

Battered Woman Defense

In certain criminal cases, almost always involving domestic disputes, a defendant accused of assault or murder might assert the “battered person defense”, contending that he or she was suffering from “battered person syndrome” when the crime was committed. Because the defense is most commonly invoked by women, it is usually designated in court and in legal literature as the *battered woman defense*.

Battered persons typically have low self-esteem, believe that the abuse is their own fault, and may suffer from Stockholm Syndrome (in a domestic context, where a spouse - - typically a wife - - expresses empathy and sympathy and has positive feelings toward her husband, sometimes to the point of defending and identifying with him, despite repeated beatings, harassment, threats, abuse, and intimidation). Due to misplaced feelings of loyalty, battered persons may be unwilling to press charges against their abuser.

The battered woman defense is usually asserted by a defendant who, owing to constant and severe physical and emotional violence by a domestic partner, may become depressed or unable to take any independent action that would allow her to escape the abuse. Often the victim's fears are based in reality, as she may lack the social support, financial means, or may be too physically disabled to survive on her own.

There is no consensus in the medical profession that such abuse results in a mental condition severe enough to excuse alleged offenders and no medical classification - - neither the DSM-5 (the fifth edition of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*) nor the ICD (*International Statistical Classification of Diseases and Related Health Problems*) recognizes the existence of the “battered woman syndrome” in the sense used by lawyers.

Despite the lack of an official medical designation for “battered woman syndrome”, the defense has been supported by the trial testimony of numerous expert psychiatric witnesses and has gained slow but steady acceptance by the courts. Two cases separated by twenty-two years serve to illustrate the progress this defense has made.

In State v. Norman (1989) the Supreme Court of North Carolina treated the “battered woman” defense with palpable hostility. There, the defendant Judy Norman had shot her husband three times in the back of the head as he lay sleeping. Initially charged with first degree murder, she was convicted of voluntary manslaughter and sentenced to six years in prison. She claimed she had acted in self-defense and presented evidence at trial that supported her contention that she was a battered woman.

The testimony showed that Norman, wed at the age of fifteen, had endured 25 years of marriage to an unemployed, alcoholic husband during which time he often slapped, punched, and kicked her, threw beer bottles, drinking glasses and other objects at her, put cigarettes out on her skin, threw hot coffee on her, and broke glass against her face. He also frequently deprived her of food or made her eat dog food, forced her to sleep on the floor, and repeatedly threatened to kill her. In addition to all this, he forced her to become a prostitute to make money for him.

The day before the killing, Norman's husband pimped her out again, arrived drunk at the place of prostitution, assaulted her, drove off, was arrested for DWI, returned home after being released, and began beating her again. She called the police who told her to file a complaint, which she was too afraid to do. The police then told her they couldn't do anything more and left.

The police soon returned after Norman swallowed a bottleful of pills in an attempt to end her life. Her drunken husband tried to interfere with the responding paramedics, cursing and shouting "let her die". After he was forced back into the house by the police, Norman was taken to the hospital where her stomach was pumped and, after she recovered somewhat, she confided to a therapist that she wanted to kill her husband.

She was discharged and, the next day when she went to a social service agency to collect a welfare payment, her husband followed there, beat her, and threatened to kill her. Back at home that evening, he called her "dog" and made her sleep on the floor, after which he lay down on the bed and went to sleep. A short time later she took a pistol and shot him dead.

At trial, in addition to the evidence of continuous physical and emotional abuse, the defense offered expert testimony on the battered woman syndrome, including the opinion that, owing to the constant abuse and degradation she had suffered, defendant believed that she could not help herself or expect help from anyone else and could not escape the complete control of her husband, whom she had come to believe was invulnerable to law enforcement and to any other authority that might have been expected to help her.

The decision of the all-male Supreme Court affirming the conviction and sentence turned on the statutory definition of "self-defense", which required the defendant to show that the killing was necessary to save the defendant from imminent death or great bodily harm. The Court focused on the term "imminent" and concluded that, since the decedent was asleep at the time he was slain, the danger to defendant of death or great bodily harm could not have been imminent.

Characterizing the facts of defendant's horrifying life with her husband as merely "poignant", the court expressed concern that relaxing the standard of "imminence" to accommodate the "battered wife defense" would:

Legalize the opportune killing of abusive husbands by their wives solely on the wives' testimony concerning their subjective speculation as to the probability of future felonious assaults by their husbands.

The court in disallowing the expert testimony on "battered wife" syndrome, made it clear that, if such a momentous change were to be made in the law of self-defense, it would be up to the legislature to do so.

State v. Sheehan (2011), was the trial of a woman who claimed to be a “battered wife” in which a New York jury returned a verdict of acquittal on a charge of second degree murder and a verdict of guilty on a charge of illegal gun possession. On February 18, 2008, Barbara Sheehan killed her husband, a retired police officer named Raymond Sheehan, shooting him 11 times with two of his guns. She was charged with murder in the second degree, punishable by a sentence of 15 to 25 years in prison. Her plea of not guilty by reason of self-defense, was based on the battered woman syndrome.

She and her husband had been married for 24 years and had two children, a grown daughter living on her own and a son, who had just begun college. Sheehan testified that after their wedding the marriage quickly deteriorated into an abusive relationship. He began to push and shove her and force her to look at the gruesome crime-scene photos he brought home. He usually apologized afterwards, bringing flowers and gifts, promising never to do it again.

But his brutality worsened after he had been promoted to sergeant and their son was born. He would point his weapon at Sheehan, threatening to kill her, and began to beat her where people couldn't see the bruises: her back, upper arms, and upper legs. He stopped apologizing and, after a while, he grew less concerned about appearances, giving her black eyes and hitting her in front of other people. Several times he punched her in the face while she was driving, despite the fact that their two young children were traveling with them and the car would swerve violently when he struck her. After these episodes, he would tell them, “You can't call the police. I *am* the police.”

After Sheehan's husband retired from the police force in 2002, he carried two guns with him at all times and would frequently tell her that because he had worked for the crime scene unit he knew how to do the perfect crime, that he could make her disappear or make her death look like an accident.

In February 2007, while vacationing in Jamaica, her husband beat Sheehan so badly that she had to go to the hospital. In February 2008, her husband wanted to vacation in Florida, but Sheehan dreaded going with him because of the beating she'd suffered on their last vacation and she feared being alone with him.

On February 16th, Sheehan and her husband visited their son at his Connecticut college, arguing continually about the trip to Florida. During the return drive on the 17th, after her husband punched her in the face and broke Sheehan's nose, he screamed at her not to get blood on his new car. When they finally reached home, she started to walk to the hospital, since he had taken her car keys. He caught up with her and drove her to the ER, but then, waiting outside, he began calling her on her cell phone demanding that she leave and get ready to go to Florida. He then threatened to kill her, their kids, and himself, going out in a “blaze of glory”, if she didn't leave the hospital immediately. She left.

On the morning of February 18th, hoping to escape, Sheehan called to her husband, as she passed the bathroom where he was shaving, that she was going to the store to get

dog food. But he opened the bathroom door, put a Glock pistol to her head and said, "You're not going anywhere or I'll kill you, kill everybody, and go down in glory." Sheehan ran back to the bedroom to get some money she'd been saving for her escape and noticed her husband's other gun, a .38 caliber police revolver, lying on the dresser. She picked it up and walked as quietly as she could towards the stairs hoping to pass the bathroom without incident. But her husband lurched out and again pointed the Glock at her head. She fired the .38 revolver dropping him to the floor. When he stretched out his arm to retrieve the pistol he had dropped, she snatched it up and emptied it into his body.

The prosecution emphasized to the jury that, according to Sheehan's own testimony, her husband had pointed a gun at her many times, but never pulled the trigger. Why, they asked, did she believe he was going to shoot her on the day she killed him? Sheehan testified that her husband's rages and physical violence had been getting worse and she was certain her refusal to go to Florida would push him to the point of killing her.

The standard for self-defense in New York was similar to that of North Carolina - - the defendant had to reasonably fear she faced an imminent threat of bodily harm or death. On this point, expert testimony on battered wife syndrome was admitted in conjunction with the extensive factual testimony concerning Sheehan's brutal battering to support the contention that defendant reasonably thought she was facing death when she shot her husband.

After delivering the unanimous verdict of acquittal on the murder charge, the forewoman of the jury of nine women and three men told the press that the jurors ultimately decided to exonerate Sheehan of murder because her family's accounts of chronic and vicious abuse had rung true. They convicted her of a gun possession charge, however, because they believed Sheehan's emptying the Glock pistol into her husband's prone body couldn't be justified as self-defense.

Minnie Wright and the Battered Woman Defense.

In *A Jury of Her Peers*, we are told that John Wright was a hard man who couldn't care less what his wife's opinion happened to be (e.g., the phone installation) and whose miserliness reduced his wife to wearing worn-out clothes and cooking on a broken down stove. In addition, he was violent and vindictive enough to rip open a birdcage door and strangle his wife's beloved canary. It is also implied that he rarely let his wife leave home - - her neighbor Martha Hale hadn't seen her in twenty years - - and, as the Wrights are childless, she appears to have been living out her days on an isolated farm with only her antagonistic husband for company. We are not told whether John Wright abused his wife physically or verbally, although it would not come as a surprise if he did. What is clear, though, is that he emotionally abused her.

The story's strongly intimates that in hiding relevant evidence, motivated by what we would currently call the battered woman defense, Mrs. Hale and Mrs. Peters prevented Mrs. Wright from being charged with her husband's murder.

The evidence that the two women effectively suppressed would, in the early 1900's, have bolstered the male prosecutor's case in front of the all-male jury by providing evidence of conflict between Mr. and Mrs. Wright and, thus, a motive for her killing him.

Today, in stark contrast to the era of Minnie Wright, women constitute: 36% of U.S. lawyers, 31% of law school deans, 52% of law school students; 33% of U.S. Supreme Court Justices, 36% of U.S. Court of Appeals judges, 33% of U.S. District Court judges, 31% of state court judges (all levels), and 50% of federal and state jurors. In the criminal justice system, women have made the least progress as prosecutors: only 17% of elected (state) district attorneys and 24% of appointed United States Attorneys (federal) are women.

In current criminal cases, the battered woman defense as a foundation for the defense of self-defense is now widely accepted by the courts. Increasingly, it is also being applied retroactively, e.g., the 2012 California law giving battered women who had been convicted of homicide or assault the right to file writs of habeas corpus to challenge their original convictions, if their sentencing took place before 1992.

While asserted with growing frequency, the battered wife defense, like most pleas of self-defense, is not easy to sustain. And the presence of women on the jury doesn't necessarily portend success. One lawyer who frequently represented female defendants asserting the "battered woman defense" found that women jurors were often sharply divided on the issue, with some fully accepting the defense and wanting to acquit, while others totally rejected it and wanted a conviction of murder. Male jurors, on the other hand, tended to seek compromise, supporting for example, conviction on a lesser charge such as manslaughter.

The intriguing question remains: Would the marital history of Minnie Wright and the evidence hidden by Mrs. Hale and Mrs. Peters be sufficient to support a successful battered woman defense in today's juridical world where female judges, prosecutors, defense attorneys, and jurors are common and factual and expert testimony on the battered woman syndrome is readily admitted at trial?