

---

---

In the Matter of THE PEOPLE OF THE  
STATE OF NEW YORK,

*Cause To Be Submitted*  
App. Div. Docket No. 2011-11719

*Respondent,*

vs.

BARBARA SHEEHAN,

*Defendant-Appellant*

---

---

**BRIEF FOR AMICUS CURIAE**

---

---

DORCHEN A. LEIDHOLDT  
SANCTUARY FOR FAMILIES  
Center for Battered Women's Services  
110 Wall Street, 11<sup>th</sup> Floor  
New York, NY 10005-3817  
(212) 340-6009 ext. 252  
[www.sanctuaryforfamilies.org](http://www.sanctuaryforfamilies.org)

NANCY K.D. LEMON  
Lecturer, University of California  
Berkeley, School of Law  
Berkeley, CA 94720  
(510) 525-3164

THE NATIONAL CLEARINGHOUSE  
FOR THE DEFENSE OF BATTERED WOMEN  
125 South 9<sup>th</sup> Street  
Philadelphia, PA 19107  
(215) 351-0010  
[www.ncdbw.org/](http://www.ncdbw.org/)

PACE WOMEN'S JUSTICE CENTER  
Pace University School of Law  
78 No. Broadway  
White Plains, NY 10603  
(914) 422-4424  
[www.law.pace.edu/wjc](http://www.law.pace.edu/wjc)

WOMEN'S LAW PROJECT  
125 S. 9th Street, Suite 300  
Philadelphia, PA 19107  
215-928-5771  
[www.womenslawproject.org](http://www.womenslawproject.org)

CONNECT  
P.O. Box 20217 Greeley Square Station  
New York, NY 10001  
(212) 683-0015  
[www.connectnyc.org](http://www.connectnyc.org)

DOMESTIC VIOLENCE PROGRAM  
AT ALBANY LAW SCHOOL CLINIC  
AND JUSTICE CENTER  
80 New Scotland Avenue  
Albany, NY 12208  
(518) 445-2328  
[www.albanylaw.edu](http://www.albanylaw.edu)

JOAN ZORZA, EDITOR  
DOMESTIC VIOLENCE REPORT  
Civic Research Institute, Inc.  
4478 Route 27 P.O. Box 585  
Kingston, NJ 08528

THE LEGAL PROJECT  
Stuyvesant Plaza  
1475 Western Avenue STE 59  
Albany, NY 12203-3705  
518-435-1770  
[www.legalproject.org](http://www.legalproject.org)

WASHINGTON STATE COALITION  
AGAINST DOMESTIC VIOLENCE  
1402 - 3rd Ave., Suite 406  
Seattle, WA 98101  
(206) 389-2515  
[www.wscadv.org](http://www.wscadv.org)

NATIONAL NETWORK TO END  
DOMESTIC VIOLENCE  
Sue Else, Director  
55 Washington Street, Suite 614  
Brooklyn, NY 11201  
(718) 534-7366  
[www.nnedv.org](http://www.nnedv.org)

SUNY BUFFALO SCHOOL OF LAW  
WOMEN, CHILDREN, AND SOCIAL  
JUSTICE CLINIC  
Suzanne E. Tomkins, Clinical Professor of Law  
John Lord O'Brian Hall  
Buffalo, New York 14260-1100  
(716) 645-3616  
<http://law.buffalo.edu/familyviolence>

MINNESOTA INDIAN WOMEN'S  
RESOURCE CENTER  
2300 15<sup>th</sup> Ave. South  
Minneapolis, MN 55404  
612-728-2008  
[www.miwrc.org](http://www.miwrc.org)

THE NEW YORK LEGAL  
ASSISTANCE GROUP  
450 West 33<sup>rd</sup> Street  
New York, NY 10001  
(212) 613-5000  
[www.nylag.org](http://www.nylag.org)

NEW YORK STATE COALITION  
AGAINST DOMESTIC VIOLENCE  
350 New Scotland Avenue  
Albany, NY 12208  
(518) 482-5465  
[www.nyscadv.org](http://www.nyscadv.org)

THE LEGAL AID SOCIETY  
199 Water Street  
New York, NY 10038  
(212) 577-3300  
[www.legal-aid.org](http://www.legal-aid.org)

Date of Completion: July 5, 2012

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....ii

STATEMENT OF FACTS.....1

STATEMENTS OF INTEREST.....1

SUMMARY OF AMICI’S ARGUMENT.....6

ARGUMENT.....9

**I. THE TRIAL COURT’S PRECLUSION OF NECESSARY AND RELEVANT CASE-SPECIFIC EXPERT TESTIMONY DEPRIVED APPELLANT OF THE OPPORTUNITY TO PRESENT A COMPLETE DEFENSE**.....9

- A. The Admission of Both General and Case-Specific Expert Testimony is Critical in Cases Involving Battered Women Who Respond to Abuse With Violence.....12
- B. Case-Specific Expert Testimony Was Necessary to Aid the Jury in Assessing the Appellant’s State of Mind With Regard to the Second Gun Possession Charge.....14
  - 1. The Excluded Comprehensive Forensic Psychological Evaluation by Dr. Hughes Demonstrated That Ms. Sheehan Was a Victim of Intimate Partner Abuse and That Her Perception of Threat Did Not Cease After Firing the First Weapon.....15
  - 2. Absent Dr. Hughes’ Proffered Case-Specific Testimony, the Jury was Ill-Equipped to Fully Assess Appellant’s Conduct and State of Mind Throughout the Incident and Its Preclusion Was Both Disproportionate and Prejudicial.....18

CONCLUSION.....24

CERTIFICATE OF COMPLIANCE

## TABLE OF AUTHORITIES

### CASES

<i>Holmes v. South Carolina</i> , 547 U.S. 319 (2006).....	19
<i>People v. Carroll</i> , 95 N.Y.2d 375 (2000).....	19
<i>People v. Ciervo</i> , 123 A.D.2d 393 (2nd Dep’t 1986).....	14
<i>People v. Colberg</i> , 182 Misc. 2d 798 (Sullivan Cty. Cty. Ct. 1999).....	18
<i>People v. Cronin</i> , 60 N.Y.2d 430 (1983).....	15, 19, 20, 21, 23
<i>People v. Ellis</i> , 170 Misc. 2d 945 (1996).....	18
<i>People v. Florestal</i> , 53 A.D.3d 164 (1st Dep’t 2008).....	20, 21
<i>People v. Humphrey</i> , 13 Cal.4th 1073 (1996).....	24
<i>People v. Johnson</i> , 22 A.D.3d 600 (2nd Dep’t 2005).....	24
<i>People v. Milczakowskyj</i> , 73 A.D.3d 1453 (4th Dep’t 2010).....	18
<i>People v. Seeley</i> , 186 Misc. 2d 715 (Kings Cty. Sup. Ct. 2000) .....	<i>passim</i>
<i>People v. Taylor</i> , 75 N.Y.2d 277 (1990).....	18
<i>People v. Torres</i> , 128 Misc. 2d 129 (Bronx Cty. Sup. Ct. 1985).....	12, 14, 24
<i>Washington v. Texas</i> , 388 U.S. 14 (1967).....	9

### CONSTITUTION

U.S. CONST. amend. V.....	6, 9
U.S. CONST. amend. VI.....	6, 9

STATUTES

CA. EVID. CODE § 1107 (West 1992) .....6

FED. R. EVID. 704(a).....19

N.Y. Penal Law § 265.03-1(b) (McKinney 2006).....21

OTHER AUTHORITIES

Jane H. Aiken & Jane C. Murphy, *Dealing with Complex Evidence of Domestic Violence: A Primer for the Civil Bench*, 39 COURT REVIEW 12 (2002) .....12

Rick Brown, *Limitations on Expert Testimony on the Battered Woman Syndrome in Homicide Cases: The Return of the Ultimate Issue Rule*, 32 ARIZ. L. REV. 665 (1990).....14

Sarah M. Buel, *Fifty Obstacles to Leaving, A.K.A. Why Abuse Victims Stay*, 28 COLO. LAW. 19 (1999).....11

Jacquelyn C. Campbell, Daniel W. Webster & Nancy Glass, *Danger Assessment: Validation of a Lethality Risk Assessment Instrument for Intimate Partner Femicide*, 24 J. INTERPERS. VIOLENCE 653, 655 (2009).....16

Phyliss Craig-Taylor, *Lifting the Veil: The Intersectionality of Ethics, Culture, and Gender Bias in Domestic Violence Cases*, 32 RUTGERS L. REC. 31 (2008)..10

Mary Ann Dutton, US Dep’t of Just., NCJ 160972, *Impact of Evidence Concerning Battering and Its Effects in Criminal Trials Involving Battered Women*, 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 1 (1996).....6, 12, 13

Mary Ann Dutton, U.S. Dep’t of Just., NCJ 160972, *Validity of “Battered Woman Syndrome” in Criminal Cases Involving Battered Women*, 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 1 (1996).....13

Leigh Goodmark, <i>When is a Battered Woman Not a Battered Woman? When She Fights Back</i> , 20 YALE J. OF LAW & FEMINISM 75 (2008).....	6
Barbara Hart, <i>National Estimates and Facts About Domestic Violence</i> , NCADV VOICE (1989).....	11
Carol Jacobsen, Kammy Mizga & Lynn D'Orio, <i>Battered Women, Homicide Convictions, and Sentencing: The Case for Clemency</i> , 18 HASTINGS WOMEN'S L.J. 31 (2007).....	10
Nancy K. D. Lemon, <i>A Transformative Experience: Working as a Domestic Violence Expert Witness</i> , 24 BERKELEY J. GENDER L. & JUST. 208 (2009)..	13
Lisa D. May, <i>The Backfiring of the Domestic Violence Firearms Bans</i> , 14 COLUM. J. GENDER & L. 1 (2005).....	11
Gregory Mitchell, Laurens Walker & John Monahan, <i>Beyond Context: Social Facts as Case-Specific Evidence</i> , 60 EMORY L.J. 1109 (2011).....	12, 18
Audrey E. Stone, <i>Presenting Battered Women's Expert Testimony: Trial and Error</i> , 271 PRACTICING LAW INSTITUTE 255 (1998).....	12, 13
Janet Parrish, U.S. Dep't of Just., NCJ 160972, <i>Trend Analysis: Expert Testimony on Battering and Its Effects in Criminal Cases</i> , 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 1 (1996).....	12, 19
Regina A. Schuller, <i>The Impact of Battered Women's Syndrome Evidence on Jury Decision Process</i> , 16 LAW & HUM. BEHAV. 597 (1992).....	12
Regina A. Schuller & Patricia A. Hastings, <i>Trials of Battered Women Who Kill: The Impact of Alternative Forms of Expert Evidence</i> , 20 LAW & HUM. BEHAV. 167 (1996).....	10, 11
Evan Stark, <i>Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control</i> , 58 ALB. L. REV. 973 (1995).....	6

Patricia Tjaden & Nancy Thoennes, U.S. Dep't of Just., NCJ 181867, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings From the National Violence Against Women Survey (2000)*.....11

## **STATEMENT OF FACTS**

*Amici* adopt the facts as described in the Appellant's Brief and recite facts in this Brief when necessary.

## **STATEMENTS OF INTEREST**<sup>1</sup>

**Sanctuary for Families** is the largest nonprofit in New York State dedicated exclusively to serving domestic violence victims, sex trafficking victims, and their children. SFF is committed to the safety, healing, and self-determination of thousands of victims and provides them with a variety of services, including legal representation. SFF conducts community outreach to help communities respond to domestic violence issues and trains thousands of professionals each year.

**The National Clearinghouse for the Defense of Battered Women** is a nonprofit organization that works to increase justice for victims of domestic violence who are charged with or convicted of crimes. NCDBW provides assistance and information to battered defendants, defense attorneys, battered women's advocates, expert witnesses, and other professionals and community members. NCDBW is committed to ensuring that victims of battering charged with crimes receive full criminal legal protections.

---

<sup>1</sup> Thanks to Noam Cohen, class of 2013, UC Berkeley School of Law, for her work on this brief.



**The Women's Justice Center at Pace University School of Law** is a legal services and training center serving victims and survivors of domestic violence. The Center is dedicated to eradicating domestic violence and to furthering the legal rights of women and other groups by providing them with education and legal tools. The Center provides direct and free civil legal services to thousands of victims and survivors of domestic violence.

**The Women's Law Project** is a Pennsylvania non-profit public interest law firm. WLP works to abolish discrimination and to advance the legal and economic status of women and their families through a variety of legal, policy, and social services. WLP has engaged in activities challenging gender discrimination and in family matters relating to custody, support, domestic violence, and divorce.

**CONNECT** is dedicated to preventing interpersonal violence and promoting gender justice. By building partnerships with individuals and communities, CONNECT strives to help change the beliefs, behaviors, and institutions that perpetuate violence.

**The Domestic Violence Program at Albany Law School** is comprised of the Family Violence Litigation Clinic and the Domestic Violence Prosecution Hybrid Clinic. As one of only a few academic programs in upstate New York serving domestic violence victims, the Program provides direct representation to survivors through the work of its supervised student interns, assists victims in civil

and criminal matters, staffs district attorney offices with students, and trains legal practitioners.

**Domestic Violence Report** is a widely distributed newsletter sent to professionals interested in ending domestic violence. It is concerned with promoting the safety of domestic violence victims and their children. The newsletter editors, contributors, and advisory board train judges, domestic violence service providers, and others nationwide and help them create appropriate policies and responses for domestic violence.

**The Legal Project** is a private, not-for-profit civil legal assistance organization that provides a range of legal services to New York's Capital Region residents. The Project provides training for attorneys and is involved in public policy advocacy, particularly in relation to domestic violence and sexual assault matters. It is actively involved in local and statewide coalitions that seek public policy changes.

**The Minnesota Indian Women's Resource Center** is a non-profit social service agency dedicated to helping American Indian women advocate for justice and equity. The Center provides culturally-based services to address the complex intersection of multi-generational trauma, gender based violence, and homelessness among American Indian women and families.

**The Washington State Coalition Against Domestic Violence** is a non-profit, statewide membership organization comprised of over 70 domestic violence shelters and advocacy programs committed to eradicating domestic violence. WSCADV's core commitment is to support domestic violence survivors, emergency shelters, and advocacy programs by advocating for laws and public policies that promote autonomy, safety, and justice for domestic violence survivors.

**The New York Legal Assistance Group** is a not-for-profit organization dedicated to providing free civil legal services to New York's low-income families, including domestic violence victims. NYLAG provides victims with legal representation in child protection, custody, visitation, child and spousal support, matrimonial, immigration, and criminal matters. NYLAG's Domestic Violence Clinical Center provides law students with the substantive and litigation skills necessary to represent battered women.

**The National Network to End Domestic Violence** is a membership and advocacy organization of state domestic violence coalitions, allied organizations and supportive individuals. NNEDV works with its members to understand the ongoing and emerging needs of victims and advocacy programs and makes sure those needs are understood by national policymakers. NNEDV brings needed

resources to communities, including training and technical assistance, innovative programs, and strategic funding.

**The New York State Coalition Against Domestic Violence** is a not-for-profit membership program representing local domestic violence service providers statewide. NYSCADV creates and supports the social change necessary to prevent and confront domestic violence through activism, education, leadership development, the promotion of policy and practice, and broad-based collaboration integrating anti-oppression principles.

**The SUNY Buffalo School of Law Women, Children, and Social Justice Clinic** is committed to preventing domestic violence and promoting the legal rights of victims of domestic abuse and intimate partner violence, including women, children, the elderly, and same-sex partners.

**The Legal Aid Society** has a long-standing record of providing targeted services to meet the most vulnerable New Yorkers' essential legal needs. In addition to an annual caseload of 300,000 individual cases and legal matters, the Society's law reform representation for clients benefits some two million low-income families and individuals in New York City, and many landmark rulings in these cases have a statewide and national impact.

## SUMMARY OF AMICI'S ARGUMENT

*Amici* contend that the trial court erred by precluding Dr. Dawn Hughes' proffered testimony. *Amici* further contend that the admission of Dr. Jacquelyn Campbell's general testimony on intimate partner abuse did not remedy the trial court's error of excluding Dr. Hughes' case-specific testimony.<sup>2</sup> The exclusion of

---

<sup>2</sup> New York statutes and cases tend to use the term "Battered Woman's Syndrome" (BWS) to describe the substance of expert testimony regarding abuse. *See, e.g., People v. Seeley*, 186 Misc. 2d 715, 716 (Kings Cty. Sup. Ct. 2000). BWS is an idea first conceptualized in the late 1970s and was coined as a term by psychologist Lenore Walker in the early 1980s. *See Leigh Goodmark, When is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J. OF LAW & FEMINISM 75 (2008). Since then, extensive research has been done in this field and the term "BWS" has become inadequate to describe the current body of knowledge about battering and its effects.

Experts, social scientists, and legislatures are replacing the term "BWS" with "battering and its effects," "intimate partner battering and its effects," or "intimate partner abuse and its effects" in legal and scholarly treatises and in statutes to better describe the experiences, beliefs, perceptions, and realities of the lives of victims of partner abuse. *See, e.g.,* Mary Ann Dutton, US Dep't of Just., NCJ 160972, *Impact of Evidence Concerning Battering and Its Effects in Criminal Trials Involving Battered Women*, 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 1, 2 (1996) [hereinafter "Dutton I"]; Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973, 975-76 (1995); *see, e.g.,* CA. EVID. CODE § 1107 (West 1992).

relevant expert testimony violated Appellant Barbara Sheehan's constitutionally protected right to present a complete defense. U.S. CONST. amend. V, VI.

When a domestic violence victim is a criminal defendant and the abuse she suffered is relevant to the crime charged, the admission of both general and case-specific expert testimony is crucial in explaining the particularities of her situation and the reasonableness of her fear at the time of the charged offense. Although the admissibility of expert testimony is within the discretion of the trial court, disproportionately precluding relevant testimony thwarts the jury's function of interpreting the facts of a given case and denies the defendant the opportunity to present critical elements of her defense.

Ms. Sheehan's conviction for criminal possession of a weapon illustrates the injustice that results when a trial court disproportionately precludes relevant expert testimony based on the court's misguided principles of admissibility. The outcome of this case clearly demonstrates that the jury did not fully understand Ms. Sheehan's state of mind when she picked up the second gun and shot the decedent. Based on Raymond Sheehan's readiness and propensity to inflict multiple forms of violence on Ms. Sheehan and the salience of his threats, Dr. Hughes concluded that Ms. Sheehan had a reasonable perception of imminent danger of death or serious

---

This brief will use the term "intimate partner abuse and its effects on battered women" or "intimate partner abuse."

bodily harm on the day of the charged offense and that this reasonable perception remained unchanged throughout the violent episode. Those findings underscored that Ms. Sheehan lacked the requisite intent for the crime for which she was convicted.

The exclusion of Dr. Hughes' proffered testimony was not remedied by the introduction of Dr. Campbell's general testimony on intimate partner abuse. In addition, the court's order precluding case-specific expert testimony barred Dr. Campbell from discussing the Danger Assessment tool and a battered woman's ability to appraise the likelihood of being killed by her batterer, both of which were highly probative of defendant's belief that she was still in imminent danger when she fired the second gun.

Deprived of any case-specific expert testimony, and hearing only general testimony on intimate partner abuse, the jury made an inaccurate inference as to Ms. Sheehan's state of mind at the time of the charged offense, resulting in an unjust conviction. *Amici* request that the Court examine the flawed reasoning that led to the preclusion of critical expert testimony and respectfully urge the Court to REVERSE the conviction for criminal possession of a weapon.

## **ARGUMENT**

### **I. THE TRIAL COURT’S PRECLUSION OF NECESSARY AND RELEVANT CASE-SPECIFIC EXPERT TESTIMONY DEPRIVED APPELLANT OF THE OPPORTUNITY TO PRESENT A COMPLETE DEFENSE.**

This case demonstrates the importance of admitting both general and case-specific expert testimony in cases involving battered women who respond to abuse with violence. The trial court’s exclusion of expert testimony deprived Ms. Sheehan of the opportunity to present a complete defense in violation of the Fifth and Sixth Amendments to the U.S. Constitution.<sup>3</sup> U.S. CONST. amend. V, VI. The Supreme Court has long held that a defendant’s right to proffer witnesses’

---

<sup>3</sup> Appellant concedes that the fine imposed by the trial court on defense counsel was warranted. However, by precluding key psychological testimony, the trial court improperly sanctioned the appellant for defense counsel’s misconduct. The trial court also failed to consider “alternative remedies that would have adequately addressed counsel’s actions while protecting [Ms. Sheehan’s] constitutional rights.” Brief for Defendant-Appellant at 50, *People v. Sheehan*, No. 2011-11719 (2nd Dep’t Apr. 26, 2012). *Amici* refer to Defendant-Appellant’s main brief on this point.



testimony is “a fundamental element of due process of law.” *See, e.g., Washington v. Texas*, 388 U.S. 14, 19 (1967). New York courts have likewise held that a defendant has a constitutional right to present a complete defense, which necessarily involves the admission of relevant exculpatory evidence. *Seeley*, 186 Misc. 2d at 717.

Expert testimony on intimate partner abuse provides the fact finder with the framework necessary to assess the reasonableness and perception of danger common to battered women. *See Seeley*, 186 Misc. 2d at 721–23 (noting that BWS “is evidence of a defendant’s state of mind or evidence relevant to a defense” and citing cases from other states holding that BWS is relevant to prove “defendant’s subjective belief that the use of physical force against the defendant is imminent”); Regina A. Schuller & Patricia A. Hastings, *Trials of Battered Women Who Kill: The Impact of Alternative Forms of Expert Evidence*, 20 LAW & HUM. BEHAV. 167, 168 (1996).

Judges and jurors alike are “plagued and riddled by a lifetime of exposure to the same mistaken myths that shape and bias the public’s attitudes.” Phyllis Craig-Taylor, *Lifting the Veil: The Intersectionality of Ethics, Culture, and Gender Bias in Domestic Violence Cases*, 32 RUTGERS L. REC. 31, 37 (2008) (internal quotations omitted). According to a 1991 survey of 223 appellate cases involving

homicide convictions of battered women in California, judges often commit due process violations by “essentially deny[ing] battered women fair trials. Judges implement their bias through the exclusion of evidence, the denial of self-defense instructions, and/or the repudiation of instructions to the jury on the relevance of a battered woman's evidence.” Carol Jacobsen, Kammy Mizga & Lynn D'Orio, *Battered Women, Homicide Convictions, and Sentencing: The Case for Clemency*, 18 HASTINGS WOMEN'S L.J. 31, 40 (2007); *see also* Lisa D. May, *The Backfiring of the Domestic Violence Firearms Bans*, 14 COLUM. J. GENDER & L. 1, 23 (2005) (stating that judges continue to impede the implementation of domestic violence laws in various ways, such as precluding certain probative evidence and intentionally misapplying local statutes).

Expert testimony on intimate partner abuse helps dispel these myths and misconceptions and explain the many reasons why battered women, despite how dire their situations may be, often remain in or return to abusive relationships.<sup>4</sup> Schuller, *supra*, at 168; Sarah M. Buel, *Fifty Obstacles to Leaving, A.K.A., Why Abuse Victims Stay*, 28 COLO. L. 19, 19–25 (1999).

---

<sup>4</sup> While some victims do leave, doing so places them in even greater danger. “It is estimated that a battered woman is 75 percent more likely to be murdered when she tries to flee or has fled, than when she stays.” Buel, *supra*, at 19 (citing Barbara Hart, *National Estimates and Facts About Domestic Violence*, NCADV VOICE (1989)); Patricia Tjaden & Nancy Thoennes, U.S. Dep't of Just., NCJ 181867, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings From the National Violence Against Women Survey*, 37 (2000).

The absence of case-specific testimony at Ms. Sheehan’s trial rendered the jury ill-equipped to make a determination as to her state of mind at the time of the offense for which she was convicted and the reasonableness of her possession of the second gun.

**A. The Admission of Both General and Case-Specific Expert Testimony is Critical in Cases Involving Battered Women Who Respond to Abuse With Violence.**

Expert testimony may take one of two forms: general expert testimony on battering and its effects or case-specific expert testimony.<sup>5</sup> Dutton I, *supra* note 2, at 2; *see also* Jane H. Aiken & Jane C. Murphy, *Dealing with Complex Evidence of Domestic Violence: A Primer for the Civil Bench*, 39 COURT REV. 12, 13 (2002).

General testimony, often referred to as “social-framework analysis,” relies on social science research and offers a social and psychological framework for

---

<sup>5</sup> Experts, social scientists, and legislatures often use different terms to refer to “general expert testimony” and “case-specific expert testimony.” *See, e.g., People v. Torres*, 128 Misc. 2d 129, 134 (Bronx Cty. Sup. Ct. 1985) (referring to case-specific testimony as opinion testimony); Regina A. Schuller, *The Impact of Battered Women’s Syndrome Evidence on Jury Decision Process*, 16 LAW & HUM. BEHAV. 597 (1992) (referring to testimony as to whether a particular woman fits the BWS as specific testimony); Janet Parrish, U.S. Dep’t of Just., NCJ 160972, *Trend Analysis: Expert Testimony on Battering and Its Effects in Criminal Cases, 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* 1, 5 (1996) (referring to “general expert testimony” as generic expert testimony).

understanding intimate partner abuse and its effects on battered women. Gregory Mitchell, Laurens Walker & John Monahan, *Beyond Context: Social Facts as Case-Specific Evidence*, 60 EMORY L.J. 1109, 1112 (2011); Audrey E. Stone, *Presenting Battered Women's Expert Testimony: Trial and Error*, 271 PRACTICING LAW INSTITUTE 255, 311 (1998). When only general testimony is permitted, the expert may not express an opinion about the battered woman on trial. Mary Ann Dutton, U.S. Dep't of Just., NCJ 160972, *Validity of "Battered Woman Syndrome" in Criminal Cases Involving Battered Women*, 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 1, 21 (1996); Stone, *supra*, at 311.

In contrast, “[c]ase-specific testimony provides information about a particular battered woman and the context in which domestic violence occurred [and] . . . places the unique facts of a specific case in a framework of what is known in the literature about battering and its effects.” Stone, *supra*, at 311; *see also* Dutton I, *supra* note 2, at 2. The expert interviews the defendant, reviews relevant documents, submits a report, and testifies in court about the particular facts of the case. Nancy K. D. Lemon, *A Transformative Experience: Working as a Domestic Violence Expert Witness*, 24 BERKELEY J. GENDER L. & JUST. 208, 220 (2009).

In order to protect a defendant's constitutional right to present a complete defense, "[a]n effective framework for expert testimony must permit both general and specific application of research findings to cases involving battered women." Stone, *supra*, at 312; *see Seeley*, 186 Misc. 2d at 722 (noting that in addition to testimony on BWS, "[m]any states[, including New York,] permit or require that the trial court allow a defense expert to testify that a defendant is a Battered Person"); *see also People v. Ciervo*, 123 A.D.2d 393, 394 (2nd Dep't 1986) (discussing the defense expert's findings that the defendant was a battered woman and "based upon the decedent's pattern of beatings, [she] was able to perceive the danger to be life threatening for her son and that it was necessary for her to stop the decedent . . . ."); *see also, Torres*, 128 Misc. 2d at 133 ( "This expert explanation concerning such acute discriminatory powers would provide a basis for the jury to understand how at the time of the shooting [defendant's husband's] violence had, in the defendant's mind, passed from the 'normal' and tolerable into the 'abnormal' and life threatening.").

**B. Case-Specific Expert Testimony Was Necessary to Aid the Jury in Assessing the Appellant's State of Mind With Regard to the Second Gun Possession Charge.**

In the absence of Dr. Hughes' proffered testimony, the jury lacked both the clarity and context necessary to fully understand Ms. Sheehan's conduct throughout the violent episode.

Although the admissibility of expert testimony is primarily within the discretion of the trial court, “jurors should have all relevant and reliable information to enable them to make an accurate determination.” *See* Rick Brown, *Limitations on Expert Testimony on the Battered Woman Syndrome in Homicide Cases: The Return of the Ultimate Issue Rule*, 32 ARIZ. L. REV. 665, 689 (1990); *see also* Seeley, 186 Misc. 2d at 722–23 (holding that the jury is entitled to hear general testimony on BWS and expert opinion as to whether a defendant is a Battered Person in order to determine the reasonableness of the defendant’s beliefs or fears). Expert testimony is appropriate where jurors are unable to draw conclusions from their own experiences and “would be benefited by the specialized knowledge of an expert witness.” *People v. Cronin*, 60 N.Y.2d 430, 433 (1983). Precluding relevant testimony whose probative value outweighs any prejudice to the opposing party “simply hinders the jury in their duty and denies the defendant much of the relevance of the proposed testimony.” Brown, *supra*, at 689.

**1. The Excluded Comprehensive Forensic Psychological Evaluation by Dr. Hughes Demonstrated That Ms. Sheehan Was a Victim of Intimate Partner Abuse and That Her Perception of Threat Did Not Cease After Firing the First Weapon.**

Dr. Hughes conducted a comprehensive forensic psychological evaluation of Ms. Sheehan in March and April 2008. She concluded that Ms. Sheehan was a victim of intimate partner abuse and that her statements were “consistent with a pattern of severe, extensive, chronic, and unremitting intimate partner abuse,

including physical violence, psychological abuse, sexual abuse, and stalking behaviors over the course of almost two decades.” November 9, 2011 Letter of Dr. Dawn Hughes [hereinafter “Letter”] at 1.<sup>6</sup>

Dr. Hughes also administered the Danger Assessment tool and found that Ms. Sheehan scored in the extreme danger category—the highest possible classification—based on the degree and extent of the abuse.<sup>7</sup> Letter, *supra*, at 2. Dr. Hughes concluded that Ms. Sheehan’s extremely high Danger Assessment score, coupled with her belief that her husband would kill her, indicated a strong predictor of lethality. *Id.*

Most significantly, Dr. Hughes concluded that in her professional opinion, “Barbara Sheehan had a reasonable perception of fear and imminent danger of

---

<sup>6</sup> The evaluation included a semi-structured clinical interview, psychological tests and questionnaires, interviews with Ms. Sheehan’s children and her friend Betsy Torres, and a review of medical and legal documents. Letter, *supra*, at 1.

Dr. Hughes used the terms “intimate partner violence” and “intimate partner abuse” interchangeably in the letter to Justice Kron. The latter term is broader, encompassing both violence and other forms of abuse, such as psychological, emotional, and sexual abuse.

<sup>7</sup> The Danger Assessment Tool (DA) is an instrument that helps assess the likelihood of lethality for women who are in abusive relationships. The DA consists of 20 risk factors associated with an increased risk of homicide and uses a weighted system to score the responses to these factors. The DA is used in many jurisdictions and has been found to “accurately identify the vast majority of abused women who are at increased risk of femicide or attempted femicide.” Jacquelyn C. Campbell, Daniel W. Webster & Nancy Glass, *Danger Assessment: Validation of a Lethality Risk Assessment Instrument for Intimate Partner Femicide*, 24 J. INTERPERS. VIOLENCE 653, 655, 669 (2009); Tr. 1426–32.

serious and lethal violence at the time she shot Raymond Sheehan on February 18, 2008,” and that “her perception of threat did not cease after firing the first weapon.” *Id.* She provided three reasons explaining why Ms. Sheehan’s perception of threat continued throughout the entire incident. First, the threat of imminent danger did not cease after she fired the first gun. Even after the first shots were fired, Raymond Sheehan continued to threaten that he was going to kill her and attempted to reach for the other gun. *Id.* According to Dr. Hughes, “[h]er psychological state of mind of terror and fear of death [would have] persisted under those conditions.” *Id.*

Second, Ms. Sheehan’s behavior at the time of the shooting was typical of what Dr. Hughes called a “psychological fear response.” Letter, *supra*, at 3. This response is a hyperaroused psychological state that causes “a shift of attention toward the source of threat and an interference of normal functions of attention, concentration, and cognitive reasoning.” *Id.* According to Dr. Hughes, this response was particularly pronounced in Ms. Sheehan’s case due to the severity and extent of the decades of abuse she had suffered and the saliency of Raymond Sheehan’s threats. Letter, *supra*, at 2–3.

Finally, Dr. Hughes found that years of physical, sexual, and psychological abuse had conditioned Ms. Sheehan to believe that the severity and duration of an abusive episode were solely within Raymond Sheehan’s control. Letter, *supra*, at



3. This dynamic causes the victim “to view [her] perpetrator as omnipotent and not capable of being stopped.” *Id.* Dr. Hughes concluded that “[a]s a consequence of nearly two decades of severe intimate partner violence, her psychological state of mind was such on February 18, 2008 that Raymond Sheehan continued to be a valid and realistic threat even after being shot by the first gun.” Letter, *supra*, at 3.

**2. Absent Dr. Hughes’ Proffered Testimony, the Jury was Ill-Equipped to Fully Assess Appellant’s Conduct and State of Mind Throughout the Incident and its Preclusion was Both Disproportionate and Prejudicial.**

Ms. Sheehan’s conviction for criminal possession of a weapon demonstrates that the jury, absent the assistance of an expert witness giving case-specific testimony, was unable to fully assess her state of mind at the time she shot Raymond Sheehan with the second gun. Dr. Campbell’s generic testimony was useful in helping the jury understand her behavior on the day of the charged offense. Nevertheless, the applicability and relevance of general expert testimony is limited in that it can never fully capture the disparities and particularities of each case. Mitchell, *supra*, at 1139–40.

A defendant should be permitted to introduce expert testimony where the jury would benefit from such testimony and the conclusions to be drawn are beyond the ken of the ordinary juror. *People v. Taylor*, 75 N.Y.2d 277, 288 (1990); *People v. Colberg*, 182 Misc. 2d 798, 800 (Sullivan Cty. Ct. 1999); *People v. Ellis*, 170 Misc. 2d 945, 951 (1996); *see also People v. Milczakowskyj*, 73 A.D.3d

1453, 1454 (4th Dep't 2010) (finding that expert testimony concerning the effects of posttraumatic stress disorder on battered women was properly admitted "to explain behavior on the part of the victim that might seem unusual to the jury."). A court may exclude or limit expert testimony to the extent that its probative value is outweighed by the prejudice it may cause the opposing party. *Seeley*, 186 Misc. 2d at 717; *Holmes v. South Carolina*, 547 U.S. 319, 326 (2006). However, the trial court must also be wary of the need to preserve the defendant's right to present a complete defense, which necessarily involves the opportunity to put forth any exculpatory evidence. *Seeley*, 186 Misc. 2d at 717.

Consistent with these evidentiary principles, the courts of every state have recognized the probative value and need for expert testimony on intimate partner abuse to support a battered defendant's claim of self-defense. In recent decades, both courts and legislatures have taken an expansive view of the scope and relevance of expert testimony to issues of state of mind and self-defense. Parrish, *supra* note 4, at 3, 5–6.<sup>8</sup> For instance, at least nineteen states have found expert testimony pertinent to the "defendant's perception of the temporal proximity of the perceived danger to life or safety" at the time of the charged crime. *Id.* at 28.

Following this trend, New York has greatly expanded the scope of admissible

---

<sup>8</sup> A similar trend may be seen among federal courts: at least twelve have admitted expert testimony on the issue of the defendant's state of mind. Parrish, *supra*, at 33; *see also* FED. R. EVID. 704(a).

general and case-specific expert testimony. New York courts have even upheld expert testimony on the ultimate issue of whether the defendant acted in self-defense, so long as such testimony is outside the jury's ordinary training or knowledge. *See, e.g., Seeley*, 186 Misc. 2d at 723; *People v. Carroll*, 95 N.Y.2d 375, 387 (2000); *Cronin*, 60 N.Y.2d at 432; *see also Parrish, supra* note 4, at 29.

The First Department and the New York Court of Appeals have found reversible error where the trial court improperly excluded relevant expert testimony regarding the defendant's state of mind. In *People v. Florestal*, 53 A.D.3d 164, 170 (1st Dep't 2008), the First Department found that the trial court erred in precluding expert testimony about whether the defendant's state of mind was that of depraved indifference, noting that such testimony was beyond the ken of the ordinary juror.<sup>9</sup> The court concluded that "since depraved indifference [was] a culpable mental state, the proposed testimony [was] akin to testimony concerning a defendant's ability to form the requisite intent and would be admissible." *Id.* (internal quotations omitted).

Similarly, the Court in *People v. Cronin* held that the Appellate Division erred in refusing to allow any inquiry as to the defendant's state of mind or his

---

<sup>9</sup> In *Florestal*, defendant appealed her murder conviction in connection with the death of her infant. She had sought to introduce psychiatric testimony "about battering and its effects in order to rebut the statutory element of depraved indifference to human life." 53 A.D.3d at 167.

intent.<sup>10</sup> 60 N.Y.2d at 432. Although the defense was permitted to offer limited testimony by a forensic psychiatrist skilled in drug and alcohol use, the trial court circumscribed any evidence it perceived as addressing the ultimate questions in the case. *Id.* The Court observed that the “opinion testimony of an expert witness necessarily enters upon the jury’s province, since the expert—and not the jury—draws conclusions from the facts, which the jury is then asked to adopt.” *Id.* Therefore, the admissibility of expert testimony does not turn on whether expert opinion addresses the ultimate questions of a case, but rather whether the conclusion to be drawn is beyond an ordinary juror’s training or intelligence. *Id.* at 432–33. The Court held that the trial court failed to exercise its discretion by precluding any expert testimony “regarding the defendant’s ability to form intent, only [on the basis that] such an opinion went to the ultimate question and would usurp the jury’s function.” *Id.* at 433.<sup>11</sup>

---

<sup>10</sup> In *Cronin*, the Court of Appeals held that the trial court committed reversible error in applying the wrong standard of admissibility in determining whether to admit psychiatric testimony as to the effect of consuming large quantities of drugs and alcohol on a defendant’s ability to form requisite intent. 60 N.Y.2d at 433.

<sup>11</sup> “The announced imposition of limits on the expert’s testimony, and the striking of testimony, denied defendant the opportunity to elicit opinions going directly to the issue of intent. The jury was left with the expert’s generalized observations about the effects of alcohol and drug consumption, without his application of these observations, in the form of opinion testimony, to the element of purposeful activity.” *Cronin*, 60 N.Y.2d at 433–34.

Dr. Hughes' proffered testimony was central to Ms. Sheehan's defense. As in *Cronin* and *Florestal*, where expert testimony regarding a defendant's state of mind and ability to form the requisite intent was erroneously precluded, Dr. Hughes' proffered testimony regarding Ms. Sheehan's mental state at the time of the charged offense was also wrongfully excluded by the trial court. *See Cronin*, 60 N.Y.2d at 432; *see Florestal*, 53 A.D.3d at 170. Criminal possession of a weapon in the second degree, the crime for which Ms. Sheehan was convicted, requires the intent to use a weapon unlawfully against another. N.Y. Penal Law § 265.03-1(b) (McKinney 2006). Ms. Sheehan clearly lacked the requisite intent to use a weapon unlawfully against the decedent because, as the jury found, she reasonably believed that her life was still in danger when she grabbed the second gun and continued to shoot him in self-defense.<sup>12</sup> Even after she fired the first gun, Mr. Sheehan continued to scream that he was going to kill her and attempted to reach for the second gun.<sup>13</sup> Tr. 691–92. Ms. Sheehan testified that if her husband got up, “[h]e was positively going to kill me . . . He used to chase me all the time, and he always

---

<sup>12</sup> As noted in the Appellant's Brief, the trial court charged the jury that “[defendant] would not be guilty if she ‘solely’ intended to use the weapons in a justifiable manner.” Brief for Defendant-Appellant, *supra* note 3, at 4. Although the jury found that Ms. Sheehan was justified in defending herself throughout the incident, it also found that she harbored the requisite intent to use the second weapon unlawfully. The jury's finding was both peculiar and contrary to the trial court's instructions.

<sup>13</sup> He was also pushing himself with his hands in an attempt to pick himself up. Tr. 692.

caught me, and he would have caught me, and he was going to kill me. I know he was.” Tr. 692. Dr. Hughes concluded that Raymond Sheehan’s readiness and propensity to inflict multiple forms of violence on Ms. Sheehan, his unrestrained access to weapons, and his ties as a former detective with the New York Police Department greatly increased the salience of his threats and reasonably led Ms. Sheehan to believe that he intended to kill her. Letter, *supra*, at 2.

The fact that Dr. Hughes’ findings addressed the ultimate question of whether Ms. Sheehan had the requisite intent to use the second weapon unlawfully, did not, in and of itself, render such testimony inadmissible. *See Cronin*, 60 N.Y.2d at 432–33. Dr. Hughes’ conclusion regarding Ms. Sheehan’s state of mind, based on an extensive psychological evaluation and years of experience working with victims of intimate partner abuse, was certainly beyond the ordinary intelligence or training of the average juror and was thus wrongfully precluded by the trial court. *See id.*

Moreover, the admission of Dr. Campbell’s general testimony on intimate partner abuse was insufficient to remedy the prejudice caused by the trial’s court’s preclusion of case-specific expert testimony. By excluding Dr. Hughes’ proffered testimony, the lower court likewise barred Dr. Campbell from addressing critical elements of the defense. Tr. 1344. Most significantly, the trial court disallowed any discussion of the risk factors associated with heightened lethality in an abusive

relationship and the uncanny accuracy with which battered women can appraise the likelihood of being killed by their abusers. Tr. 1374–75, 1426–30. The excluded portions of Dr. Campbell’s testimony were most probative on the issue of Ms. Sheehan’s intent with respect to the second gun possession charge, the only charge of which she was convicted.

The exclusion of critical expert testimony also provided the prosecution an opportunity to distort Ms. Sheehan’s testimony and to mischaracterize the events that transpired on February 18, 2008. The prosecution repeatedly tried to portray Mr. Sheehan as defenseless and unarmed, too crippled by injuries inflicted by the first gun to be a viable threat. *See, e.g.*, tr.8. The prosecution theorized that the positioning of Mr. Sheehan’s body, and the fact that he had a broken ankle and multiple bullet wounds, made it virtually impossible for him to stand up and chase Ms. Sheehan. People’s Summations 103. Armed or unarmed, the force of his threats made Ms. Sheehan reasonably believe that she was in imminent danger of being killed. The excluded portions of Dr. Campbell’s testimony, as well as Dr. Hughes’ proffered testimony, were highly probative as to Ms. Sheehan’s belief that her husband posed a real and viable threat at the time she fired the second gun. *See Torres*, 128 Misc. 2d at 133; *see People v. Johnson*, 22 A.D.3d 600, 601 (2nd Dep’t 2005) (“The trial court providently exercised its discretion in admitting expert testimony regarding the battered women's syndrome[, which . . .] was

properly admitted to aid the jury in understanding the unusual behavior of one of the female victims after the attack.”); *see also People v. Humphrey*, 13 Cal.4th 1073, 1086 (1996) (holding that expert testimony on a battered woman’s ability to discern when danger is most imminent is relevant to the “jury’s evaluation of the reasonableness of defendant’s fear for her life”).

### **CONCLUSION**

The trial court’s preclusion of case-specific expert testimony violated Barbara Sheehan’s constitutionally protected right to present a valid defense. In the absence of relevant exculpatory evidence, the jury did not possess all the information necessary to assess the reasonableness of Ms. Sheehan’s state of mind when she fired the second weapon.

WHEREFORE, for the foregoing reasons, and those set forth in the Brief of Appellant, *Amici* respectfully request this Court to REVERSE the conviction for criminal possession of a weapon.



Dated: New York, New York  
July \_\_\_\_\_, 2012

Respectfully Submitted,

AMICUS CURIAE

By: \_\_\_\_\_  
Dorchen A. Leidholdt  
Sanctuary for Families  
Center for Battered Women's Legal  
Services, 110 Wall Street, 11<sup>th</sup> Floor  
New York, NY 10005-3817  
(212) 349-6009 x252

\_\_\_\_\_  
Nancy K.D. Lemon  
Lecturer, University of California,  
Berkeley, School of Law  
Berkeley, CA 94720  
(510) 525-3164

CERTIFICATE OF COMPLIANCE  
PURSUANT TO 22 NYCRR § 670.10.3(f)

The foregoing brief was prepared on a computer using Microsoft Word. A proportionally spaced typeface was used, as follows:

Name of typeface: Times New Roman  
Point Size: 14  
Line Spacing: Double

The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, or any authorized addendum containing statutes, rules, regulations, etc., is 6984.

Dated: New York, New York  
July 5, 2012

AMICI CURIAE

---

BY: Dorchen A. Leidholdt, Esq.  
Sanctuary for Families  
Center for Battered Women's  
Legal Services  
110 Wall Street, 11<sup>th</sup> Floor  
New York, NY 10005-3817  
(212) 349-6009 x252

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: SECOND DEPARTMENT

----- X  
THE PEOPLE OF THE  
STATE OF NEW YORK, :

Respondent, :

**AFFIDAVIT OF SERVICE**

: App. Div. Docket No. 2011  
11719

- v. - :

Queens County Ind. No. 1124/08

BARBARA SHEEHAN,

Defendant-Appellant.

----- X

State of New York )  
County of New York ) ss :

Lisa Alexander, Esq., being duly sworn, deposes and says that:

1. The deponent is not a party to the action, is 18 years of age or older, and resides at:  
c/o Sanctuary for Families, 110 Wall Street 11<sup>th</sup> Floor, New York, NY 10005.

2. On the 5 day of July, 2012, the deponent served the following described papers upon the person or persons listed in paragraph 5 hereof: *Amici Curiae* Brief in Support of Defendant-Appellant.

3. The number of copies served on each of said persons was 2.

4. The method of service on each of said persons was:

By mailing the paper to the person at the address designated by him or her for that purpose by depositing the same in a first class, postpaid, properly addressed wrapper, in a post office or official depository under the exclusive care and custody of the United States Postal Service within the State of New York pursuant to CPLR 2103(b)(2).

5. The name of the person or names of the persons served and the address or addresses at which service was made are as follows:

QUEENS COUNTY DISTRICT ATTORNEY'S OFFICE  
Assistant District Attorney Donna Aldea  
125-01 Queens Boulevard  
Kew Gardens, NY 11415  
*Counsel for Respondent*

STILLMAN & FRIEDMAN, P.C.  
Nathaniel Z. Marmor, *of counsel*  
425 Park Avenue  
New York, NY 10022  
(212) 223-0200  
*Counsel for Appellant*

Dated: July 5, 2012, New York,  
New York

Sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

SUPREME COURT OF THE STATE NEW YORK  
APPELLATE DIVISION: SECOND DEPARTMENT

----- X

THE PEOPLE OF THE  
STATE OF NEW YORK,

Respondent,

- vs. -

BARBARA SHEEHAN,

Defendant-Appellant.  
----- X

App. Div. Docket  
No. 2011-11719

:  
Queens County  
Ind. No. 1124/08  
:  
:

**AFFIRMATION OF DORCHEN  
LIEDHOLDT IN SUPPORT OF  
MOTION FOR LEAVE TO FILE  
AN AMICUS CURIAE BRIEF IN  
SUPPORT OF DEFENDANT-  
APPELLANT**

Dorchen A. Leidholdt, an attorney licensed to practice in the State of New York, hereby  
affirms under penalty of perjury:

1. I am counsel with lead proposed amicus, Sanctuary for Families, Center for Battered Women's Legal Services ("Sanctuary for Families"). Together, with co-counsel Nancy K. D. Lemon, we represent Sanctuary for Families, The National Clearinghouse for the Defense of Battered Women, The Women's Justice Center at Pace University School of Law, The Women's Law Project, CONNECT, The Domestic Violence Program at Albany Law School, Domestic Violence Report, The Legal Project, The Minnesota Indian Women's Resource Center, The Washington State Coalition Against Domestic Violence, The New York Legal Assistance Group, The National Network to End Domestic Violence, The New York State Coalition Against Domestic Violence, The SUNY Buffalo School of Law Women, Children, and Social Justice Clinic, and The Legal Aid Society, collectively the proposed *Amici Curiae* (hereinafter "*Amici*"). I respectfully submit this affirmation in support of proposed *Amici Curiae*'s Motion for Leave to file an *amicus curiae* brief in support of Defendant-Appellant who is before this Court on her appeal from a Judgment of Conviction entered on November 10, 2011. See Exhibit A.

2. The *Amici* are legal and social service organizations that represent adult and child victims of domestic violence. Together, *Amici* are made up of lawyers, academics, and long-time advocates for battered women who work with victims in the civil, criminal, and public interest arenas. They engage in representation, advocacy, education, and training related to domestic violence. A description of these organizations and an explanation as to how their experience and expertise will assist this Court is attached as Exhibit B.

3. The issue before this Court is the propriety of a Supreme Court ruling precluding case-specific expert testimony and severely limiting general expert testimony related to intimate partner abuse and its effects when relevant to a defendant's state of mind, particularly where the defendant

is a victim of domestic violence and is accused of intending to use a weapon unlawfully against her batterer.

4. Under New York law, when a statutory crime specifically denotes a mens rea in its description of the offense, that is the mental state required for the crime. N.Y. Penal Law § 15.15(1) (McKinney 2006). The mens rea required for the crime of criminal possession of a weapon is that of intent. *Id.* at § 265.03(1). Since intent is the only mens rea mentioned in the statute, it “is presumed to apply to every element of the offense unless an intent to limit its application clearly appears.” *Id.* at § 15.05(1).

5. As the prosecution bears the burden of proving each and every element of the charged offense beyond a reasonable doubt, the Respondent had to prove that Ms. Sheehan intended to use a weapon unlawfully against Mr. Sheehan and that she intended to possess a loaded firearm. *See* N.Y. Penal Law § 265.03(1)(b). The prosecution’s theory was that Ms. Sheehan unlawfully intended to use a weapon against Mr. Sheehan because he was on the ground, injured, and therefore not a threat to anyone. *See, e.g.* Tr. 8. The defense should have been afforded an opportunity to counter the prosecution’s claims during its case-in-chief. As described in greater detail in Defendant-Appellant’s brief, the lower court refused to allow testimony from a case-specific expert witness, Dr. Dawn Hughes, about Ms. Sheehan’s mental state at the time of the charged offense as a result of her history of severe domestic violence. It also drastically limited testimony by a general expert witness, Dr. Jacquelyn Campbell, on risk factors associated with heightened lethality in domestic violence relationships and how likely victims are to correctly assess being killed by their abusers.

6. New York courts have consistently upheld the use of expert testimony as it relates to a defendant’s mental state. For instance, in *People v. Florestal*, the Appellate Division determined

that the trial court's exclusion of expert testimony on whether the defendant's mental state was one of "depraved indifference" was an error because such information was beyond the comprehension of an average juror. *People v. Florestal*, 53 A.D.3d 164, 170 (1st Dep't 2008). Similarly, in *People v. Cronin* the Court held that the Appellate Division erred in refusing to allow any inquiry as to the defendant's state of mind or his intent. *People v. Cronin*, 60 N.Y.2d 430, 432 (1983). The Court explained that precluding expert testimony solely because "such an opinion went to the ultimate question and would usurp the jury's function" was reversible error. *Id.* at 433. Therefore, because intent was in issue in Ms. Sheehan's case, the jury should have been permitted to hear expert testimony regarding her intent at the time of the charged offense.

7. *Amici* respectfully refer the Court to their proposed *amicus* brief, annexed hereto as Exhibit C, for a complete discussion of the arguments *Amici* seek to place before the Court.

8. This Court has the discretion to permit participation of *Amici* where such participation will not prejudice any party and may be of assistance to this Court.

9. *Amici's* submission of this *amicus* brief is not prejudicial to any party, and as *Amici* either represent parties in matters with similar issues or have extensive knowledge regarding the underlying issues, the proposed *amicus* brief may assist this Court.

10. *Amici* respectfully ask this Court to grant the instant motion, which will permit them to appear as *Amici Curiae* in support of Defendant-Appellant and file the proposed *amicus* brief in support of Defendant-Appellant. *Amici* also respectfully request that Ms. Nancy K.D. Lemon be admitted *pro hac vice* in order to appear in this action.

WHEREFORE, I respectfully request that this Court grant the motion of proposed *Amici Curiae*.

Dated: May 23, 2012  
New York, New York



---

Dorchen A. Leidholdt  
Sanctuary for Families  
Center for Battered Women's  
Legal Services  
110 Wall Street, 11<sup>th</sup> Floor  
New York, NY 10005-3817  
(212) 349-6009 x252

### **STATEMENTS OF INTEREST**

**Sanctuary for Families** is the largest nonprofit in New York State dedicated exclusively to serving domestic violence victims, sex trafficking victims, and their children. Sanctuary is committed to the safety, healing, and self-determination of thousands victims of domestic violence and related forms of gender violence and their children and strives to create a world in which freedom from gender violence is a basic human right. To achieve this goal, Sanctuary offers high-quality services—including clinical, legal, shelter, children’s, and economic empowerment—designed to meet the complex needs of victims. Sanctuary provides domestic violence services in nine locations, including our Manhattan office, Bronx Family Justice Center, Brooklyn Family Justice Center, and the Queens Family Justice Center.

Sanctuary is also a leading advocate for positive changes in city, state, and federal laws and public policies that affect our clients. Sanctuary has helped bring about legislative and legal

victories in areas including child welfare, sex trafficking, family law, matrimonial law, and immigrant issues. Sanctuary pursues improvements in housing and homelessness policies, the family court system, access to public benefits, and laws affecting lesbian, gay, bisexual, and transgender (LGBT) individuals and victims of sex trafficking. Part of this advocacy includes litigation and other forms of legal representation, as well as *amicus* briefs. Through this advocacy, Sanctuary has built strong relationships with government officials, community groups, and media and opinion leaders.

**The National Clearinghouse for the Defense of Battered Women (NCDBW)**

is a nonprofit organization that works to increase justice for victims of domestic violence who are charged with or convicted of crimes. NCDBW provides specialized, case-specific technical assistance and information to battered defendants, defense attorneys, battered women's advocates, expert witnesses, and other professionals and community members. The organization is committed to ensuring that victims of battering charged with crimes receive the full benefit of criminal legal protections to which all defendants are entitled.

**The Women's Justice Center** is a nonprofit legal center at Pace University School of Law, under the 501(c)(3) status of Pace University. In 1991, the Women's Justice Center ("Center") was founded at Pace University School of Law as one of the first academic legal centers in the country devoted to training attorneys and others in the community on domestic violence issues. The Center has since grown to be a highly respected, multi-faceted legal services and training center serving victims and survivors of domestic violence.

The Center is dedicated to eradicating domestic violence and to furthering the legal rights of women, the elderly, low-income families and children by providing the education and legal tools needed to stop the violence, seek economic justice and empower the underrepresented. Each year, the Center provides direct and free civil legal services to thousands of victims and survivors of domestic violence and elder abuse, and trains hundreds of attorneys, judges, prosecutors, police officers, and students on issues that impact the rights of these vulnerable and often underserved populations of litigants, including domestic violence, stalking, elder abuse and sexual assault. Assuring that vulnerable litigants have meaningful access to the judicial system is critical to the Center's mission.

**The Women's Law Project (WLP)** is a non-profit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. Founded in 1974, the WLP works to abolish discrimination and injustice and to advance the legal and economic status of women and their families through litigation, public policy development, public education, and individual counseling. Throughout its history, the Women's Law Project has engaged in extensive activities challenging gender discrimination in employment, education, insurance, and in family matters relating to custody, support, domestic violence and divorce. Assisting women who are victims of domestic violence, in particular, has been a major focus of both the telephone counseling service, which handles more than 5000 inquiries a year, and the Law Project's litigation efforts, which include both original litigation and participation as *amicus curiae*.

**CONNECT** is dedicated to preventing interpersonal violence and promoting gender justice. By building partnerships with individuals and communities, CONNECT

strives to help change the beliefs, behaviors and institutions that perpetuate violence. Through legal empowerment, grassroots mobilization and transformative education, CONNECT seeks to create safe families and peaceful communities.

**The Domestic Violence Program at Albany Law School's Law Clinic and Justice Center** is comprised of the Family Violence Litigation Clinic and the Domestic Violence Prosecution Hybrid Clinic. The Program is one of only a few academic programs in upstate New York serving domestic violence victims. The Domestic Violence Program not only provides direct representation to survivors through the work of its student interns under faculty supervision, but also assists victims in both civil and criminal matters, staffs district attorney offices with well-trained students, and trains a multitude of lawyers, court personnel and other practitioners who work with victims across the State.

**Domestic Violence Report (DVR)** is a multi-disciplinary newsletter that is widely distributed throughout the nation to 2,000 domestic violence programs and advocates, judges, lawyers, therapists, doctors, clergy, academics, police, probation officers and others interested in ending domestic violence. Since October of 1995, it has published every two months and covers all of the many aspects of domestic violence, and is primarily concerned with promoting the safety of domestic violence victims and the children in homes where domestic violence occurs.

The newsletter editors and contributors and advisory board, who include lawyers, healthcare providers, criminologists, police, academics, researchers and battered women's advocates, work with and train judges, health care providers, law enforcement officers, policymakers, and domestic violence service providers throughout the nation

and assist them in creating and appropriate policies and responses for domestic violence and understanding the complexities of the effects of domestic violence on its victims.

**The Legal Project** is a private, not-for-profit civil legal assistance organization that provides a range of legal services to low-and-moderate-income residents of the Capital Region of New York. Our Domestic Violence Legal Connection program provides free and low-cost civil legal advice, information, and representation to survivors of domestic violence in Family Court, matrimonial matters, and the range of other civil legal matters needed as they move toward safety and independence. These legal services are provided by a combination of staff attorneys and a panel of more than 90 volunteer attorneys.

The Legal Project provides training for volunteer attorneys through a local training consortium, and The Legal Project's Counsel provides training and technical assistance nationally on issues surrounding military-related survivors of domestic violence and sexual assault. The Legal Project is also involved in public policy advocacy, particularly in relation to matters of domestic violence and sexual assault, and how those affect our clients. We are actively involved in local and statewide coalitions that seek public policy changes and to be a voice for survivors on matters such as civil legal services funding, divorce reform, immigration issues, and military/veterans issues.

We believe firmly it is only by speaking with a loud, collective voice that change can happen. Survivors of domestic violence need access to all the legal assistance possible, including expert testimony to show why their actions are reasonable within the context of the domestic violence they live with – something that is difficult for anyone outside the situation to comprehend. For these reasons, we are joining this brief as *amicus curiae*.

**The Minnesota Indian Women's Resource Center** is a 28-year-old non-profit social service agency based in Minneapolis, Minnesota. Our mission is to empower American Indian women to exercise their cultural values and integrity, and achieve sustainable life-ways, while advocating for justice and equity. We provide a holistic set of culturally based services to address the complex intersection of multi-generational trauma, gender based violence, and homelessness among American Indian women and families. Our experience is that the vast majority of Native women have experienced repeat episodes of gender based violence throughout their lives. We keenly understand the impact this trauma has on their spiritual, emotional, physical and mental well-being. We recognize them as victims of crime and respond accordingly. As an organization led by survivors of domestic and sexual violence, we strongly support the position of Sanctuary for Families in the case of *People v. Sheehan*.

**The Washington State Coalition Against Domestic Violence (WSCADV)** is a non-profit organization, incorporated in the state of Washington. Founded in 1990 by domestic violence survivors, WSCADV is a statewide membership organization of over 70 domestic violence shelter and advocacy programs, committed to eradicating domestic violence through advocacy and action for social change. . WSCADV shares resources, develops common strategies and strengthens community responses to domestic violence around the state. The core commitment of WSCADV is to support domestic violence survivors, emergency shelter and advocacy programs by advocating for laws and public policies that promote autonomy, safety and justice for domestic violence survivors.

**The New York Legal Assistance Group (NYLAG)**, founded in 1990, is a not-for-profit organization dedicated to providing free civil legal services to New York's low income families. The Matrimonial & Family Law Unit of NYLAG provides legal representation to victims of

domestic violence on a priority basis. In addition to obtaining orders of protection, NYLAG provides victims with legal representation in child protection, custody, visitation, child and spousal support, and both contested and uncontested matrimonial matters. NYLAG's Immigrant Protection Unit represents victims of domestic violence in various immigration matters. NYLAG has further demonstrated its commitment to promoting legal services for victims of domestic violence through its Domestic Violence Clinical Center ("DVCC"). The DVCC is an innovative program administered and supervised by NYLAG attorneys, which offers law students the opportunity to learn the substantive and litigation skills necessary to provide exceptional representation to battered women. Finally, NYLAG represents domestic violence victims in criminal court to the extent possible under state law obtaining restitution and meaningful orders of protection as part of sentencing. As such, NYLAG has a special degree of knowledge and expertise in litigating domestic violence matters. In civil and criminal litigation the need for expert testimony regarding the dynamics of domestic violence is unquestionable.

**The National Network to End Domestic Violence (NNEDV)** is the leading voice for domestic violence victims and their advocates. As a membership and advocacy organization of state domestic violence coalitions, allied organizations and supportive individuals, NNEDV works closely with its members to understand the ongoing and emerging needs of domestic violence victims and advocacy programs. Then NNEDV makes sure those needs are heard and understood by policymakers at the national level.

NNEDV offers a range of programs and initiatives to address the complex causes and far-reaching consequences of domestic violence. Through cross-sector collaborations and corporate partnerships, NNEDV offers support to victims of domestic violence who are escaping abusive relationships – and empowers survivors to build new lives.

NNEDV further supports the fight to end domestic violence by providing state coalitions with critical information and resources. From training and technical assistance to innovative programs and strategic funding, NNEDV brings much-needed resources to local communities. At NNEDV's national and regional meetings, members share information and ideas with NNEDV staff and with each other, working together to develop comprehensive solutions.

Sue Else

A handwritten signature in black ink, appearing to read 'Sue Else', with a long horizontal flourish extending to the right.

President  
National Network to End Domestic Violence  
May 18, 2012

**The New York State Coalition Against Domestic Violence** is a not-for-profit membership program, representing the local domestic violence service providers across New York State. NYSCADV's mission is to create and support the social change necessary to prevent and confront all forms of domestic violence. As a statewide membership organization we achieve our mission through activism, education, leadership development, the promotion of sound policy and practice and broad based collaboration integrating anti-oppression principles in all our work.

**The SUNY Buffalo School of Law Women, Children, and Social Justice Clinic** is committed to preventing domestic violence and promoting the legal rights of victims of domestic abuse and intimate partner violence, including women, children, the elderly, and same-sex partners.

Students and faculty of the clinic seek justice and provide legal resources for people on the margins of our society: the homeless, the impoverished and economically disadvantaged, immigrants, and the disabled.

**The Legal Aid Society** is the oldest and largest program in the nation providing direct



legal services to low-income families and individuals. Founded in 1876, The Legal Aid Society has a long-standing proven track record of providing targeted services to meet the essential legal needs for the most vulnerable New Yorkers in all five boroughs of the City. The Society's legal program operates three major practices — Civil, Criminal and Juvenile Rights — and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program. With its annual caseload of more than 300,000 legal matters, the Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States. And it brings a depth and breadth of perspective that is unmatched in the legal profession. The Legal Aid Society's unique value is an ability to go beyond any one case to create more equitable outcomes for individuals and broader, more powerful systemic change for society as a whole. In addition to the annual caseload of 300,000 individual cases and legal matters, the Society's law reform representation for clients benefits some 2 million low-income families and individuals in New York City and the landmark rulings in many of these cases have a Statewide and national impact.

The Civil Practice's Domestic Violence Project includes representation in the areas of protection orders, custody/visitation, child/spousal support, property distribution, divorce, and domestic violence-related immigration relief. In litigated cases, the attorneys regularly appear in Supreme Court in contested matrimonial matters, as well as in Family Court for orders of protection, custody, and support cases and Immigration Court for removal hearings. Through formal and informal partnerships and collaboration with community-based organizations, social workers, hospitals, and other agencies, the Domestic Violence Project is enhanced by strong ties to the communities we serve. The Domestic Violence Project also focuses considerable efforts

on community education and training advocates and social service providers on issues of family law, immigration, and other issues affecting domestic violence victims and survivors.

SUPREME COURT OF THE STATE NEW YORK  
APPELLATE DIVISION: SECOND DEPARTMENT

----- x

PEOPLE OF THE  
STATE OF NEW YORK,

Respondent,

- vs. -

BARBARA SHEEHAN,

Defendant-Appellant.

----- x

App. Div. Docket  
No. 2011-11719

: Queens County  
Ind. No. 1124/08

: **NOTICE OF MOTION  
FOR LEAVE TO  
FILE AN *AMICUS CURIAE*  
BRIEF IN SUPPORT OF  
DEFENDANT-APPELLANT**

PLEASE TAKE NOTICE that upon the annexed Affirmation in Support of Motion by Dorchen A. Leidholdt, Esq., dated May 21, 2012, and the Exhibits annexed to that Affirmation, the undersigned will move this Court at the Courthouse thereof located at 45 Monroe Place, Brooklyn, New York 11201 on June 8 at 9:30 a.m., or as soon thereafter as counsel may be heard, for an order granting Sanctuary for Families, The National Clearinghouse for the Defense of Battered Women, The Women's Justice Center at Pace University School of Law, The Women's Law Project, CONNECT, The Domestic Violence Program at Albany Law School, Domestic Violence Report, The Legal Project, The Minnesota Indian Women's Resource Center, The Washington State Coalition Against Domestic Violence, The New York Legal Assistance Group, The National Network to End Domestic Violence, The New York State Coalition Against Domestic Violence, The SUNY Buffalo School of Law Women, Children, and Social Justice Clinic, and The Legal Aid Society (collectively "*Amici*") leave to appear as *amici curiae* in support of Defendant-Appellant, to file an *Amicus Curiae* Brief on the issues raised by Brief for Defendant-Appellant, and to have Ms. Nancy K.D. Lemon admitted *pro hac vice* in order to appear in this action. So as not to delay proceedings, the proposed *amicus* brief is submitted concurrently with this Motion.

Dated: May 23, 2012  
New York, New York

---

Dorchen A. Leidholdt, Esq.  
Sanctuary for Families  
Center for Battered Women's  
Legal Services  
110 Wall Street, 11<sup>th</sup> Floor  
New York, NY 10005-3817  
(212) 349-6009 x252

To: HON. CLERK OF THE COURT  
Supreme Court of the State of New York  
Appellate Division: Second Department  
45 Monroe Place  
Brooklyn, NY 11201

QUEENS COUNTY DISTRICT ATTORNEY'S OFFICE  
Assistant District Attorney Donna Aldea  
125-01 Queens Boulevard  
Kew Gardens, NY 11415  
*Counsel for Respondent*

STILLMAN & FRIEDMAN, P.C.  
Nathaniel Z. Marmor, *of counsel*  
425 Park Avenue  
New York, NY 10022  
(212) 223-0200  
*Counsel for Defendant-Appellant*