS, court struck a proper balance between allowing defense rehabilitation of the wife while avoiding inflammatory and irrelevant evidence.

VIRGINIA

Conley v. Commonwealth, 273 Va. 554, 643 S.E.2d 131 (Va. 2007). In child sexual abuse prosecution, state's expert in the diagnosis and treatment of PTSD, a licensed clinical social worker who was authorized to make diagnoses and who had worked in the field, was qualified to testify that the victim had PTSD even though she was not a doctor.

Ward v. Commonwealth, 264 Va. 648, 570 S.E.2d 827 (Va. 2002). In rape prosecution, trial court did not err in allowing a clinical psychologist to testify that the victim suffered from PTSD where the testimony did not comment on the ultimate issue, improperly bolster the victim's testimony, and was not excessively prejudicial.

Taylor v. Commonwealth, 21 Va. App. 557, 466 S.E.2d 118 (Va. Ct. App. 1996). In prosecution for attempted rape, trial court did not err in permitting state's expert, a licensed clinical social worker, to testify that the victim suffered from PTSD. "We hold that evidence of an emotional or psychological injury such as posttraumatic stress disorder, like medical evidence of physical injury, is relevant as circumstantial evidence of the occurrence of a traumatizing event." The expert testimony corroborated that the victim suffered a traumatic event and did not express an opinion on her credibility or on the facts.

Pancoast v. Commonwealth, 2 Va. App. 28, 340 S.E.2d 833 (Va. Ct. App. 1986). Defendant doctor was convicted of forging prescriptions and fraudulently obtaining drugs for her drug-addicted, abusive husband. She argued that because of his coercion, including sleep deprivation, threats, and assaults, she lacked the felonious intent necessary for conviction. A clinical psychologist testified as to the personality traits of both defendant and her husband. Court rejected argument that duress negates criminal intent and instead described it as a defense that a greater harm is avoided by committing a lesser harm. Court then found that there was no threat of imminent death, without discussing whether threats from husband did in fact exceed harm of obtaining drugs by fraud.

Commonwealth v. McDowell, 98 Va. Cir. 448 (Va. Cir. Ct. 2013). Decision on motion in limine where defendant was charged with murder for killing batterer and asserted self-defense. State sought to preclude expert on PTSD and "battered person syndrome" (BPS) on ground it would be "tantamount to an insanity defense" without complying with rules. Defense proffered that expert would testify based on defendant's history of childhood abuse that she suffered from BPS and PTSD, showed traits of hyper-vigilance and hyper-reactivity, and expert would not opine whether defendant subjectively believed she was in danger when she stabbed decedent. Court noted statute allowing evidence of prior abuse (Code §19.2-270.6) and distinguished *Peeples* and *Stamper* cases. "[W]here there is a claim of self-defense, testimony regarding the defendant's state of mind and the circumstances as they reasonably appeared to him at the time are relevant and material. See *Jones v. Commonwealth*, 217 Va. 226, 228 S.E.2d 124 (1976). "[W]hether the danger is reasonably apparent is always to be determined from the viewpoint of the defendant at the time he acted." *McGhee v. Commonwealth*, 219 Va. 560, 562, 248 S.E.2d 808 (1978)." Court held expert testimony was admissible to support self-

defense, but not a *mens rea* defense, so long as it did not usurp function of jury. Court ordered a more refined proffer.

WASHINGTON

State v. Harvill, 169 Wash. 2d 254, 234 P.3d 1166 (Wash. 2010). Where defendant sold drugs to an undercover officer at the behest of a buyer, and claimed he did so out of fear that the buyer would otherwise hurt him or his family due to his knowledge about the buyer, trial court committed reversible error by not instructing the jury on defense of duress on the theory there was no explicit threat to do harm. The duress statute encompasses both explicit and implicit threats of harm.

State v. Williams, 937 P.2d 1052 (Wash. 1997). Appeal by defendant convicted of welfare fraud for failing to report batterer's income. Trial court refused duress instruction on theory that harm to defendant by batterer was not immediate. Reversed. Trial court committed reversible error by failing to instruct on duress. Inquiry in duress claims is directed at defendant's belief of harm and reasonableness of belief; expert testimony on battering helps explain defendant's subjective mental state and the reasonableness of her actions. Reasonableness of her perception of immediacy is a question of fact which must be evaluated in light of her experiences of abuse.

State v. Riker, 123 Wash. 2d 351, 869 P.2d 43 (Wash. 1994). Appeal by defendant convicted of delivery and possession of cocaine who claimed she was under duress by male police informant in light of her history of being abused. Affirmed. Trial court did not abuse discretion by excluding defense expert testimony about “battered woman syndrome” (BWS) to explain defendant's actions with informant as the relationship was outside the typical battering relationship – nonintimate, brief and business oriented.

State v. Ciskie, 110 Wash. 2d 263, 751 P.2d 1165 (Wash. 1988). In a rape prosecution, the court properly allowed the state to introduce expert testimony that the victim of the rape had “battered woman syndrome” to explain why the victim failed to end a violence-filled relationship or report acts of violence to the police. Expert testimony is admissible under evidence rule 702 in the State's case in chief if it would be helpful to the trier of fact where an adult victim was engaged in an intimate relationship with the accused. Dissent suggests that BWS evidence should be inadmissible as a matter of law when it is used as an affirmative weapon against a defendant. Judgment affirmed.

State v. Pascal, 108 Wash. 2d 125, 736 P.2d 1065 (Wash. 1987). Where defendant was convicted of manslaughter for killing abusive partner, court upheld sentence of ninety days, which was below the standard range. Defendant's claims of self-defense and that she suffered from “battered woman syndrome” failed as a defense but could be considered by the court as mitigating factors that

distinguished her conduct from typical manslaughter. The trial court provided sufficient reasons to justify sentencing below the standard range and did not abuse its discretion in setting its duration.

State v. Allery, 101 Wash. 2d 591, 682 P.2d 312 (Wash. 1984). Seminal Washington decision. Appeal by defendant convicted of shooting abusive husband while he lie on her couch in her house in violation of restraining order. Reversed. Instruction on self-defense did not make the subjectivity of the self-defense standard “manifestly apparent to the average juror.” (citations omitted). The instruction was erroneous because it did not instruct the jury to consider the conditions as they appeared to the defendant, considering all facts and circumstances she knew at and prior to the incident (citing *State v. Wanrow*). Court also holds that expert testimony on “battered woman syndrome” (BWS) proffered by the defense was admissible to show the defendant’s fear of imminent danger and explain her counterintuitive behavior, such as why a person suffering from BWS “would not leave her mate, would not inform police or friends, and would fear increased aggression against herself. . . This evidence may have a substantial bearing on the woman's perceptions and behavior at the time of the killing and is central to her claim of self-defense.” Court also finds error in trial court’s failure to instruct that she had no duty to retreat.

State v. Ivy Kelly, 102 Wash. 2d 188, 685 P.2d 564 (Wash. 1984). Appeal by defendant convicted of murder, claimed self-defense and presented expert testimony on battering; state presented evidence of her prior aggressive acts toward decedent and others in rebuttal. Reversed. Expert testimony on “battered woman syndrome” did not constitute evidence of a pertinent character trait; expert did not testify that defendant acted in conformity with character trait but instead testified to aid the jury in assessing self-defense. Even if expert testified about a character trait, the method of rebuttal – by specific instances of conduct – was incorrect.

State v. Wanrow, 88 Wash.2d 221, 559 P.2d 548 (Wash. 1977), *Reversed other grounds (Superseded by statute as stated in Lewis v. Dep’t of Licensing*, 157 Wn.2d 446, 464, 139 P.3d 1078, 1086 (Wash. 2006). Where defendant shot intoxicated, alleged child molester, and had knowledge of his prior sexual abuse of children, court reversed murder conviction based on erroneous self-defense instructions. Instruction limiting facts for the jury to consider to those ‘at or immediately before killing’ is presumed prejudicial. Instructions should tell jury to consider “all facts and circumstances known to defendant, including those known substantially before the killing” in order to determine the reasonableness of defendant’s belief of harm. Also prejudicial to use masculine gender as it leaves impression jury should apply an objective standard of fight between two men.

State v. Moreno, 26 Wash. App. 2d 681, 529 P.3d 431 (Wash. Ct. App. 2023). Where defendant was convicted of manslaughter, counsel was ineffective for failing to request self-defense instructions based on counsel’s incorrect belief that self-defense was not a defense to manslaughter.

State v. Green, 182 Wash. App. 133, 328 P.3d 988 (Wash. Ct. App. 2014). Where defendant was convicted of shooting abusive husband, trial court abused discretion by precluding expert testimony on PTSD and battering, including testimony about her dissociation as part of PTSD, and tendency to accept blame as part of battering. Expert testimony would have explained inconsistencies in defendant's statements to police, including why she initially confessed to the shooting when at trial she claimed the shooting was self-inflicted.

State v. Mannering, 112 Wn. App. 268; 48 P.3d 367 (Wash. Ct. App. 2002). Appeal by defendant convicted of attempted first-degree murder and burglary. Affirmed. Duress is not a defense to attempted murder. Attorney's failure to offer expert testimony regarding defendant's lack of intent and claim of duress were acceptable trial strategies. Even if deficient representation, defendant did not prove prejudice.

State v. Bottrell, 103 Wash. App. 706, 14 P.3d 164 (Wash. Ct. App. 2000). Where defendant was convicted of first degree premeditated murder for killing abuser, trial court committed reversible error by precluding testimony that she suffered from PTSD which was relevant to negate her intent. The testimony was relevant to diminished capacity, and she may have suffered a flashback at the time of her struggle with decedent making her unable to act with intent. Her conviction on felony murder was affirmed because the offer of proof of the PTSD testimony did not address the intent to commit robbery which was relevant to felony murder. The evidence supported that defendant intended to rob decedent before she went to his home, and the killing took place in the course of the robbery.

State v. Whitfield, 99 Wash. App. 331, 994 P.2d 222 (Wash. Ct. App. 1999). In prosecution for assault, exceptional sentence below the standard range upheld where victim provoked the incident.

State v. Hendrickson, 81 Wash. Ct. App. 397, 914 P.2d 1194 (Wash. Ct. App. 1996). Defendant convicted of felony murder after stabbing boyfriend during abusive confrontation. Since defendant did not recall inflicting the fatal blow, trial court excluded defendant's claim of self-defense, precluding both lay and expert testimony about abuse, and found her testimony established only defense of accident. Reversed. Trial court erred in precluding self-defense. Defendant did not assert that fatal blow was accidental, distinguishing it from other cases.

State v. Janes, 64 Wash. App. 134, 822 P.2d 1238 (Wash. Ct. App. 1992). Defendant convicted of second-degree murder for shooting abusive stepfather; claimed self-defense. Reversed. Trial court erred by excluding testimony on battered child syndrome and refusing to instruct jury on the issue.

State v. Hutcheson, 62 Wash. App. 282, 813 P.2d 1283 (Wash. Ct. App. 1991). Defendant appealed denial of motion for new trial for conviction of murder arising from his killing battered woman's ex-boyfriend. Battered woman was codefendant and had a separate trial. Affirmed. New evidence consisting of expert testimony on "battered woman syndrome" presented at codefendant's subsequent trial was

newly discovered and material, but defense failed to show it would probably change result of his trial. Issue here was the intent of the defendant, not that of the battered woman-codefendant.

State v. Hanson, 58 Wash. App. 504, 793 P.2d 1001 (Wash. Ct. App. 1990). Appeal by defendant convicted of murder for shooting abusive boyfriend. Defendant claimed she got the gun for protection and it went off when abuser was shaking her. Affirmed. Trial court error in excluding expert testimony on “battered woman syndrome” (BWS) was not properly before appeals court because defense offer of proof was insufficient in that it did not connect BWS to the question of whether the shooting was accidental or intentional. Expert testimony would have clearly been admissible if defendant claimed self-defense but was not relevant to accident. Court rejects defense argument that expert testimony was relevant despite no claim of self-defense to enhance defendant’s credibility and show that getting the gun was defensive. BWS testimony is not used to show ‘general credibility’ as defendant claims but to help jury understand and evaluate conduct that would otherwise seem strange, like staying in battering relationship.

State v. Walker, 40 Wash. App. 658, 700 P.2d 1168 (Wash. Ct. App. 1985). Where defendant stabbed her abusive husband in the back, defendant did not present evidence sufficient to warrant self-defense instructions; therefore, any error in the instructions given was harmless. Past abuse alone could not justify defendant’s actions, nor could expert testimony on battering. “We do not read *State v. Allery*, supra, which recognized the existence of the “battered woman syndrome,” as establishing that this syndrome is a defense in and of itself. The function of evidence of the battered woman syndrome, offered through expert testimony, is merely to assist the trier of fact in evaluating the reasonableness of both the use of force and the degree of force used in a case involving the recognized circumstances of self-defense. That the defendant is a victim of a battering relationship is not alone sufficient evidence to submit the issue of self-defense to a jury.”

State v. Crigler, 23 Wash. App. 716, 598 P.2d 739 (Wash. Ct. App. 1979). Appeal from conviction of murder after defendant shot and killed estranged boyfriend through locked door as he attempted to enter her home. Reversed. Self-defense instruction directed the jury to find that only acts “at or immediately before killing” would justify the killing. Applying *State v. Wanrow*, the jury is not to be limited to considering only those acts and circumstances occurring at or immediately before the killing. The “gravity of danger” to the defendant must be measured by all circumstances including those which occurred during the months preceding the incident.

WEST VIRGINIA

State v. Surbaugh, 230 W. Va. 212, 227, 737 S.E.2d 240, 255 (W. Va. 2012). Where defendant was convicted of murder for shooting her husband, court correctly refused an instruction on prior abuse

under *State v. Harden*. “While there was certainly evidence of marital discord, there was not sufficient evidence of the alleged threats and abuse requiring the giving of this type of instruction.”

State v. Stewart, 228 W. Va. 406, 719 S.E.2d 876 (W. Va. 2011.) Battered woman shot her abusive husband as he lay in intensive care unit of a hospital. Trial court excluded evidence of history of abuse, including expert on battering, which defendant offered to give context and explain her state of mind. Court reversed, holding that the evidence of battering was essential to her ability to defend, and to negate requisite elements of intent, malice and premeditation. Experts do not need to be able to “diagnose” defendants with BWS for testimony to be admissible; the standard is that they should be able to say if defendant meets the profile of BWS.

State v. Harden, 223 W. Va. 796, 679 S.E.2d 628 (W. Va. 2009). Appeal by defendant convicted of murder for killing unarmed abusive husband as he lay on the couch. Vacated. “[W]here a defendant has asserted a plea of self-defense, evidence showing that the decedent had previously abused or threatened the life of the defendant is relevant evidence of the defendant’s state of mind at the time deadly force was used.” Court also holds that cohabitant has no duty to retreat. Defendant presented sufficient evidence on all elements of self-defense and state failed to disprove self-defense beyond a reasonable doubt.

State v. Riley, 201 W. Va. 708, 500 S.E.2d 524 (W. Va. 1997). Where defendant was convicted of murder for killing abusive spouse, trial court did not err in limiting defense evidence of history of abuse and expert testimony on “battered woman syndrome.”

State v. Wyatt, 198 W. Va. 530, 482 S.E.2d 147 (W. Va. 1996). In prosecution for death of a child where defendant was convicted of failing to provide care after batterer harmed the child, trial court’s restrictions on battering expert were not erroneous. The court ruled that the expert could testify about defendant’s state of mind but not about “battered woman syndrome” as such. Defense opted not to present the expert. While such evidence is generally used in self-defense, it has been used to negate intent, citing *State v. Lambert*, 173 W. Va. 60, 312 S.E.2d 31 (1984). Court outlines how history of abuse could be a factor negating criminal intent if it met Wilt/Daubert standards and anticipates defendant will use expert at retrial.

State v. Lambert, 173 W. Va. 60, 312 S.E.2d 31 (W. Va. 1984). Appeal by defendant convicted of welfare fraud for not reporting her abusive husband’s employment; argued she feared he would kill her if she reported, sought coercion instruction. Reversed. Though coercion instruction offered by defense was not legally unobjectionable, trial court erred in not correcting the instruction and giving it to the jury in proper form. Defendant’s sole defense was lack of intent; uncontradicted evidence of abuse by her husband supported her “vital” coercion defense.

State v. Roberts, No. 13-1049, 2014 W. Va. LEXIS 1091, 2014 WL 5311317 (Oct. 17, 2014), *Unpublished*. Where defendant was convicted in robbery conspiracy with her abusive husband, court did not err in refusing a duress instruction. The trial court admitted extensive testimony and gave a jury instruction on “battered woman's syndrome” (BWS), thereby allowing the jury to consider defendant’s past abuse in determining her state of mind.

WISCONSIN

State v. Stetzer, 2025 WI 34, 417 Wis. 2d 373, 22 N.W.3d 893 (Wis. 2025). Defendant convicted of driving while intoxicated, argued she was under coercion as she drove to escape abuse occurring at the time, presented expert testimony on battering. Affirmed. While defendant established coercion for why she drove to flee abuse, the state disproved the defense because after she started driving, she had other options, including stopping when she passed a police officer on the road. Court holds that, as with self-defense, defendant’s “personal history” is relevant in the context of coercion to determining reasonableness, such as her prior dealings with batterer and with police. The lower court properly concluded that at some point before she was pulled over, her reasonable belief that driving was necessary to escape harm became unreasonable.

State v. Kizer, 403 Wis. 2d 142, 976 N.W.2d 356 (Wis. 2022). Interlocutory appeal by trafficking victim facing murder charges. Court interpreted statute providing affirmative defense if crime was committed as a direct result of trafficking, Wis. Stat. 939.46. “[A]n offense is ‘committed as a direct result of the violation’ of the human-trafficking statutes if there is a logical, causal connection between the offense and the trafficking such that the offense is not the result, in significant part, of other events, circumstances, or considerations apart from the trafficking violation. Additionally, we emphasize that the offense need not be a foreseeable result of the trafficking violation and need not proceed “relatively immediately” from the trafficking violation.” 403 Wis. 2d 142, 154, 976 N.W.2d 356, 362. Court rejected state’s narrower views of causation and explicitly rejected that traffickers must be aware of the conduct or direct it. Applying the rule of lenity, court also held that 939.46(1m) is a complete defense to a charge of first-degree intentional homicide.

State v. Kleser, 2010 WI 88, 328 Wis. 2d 42, 786 N.W.2d 144 (Wis. 2010). Juvenile reverse waiver proceeding. Trial court committed error in granting reverse waiver by 1) substantively relying on defense expert inadmissible hearsay testimony describing juvenile’s account that he had killed decedent out of rage and fear of being raped; 2) allowing defense expert to impermissibly vouch for the juvenile’s account; and 3) denying state expert examination of juvenile after he waived his right to self-incrimination by putting facts of the offense in issue.

State v. Head, 255 Wis. 2d 194, 648 N.W.2d 413 (Wis. 2002) Where defendant was convicted of murder of her abusive husband, was denied admission of evidence of prior abuse and jury instructions on both perfect and imperfect self-defense, court reversed. Trial court erroneously held that both perfect and imperfect self-defense required a threshold showing of objective reasonableness. Imperfect self-defense does not require objective reasonableness but requires actual belief of imminent harm and need to defend. Victim's violent character and past acts of violence can provide factual basis that defendant actually believed she was in imminent danger and that the force used was necessary to defend herself, even if both beliefs were unreasonable. Defendant should have been allowed to present this evidence for purposes of both perfect and imperfect self-defense at trial. Further, her offer of proof established sufficient factual basis for imperfect self-defense instruction, which could have mitigated first-degree murder charge to second degree.

State v. Felton, 110 Wis. 2d 485, 329 N.W.2d 161 (Wis. 1983). Second degree murder conviction of woman who shot sleeping husband reversed. Trial counsel was ineffective for having focused solely on self-defense, being ignorant of statutory heat-of-passion manslaughter defense and failing to give due consideration to defense of not guilty by reason of mental disease or defect. Long discussion of standard for heat-of-passion where there is a history of abuse.

State v. Matthews, 405 Wis. 2d 554, 983 N.W.2d 219 (Wis. Ct. App. 2022). In appeal from denial of post-conviction motion by defendant convicted of murder for killing abusive boyfriend, counsel was not ineffective for stipulating to forgo having the expert testify that defendant's symptoms were consistent with "battered woman syndrome." In exchange, the state agreed not to cross-examine the expert about defendant's inconsistent representations of physical abuse or defendant's review of a book on "battered woman syndrome." The stipulation was not objectively unreasonable and without it, defendant's credibility would have been suspect.

State v. Peters, 2002 WI App 243, 258 Wis. 2d 148, 653 N.W.2d 300 (Wis. Ct. App. 2002). Where defendant was convicted of homicide, court reversed because jury was not instructed on imperfect self-defense pursuant to *State v. Head*.

State v. Mayer, 220 Wis. 2d 419, 422-23, 583 N.W.2d 430, 431 (Wis. Ct. App. 1998). In assault prosecution, where victim recanted version of events she initially told police, court did not err in allowing state to present expert testimony on traits shared by battered women.

State v. Morgan, 195 Wis. 2d 388, 536 N.W.2d 425 (Wis. Ct. App. 1995). Defendant convicted of homicide of third person. Affirmed. Trial court did not err in precluding defense expert on PTSD in guilt phase of trial to show that defendant's act was unintentional. Court distinguished this case from those involving experts on battering. Court also rejected argument that defendant's psycho-social history, including many acts of violence she suffered in the past, should have been admitted in guilt phase.

State v. Schaller, 199 Wis. 2d 23, 544 N.W.2d 247 (Wis. Ct. App. 1995). Where defendant was convicted of sexual assault of his estranged wife, and state presented experts who testified about recantation, minimization and other characteristics, defendant was not entitled to a psychological evaluation of the victim. Even though the experts had met or observed the victim, they did not testify about their meetings or observations.

State v. Richardson, 189 Wis. 2d 418, 525 N.W.2d 378 (Wis. Ct. App. 1994). Where defendant was convicted of homicide in killing of abusive boyfriend, court reversed because trial court should have allowed battering expert to compare characteristics of “battered woman syndrome” (BWS) to defendant, e.g., to give an opinion whether defendant’s behavior and characteristics are consistent with BWS. “The comparison testimony excluded here would have provided a context from which the jury could understand why Richardson might perceive herself to be in imminent danger at the time of the killing and could assess whether such a belief would have been reasonable.” Court also held that expert may not opine on defendant’s state of mind, e.g., whether defendant believed that the danger was imminent or whether that belief was reasonable as that would be a comment on credibility and an opinion about guilt.

State v. Bednarz, 179 Wis. 2d 460, 507 N.W.2d 168 (Wis. Ct. App. 1993). In prosecution for assault where complainant recanted, trial court did not err in allowing state to present expert on “battered woman syndrome” (BWS.) Expert opinion regarding recantation is permissible in domestic abuse cases. Expert's opinion was not rendered irrelevant because expert did not diagnose complainant as person with BWS. There was sufficient evidence of underlying characteristics of each of three stages in cycle of violence to show expert opinion relevant to facts.

State v. Balke, 173 Wis. 2d 306, 498 N.W.2d 913 (Wis. Ct. App. 1992). Appeal by defendant convicted of first-degree reckless homicide while using dangerous weapon for stabbing husband during dispute; claimed accident and self-defense. Affirmed. Trial counsel not ineffective for failing to introduce “battered woman syndrome” evidence. Defendant failed to lay foundation for evidence because she said killing was accidental, not result of prior beatings; relationship was mutually abusive and jury was instructed on self-defense anyway. Counsel not ineffective for failing to call witnesses to support defendant's claims of past abuse; evidence would have been cumulative and not at all helpful to defense.

State v. Landis, 138 Wis. 2d 527, 406 N.W.2d 171 (Wis. Ct. App. 1987). Appeal of murder conviction for shooting abusive boyfriend while he slept, after he made defendant play Russian roulette with loaded gun and would not let her leave; claimed self-defense. Affirmed. Trial court did not abuse discretion by limiting expert testimony to general characteristics of “battered woman syndrome” (BWS) and excluding testimony as to whether defendant fell into that category. Court considered expert's limited contact with defendant, that he had not been asked to diagnose her and was not present when she testified at trial. Defense counsel accepted these limitations; defendant was not prohibited from

presenting a defense -- general symptoms of BWS were put before jury and defense counsel argued to jury similarities of BWS symptoms to defendant's case and conclusions were left to jury to draw.

WYOMING

Thompson v. State, 2018 WY 3, 408 P.3d 756 (Wyo. 2018). In prosecution for assault against his girlfriend, court did not err in allowing state's expert to testify generally about domestic violence victims' counterintuitive behavior such as staying in a relationship, recantation, minimization and denial. State should have first laid a foundation through lay witnesses that victim was battered, but the error was harmless since lay witnesses to the battering testified after the expert.

Dean v. State, 2008 WY 124, 194 P.3d 299 (Wyo. 2008). Appeal by defendant convicted of domestic battery. Complainant recanted at trial and state introduced expert testimony on battering about victim behavior and recantation. Affirmed. Trial court did not err in admitting state's expert as the testimony did not vouch for the credibility of the complainant or impugn the character of the defendant.

Kenyon v. State, 2004 WY 100, 96 P.3d 1016, 1025 (Wyo. 2004.) In prosecution of defendant for murder of his ex-girlfriend and her brother, state's expert testimony about "cycle of violence," and why victims return to abusers was permissible. Court distinguished prior cases that reversed based on admission of state's expert testimony [*Ryan v. State*, 988 P.2d 46 (Wyo. 1999), *Skinner v. State*, 2001 WY 102 (2001)], and held that the expert testimony here was to explain victim's irrational behavior in answer to defendant's assertions he had not battered or kidnapped victim. "An explanation of the victim's conduct is admissible, and to the extent that it describes characteristics of those in the relationship, those references are an integral part of admissible framework evidence and not character evidence."

Chapman v. State, 2001 WY 25, 18 P.3d 1164 (Wyo. 2001). In child sexual abuse prosecution, state's expert testimony that the child had PTSD was properly admitted. The purpose of the testimony was to explain victim behavior, not to prove that the child was sexually abused. Nor did the expert violate the rule against vouching for a witness' credibility as the testimony was on general symptoms common to victims of sexual abuse and how those symptoms related to the victim. That it may have incidentally bolstered the victim's credibility is not error. Court cautioned that great care must be taken when admitting evidence of PTSD in sexual assault prosecutions.

Campbell v. State, 999 P.2d 649 (Wyo. 2000). Appeal by defendant convicted of felony child endangerment for leaving her child alone with her abusive boyfriend and failing to seek medical treatment immediately when the child was covered with burns. Defendant argued that trial court deprived her of the right to present a defense when it refused to instruct the jury on coercion and duress. Affirmed. Since the record did not reflect that defendant faced "present, imminent or

impending death or serious bodily injury," the trial court did not err when it refused to instruct the jury on duress or coercion. Statute permitting evidence of "battered women's syndrome" (BWS) not applicable, as it only applies to self-defense cases.

Trujillo v. State, 953 P.2d 1182 (Wyo. 1998). In prosecution for assault on pregnant girlfriend, trial court properly admitted state's expert testimony which described the characteristics of "battered woman syndrome" including why victim would return to the batterer after horrific abuse.

Witt v. State, 892 P.2d 132 (Wyo. 1995). Appeal by defendant convicted of voluntary manslaughter for shooting abusive boyfriend. Trial court permitted defense expert to testify about "battered woman syndrome" (BWS) generally, the characteristics displayed by defendant, and that she "suffered from BWS," but precluded testimony that defendant believed she was in imminent danger at time of incident. Affirmed. Held, in part, that statute authorizing expert testimony on BWS does not permit such testimony on the accused's state of mind at time of offense. Expert testimony on state of mind would not aid trier of fact since expert has no special knowledge in that area; therefore, such testimony not admissible under evidentiary rule equivalent to FRE 704 allowing testimony on ultimate issue if it would aid trier of fact. Court also upheld trial court's denial of defendant's proffered jury instructions on BWS.

SELECTED SUPREME COURT AND CIRCUIT COURT DECISIONS

Andrew v. White, 604 U.S. 86 (2025). Landmark decision held that gender-based prejudicial testimony can amount to a Due Process violation. Where defendant was sentenced to death for participating with boyfriend in shooting death of her husband, she alleged due process violation by prosecution's repeated references to prejudicial gender-based evidence such as her promiscuity, sex life, dress, underwear, bad mothering, etc. Vacated and remanded. Tenth Circuit erred by holding there was no clearly established federal law governing the due process claim. *Tennessee v. Payne* and other cases establish that the Due Process Clause provides relief for introduction of evidence that is so prejudicial it renders the trial fundamentally unfair. Court remanded to the Tenth Circuit to determine whether, on this record, the improper evidence of gender was so prejudicial as to render the trial fundamentally unfair.

Diaz v. United States, 602 U.S. 526, 144 S. Ct. 1727 (2024) Defendant convicted of importing drugs, claimed her boyfriend tricked her into it and she was unaware there were drugs in her car. Affirmed. Government's expert testimony of a detective that drug couriers usually do not entrust large quantities of drugs to those who don't know they are carrying drugs was properly admitted as it did not opine on

the defendant's mental state and did not run afoul of Rule 704. While the agent could not testify to "absolutes" such as *all* couriers know they are transporting drugs, he could testify that *most* know. As the agent did not opine that defendant knowingly transported drugs, his testimony did not violate Rule 704(b).

Clark v. Arizona, 548 U.S. 735, 126 S. Ct. 2709 (2006). Defendant convicted of murder of a police officer argued that because of his paranoid schizophrenia, including delusions, he lacked specific intent and knowledge that the victim was a police officer. Affirmed. Court upheld Arizona's rule allowing expert psychological or psychiatric testimony to be admitted only on the issue of insanity, not as it bears on *mens rea*, as stated in *State v. Mott*, 187 Ariz. 536 (1997) (expert testimony that defendant suffered from "battered woman syndrome" not admissible to rebut or negate *mens rea* element of knowing and intentional child abuse). Court delineated three categories of evidence. "Observation evidence," as used "in the everyday sense," includes lay or expert testimony about defendant's words, actions or behavioral characteristics, and would be relevant to what was in Clark's mind at the time of the shooting. States can restrict the other two categories, e.g., "mental-disease evidence" (an opinion that the defendant suffers from a mental disease) and "capacity evidence" (regarding "defendant's capacity for cognition and moral judgment"). The Court interpreted the *Mott* decision as restricting only the second and third categories. The Court denied Clark relief because the defense was unclear in delineating objections to restrictions on observation evidence.

United States v. Navedo-Ramirez, 781 F.3d 563 (1st Cir. 2015). Where defendant was convicted of aiding and abetting a drug operation, trial court did not err by excluding defense expert testimony on "battered woman syndrome" as it would not have helped jury to determine whether defendant was under duress or lacked intent. While court agrees testimony on battering in general could be relevant to a claim by defendant that she was forced into criminal activity, in this case defendant's testimony adequately conveyed her claim that she participated out of fear.

Pike v. Guarino, 492 F.3d 61 (1st Cir. 2007). Appeal by Massachusetts state prisoner from denial of federal habeas relief for conviction of murder for participating with abusive husband codefendant in killing of third person. Affirmed. Defendant argued that codefendant coerced her into testifying to a fabricated version of events at trial, and that based on newly discovered evidence of battering and her changed story, she was incompetent to stand trial in the sense of having been unable to communicate facts about abuse to her lawyers. Court upheld lower court finding that although she suffered severe abuse, she was able, through pretrial and trial, to communicate about the abuse to her lawyers and to assist in her own defense. Court also rejected claim that the effects of the abuse and codefendant's coercive control forced her to forgo "asserting battered woman's syndrome as a defense" as any coercion by codefendant did not involve state action.

United States v. Santos, 932 F.2d 244 (3d Cir. 1991). Where defendant was convicted of drug distribution and conspiracy with her abusive codefendant, trial court's failure to define preponderance of the

evidence standard in duress instruction, and failure to instruct that she could establish duress as a result of threats to her children, did not amount to plain error.

Wilson v. Moore, 178 F.3d 266 (4th Cir. 1999). Where defendant was convicted of drug conspiracy with abusive partner and both were represented by the same lawyer, a conflict which defendant expressly waived, court denied federal habeas relief. Court rejected defense claim that she did not knowingly and voluntarily waive her right to separate counsel because she was suffering from “battered woman syndrome” and could not assess whether she should have her own attorney. Defendant failed to present this claim to the state courts in her original request for post-conviction relief, and though she went back to state court to try to present the claim, it was denied without comment. Denial of the federal petition was appropriate because the state courts did not consider the claim on the merits.

United States v. Dixon, 413 F.3d 520 (5th Cir. 2005). Where defendant claimed she was coerced by abusive boyfriend to illegally purchase guns, trial court did not err in precluding defendant’s battering expert regarding the psychological effects of abuse. Most of the expert testimony described defendant’s subjective perceptions and was not relevant to the objective reasonableness standard of duress.

United States v. Willis, 38 F.3d 170 (5th Cir. 1994). Appeal by defendant convicted of drug/firearms offenses. Claimed duress/coercion by abusive boyfriend-co-conspirator and presented evidence of his violent nature and prior abuse. Expert witness (psychologist) was permitted to testify about abuser’s specific acts of violence, defendant’s state of mind, but precluded from testifying in detail about “battered woman syndrome” (BWS). Affirmed. BWS evidence is not relevant to duress defense because duress requires an “objective” determination that person of ordinary firmness would succumb to the coercive force. BWS evidence is “inherently subjective.” Therefore, to consider it in applying test would be “to turn the objective inquiry that duress has always required into a subjective one,” e.g., whether the individual woman “in light of the psychological condition from which she suffers” could have resisted. Court notes this ‘subjective evidence’ is relevant to sentencing (U.S. Sentencing Guideline 5k2.12), but defendant here did not raise it as to sentencing.

Beets v. Collins, 986 F.2d 1478, 1488-89 (5th Cir. 1993) Ineffective assistance of counsel claim denied where defendant never gave her attorney “any hint that she had been abused by previous husbands or boyfriends. Neither [the defendant] nor any other member of her family ever conveyed to [the attorney] any information giving him reason to believe that she had a history of being physically abused.” Also, failure to present such evidence not prejudicial.

United States v. Gordon, 812 F.2d 965, 967 (5th Cir. 1987). Court rejected battered woman defendant’s contention that her statement to authorities was coerced because the nurturing approach of the agents who questioned her effectively coerced her into cooperating. See *United States v. Gordon*, 638 F. Supp. 1120 (W.D. La. 1986) for detailed analysis.

Dando v. Yukins, 461 F.3d 791 (6th Cir. 2006). Appeal by Michigan state prisoner from denial of federal habeas corpus following no contest plea to robbery and related charges arising from crime spree with abusive boyfriend. Reversed and remanded. Defense counsel was ineffective for failing to adequately investigate the availability of a duress defense and for failing to pursue an expert on battering, despite defendant telling him about the long history of abuse and control leading to her forced participation. Counsel's advice that an expert would be too costly was not professional judgment; it was a mistake since the state would have paid. That she received a lenient sentence did not correct the shortcomings at the plea stage. Defendant showed prejudice: With the help of an expert, defendant could have established each element of duress, counsel likely would not have given the same advice, and defendant likely would have rejected the plea.

Bennett v. Brewer, 940 F.3d 279 (6th Cir. 2019). Appeal from denial of federal habeas corpus by defendant convicted of aiding batterer in killing of third person. Affirmed. Defendant argued that trial counsel should have used evidence of battering to shed light on her state of mind and explain her behavior, which would be misunderstood by laypersons. While trial counsel performed deficiently (basing the trial defense on co-defendant's innocence of the crime despite overwhelming evidence of his guilt), the totality of the evidence shows there was no prejudice. The evidence includes facts that undermined defendant's assertion that she did not know of codefendant's plan. While presenting evidence of abuse might have explained her state of mind, it might also have been rejected. Defendant did not meet prejudice standard.

United States v. Lavictor, 848 F.3d 428 (6th Cir. 2017). Where defendant was convicted of sexually assaulting his girlfriend, and victim recanted at trial, trial court properly allowed state to present expert testimony on the dynamics of victim recantation. The expert testimony gave the jury a way to reconcile inconsistencies and weigh her testimony in proper context. Court rejected defense arguments that the testimony was unhelpful and unreliable.

Shimel v. Warren, 838 F.3d 685 (6th Cir. 2016). Appeal from denial of federal habeas relief after state courts denied defendant's motion to withdraw guilty plea to second degree murder of her batterer. Defendant alleged ineffective assistance for failing to investigate battering evidence. Affirmed. Defendant failed to establish prejudice – that she would have gone to trial rather than plead guilty had her lawyer properly investigated the evidence of battering. A reasonable defendant in her place would have accepted the open second-degree murder plea rather than risk a first-degree murder conviction. Even if she would have rejected the second-degree plea, defendant failed to show that expert testimony on battering would have improved her result. Court notes that decedent was shot nine times and that government would have presented evidence defendant reloaded the gun and had financial problems.

Seymour v. Walker, 224 F.3d 542 (6th Cir. 2000). Where defendant was convicted of voluntary manslaughter in the shooting death of her ex-husband, counsel was not ineffective for failing to introduce evidence of “battered woman syndrome” as it was too speculative to conclude such testimony would have changed the outcome. Court notes that at the time of the shooting, defendant was no longer involved in the abusive relationship and that “Seymour herself had acted violently toward [decedent] prior to the shooting.”

Meeks v. Bergen, 749 F.2d 322 (6th Cir. 1984). In federal habeas proceeding, counsel was held not to be ineffective for failing to introduce “battered woman syndrome” expert testimony or to pursue a “battered woman defense” instead of self-defense. Court also rejected claim of ineffectiveness for failing to produce expert testimony on state of mind as no expert testimony was presented at the federal evidentiary hearing and defendant failed to show prejudice. Remarkable demonstration of misunderstanding of evidence of battering as a separate defense.

United States v. Dingwall, 6 F.4th 744 (7th Cir. 2021). Defendant appealed denial of *motion in limine* to present evidence of battering in support of duress defense. Reversed. Defendant committed two robberies while abuser was at work, and a third while he was in the car at the scene but not present inside. Defendant argued duress due to abuser’s severe abuse before demanding she commit robbery and repeated demands for money. District court erred as evidence of battering and its effects “can help inform the factfinder how an objectively reasonable person in her circumstances may behave” and would help jury assess reasonableness of her fear and opportunities to avoid the harm. Court cites evidence of duress including battering expert report explaining how the abuse affected defendant’s perception of viable options. Court surveys federal courts’ treatment of duress and evidence of battering. Court finds that reasonableness inquiry must consider the person’s particular circumstances and rejects a “strict physical proximity test.” Abuser’s beatings in connection with his demanding money from defendant could cause a reasonable person to fear imminent violence and lack reasonable alternatives.

United States v. Young, 955 F.3d 608, 615 (7th Cir. 2020). In federal sex trafficking prosecution, government expert on sex trafficking, who defined terminology and explained common sex trafficking dynamics, was relevant and helpful to the jury.

United States v. Young, 316 F.3d 649 (7th Cir. 2002). In federal prosecution for kidnapping and interstate domestic violence, where victim recanted at trial, trial court properly admitted expert on battering who testified about common behavior of recantation to protect the abuser, and that victim exhibited that behavior. Expert had extensive background in the field and fully reviewed the facts. Court holds that trial court properly applied *Daubert* framework. The expert testimony was helpful to the jury to evaluate victim’s testimony and recantation.

Morgan v. Krenke, 232 F.3d 562, 569-70 (7th Cir. 2000). Grant of habeas relief reversed. Wisconsin courts did not unreasonably apply federal law in deciding that defense expert evidence of PTSD was inadmissible in guilt phase of trial for murder. Such exclusion did not rise to the level of a constitutional violation.

United States v. Madoch, 149 F.3d 596 (7th Cir. 1998). Where defendant was convicted of tax fraud arising from scheme with abusive husband and asserted that she acted out of fear (and therefore lacked intent or acted under duress), court did not commit plain error when it instructed the jury that coercion and duress were not at issue. Court “decline[s] Janice’s invitation to expand the law relating to battered women’s syndrome in this case. We do not mean to minimize the significance of battered women’s syndrome, or to exclude as a matter of law the possibility that some battered women may be able to prove either coercion, duress, or inability to form a specific intent.” Court finds record was not properly developed or points preserved to decide these issues.

United States v. Wysonog, 516 F.3d 666 (8th Cir. 2008). Where defendant plead guilty to possessing pseudoephedrine offense, court determined that a variance from guideline range was justified based on expert testimony about “battered person’s syndrome” and its effects on defendant. Court purported to suspend sentence; defendant argued the court intended to place her on a term of probation. Remanded for resentencing.

Lannert v. Jones, 321 F.3d 747 (8th Cir. 2003). Appeal from denial of federal habeas corpus by defendant who killed her sexually abusive father. Affirmed. Court interprets state statute as requiring self-defense to be an issue in the case before syndrome evidence is admissible. Here, defendant shot her father while he slept, so she was the first aggressor, and could not claim self-defense under state law.

Gumangan v. United States, 254 F.3d 701 (8th Cir. 2001). Counsel not ineffective for failing to explore duress defense to charge of stealing and forging checks since defendant engaged in some transactions without batterer’s knowledge and therefore duress claim unlikely to have succeeded.

Copeland v. Washington, 232 F.3d 969 (8th Cir. 2000). Where defendant was sentenced to death as an accomplice to her abusive husband’s fraud and murder scheme, preclusion of expert testimony on battering at guilt phase was proper since defendant failed to establish legal basis to admit it (mental disease or defect) or comply with procedural requirements. Court vacates death penalty due to prosecutor’s improper, highly prejudicial comments in the face of a weak death penalty claim where defendant was not the shooter and was controlled by abuser-codefendant.

Anderson v. Goeke, 44 F.3d 675 (8th Cir. 1995). Where defendant was convicted of murder arising from a contract killing of her abusive husband, trial court did not violate due process by precluding evidence

of “battered woman syndrome” (BWS) on issue of self-defense, or by failing to instruct the jury on self-defense. Defendant failed to establish a *prima facie* case of self-defense.

United States v. Whitetail, 956 F.2d 857 (8th Cir. 1992). Defendant convicted of second-degree murder for stabbing abuser/boyfriend and sentenced to 108 months; claimed self-defense. Affirmed, remanded for resentencing. Trial court did not err by admitting testimony of defendant's prior bad acts and her reputation for violence with deceased and others. But trial court erred by not considering battering evidence as basis for departing from sentencing guidelines. Jury verdict rejecting self-defense claim did not foreclose consideration of such mitigating evidence.

Arcoren v. United States, 929 F.2d 1235 (8th Cir. 1991). Where complainant testified before federal grand jury that defendant had beaten and raped her but recanted the testimony at trial, trial court correctly permitted prosecution to present expert testimony on “battered woman syndrome.” Court rejects argument that such testimony is only admissible to support a claim of self-defense, reasoning that if the testimony meets Rule 702, it is not material whether offered by prosecution or defense. Expert testimony could help the jury understand complainant’s behavior.

United States v. Lopez, 913 F.3d 807 (9th Cir. 2017). Appeal by defendant after denial of motion for new trial for conviction of purchasing a firearm with false identification for abusive partner. Asserted duress and proffered expert testimony on battering. District court precluded expert testimony but allowed defendant to testify about abuse and instructed on duress. Reversed. Court analyzes elements of duress, concluding that evidence of battering does not transform the objective duress standard into a subjective one, and joining those jurisdictions that recognize evidence of battering is relevant to, and may be admitted in support of a duress defense. Evidence of battering directly buttresses the elements of duress, e.g., whether defendant has a well-grounded fear, reasonable opportunity to escape, the assessment of reasonableness taking into account defendant’s particular circumstances. It is also relevant to rehabilitate defendant’s credibility and explain inconsistencies and counterintuitive behavior. “[E]xpert testimony on BWS is not categorically excludable and may be relevant to a defense of duress.”

United States v. Haischer, 780 F.3d 1277 (9th Cir. 2015). Appeal by defendant convicted of wire fraud, alleged she was coerced by batterer-co-defendant’s abuse which included breaking her leg and having her sign false documents before taking her for medical treatment. The defense asserted duress but abandoned the defense mid-trial and instead asserted that she lacked the *mens rea* of knowledge and intent. The trial court precluded all evidence of abuse, told the jury to disregard it, and gave a deliberate ignorance instruction. Reversed. Preclusion of evidence of abuse was a due process violation. The court explains the difference between duress and absence of *mens rea*. *Id.* at 1283. The evidence of abuse “would have been central evidence in support of Haisher’s *mens rea* defense, particularly in light of the deliberate ignorance instruction.” *Id.*

Clark v. Arnold, 769 F.3d 711 (9th Cir. 2014). See *Clark v. Arizona*, 548 U.S. 735, 126 S. Ct. 2709 (2006). Counsel was not ineffective for failing to preserve arguments on “observation evidence” as defined by *Clark v. Arizona*, 548 U.S. 735, 126 S. Ct. 2709 (2006) (discussed above).

United States v. Munguia, 704 F.3d 596, 603 (9th Cir. 2012). In prosecution for conspiring to possess and possessing pseudoephedrine, knowing or having reasonable cause to believe that it would be used to manufacture methamphetamine, and where defendant claimed she bought the drug at behest of abusive boyfriend, trial court erred by failing to give defendant’s instruction that “reasonable cause to believe” had to be evaluated from the perspective of the defendant, not a hypothetical reasonable person.

United States v. Dowd, 417 F.3d 1080 (9th Cir. 2005). Appeal of conviction for interstate domestic violence. Affirmed. The physical, sexual and psychological abuse defendant perpetrated provided overwhelming evidence that he coerced victim across state lines even though she may have had times where escape seemed possible. Court cites Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 Hofstra L. Rev. 1191, 1208 (1993) (“To negate the impact of the time period between discrete episodes of serious violence -- a time period during which the woman may never know when the next incident will occur, and may continue to live with ongoing psychological abuse -- is to fail to recognize what some battered women experience as a continuing 'state of siege.' ”). Court also gets support from history of Violence Against Women Act. Court holds that, “[W]hen a jury is assessing a victim's opportunity to escape, it is the victim's perspective that counts. The jury must take into account whether a reasonable person in the victim's position would believe she (or he) could effectively escape.”

Depetris v. Kuykendall, 239 F.3d 1057 (9th Cir. 2001). Appeal of denial of federal habeas by California prisoner convicted of murder of abusive husband. Reversed. Trial court’s exclusion of abuser’s diary was constitutional error which went to the heart of the defense, to defendant’s subjective state of mind including her honest belief in the need to kill abuser to save herself, a theory which would have reduced murder conviction to manslaughter under California law. The defense hinged on whether the jury believed defendant’s testimony about her state of mind at the time of the killing. The court not only excluded the journal but also prevented defendant from testifying about its contents. This restriction prevented defendant from testifying fully about her state of mind and corroborating her own testimony. The erroneous ruling violated her due process right to present a defense.

Dillard v. Roe, 244 F.3d 758 (9th Cir. 2001). Where defendant was convicted of assaulting his girlfriend and sought habeas corpus relief, trial court did not err in admitting state’s expert testimony on battering which was necessary for the jury to evaluate credibility of complainant who had recanted. Even if admission of the evidence violated California law, a question not decided, it did not render the trial fundamentally unfair.

United States v. Ramos-Oseguera, 120 F.3d 1028 (9th Cir. 1997), reversed on other grounds, *United States v. Nordby*, 225 F.3d 1053 (9th Cir. 2000), reversed in part by *United States v. Buckland*, 289 F.3d 558 p.568. Where defendant was convicted of participating in drug conspiracy with abusive partner, court did not err in rejecting proffered defense instructions tying duress to the evidence of battering. Court gave general duress instructions.

United States v. Homick, 964 F.2d 899 (9th Cir. 1992). In a wire fraud prosecution, the “battered woman defense” was unavailable to defendant to show she wrote a false affidavit due to the abuser’s control and dominion over her. Court states, “The battered woman defense is a species of the defense of duress. . . .” At the time of the subject phone calls defendant and abuser were in different states. Also, fact that defendant stuck to her version of the contents of the affidavit showed that her participation was not the product of his control.

United States v. Johnson, 956 F.2d 894 (9th Cir. 1992). Court affirmed drug offense convictions but remanded for resentencing, holding that even where complete defense of duress not made out, sentencing court must still consider evidence of duress, including the particular individual’s circumstances and vulnerability to fear. Expert testimony on “battered woman syndrome” is particularly relevant to duress defense (including whether defendant had opportunity to escape), not limited to supporting self-defense claims. Trial court has discretion to adjust downward under sentencing guidelines on basis of “incomplete duress.” Trial court should not have refused downward reduction of sentence because defendants’ acceptance of responsibility was not made until trial.

United States v. Dixon, 901 F.3d 1170 (10th Cir. 2018). Appeal by defendant from conviction of embezzlement and theft from a tribal organization. Affirmed. Defendant argued she was coerced into theft out of imminent fear of sexual abuse by her stepfather, who had sexually abused her for years and withheld financial support unless he moved back into her home. She proffered two battering experts. District court precluded all evidence and jury instruction on duress. Court held that defendant failed to make out threshold showing of duress; specifically, that she had no reasonable legal alternative to violating the law. Court rejected defendant’s argument to view reasonableness through the lens of a person who has been abused for years and now suffers from PTSD, reasoning that the lens must be objective, not the “PTSD distorted lens” of defendant. Court reviewed law on evidence of battering and duress.

Paine v. Massie, 339 F.3d 1194 (10th Cir. 2003). Appeal from denial of federal habeas relief by Oklahoma state prisoner convicted of murder for killing abusive husband. Remanded with instructions. While counsel presented a competency expert psychologist to opine that defendant was in genuine fear when she shot her abuser, counsel failed to present an expert on battering and its effects which was necessary to equip the jury to determine reasonableness under Oklahoma law. That failure was objectively unreasonable and “eviscerated” defendant’s only defense of self-defense. Remanded to give defendant an opportunity to present a battering expert to opine that defendant’s belief in the

need to use deadly force could be considered reasonable based on her circumstances. If an expert so opines, the district court is directed to grant the habeas petition; if not, the petition shall be denied.

McLuckie v. Abbott, 337 F.3d 1193 (10th Cir. 2003). Appeal by Colorado state prisoner from denial of federal habeas petition following conviction of first-degree murder for killing and dismembering her abusive partner. Trial counsel entered a last minute NGRI plea that was denied, then shifted strategy to self-defense but did not call battering expert. Affirmed. Counsel's failure to timely investigate the client's mental state and failure to assert a mental state defense was objectively unreasonable, and Colorado's decision to the contrary, an unreasonable application of federal law. Court upholds finding of no prejudice due to failure to call battering expert and mental health expert, finding that neither expert opined as to insanity or diminished capacity, and battering expert testimony required a foundation of lay evidence not supported by record.

Dunn v. Roberts, 963 F.2d 308 (10th Cir. 1992). Appeal by state from grant of federal habeas relief to Kansas prisoner convicted of aiding and abetting the murder spree of her abusive partner. Habeas grant affirmed. State courts denied defendant due process by rejecting her pre-trial request for funds for an expert on battering necessary to explain the history of abuse and circumstances of her staying with the batterer. Such evidence was essential to the issue of whether defendant was merely present when codefendant committed the murder, or had specific intent to assist him, a necessary element of aiding and abetting.

Burton v. Johnson, 948 F.2d 1150 (10th Cir. 1991). Where defendant was convicted of murder for killing abusive husband, she was denied a fair trial by juror's not disclosing during voir dire her own history of abuse which would have resulted in dismissing the juror for cause.

United States v. Litzky, 18 F.4th 1296 (11th Cir. 2021) Defendant mother convicted of production of child pornography for posing minor girls and sending pictures to abusive partner. Relevant *mens rea* was "knowingly." Defendant proffered expert testimony to negate *mens rea*, which testimony addressed her vulnerability, intellectual disabilities, prior sexual assault, abuse and manipulation by codefendant. Affirmed. District court properly excluded expert testimony. Under the Insanity Defense Reform Act, the defendant was permitted to show she suffered from a mental disease or defect making her unable to appreciate the nature, quality, wrongfulness of her actions, "But that's it: A "[m]ental disease or defect does not otherwise constitute a defense." *Id.* at 1303. The court noted that defendant had expressly disavowed an insanity defense. The expert's opinion was about defendant's vulnerability and did not provide the "link" with defendant's state of mind at the time of the offense. The expert report's "lack of "focus[] on [Litzky]'s state of mind at the time of the allegedly criminal incidents" therefore dooms Litzky's constitutional claim." (*citations omitted.*) Court rejected defendant's argument that her desire to please the batterer negated her *mens rea*, holding that her motive to produce the child pornography is not relevant, and that her proffer was in the nature of

mental disease evidence under *Clark v. Arizona*, 548 U.S. 735 (2006.) Court also held that the evidence was likely to confuse the jury and distract from relevant issues.

United States v. Word, 129 F.3d 1209 (11th Cir. 1997). Where defendant was convicted of conspiring with abusive partner to commit fraud, and government relied on inference that their romantic relationship meant she had knowledge and intent with respect to the fraud scheme, trial court committed reversible error by precluding lay testimony about the history of abuse which was necessary to tell the full story and which the government made relevant. Note that defendant also proffered expert testimony on battering which was properly precluded because the defense had not given proper Rule 12.2 notice.

United States v. Laureys, 432 U.S. App. D.C. 36, 866 F.3d 432 (D.C. Cir. 2017). In a prosecution for coercion or enticement of a minor, and travel to engage in illicit sexual conduct, counsel was ineffective for failing to get a mental health expert. Reversed and remanded for new trial. Counsel tried to retain an expert but the effort was flawed because the attorney pursued his own idea of a diminished capacity defense, losing sight of how the expert could have provided context for understanding defendant's behavior, such as engaging in pedophilic fantasy but not intending to have sex with the child. Defendant was prejudiced by lack of an expert. While defendant testified to his own intent, jurors could have concluded that anyone with such disturbing fantasies clearly intended to have sex with the child. The expert also was necessary to rebut quasi-expert testimony from a detective about the categories of those who similarly chat on the internet.

United States v. Nwoye, 824 F.3d 1129 (D.C. Cir. 2016). Appeal by from denial of motion to vacate conviction of conspiracy to commit extortion. Reversed and remanded. Counsel's failure to present expert testimony on "battered woman syndrome" (BWS) was prejudicial; remand to consider deficient representation prong of ineffective assistance claim. Expert testimony on BWS would have entitled defendant to jury instruction on duress defense, as it would have helped the jury understand the reasonableness of the defendant's actions under the threat of separation violence. Duress instruction and BWS evidence would have created reasonable probability that jury would have had a reasonable doubt about guilt.

United States v. Rouse, 335 U.S. App. D.C. 71, 168 F.3d 1371 (D.C. Cir. 1999). Appeal by defendant of convictions for fraud and money laundering arising out of a scheme headed by her abusive partner. Defendant argued that evidence of battering was newly discovered, as she was only able to reveal it following psychotherapy after the trial. She claimed that she participated in the crime out of fear and abuse and lacked intent. Affirmed. Court upholds district court finding that defendant could have come forward if she chose to do so, and therefore the evidence was not newly discovered. Court notes district court had concerns about the credibility of the claim given its timing, and doubts about the expert's report and testimony.

Horton v. Massie, No. 99-7052, 2000 U.S. App. LEXIS 1232 (10th Cir. Jan. 31, 2000), *Unpublished*. Appeal from denial of federal habeas petition by defendant convicted of conspiring with her abusive husband and others to kill a third person. Reversed. Trial counsel was ineffective for failing to request duress instruction as defense to kidnapping and murder charges where defendant testified that, under threat of being shot by batterer, she complied with his instructions to drive decedent to location where batterer killed him. The fact that defendant was in physical control of car when she drove victim to location of the murder did not negate the defense.

SELECTED FEDERAL DISTRICT COURT DECISIONS

United States v. Jackson, 535 F. Supp. 3d 809, 816-18 (N.D. Ind. 2021). In sex trafficking prosecution, court denied defense motion to exclude government expert on dynamics of trafficking. The proposed testimony on trafficking, a subject foreign to laypeople, would help the jury assess the victim's credibility, understand trafficking and exploitation dynamics, decide whether victim was coerced, and place her testimony in proper context. Court discusses similar testimony allowed in other cases.

United States v. Thompson, 544 F. Supp. 3d 1159 (D.N.M. 2021). In federal robbery prosecution, court precluded defense expert testimony that defendant's PTSD and suggestibility made him more susceptible to coercion by his co-defendants. The court held that the defendant's subjective mental state and "PTSD-distorted lens" were irrelevant to objective standard of duress under the Tenth Circuit decision in *US v. Dixon*. The expert testimony was not analogous to expert testimony on battering as it lacked historical context – defendant had met his codefendants just prior to the incident. Court also ruled that proposed testimony would violate Insanity Defense Reform Act. Court stopped short of precluding any evidence of defendant's mental health as such evidence could be admitted to rebut specific intent.

Bachynski v. Warren, 96 F. Supp. 3d 680 (E.D. Mich. 2015). Appeal from habeas denial by defendant convicted of murder home invasion with abusive partner. Trial court's exclusion of expert testimony on "a condition similar to Stockholm Syndrome" and "a theory similar to battered woman syndrome" was not erroneous, as it did not prevent defendant from presenting her duress defense. Habeas granted on other grounds.

Johnson v. United States, 860 F. Supp. 2d 663 (N.D. Iowa 2012). Defendant convicted as an aider and abettor of murder in furtherance of a continuing criminal enterprise and sentenced to death. Defendant alleged the failure to present evidence of "battered woman's syndrome" (BWS) to explain the relationship between defendant and decedent was ineffective. Defendant asserted the evidence would have refuted the prosecution theory that her motive for killing him was revenge for the beatings he inflicted and would have bolstered the mitigating evidence of mental health. Court finds counsel

represented defendant deficiently in the mitigation phase by not confronting the “revenge” theory with evidence of BWS which was especially relevant to penalty of death as compared to that of the actual shooter who got life. The deficiency was prejudicial as evidence from a credible defense expert about defendant’s state of mind at the time of the murder would have cast serious doubt on the prosecution’s revenge theory as a basis for distinguishing between defendant’s death sentence and the shooter’s life sentence.

Costin v. United States, 588 F. Supp. 2d 280, 287 (D. Conn. 2008). Where defendant plead guilty to conspiracy, wire fraud, and willful failure to file tax return, counsel was not ineffective for advising her to plead guilty to a twenty-seven month sentence and failing to argue diminished capacity based on her mental capacity and history of abuse. “Costin has not evidenced that the abuse she describes by her ex-husband significantly impaired her ability to understand the wrongfulness of her behavior, nor that the abuse contributed substantially to the crimes she committed.” Defendant also failed to prove the plea was unknowing and involuntary as she presented no evidence she was not competent at the time, or that the battering would have affected her ability to knowingly and voluntarily plead.

United States v. Brown, 891 F. Supp. 1501, 1510 (D. Kan. 1995). Defendant convicted of drug crimes moved for new trial based on newly discovered evidence of battering by abusive husband-co-defendant. Defendant presented expert on battering who opined she participated out of fear, and lay witness who described the abuse. New trial granted. Expert testimony would assist the jury by supporting defense of compulsion and explaining her acts and state of mind. Evidence of battering could not have been discovered with diligence before trial. According to the expert, “it is the nature of [defendant’s] illness to conceal its existence.” Defendant never told her attorney of the abuse which is “in accord with symptoms of the syndrome.” Not until her relatives contacted the attorney post-trial did he learn of the abuse and had no prior reason to suspect abuse could aid in her defense. Therefore, defendant showed diligence, and the evidence was more than impeaching and cumulative.

United States v. Marengi, 893 F. Supp. 85 (D. Maine 1995.) Seminal decision on the use of evidence of battering and its effects in a drug case on theories of both negating intent and supporting duress. The court reviews pre-Insanity Defense Reform Act federal cases and concludes that the Act did not preclude defendant from presenting evidence to negate mens rea. “The consensus of the decisions of these federal courts is that the presentation of evidence to negate the presence of mens rea does not constitute a “defense” since it merely negates an element of the offense. *Id.* at 89. “[T]he IDRA does not preclude the admissibility of psychiatric evidence to directly negate mens rea. *Id.* Court engages in excellent analysis of evidence of battering as relevant to duress, surveying other jurisdictions, refusing to adopt a rule barring duress, comparing admissibility of battering evidence to support self-defense. Court holds there is not enough information from the pleadings and directs the defense to file offer of proof.

United States v. Taylor, 820 F. Supp. 124 (S.D.N.Y. 1993). Where defendant was charged in bribery scheme, offered expert testimony on battering and expressly declined to rely on Rule 12.2, court ruled it would allow expert testimony to explain defendant's failure to recall incriminating statements if government attacked her credibility on that point.

U.S. ex rel. Falconer v. Lane, 720 F.Supp. 631 (N.D.Ill. 1989). Writ of habeas corpus by defendant convicted of stabbing abusive husband. Habeas petition granted. Instructions were constitutionally infirm since they deprived defendant of affirmative defenses to murder and shifted burden. They failed to adequately inform the jury that if it found an unreasonable belief of justification, or serious provocation, it could convict only of manslaughter, not murder, and that state had burden to disprove affirmative defenses beyond a reasonable doubt.

United States v. Wilson, No. 3:24-239, 2025 LX 583370, 2025 LX 583370, 2025 WL 3204542 (M.D. Pa. Nov. 17, 2025), *Unpublished*. Pre-trial ruling granting government motion to exclude defense expert psychologist from testifying about defendant's PTSD. The PTSD evidence does not constitute insanity or negate the *mens rea* for voluntary manslaughter and is therefore inadmissible. PTSD likely supports an explanation (heat of passion) but not a negation. Court rejected analogy to cases involving battered women in that here defendant was not defending against a batterer but a more general perceived threat. The PTSD evidence would also confuse or mislead the jury and is irrelevant to the objective standard of self-defense.

Nobles v. Davis, No. 19-10607 (RMB), 2022 U.S. Dist. LEXIS 51978, 2022 U.S. Dist. LEXIS 51978, 2022 WL 861850 (D.N.J. Mar. 23, 2022), *Unpublished*. Where defendant plead guilty to aggravated manslaughter for stabbing her abusive husband, counsel was not ineffective for failing to explain how "battered woman's syndrome" related to self-defense, thereby preventing a voluntary and knowing plea. The record showed that counsel retained an expert on battering, went over the report with defendant, and the expert report did not draw definitive conclusions. Nor did defendant prove counsel was ineffective at sentencing as counsel argued for mitigation based on the prior abuse.

United States v. Barrero, No. 6:17-cr-00426-JMC, 2022 U.S. Dist. LEXIS 137029, 2022 WL 3030752 (D.S.C. Aug. 1, 2022), *Unpublished*. Where defendant was convicted of conspiring with abuser in drug distribution conspiracy resulting in death, court rejected claims of ineffective assistance based on a knowing and involuntary plea where counsel failed to advise her of available defenses and to get an expert on PTSD and battering. Defendant claimed the expert testimony was relevant to defenses of insanity or duress, but both defenses were unfounded.

Botello v. Lumpkin, Civil Action No. 4:21-cv-0940-O, 2022 U.S. Dist. LEXIS 144251, 2022 U.S. Dist. LEXIS 144251, 2022 WL 3348604 (N.D. Tex. Aug. 11, 2022), *Unpublished*. Where defendant and abusive boyfriend were convicted in beating death of child, counsel was not ineffective for failing to employ an expert to testify that defendant "suffered from battered woman syndrome" to explain her inaction in

protecting the child. Court reasons that the defense was duress, expert testimony would have undercut that defense and was not outside the realm of reasonable trial strategy.

Smalls v. Kaplan, 2018 U.S. Dist. LEXIS 249016 (N.D.N.Y. 2018), *Unpublished*. Appeal from denial of habeas relief after guilty plea to first-degree manslaughter of intimate partner. Claims included ineffective assistance because attorney did not inform defendant of New York's alternative sentencing for survivors, which made defendant's plea not knowing. Affirmed. Attorney's decision not to pursue alternative sentencing was strategic and reasonable, and defendant was not constitutionally required to be informed of alternative sentencing that may have cut into her plea deal. Plea was knowing because defendant was aware of her sentencing possibilities, as alternative sentencing was not guaranteed to change sentencing possibilities. Additionally, petitioner's habeas claims were unexhausted.

Mott v. Stewart, 2002 U.S. Dist. LEXIS 23165 (D. Ariz. 2000). *Unpublished*. Federal habeas relief granted where state court precluded defense expert on battering who would have provided alternative explanation for why defendant left her child alone with known batterer, and other commissions and omissions the state used to prove she acted intentionally with respect to child abuse resulting in death. Expert testimony would have negated state's evidence of specific intent by providing alternative explanations; preclusion violated due process and her right to present a defense. Though state could constitutionally preclude the evidence if offered for diminished capacity, that did not warrant preclusion for all purposes. State could not justify exclusion based on efforts to limit insanity defense; insanity defense is a separate issue from defendant's right to present alternative explanations for her conduct that challenge proof of intent. But see, *Clark v. Arizona*, 548 U.S. 735 (2006) (Arizona rule in *State v. Mott*, 187 Ariz. 536 (1997) did not offend due process.)

United States v. Gaviria, 804 F. Supp. 476 (E.D.N.Y. 1992). Evidence of life history of abuse and severe abuse by husband-codefendant who was primarily responsible for drug offenses, plus psychiatrist testimony that defendant was suffering effects of the abuse and coercion at the time of drug offenses, warranted downward departure of sentencing guidelines to mandatory minimum.

Lopez-Correa v. United States, 537 F. Supp. 3d 169 (D.P.R., 2020). Federal habeas motion to vacate conviction following guilty plea to aiding and abetting abusive partner in producing child pornography. Granted, conviction vacated. Defendant established freestanding and gateway actual innocence claims because she did not have requisite *mens rea*, and counsel was ineffective. Court cites evidentiary record at length, including defendant's mental health during plea period, lifetime history of trauma and abuse, and severe abuse and control to which codefendant subjected her throughout the relationship culminating in the instant offense. Court cites reports of battering and mental health experts. As a result of the abuse and control, defendant lacked specific intent to record the sexual acts and did not share co-defendant's gratification. Nor did she have criminal intent to aid and abet co-defendant's crime. Counsel was ineffective for advising her to plead guilty when she

lacked mental competency and *mens rea*, and for not pursuing duress defense or the evidence of battering.