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Battered Woman's Syndrome: Setting a Standard in Florida

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BATTERED WOMAN'S SYNDROME: SETTING A STANDARD IN FLORIDA

SARA M. SANDLER*

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I. INTRODUCTION

Domestic violence is an epidemic that defies classifications of race, ethnicity, age, class, and religion. It spans state lines, oceans, and international boundaries. Unfortunately, the cure for this external disease is unknown and out of reach, as many of those who suffer from it deny or hide their symptoms. In recent years, the legal world has done much to combat domestic violence by enacting statutes and case law to protect those who are victimized by abuse and even those who finally find the courage to turn on their attackers and end the violence forever.

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The federal government has begun to do its part in the battle against domestic violence. As part of the Violence Against Women Act of 1994, Congress enacted sections 2261 and 922 of Title 18 of the *United States Code*.¹ Section 2262(a)(1) makes it illegal for persons with an order of protection against them to cross state lines with the intent to threaten, harass, or commit violence against whomever the order protects.² Section 2262(a)(2) further makes it a crime for persons with an order of protection against them to use force, coercion, or fraud to induce the protected person to cross state lines in order to cause violence against the protected person.³ This statute undoubtedly applies to an intimate partner.⁴ Thus, a battered woman who is able to obtain an order of protection against her batterer would gain further protection through federal law. Section 922(d)(8) prohibits the sale and possession of firearms or ammunition to people with a restraining order against them.⁵ This prevents them from threatening, harassing, stalking, or assaulting an intimate partner⁶ and thus provides further federal protection to a battered woman.

Individual states are also beginning to take a stand on punishing those who commit violence against their spouse or significant other. Currently, “[a]ll [fifty] states now have statutes that make spousal abuse a crime.”⁷ Further, Maryland,⁸ Missouri,⁹ and South Carolina¹⁰ have actually enacted

1. Douglas A. Orr, *Weiand v. State and Battered Spouse Syndrome: The Toothless Tigress Can Now Roar*, 74 FLA. B.J. 14, 16 (June 2000).

2. 18 U.S.C. § 2262(a)(1) (2000).

3. *Id.* § 2262(a)(2).

4. Orr, *supra* note 1, at 16.

5. 18 U.S.C. § 922(d)(8).

6. *Id.* This section of the *United States Code*, however, only applies to restraining orders that have been received following a hearing where actual notice was received, where there was an opportunity to participate, and when either: 1) there has been a finding of a credible threat to the safety of the intimate partner; or 2) the terms of the restraining order “explicitly prohibit[] the use, attempted use, or threatened use of physical force against such intimate partner.” *Id.* § 922(d)(8)(A)-(B).

7. Orr, *supra* note 1, at 16.

8. MD. CODE ANN., CTS. & JUD. PROC. § 10-916(b)(2) (LexisNexis 2006). When the defendant claims that they suffer from Battered Woman’s Syndrome, the Maryland statute permits “[e]xpert testimony on the Battered Spouse Syndrome” in order to explain “the defendant’s motive or state of mind, or both, at the time of the . . . alleged offense.” *Id.*

9. MO. ANN. STAT. § 563.033(2) (West 1999). This statute authorizes Missouri courts to appoint a psychiatrist or psychologist to perform an examination of the accused once the accused files a written notice of his or her intent to introduce evidence of Battered Woman’s Syndrome. *Id.* Though the statute does not explicitly allow for the testimony of the expert witness, Missouri courts have interpreted the statute to mean that as long as there is “a prima facie showing of the elements of self-defense” expert testimony on Battered Woman’s Syndrome is admissible. See *State v. Anderson*, 785 S.W.2d 596, 599–600 (Mo. Ct. App. 1990).

statutes authorizing the use of expert testimony regarding Battered Woman's Syndrome. Florida has enacted tougher laws for abusers, such as section 741.2901(3), which requires that a defendant arrested for domestic violence remain in custody until his or her first appearance, and that when determining bail, the court must take into consideration the safety of the victim.¹¹ Though this may seem minimal, it provides a cooling off period for both the abuser and the victim, which significantly reduces the amount of potential violence after arrest. The Florida judiciary has also reorganized itself so that there are now eight domestic violence courts.¹² Furthermore, over half of the judicial circuits have incorporated a domestic violence task force.¹³ In addition, "Florida judges, both circuit and county, receive education and training that specifically address domestic violence related issues."¹⁴

Thus, it is clear that both state and federal governments are beginning to adopt changes to encourage the awareness and prevention of domestic violence. However, "it is believed that most incidents of physical abuse of women by their mates are never reported to authorities."¹⁵ Unfortunately, there is not much that can be done to encourage women to take legal action against their abusers. Nor is there much that can be done to permanently get rid of this terrible problem faced all over the world due to its inherent nature to remain a private matter. However, there is something that can be done legally to help those victims who are forced to resort to extreme measures to protect their lives. Currently, Florida allows for the use of expert testimony on Battered Woman's Syndrome as part of a self-defense claim to murder.¹⁶ This has helped numerous battered women defendants explain to the jury why they chose to kill their abuser instead of leave him. However, expert testimony, if used to testify specifically regarding the individual defendant, as opposed to Battered Woman's Syndrome in general, is based solely on the testimony of the defendant.¹⁷ Thus, Florida falls short in establishing a stan-

10. S.C. CODE ANN. § 17-23-170(B) (2003). The South Carolina statute explicitly states that expert testimony on Battered Woman's Syndrome should "not be considered a new scientific technique the reliability of which is unproven." *Id.* (emphasis added).

11. FLA. STAT. § 741.2901 (2006).

12. Orr, *supra* note 1, at 16.

13. *Id.*

14. *Id.*

15. Jimmie E. Tinsley, *Criminal Law: The Battered Woman Defense*, 34 AM. JUR. PROOF OF FACTS 2D § 2 (1983).

16. See *Rogers v. State*, 616 So. 2d 1098, 1100 (Fla. 1st Dist. Ct. App. 1993).

17. See *State v. Hickson*, 630 So. 2d 172, 176-77 (Fla. 1993). The Court held that if a defendant chooses to present expert testimony based on the facts of her specific case, then the State may also have its own expert examine the defendant. *Id.* The court does not mention an opportunity for either expert to take into account evidence or testimony other than the defendant's. *Id.* Thus, the experts' determination as to whether the woman suffers from Battered

dard for the jury to relate the actual evidence presented at trial with determining whether the defendant does in fact suffer from Battered Woman's Syndrome and whether she should be allowed to use the syndrome as part of her self-defense claim.

This article will begin by giving a brief overview of Battered Woman's Syndrome as developed by Dr. Lenore E. Walker and its emergence into the courtrooms. It will summarize the psychological theory of learned helplessness¹⁸ and the "cycle theory of violence,"¹⁹ as well as give a general depiction of the battered woman, as described by Dr. Walker.²⁰ The third part of this article will give a history of Battered Woman's Syndrome in the courtroom by explaining its legal use as an impaired mental capacity defense and the more recent use of Battered Woman's Syndrome in conjunction with a self-defense argument. This note will more specifically discuss the definition of "imminent" as it pertains to the legal definition of self-defense and as it pertains to the battered woman. Next, this article will discuss Florida cases that have addressed Battered Woman's Syndrome and their effect on expert testimony as well as their impact on the duty to retreat. The fifth section of this note will suggest what Florida can do to set a standard for the use of Battered Woman's Syndrome in the courtroom by setting up a three-pronged test, based on the length of abuse, the severity of abuse, and the battered woman's opportunity to flee, to be used to determine whether a woman should be allowed to incorporate Battered Woman's Syndrome into her defense. Finally, this article will conclude by discussing the impact the three-pronged test would have on using Battered Woman's Syndrome in conjunction with a self-defense argument, its impact on expert testimony regarding Battered Woman's Syndrome, and the impact the test would have on Florida courts.

Woman's Syndrome is based only on the accused's account of the relationship. This leaves ample room for a defendant to exaggerate, or possibly lie altogether, about the facts of her allegedly abusive relationship.

18. See LENORE E. WALKER, *THE BATTERED WOMAN* 42–54 (1979).

19. See *id.* at 55–70.

20. *Id.* at 31.

II. DEFINING BATTERED WOMAN'S SYNDROME

Despite the reference to a “constellation of medical and psychological conditions,”²¹ Battered Woman's Syndrome is a type of Post-Traumatic Stress Disorder, not a form of mental illness.²² There are four general characteristics of Battered Woman's Syndrome:

- 1) The woman believes that the violence was her fault, 2) The woman has an inability to place the responsibility for the violence elsewhere, 3) The woman fears for her life and/or her children's lives, and 4) The woman has an irrational belief that the abuser is omnipresent and omniscient.²³

Dr. Walker describes nine common characteristics of a battered woman including: low self-esteem; a belief in the “feminine sex-role stereotype;” accepting responsibility for her abuser's actions; suffering from severe stress reactions; and a belief that no one is able to help her get out of her abusive situation.²⁴ Certain characteristics, like low self-esteem and the belief in a stereotypical female role, make it easier to fall into an abusive relationship, while characteristics such as accepting responsibility and a belief that no one can help, make it easy to remain in an abusive relationship. Taken as a whole, such qualities push a battered woman into what Dr. Walker describes as “learned helplessness,” and from there, the battered woman experiences an endless cycle of violence.²⁵

A. *Learned Helplessness*

Learned helplessness stems from the principle of the learning theory, which is based on the way a person reacts to the outcomes of his or her voluntary responses to his or her environment.²⁶ For example, if a voluntary response changes the circumstances of a situation or creates a positive outcome, a person is likely to repeat that response, which is known as reinforcement.²⁷ Once a person expects that a certain response will produce a

21. BLACK'S LAW DICTIONARY 162 (8th ed. 2004).

22. Judge Jay B. Rosman, *The Battered Women Syndrome in Florida: Junk Science or Admissible Evidence?* 15 ST. THOMAS L. REV. 807, 810 (2003).

23. *Id.* (quoting WALKER, *supra* note 18, at 95–96).

24. WALKER, *supra* note 18, at 31.

25. *Id.* at 43.

26. *Id.* at 44.

27. *Id.*

specific outcome and that outcome is in fact achieved, that person feels as though he or she has control over that situation.²⁸ However, when a person expects a certain outcome to occur through a certain response and that outcome does not occur, a person often needs an explanation as to why his or her expected outcome was not achieved.²⁹ If no explanation can be offered, after time, the person assumes he or she has no control over the outcome and learns what types of things he or she does and does not have control over in his or her environment.³⁰ According to the learning theory, once a person realizes that they are not in control of certain situations, they will lose motivation to respond to those situations, even if they are later able to make changes that will affect the outcome.³¹ Applying the learning theory to battered women, learned helplessness is the theory to which some victims of recurring abuse will eventually succumb.³² This is based on the notion that they cannot change their abusive situation and instead become subservient in order to reduce incidents of violence.³³

There are three basic components to the learned helplessness theory: “information about what will happen; thinking or cognitive representation about what will happen, . . . and behavior toward what does happen.”³⁴ It is the second component that leads to emotional disturbances, as this is where a person develops their expectations and beliefs as to what outcomes should occur.³⁵ The key difference between those who react with the learned helplessness response and those who do not stems from the person’s actual beliefs and expectations as to what they have control over.³⁶ If a person does not have control over a situation, but believes that he or she does have control, that person’s behavior will not be affected.³⁷ However, if a person does in fact have control, but believes that he or she does not, they will respond with a learned helplessness reaction.³⁸ Thus, once a battered woman believes she has no control over her abusive situation, she becomes “helpless.”³⁹ She allows what she believes to be out of her control to actually be-

28. *Id.*

29. WALKER, *supra* note 18, at 45.

30. *Id.*

31. *Id.*

32. Erin M. Masson, Annotation, *Admissibility of Expert or Opinion Evidence of Battered-Woman Syndrome on Issue of Self-Defense*, 58 A.L.R.5TH 749, 762 (1998).

33. *Id.* at 762–63.

34. WALKER, *supra* note 18, at 47.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. WALKER, *supra* note 18, at 47.

come out of her control, and learns to expect the abuse as a way of life, over which she has no influence.⁴⁰

B. *Cycle Theory of Violence*

Through her studies, Dr. Walker found that “[b]attered women are not constantly being abused, nor is their abuse inflicted at totally random times.”⁴¹ Instead, she found that there was a “definite battering cycle” consisting of three distinct phases: the tension-building phase, the acute battering incident, and the contrition phase.⁴² The tension building phase is “a gradual escalation of tension during which the batterer displays hostility and dissatisfaction and the woman attempts to placate him.”⁴³ The woman resorts to denial and “rationalizes that perhaps she did deserve the abuse,” and she will begin to minimize the incident because she knows her batterer is capable of doing much worse.⁴⁴ During the acute battering incident, “the batterer explodes into uncontrollable rage [which is] often out of proportion to the situation.”⁴⁵ The trigger for this phase is rarely because of any act by the battered woman; instead, it is usually an outside event or the man’s internal state.⁴⁶ There are times, however, when the woman will provoke this second phase because she knows it is inevitable and cannot tolerate her anxiety and terror in waiting for the explosion to occur.⁴⁷ Further, she knows that once phase two is over, the third phase of peace will occur.⁴⁸ This third phase, the contrition phase, is characterized by remorse and promises by the batterer to end the abuse.⁴⁹ This phase may also be considered the “honeymoon” phase due to the calm, loving respite.⁵⁰ Of course, despite numerous promises that the abuse will never again occur, it is inevitable that the cycle will begin anew.⁵¹ This cycle has helped to explain how battered women become victims, how they succumb to learned helplessness behavior, and, more importantly, why they continue to remain in their abusive relation-

40. WALKER, *supra* note 18, at 47.

41. *Id.* at 55.

42. *Id.*

43. D. KELLY WEISBERG & SUSAN FRELICH APPLETON, *MODERN FAMILY LAW: CASES AND MATERIALS* 368 (2d ed. 2002).

44. WALKER, *supra* note 18, at 56–57.

45. WEISBERG & APPLETON, *supra* note 43, at 368.

46. WALKER, *supra* note 18, at 60.

47. *Id.*

48. *Id.*

49. WEISBERG & APPLETON, *supra* note 43, at 368.

50. Rosman, *supra* note 22, at 809.

51. WEISBERG & APPLETON, *supra* note 43, at 368.

ships.⁵² Before she can be labeled a “battered woman,” a woman must experience at least two complete battering cycles.⁵³ Dr. Walker has been unable to estimate the length of each phase or the amount of time it takes to complete an entire cycle, although she has found that certain events and life stages can have an influence on their timing.⁵⁴

III. A HISTORY OF BATTERED WOMAN’S SYNDROME IN THE COURTS

Murders committed by battered women are often divided into three categories: confrontational homicides, non-confrontational homicides, and solicited homicides.⁵⁵ Most cases fall under the first category, confrontational homicides, in which the battered woman kills her abuser during a battering incident.⁵⁶ The main legal issues in these cases are whether to allow expert testimony on Battered Woman’s Syndrome, and whether the defendant is able to introduce evidence of past abuse.⁵⁷ In non-confrontational homicides, where the victim typically attacks her abuser while he is asleep, the legal issues that arise are whether there is an entitlement to a self-defense argument, and whether Battered Woman’s Syndrome can be used to explain how there was an imminent threat to the woman, despite her victim being asleep.⁵⁸ In the few cases that fall under solicited homicide, the defendant tries to prove that, due to Battered Woman’s Syndrome, responding to the abuse by hiring a person to kill her abuser was reasonable under the circumstances.⁵⁹

It is important to point out that Battered Woman’s Syndrome is not a recognized defense, and simply proving that a woman was abused by her victim is not grounds for an acquittal.⁶⁰ “Rather, proof that a criminal defendant was a battered woman is introduced on the theory that such proof is relevant to some other recognized defense.”⁶¹ In general, there are four different uses for Battered Woman’s Syndrome as evidence to a recognized defense, primarily self-defense, in a murder trial. The first use of Battered Woman’s Syndrome is to give credibility to the defendant by “assist[ing] the jury in objectively analyzing the defendant’s claim of self-defense by dispel-

52. WALKER, *supra* note 18, at 55.

53. Rosman, *supra* note 22, at 809.

54. WALKER, *supra* note 18, at 55.

55. JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 240–41 (3d ed. 2001).

56. *Id.* at 240.

57. *Id.*

58. *Id.* at 240–41.

59. *Id.* at 241.

60. Tinsley, *supra* note 15, § 3.

61. *Id.*

ling many of the commonly held misconceptions about battered women.”⁶² The second reason Battered Woman’s Syndrome is introduced at trial is to prove the defendant honestly believed she was defending herself against imminent death or great bodily harm.⁶³ The third use of Battered Woman’s Syndrome at trial is to prove reasonableness in that the killing of the abuser by the woman was necessary.⁶⁴ Finally, Battered Woman’s Syndrome is used to explain the real dangers faced by battered women in their abusive relationships.⁶⁵

A. *Impaired Mental Capacity*

Traditionally, a battered woman who killed her abuser relied on an impaired mental capacity defense.⁶⁶ Reliance was usually placed on insanity, diminished capacity, or heat of passion.⁶⁷ Insanity constituted a total defense and diminished capacity and heat of passion both reduced the degree of the crime.⁶⁸ When using these impaired mental capacity defenses, reliance is placed on Battered Woman’s Syndrome as evidence to prove the effect this syndrome had on the woman’s mental state at the time of the alleged murder.⁶⁹ When insanity is used as a defense, the burden of proof varies based on jurisdiction.⁷⁰ Once evidence of insanity has been presented by the defense, some jurisdictions require the prosecution to prove beyond a reasonable doubt that the defendant does not suffer from this impaired mental capacity, while other jurisdictions only require the defendant to prove insanity by a preponderance of the evidence.⁷¹ Of course, using an impaired mental capacity for such cases has received a great amount of criticism.⁷² Many complain that concluding that a woman must be insane to kill her abuser reflects a sexual bias.⁷³ Others note that the defense is not appropriate since the mental capacity of the woman at the time of the offense is not really impaired.⁷⁴ Still others realize that while this type of defense “may lead to an

62. *Id.* § 1 (quoting *People v. Jaspas*, 119 Cal. Rptr. 2d 470, 475 (Ct. App. 2002)).

63. *Id.* (citing *Jaspas*, 119 Cal. Rptr. 2d at 475).

64. *Id.*

65. Tinsley, *supra* note 15, § 1 (citing *Weiland v. State*, 732 So. 2d 1044, 1054 (Fla. 1999)).

66. *Id.* § 3.

67. *Id.*

68. *Id.*

69. *Id.*

70. Tinsley, *supra* note 15, § 3.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

acquittal or conviction on a lesser charge, it might also result in the woman's confinement in a mental institution."⁷⁵ Needless to say, the impaired mental capacity defenses for women who suffer from Battered Woman's Syndrome are slowly beginning to find their way out of court. In recent years, the trend has been to use self-defense as the defense in cases in which a battered woman kills her batterer.⁷⁶

B. *As Part of a Self-Defense Argument*

The use of expert testimony on Battered Woman's Syndrome appears to be the most necessary part of a self-defense claim.⁷⁷ "[T]he syndrome is used to assist the jury in determining whether the woman acted in self-defense with respect to the elements of imminency and reasonableness."⁷⁸ In other words, evidence of the syndrome is used to show whether it was reasonable that she believed death or serious injury was imminent.⁷⁹ When using a self-defense argument, evidence of the abusive relationship between the defendant and the victim is introduced in order to show that the defendant's decision to resort to deadly force was appropriate, given her circumstances and the history of violence she experienced.⁸⁰

While the courts have not yet accepted the premise that the law of self-defense is any different when the defendant is a battered woman, it is clear that some juries have acquitted battered woman defendants in cases in which traditional self-defense was technically not established It has been suggested that such verdicts are examples of jury nullification, and that such repeated instances of jury nullification indicate that the law as it presently exists is not in accordance with current social views.⁸¹

If this theory is true, juries, through either acquitting or convicting battered women of lesser charges, are expressing their disapproval with the current unavailability of a separate defense for battered women. The foreseeable consequences could be devastating to the justice system. If all a woman would have to do in order to avoid a conviction for murder is prove that she

75. Tinsley, *supra* note 15, § 3.

76. *See id.*

77. *See id.* § 6.

78. Danielle R. Dubin, *A Woman's Cry for Help: Why the United States Should Apply Germany's Model of Self-Defense for the Battered Woman*, 2 ILSA J. INT'L & COMP. L. 235, 239 (1995).

79. *See* Tinsley, *supra* note 15, § 6.

80. *Id.* § 3.

81. *Id.*

suffered from Battered Woman's Syndrome, it would be very difficult to ever convict an abused woman based on the current standards used for the syndrome.

In Florida, deadly force may be used if one "reasonably believes that such force is necessary to prevent *imminent* death or great bodily harm to himself or herself."⁸² One of the main obstacles for women using a Battered Woman's Syndrome claim is proof that they were faced with an imminent danger that required them to resort to deadly force in self-defense.⁸³ "[I]t must be shown why the defendant perceived danger in a situation in which a person other than a battered woman would not have perceived danger."⁸⁴

1. Defining "Imminent"

Imminent danger is "[a]n immediate, real threat to one's safety that justifies the use of force in self-defense."⁸⁵ Case law and legislation make it mandatory that the defendant reasonably believe his or her attacker's unlawful violence is almost immediately impending.⁸⁶ "However, the question of whether there should be an imminence-of-attack requirement and, if so, how it should be characterized, is most dramatically presented in the context of a homicide by a battered [woman]."⁸⁷

The imminent danger . . . requirement[] ha[s] been developed in the context of a single, violent encounter between two men. The rationale is that one man is not justified in using deadly force on another unless necessary to protect the first man from a danger which immediately threatens. This stereotypical model is inappropriate when assessing whether a battered woman reasonably perceived imminent danger and the need to resort to deadly force. It is important that the defense case be presented in such a manner as to focus the jury's attention on the situation as viewed from the woman's perspective.⁸⁸

82. FLA. STAT. § 776.012(1) (2006) (emphasis added).

83. Tinsley, *supra* note 15, § 4.

84. *Id.*

85. BLACK'S LAW DICTIONARY 421 (8th ed. 2004).

86. WAYNE R. LAFAVE, PRINCIPLES OF CRIMINAL LAW 409 (2003).

87. *Id.* at 410.

88. Tinsley, *supra* note 15, § 4 (citations omitted).

2. “Imminent” to the Battered Woman

To the battered woman, “imminent” takes on a different meaning. Once the woman has experienced the tension-growing atmosphere that phase one provides and then suffers through the acute battering of phase two,⁸⁹ “she develops a constant fear of serious bodily harm that she perceives as imminent partially because of the unpredictability of her [partner’s] rage.”⁹⁰ A battered woman becomes sensitive to indications of an impending attack from her abuser, whether it is a trivial comment or action made by the man that might suggest an attack is coming.⁹¹ Though she has experienced violence at the hands of her abuser on numerous prior occasions, *this time* is different.⁹² Dr. Walker notes what, in her experience, makes the battered woman finally take action:

Several factors were common to all these cases. First, each woman stated that she was convinced the batterer was going to kill her. Violent assault had taken place previously in all of these cases. In the final incident, however, something different was noted by these women which convinced them that the batterer really was going to kill them *this time*. In each case, the woman stated that she did not intend to kill her batterer, only to stop him from killing her . . . All reported being terrified of their batterers. To them, the men were omnipotent; the women felt they had no place to hide. No matter where they went, the batterer would follow. In each case, the batterer’s violence was extraordinarily brutal. In the end, these women had to resort to the most extreme kind of force—use of a lethal weapon—in order to prevent the batterers from killing them.⁹³

Thus, to the battered woman, despite having experienced the abuse, perhaps even equal in severity of abuse in the past, something made it different *this time*. Explaining this mindset is vital, especially for those women who kill in a non-confrontational homicide.⁹⁴ It is important “to present the facts to the jury in such a way as to enable it to see the situation as it presented itself to the defendant at the time she . . . killed her husband.”⁹⁵ It is also important to point out to the jury the number of differences between the

89. See *supra* notes 40–53 and accompanying text.

90. WEISBERG & APPLETON, *supra* note 43, at 369.

91. Tinsley, *supra* note 15, § 4.

92. See WALKER, *supra* note 18, at 220.

93. *Id.* (emphasis added).

94. See DRESSLER, *supra* note 55 and accompanying text.

95. Tinsley, *supra* note 15, § 6.

behavior of a battered woman and the behavior of a non-battered woman in order to show how and why a battered woman would perceive an imminent attack, whereas a non-battered woman would not.⁹⁶

IV. FLORIDA COURTS AND BATTERED WOMAN'S SYNDROME

There are few Florida cases that address Battered Woman's Syndrome;⁹⁷ nonetheless, their rulings have opened numerous doors for the defense of battered women who kill their abusers. Most of the cases addressing Battered Woman's Syndrome involve the use of expert testimony at trial.⁹⁸ However, the landmark Florida case in the use of Battered Woman's Syndrome as a defense concerned the duty to retreat.⁹⁹ The duty to retreat has often prevented many battered women from establishing a complete self-defense claim.¹⁰⁰ Taken as a whole, these cases have begun to develop case law regarding Battered Woman's Syndrome as part of a self-defense claim. However, they stop short of giving any real standard as to how such a branch of self-defense should be applied.

A. *Florida on Expert Testimony*

"Whether the situation is a proper one for the use of expert testimony is to be determined on the basis of whether it will assist the trier of fact."¹⁰¹ If the issue at trial is one that an average layperson "would be capable of forming a correct judgment, expert testimony is not admissible."¹⁰² However, "[i]f the triers of fact have a general knowledge of a matter, but an expert's testimony would aid their understanding of the issue, it would be admissible."¹⁰³ In Florida, the law on expert testimony reads as follows:

If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill,

96. *Id.*

97. *State v. Hickson*, 630 So. 2d 172 (Fla. 1993); *Gonzalez-Valdes v. State*, 834 So. 2d 933 (Fla. 3d Dist. Ct. App. 2003) (per curiam); *Williams v. State*, 779 So. 2d 314 (Fla. 2d Dist. Ct. App. 1999) (per curiam); *Humble v. State*, 652 So. 2d 1213 (Fla. 1st Dist. Ct. App. 1995); *Rogers v. State*, 616 So. 2d 1098 (Fla. 1st Dist. Ct. App. 1993)

98. *See id.*

99. *See Weiland v. State*, 732 So. 2d 1044 (Fla. 1999).

100. *See State v. Bobbitt*, 415 So. 2d 724 (Fla. 1982) (overruled by *Weiland*, 732 So. 2d at 1044).

101. FLA. STAT. ANN. § 90.702 law revision council's note (West 1999).

102. *Id.*

103. *Id.*

experience, training, or education may testify about it in the form of an opinion; however, the opinion is admissible only if it can be applied to evidence at trial.¹⁰⁴

One of the first Florida cases to examine the use of expert testimony on Battered Woman's Syndrome was *Hawthorne v. State (Hawthorne I)*.¹⁰⁵ In this case, the court was to determine if Dr. Lenore Walker was entitled to serve as an expert witness offering testimony as to whether the defendant suffered from Battered Woman's Syndrome in relation to a self-defense claim.¹⁰⁶ The court found "that jurors would not ordinarily understand 'why a person suffering from [B]attered [W]oman's [S]yndrome would not leave her mate, would not inform police or friends, and would fear increased aggression against herself.'"¹⁰⁷ However, the court held the following:

[T]here has been no determination [in the lower court] as to the adequacy of Dr. Walker's qualifications or the extent to which her methodology is generally accepted indicating that the subject matter can support a reasonable expert opinion. Our determination that this expert testimony would provide the jury with an interpretation of the facts not ordinarily available to them is subject to the trial court determining that Dr. Walker is qualified and that the subject is sufficiently developed and can support an expert opinion.¹⁰⁸

On remand, the lower court concluded that the "depth of study in this field has not yet reached the point where an expert witness can give testimony with any degree of assurance that the state of the art will support an expert opinion."¹⁰⁹ Thus, after determining that the lower court did not abuse its discretion, the First District Court of Appeal held that Dr. Walker's testimony was not admissible.¹¹⁰

The *Hawthorne* decisions were overturned over a decade later in *Rogers v. State*,¹¹¹ where the court, in a landmark decision, held:

104. FLA. STAT. § 90.702 (2006).

105. 408 So. 2d 801 (Fla. 1st Dist. Ct. App. 1982) (per curiam), *abrogated by* *Rogers v. State*, 616 So. 2d 1098 (Fla. 1st Dist. Ct. App. 1993).

106. *Id.* at 805.

107. *Id.* at 806 (quoting *Smith v. State*, 277 S.E.2d 678, 683 (Ga. 1981)).

108. *Id.*

109. *Hawthorne v. State (Hawthorne II)*, 470 So. 2d 770, 773 (Fla. 1st Dist. Ct. App. 1985), *abrogated by* *Rogers*, 616 So. 2d at 1098.

110. *Id.* at 773-74.

111. 616 So. 2d 1098 (Fla. 1st Dist. Ct. App. 1993), *overruled on other ground by* *State v. Hickson*, 630 So. 2d 172 (Fla. 1993).

Because the scientific principles underlying expert testimony relative to the [B]attered [W]oman's [S]yndrome are now firmly established and widely accepted in the psychological community, we conclude that the syndrome has now gained general acceptance in the relevant scientific community *as a matter of law*. . . . We hold that expert testimony regarding [B]attered [W]oman's [S]yndrome is henceforth admissible There will be no further need for a case-by-case determination as to whether the state of the art of scientific knowledge relative to the [B]attered [W]oman's [S]yndrome is sufficiently developed to permit a reasonable opinion by an expert.¹¹²

By taking the discretion away from judges as far as determining whether the scientific knowledge on Battered Woman's Syndrome had been sufficiently developed "to permit a reasonable opinion to be given by an expert,"¹¹³ the *Rogers* court flung open the door for experts like Dr. Walker to explain why battered women kill their abusers despite having remained in the abusive relationship.¹¹⁴ Such testimony is pertinent to aiding in self-defense arguments often used in such cases, in that the testimony helps to explain the reasonableness, in the mind of the battered woman, of killing her batterer.¹¹⁵ The testimony also helps to explain how a woman came to be a battered woman and what the significance of adding such a descriptive term means.

Though extraordinary, the court's decision in *Rogers* seemed to leave the use of expert opinion on Battered Woman's Syndrome extremely broad and set no limits to its use.¹¹⁶ Looking to fix this problem, the Supreme Court of Florida found itself narrowing down the use of such expert opinion in *State v. Hickson*,¹¹⁷ where the court decided to tackle the question: "[w]hat can an expert testify to when a defendant relies on [B]attered [W]oman's [S]yndrome evidence to support a claim of self-defense?"¹¹⁸ The *Hickson* court also addressed whether a defendant claiming Battered Woman's Syndrome should have to submit to an examination by an expert from the adverse side.¹¹⁹ The court found itself trying to reconcile the rights of both parties without sacrificing justice.¹²⁰

112. *Id.* at 1100.

113. *Id.* at 1098.

114. *See id.*

115. DRESSLER, *supra* note 55, at 241 (discussing evidence of Battered Woman's Syndrome used to show that killing the batterer was reasonable).

116. *See Rogers*, 616 So. 2d at 1098.

117. 630 So. 2d 172 (Fla. 1993).

118. *Id.* at 173.

119. *Id.* at 175.

120. *See id.* at 176.

When defendants take the stand, they waive their privilege against compelled self-incrimination.¹²¹ Thus, the court's main concern was that defendants would be able to use expert testimony to relay the facts of the case in lieu of testifying themselves and being subjected to the prosecution's questions and possible self-incrimination.¹²² However, the court also needed to satisfy the use of expert opinion on Battered Woman's Syndrome so that the jury would be able to understand the plight of the battered woman.¹²³ In response to these concerns, the *Hickson* court gave a defendant using Battered Woman's Syndrome to support a claim of self-defense the following two options: "1) having her expert testify directly about her case, in which instance the [S]tate may have her examined by its expert, or 2) both sides may present the testimony of experts who have not examined the defendant and who will not testify about the facts of her case."¹²⁴ The first option allows for an expert to give testimony about the specific facts of the case, relating Battered Woman's Syndrome directly to the defendant and her abusive relationship.¹²⁵ However, it also allows for the State to have the defendant examined by its own expert who would be able to testify to the specifics of the case as well.¹²⁶ The second option allows the expert obtained by the defense to only testify about Battered Woman's Syndrome in general and the characteristics of a battered spouse.¹²⁷ The expert would not be allowed to examine the defendant and thus could not relate such characteristics to the defendant, only allowing for hypothetical situations to be addressed.¹²⁸ The court felt that these options "protect[ed] the rights and interests of both the defendant and the [S]tate."¹²⁹ Thus far, it appears as though the Supreme Court of Florida maintains this solution, as this case has not been overturned or questioned.

The remaining Florida cases addressing Battered Woman's Syndrome do not really add much to the case law regarding its use. They simply follow the precedent established in *Rogers* and *Hickson* while tightening up the nuts and bolts in the use of expert testimony concerning Battered Woman's Syndrome. The First District Court of Appeal helped to specify who could *not*

121. *Id.*

122. *Hickson*, 630 So. 2d at 176.

123. *See id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Hickson*, 630 So. 2d at 175–76.

128. *Id.* at 176–77.

129. *Id.* at 175–76.

testify about Battered Woman's Syndrome in *Humble v. State*.¹³⁰ Here, the court held the following:

[A woman with seventeen] years experience working in the field of domestic violence, operating shelters and domestic-violence programs, and has . . . taught numerous workshops on spouse abuse . . . lack[ed] . . . academic training in the disciplines of psychology or mental health, or clinical experience involving the study, treatment, or diagnosis of [B]attered [Woman's] [S]yndrome render[ing] her unqualified to describe the syndrome to the jury.¹³¹

The *Humble* court made it clear that it would take a lot more than experience to testify about Battered Woman's Syndrome.¹³² One must be academically trained in psychology or mental health or have actual clinical experience involving battered women; operating programs to aid battered women or teaching classes on domestic abuse is not enough to entitle a person to be labeled an "expert" on Battered Woman's Syndrome.¹³³

The Second District Court of Appeal, in *Williams v. State*,¹³⁴ further found a way to limit not only the use of expert testimony pertaining to Battered Woman's Syndrome, but the use of Battered Woman's Syndrome in general.¹³⁵ The defendant had been convicted of sexual battery due to his girlfriend's use of an expert witness to prove that she suffered from Battered Woman's Syndrome.¹³⁶ Therefore, according to the expert, she lacked the ability to give consent to sexual intercourse.¹³⁷ The court reversed the conviction for sexual battery and held that the State would have to prove a scientific basis to support a claim that "[B]attered [Woman's] [S]yndrome robs a person of the ability to consent" and that "[s]uch a conclusion would seem to convert all sexual relations engaged in by a person suffering from this syndrome into criminal acts by their partner."¹³⁸ Thus, the *Williams* court held that testimony regarding Battered Woman's Syndrome cannot be used to prove that a woman lacked the ability to consent in a case based on forced sexual intercourse.¹³⁹

130. 652 So. 2d 1213 (Fla. 1st Dist. Ct. App. 1995).

131. *Id.* at 1213–14.

132. *Id.*

133. *Id.*

134. 779 So. 2d 314 (Fla. 2d Dist. Ct. App. 1999) (per curiam).

135. *See generally id.*

136. *Id.* at 314–15.

137. *Id.* at 315.

138. *Id.* at 316.

139. *Williams*, 779 So. 2d at 316.

The most recent Florida case to address expert testimony on Battered Woman's Syndrome, *Gonzalez-Valdes v. State*,¹⁴⁰ proves exactly why expert testimony can be dangerous and reaffirms the reasoning followed in *Hickson*.¹⁴¹ In this case, the defendant sought the use of a Battered Woman's Syndrome expert to aid in establishing a self-defense claim to murder.¹⁴² The expert testified that the defendant did in fact suffer from Battered Woman's Syndrome.¹⁴³ However, the expert based this opinion solely on meetings with the defendant and her own testimony as to the events surrounding the "abusive" relationship and subsequent shooting.¹⁴⁴ The prosecution introduced the victim's brother who testified that he had never seen the victim hit the defendant.¹⁴⁵ The prosecution also brought as a witness the victim's ex-wife who had been married to the victim for twenty-nine years and testified that during that entire time, the victim had "never raised his hand to her."¹⁴⁶ The appellate court found that the trial court did not abuse its discretion in admitting the testimony of the victim's brother and ex-wife and subsequently upheld the defendant's conviction for second-degree murder.¹⁴⁷

The *Gonzalez-Valdes* case proves just how important it is that expert testimony on Battered Woman's Syndrome is somehow offset, whether through another expert on the syndrome, or a witnesses proving that the party claiming Battered Woman's Syndrome did not in fact suffer from it.¹⁴⁸ This is one of the main problems with allowing Battered Woman's Syndrome to be used—expert opinions are based solely on the testimony of those seeking to be deemed a *battered woman*. In the majority of cases, the *abuser* has been killed and cannot share his side of the story, and therefore, others must be brought in to at least attempt to prove he was not abusive. This seems to be the perfect case to affirm the *Hickson* court's reasoning.

140. 834 So. 2d 933 (Fla. 3d Dist. Ct. App. 2003) (per curiam).

141. *See id.*

142. *See id.* at 935.

143. *Id.*

144. *Id.*

145. *Gonzalez-Valdes*, 834 So. 2d at 935.

146. *Id.*

147. *Id.*

148. *See id.*

B. *Florida on the Duty to Retreat: Weiland v. State*

The duty to retreat stems from the use of force in defending oneself or another person.¹⁴⁹ In Florida, the applicable law is the “Use of Force in Defense of Person” which reads as follows:

A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat if:

(1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony¹⁵⁰

In sum, there is no duty to retreat, even when using deadly force, if there is a reasonable belief that deadly force is necessary in order to prevent imminent death or great bodily harm.¹⁵¹ Further, Florida recognizes the “castle doctrine,” which does not impose a duty to retreat when one is in his or her own home.¹⁵² Often, the problem that arose from this statute and the “castle doctrine” involved cases of domestic violence where both the abuser and victim resided in the same residence.¹⁵³ How should the duty to retreat apply to a woman being beaten or in fear of being beaten when she has finally found the courage to defend herself? The case of *Weiland v. State*¹⁵⁴ addressed this exact question.¹⁵⁵ To be more specific, the Court posed the following question: “Should the law impose a duty to retreat from the residence before a defendant may justifiably resort to deadly force in self-defense against a co-occupant, if that force is necessary to prevent death or great bodily harm?”¹⁵⁶

The facts of *Weiland* are typical of any case in which a claim of Battered Woman's Syndrome is alleged.¹⁵⁷ The defendant “shot her husband during a violent argument in the apartment where the two [lived] together with their

149. See FLA. STAT. § 776.012 (2006).

150. *Id.*

151. *See id.*

152. Orr, *supra* note 1, at 14.

153. *See, e.g., Weiland v. State*, 732 So. 2d 1044, 1048 (Fla. 1999).

154. *Id.* at 1044.

155. *See id.* at 1047.

156. *Id.* (emphasis omitted).

157. *See, e.g., State v. Hickson*, 630 So. 2d 172 (Fla. 1993).

seven-week-old daughter.”¹⁵⁸ The defendant presented evidence of Battered Woman’s Syndrome to support her claim of self-defense and presented expert testimony to prove that because she suffered from the syndrome, she truly believed her husband was going to seriously hurt or kill her.¹⁵⁹ Florida case law has established that when deadly force is necessary to prevent death or great bodily harm, a person does not need to retreat when in their own home before resorting to the use of such force.¹⁶⁰ However, the prosecution, in *Weiand*, relied on *State v. Bobbitt*¹⁶¹ which held that:

the privilege not to retreat, premised on the maxim that every man’s home is his castle which he is entitled to protect from invasion, does not apply here where both [the abused] and her husband had equal rights to be in the “castle” and neither had the legal right to eject the other.¹⁶²

The Supreme Court of Florida, however, reversed its decision in *Bobbitt*, noting that it was among the “minority of jurisdictions that refused to extend the privilege of nonretreat . . . [when] the aggressor was a co-occupant.”¹⁶³ The court concluded that “there is no duty to retreat from the residence before resorting to deadly force against a co-occupant or invitee if necessary to prevent death or great bodily harm, although there is a limited duty to retreat within the residence to the extent reasonably possible.”¹⁶⁴

One of the reasons the court decided to overturn *Bobbitt* was because of the recent advancements in understanding “the plight of victims of domestic violence,” and the public “policy reasons for not imposing [the] duty to retreat from [one’s home] when . . . resort[ing] to deadly force in self-defense against a co-occupant.”¹⁶⁵ The court recognized numerous studies which indicated that a time of retreat is often the most dangerous time for a battered woman because the violence during retreat tends to increase dramatically.¹⁶⁶

158. *Weiand*, 732 So. 2d at 1048.

159. *See id.*

160. *See Hedges v. State*, 172 So. 2d 824, 827 (Fla. 1965), *overruled by State v. Bobbitt*, 415 So. 2d 724 (Fla. 1982), and *Weiand*, 732 So. 2d at 1044.

[W]hen one is violently assaulted in his own house or immediately surrounding premises, he is not obliged to retreat but may stand his ground and use such force as prudence and caution would dictate as necessary to avoid death or great bodily harm. When in his home he has “retreated to the wall.”

Hedges, 172 So. 2d at 827 (citing *Pell v. State*, 122 So. 110, 116 (Fla. 1929)).

161. 415 So. 2d 724 (Fla. 1982), *overruled by Weiand*, 732 So. 2d at 1044.

162. *Id.* at 726.

163. *Weiand*, 732 So. 2d at 1051.

164. *Id.* at 1058.

165. *Id.* at 1051.

166. *Id.* at 1053.

In concluding its public policy argument, the court found that “retaining a duty to retreat from the home ‘clearly penalizes spouses, and particularly wives, in defending themselves from an aggressor spouse.’”¹⁶⁷

The *Weiland* court was also concerned that a jury instruction on the duty to retreat would “reinforce, legitimize, and strengthen myths and stereotypes about domestic violence,” particularly that an abused woman can leave an abusive relationship whenever she wants.¹⁶⁸ To allow for “a jury instruction [which] suggested retreat [as] an option . . . would . . . undermine” the Battered Woman’s Syndrome expert’s opinion on a battered woman’s feelings of helplessness and fear of imminent harm.¹⁶⁹ The court did, however, retain “a limited duty to retreat within the residence to the extent reasonably possible,” but still did not require that one flee the residence.¹⁷⁰ Thus, by answering its proposed question in the negative, the *Weiland* court was able to not only settle the confusion in how to apply both the duty to retreat and the castle doctrine simultaneously, but was also able to protect battered women who found themselves without an ability to retreat and who were compelled to use deadly force against a co-occupant in order to prevent a possible deadly attack.

V. HOW TO DETERMINE A BATTERED WOMAN’S DEFENSE: A THREE-PRONGED TEST

The problem in Florida, as well as in many other states, is that although the courts have made significant progress in the use of Battered Woman’s Syndrome at trial, they have failed to aid the fact finders in determining when Battered Woman’s Syndrome should be accepted as part of the defense. There is no legal standard established in Florida to guide a jury in determining whether Battered Woman’s Syndrome can make up for the factors a defendant lacks when she uses self-defense to explain why she killed her batterer.¹⁷¹ As of now, it is all extremely discretionary, meaning that the potential for establishing any precedent in such cases is minimal, at best.¹⁷² This is even more so because battered women cases are all truly unique; each abusive relationship examined will have lasted a different amount of time, the severity in the abuse will range greatly, and each woman’s ability to get

167. *Id.* at 1054 (quoting *State v. Rippie*, 419 So. 2d 1087, 1087 (Fla. 1982) (Overton, J., dissenting)).

168. Orr, *supra* note 1, at 16.

169. *Id.*

170. *Weiland*, 732 So. 2d at 1058.

171. See generally Orr, *supra* note 1, at 14–16 (discussing the legal status of the Battered Woman’s Syndrome in Florida).

172. See *id.* at 15.

herself out of the relationship will vary. Thus, I propose a three-pronged test to assist the fact finder in deciding whether or not Battered Woman's Syndrome can be applied to the defense.

This test would consist of determining the length of abuse, the severity of abuse, and the opportunity to flee. Each element must be substantially met in order for the syndrome to be applicable; however, each element is intentionally vague due to the lack of research available regarding any specific data to indicate the amount of time or severity of abuse necessary to establish a "battered woman." Though expert testimony brought by both the prosecution and the defense does assist the jury in understanding what Battered Woman's Syndrome is and how it may or may not apply to the defendant, the experts are making their decision based strictly on what the battered woman claims to have happened. Thus, they are most likely not taking into account evidence that the other side has to offer, which makes their opinion skewed.¹⁷³ By giving the jury a guideline, they can combine both the expert testimony and the evidence presented at trial to determine whether the defendant is in fact entitled to the use of Battered Woman's Syndrome as a part of a self-defense claim.

A. *Length of Abuse*

Determining what accounts as "long enough" to enable a person to claim she suffers from Battered Woman's Syndrome is difficult. Even Dr. Walker has been unable to determine a specific amount of time that abuse must last in order to conclude that a woman is suffering from Battered Woman's Syndrome.¹⁷⁴ However, according to studies comparing battered women who killed versus battered women who did not resort to killing their abuser, the frequency at which abuse occurs and the severity of the abuse,

173. See *Gonzalez-Valdes v. State*, 834 So. 2d 933, 934-35 (Fla. 3d Dist. Ct. App. 2003) (per curiam). Defendant used a self-defense claim for the shooting of her boyfriend, claiming to have Battered Woman's Syndrome. *Id.* An expert testified that she did in fact suffer from the syndrome. *Id.* at 935. However, the expert's opinion was based solely on meetings with Defendant and Defendant's statements of abuse. *Id.* Later, at trial, testimony from victim's brother and ex-wife proved that the victim never raised a hand to Defendant and that the victim had no history of abusing his ex-wife in any way. *Id.*

174. See WALKER, *supra* note 18, at 55.

Battered women are not constantly being abused, nor is their abuse inflicted at totally random times. . . . So far, I have been unable to estimate how long a couple will remain in any one phase [of the cycle theory of violence], nor can I predict how long a couple will take to complete a cycle.

Id.

both physical and psychological, increase over time.¹⁷⁵ As the abusive relationships progressed, the battered women who killed their batterers reported that they “became convinced that their partners either could or would kill them, based on the severity and frequency of violence, verbal threats to kill, and an apparent diminution of concern by the abusers for the harm they were inflicting.”¹⁷⁶ Thus, when a jury considers whether a woman does in fact suffer from Battered Woman’s Syndrome, the length of the abusive relationship can serve as an indicator of how severe the abuse became before the battered woman fatally ended it. If an abusive relationship lasted only a few months to a year, chances are the abuse did not escalate to that suffered by a woman who experienced a ten- or fifteen-year abusive relationship.¹⁷⁷

B. *Severity of Abuse*

Abuse can come in many ranges. Minor assaults may include “a slap in the face, a smack on the rear end, a pinch on the cheek or arm, a playful punch, and hair pulling.”¹⁷⁸ Though these may seem inconsequential, if received regularly and without respect to the woman’s welfare, Dr. Walker considers these actions battering behavior.¹⁷⁹ Further, these are the exact types of minimal attacks that lead to major physical assaults.¹⁸⁰ For example, hitting or lightly punching a woman the first time, makes the second time easier, the third time even easier, until it eventually escalates to uncontrollable behavior.¹⁸¹ “Major physical [attacks] include[: slaps and punches to the face and head; kicking, stomping, and punching all over the body; choking to the point of consciousness loss; pushing and throwing across a room, down the stairs, or against objects . . . stabbing and mutilation”¹⁸² It is important to consider, aside from the physical violence, the terror inflicted on the battered woman as well.¹⁸³ “Batterers reportedly would frighten their women with terrorizing descriptions of how they would torture

175. See ANGELA BROWNE, *WHEN BATTERED WOMEN KILL* 68–69 (1987) (“The frequency with which abusive incidents occurred increased over time, with [forty] percent of women in the homicide group reporting that violent incidents occurred more than once a week by the end of the relationship.”).

176. *Id.* at 68–69.

177. *Id.*

178. WALKER, *supra* note 18, at 79.

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. See WALKER, *supra* note 18, at 75.

them. They often backed up these descriptions through the use of guns, knives, and other weapons in their abusiveness.”¹⁸⁴

Thus, when a jury considers the severity of abuse inflicted on women attempting to prove that they suffered from Battered Woman’s Syndrome, it is important that they take into account both the physical and psychological effects of abuse. Though minor versus major physical violence is rather apparent, perhaps a good standard to judge the culmination of severity would be similar to a “shocks the conscience” standard.¹⁸⁵ This would be beneficial since the range of abuse is so great and unique to each individual case. It would be unfair to label specific abuse “severe” and hold more minor abusive incidents to not be severe enough to establish Battered Woman’s Syndrome.

C. *Opportunity to Flee*

It is almost unbelievable that a woman would stay with a man who abused her so severely that she was forced to kill him in order to finally get away. Most women, those who have been fortunate enough to either not experience an abusive relationship or those who saw the warning signs and escaped early, cannot fathom what could possibly encourage these battered women to remain with their batterer. This is precisely why expert testimony regarding Battered Woman’s Syndrome is so vital to the court system.

Studies show that women who retreat from the residence when attacked by their co-occupant spouse or boyfriend may, in fact, increase the danger of harm to themselves due to the possibility of attack after [their] separation. . . . Experts in the field explain that separation or retreat can be the most dangerous time in the relationship for the victims of domestic violence¹⁸⁶

Another main reason many women stay in their abusive relationships is due to the extreme change in circumstances that often occurs after an intense violent episode.¹⁸⁷ This is referred to as phase three of the cycle theory of violence.¹⁸⁸ In this stage, the batterer begins to behave in a loving manner, begs for forgiveness, and promises never to beat his partner again.¹⁸⁹ He will

184. *Id.*

185. *See* *Rochin v. California*, 342 U.S. 165, 175 (1952) (Black, J., concurring) (compares “shocks the conscience” to running counter to the “decencies of civilized conduct”).

186. *Weiland v. State*, 732 So. 2d 1044, 1053 (Fla. 1999).

187. WALKER, *supra* note 18, at 65.

188. *Id.*

189. *Id.*

recruit others to plead his case, usually his mother, father, and siblings—whoever he can get to work on the woman's guilt—telling her that she is all he has.¹⁹⁰ Although everyone acknowledges that the batterer is at fault, “the battered woman [is] held responsible for the consequences of any punishment he receive[s].”¹⁹¹ What adds to the ability to persuade the woman to remain in the relationship are her traditional values, a very common trait among battered women.¹⁹² She wants to believe that this time he really does mean it, and since she realizes he needs help and believes she is the only one who can help him, she convinces herself that this is what love is.¹⁹³ Moreover, this period further pushes away anyone who may have been willing to assist the battered woman: “Helpers of battered women become exasperated at this point, since the women will usually drop charges, back down on separation or divorce, and generally try to patch things up until the next acute incident.”¹⁹⁴ Thus, phase three only reinforces a battered woman's refusal to leave.¹⁹⁵

Beyond the fear that more violence will result upon leaving, and the phase three period of a misguided hope for change, there are other factors which keep an abused woman in an abusive relationship. Women are more likely “to be the peacekeepers in [a] relationship[];” they feel they are responsible for making the relationship work,¹⁹⁶ and thus they remain with a feeling of obligation to their mate.¹⁹⁷ Further, prior threats that the batterer will kill himself or his children, threats to run away with the children, a lost self-esteem, the adverse economic consequences of leaving, and the loss of “psychological energy to leave,” are more reasons why a battered woman remains in her abusive relationship.¹⁹⁸ It is also important to recognize that an abused woman may have nowhere to go.¹⁹⁹ It is very possible that the abuser may have isolated the woman from her family and friends, forcing her to stay in the relationship since she has no one else to turn to.²⁰⁰

Thus, it is very important that a jury fully understand why a battered woman may not leave. This is perhaps the most important of the three elements, as it best establishes the woman's lack of reasonable ability to retreat.

190. *Id.* at 66–67.

191. *Id.*

192. WALKER, *supra* note 18, at 67.

193. *See id.* at 66–68.

194. *Id.* at 68.

195. *See id.* at 69.

196. Rosman, *supra* note 22, at 809.

197. *See id.*

198. *Id.*

199. *See Weiland v. State*, 732 So. 2d 1044, 1054 (Fla. 1999).

200. *See id.*

If a woman had an opportunity to flee, if she was financially capable or had family or friends who were willing to help her get away from her abuser, it is more likely she could have escaped. Further, when there are no children involved, a woman has a better chance of absconding. The jury should take these factors into account when determining whether the woman had a decent opportunity to flee. Other evidence to consider might be proof that she had attempted to leave on a prior occasion, and was either unable to or had escaped but returned and consequently suffered some sort of physical or emotional abuse from her abuser.

VI. CONCLUSION

Unfortunately, Battered Woman's Syndrome is not going to be cured anytime soon, if at all. Since the concept is relatively new in the psychological field and extremely new to the legal world, there is still a great deal of information still being learned about the syndrome, its causes, and its effects. Until Battered Woman's Syndrome is more developed, it is important that Florida courts come up with a standard to apply to women attempting to use Battered Woman's Syndrome as part of a self-defense claim. Though expert testimony is vital to the jury understanding Battered Woman's Syndrome, it should not be used as the sole determinant when looking to apply the syndrome. By combining the expert opinion with the evidence presented at trial, the jury essentially will be evaluating the testimony of the defendant—the battered woman—along with evidence that will either corroborate her suffering from Battered Woman's Syndrome or prove that she was not. Though the members of the jury do not come close to qualifying as experts on Battered Woman's Syndrome, it is their duty to determine whether a defendant's self-defense claim may be used for justifiable homicide. Since Battered Woman's Syndrome seeks to explain how a battered woman may meet the elements of self-defense, it will essentially be up to the jury to determine whether she does in fact suffer from the syndrome. Thus, it is extremely significant that the jury has a standard to decide this.

By incorporating this three-pronged test into self-defense claims using Battered Woman's Syndrome, the court will be able to begin establishing a precedent for such cases. Further, it will give defense attorneys an indication of when the use of the Battered Woman's Syndrome would be appropriate as part of a self-defense argument. It would also take away from the unreliability of the expert's opinion, which is based solely on the testimony of the defendant.²⁰¹ However, it is important to recognize that the purpose of this

201. See *Gonzalez-Valdes v. State*, 834 So. 2d 933, 935 (Fla. 3d Dist. Ct. App. 2003).

standard is in no way meant to undermine the use of expert testimony regarding Battered Woman's Syndrome. Such testimony is vital to giving the jury an understanding of the syndrome, its effects on the battered woman, and her perception of the situation at the time she chose to murder her abuser. The case law regarding Battered Woman's Syndrome should remain in effect.²⁰² However, the three-pronged standard should be added to the already established precedent in order to give justice to both sets of victims: the defendant and the abuser she murdered.

202. See *Weiand*, 732 So. 2d at 1044 (finding a privilege of non-retreat from one's own residence before resorting to deadly force against a co-occupant if necessary to prevent death or great bodily harm); *State v. Hickson*, 630 So. 2d 172 (Fla. 1993). *Hickson* established two options for a defendant's use of expert testimony regarding Battered Woman's Syndrome when that defendant claims to be suffering from Battered Woman's Syndrome. See *id.* at 176. The defendant can choose to either have the "expert testify directly about [their] case" and thus be subjected to opposing counsel's expert, or have an expert present general information regarding the syndrome, not directly related to the defendant. See *id.*; see also *Rogers v. State*, 616 So. 2d 1098, 1100 (Fla. 1st Dist. Ct. App. 1993) (finding the general acceptance of Battered Woman's Syndrome in the scientific community and thus establishing admissibility of expert testimony without a case-by-case determination).