

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

EVELYN HUMPHREY,

Defendant and Appellant.

CASE NO. S045985

Fresno County Superior Court No. 460768-5
The Honorable A. Dennis Caeton, Judge

On Review from the Decision of the Court of Appeal,
Fifth Appellate District (F020267),
Affirming the Judgment of Conviction
By the Superior Court of Fresno County

BRIEF OF *AMICI CURIAE*
CALIFORNIA ALLIANCE AGAINST DOMESTIC VIOLENCE, *et. al.*
IN SUPPORT OF DEFENDANT/APPELLANT EVELYN HUMPHREY

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

INTRODUCTION

Amici Curiae (hereinafter "*Amici*") submit this brief in support of Appellant/Defendant, Evelyn Humphrey.¹ The principal question in this case is whether expert testimony on battered women's syndrome is relevant to a determination of what a reasonable person in the circumstances of a battered defendant would think and do.

Appellant shot her abusive boyfriend, Albert Hampton, after he said to her, "This time bitch, when I shoot at you, I won't miss," and moved to pick up a gun (RT 441). The shooting followed a day in which Hampton repeatedly hit Humphrey and threatened to kill her and hide her body (RT 425). The day before the shooting, the decedent fired a loaded gun at Humphrey, barely missing her (RT 414-415).

At trial, Dr. Lee Bowker provided expert testimony on domestic violence as part of Appellant's case. Dr. Bowker testified to general dynamics in abusive relationships (RT 278-287), and the results of his research on battered women and battering men (RT 272-277). He covered some of the common societal myths about battering and battered women (RT 274). He also testified about Appellant in particular, including details about the decedent's numerous batterings of Appellant (RT 327-341).

The trial court gave a jury instruction which prevented the jury from considering expert testimony on battered women's syndrome in their determination of the reasonableness of Appellant's fear that her life was in danger when she shot decedent.¹ During jury deliberations, the jury asked for clarification of "subjectively honest and objectively unreasonable."

Appellant was convicted of voluntary manslaughter and sentenced to three years for

¹ People's Special Jury Instruction read: "Evidence regarding Battered Woman's Syndrome has been introduced in this case. Such evidence, if believed, may be considered by you only for the purpose of determining whether or not the defendant held the necessary subjective belief which is a requirement for both perfect and imperfect self-defense. However, that same evidence regarding Battered Woman's syndrome may not be considered or used by you in evaluating the objective reasonableness requirement for perfect self-defense." (Supp. CT 82)

voluntary manslaughter and five years for using a firearm in the commission of a crime.

The limiting jury instruction on the use of battered women's syndrome testimony prevented the jury from properly considering the evidence of decedent's violence against Appellant, and from fairly assessing the reasonableness of her actions from the perspective of a reasonable person in the same circumstances as Appellant, as required by California law. Because expert testimony on battered women's syndrome is necessary to assist the trier of fact in understanding the circumstances of a battered woman, it was prejudicial error to prevent the jury from using expert testimony to assess reasonableness.

STATEMENT OF FACTS

Amici adopt the Statement of Facts set forth in the brief of Appellant.

CALIFORNIA SELF-DEFENSE LAW REQUIRES THE TRIER OF FACT TO CONSIDER THE PARTICULAR CIRCUMSTANCES OF THE DEFENDANT

California Self-Defense Law Incorporates an Element of Subjectivity By Requiring The Jury to Consider the Individual Circumstances of the Defendant

California self-defense law justifies a homicide when a person honestly and reasonably believes that they are in danger of death or great bodily injury from an assailant. Pen. Code §§ 197, 198. California law requires, and Respondent readily concedes, that in a self-defense case, the jury must make their determination of reasonableness based on the individual circumstances of the defendant, knowing what she knew about the victim. People v. Pena (1984) 151 Cal.App.3d 462, 476; Respondent's Brief on the Merits, p. 15. The court in People v. Moore (1954) 43 Cal.2d 517, 528, ruled that the jury must consider the facts and circumstances of defendant's relationship with the victim when determining reasonableness.

Amici do not wish to change the self-defense standard in California. We agree with Respondent that California law already incorporates an element of subjectivity in its self-defense law by requiring the jury to consider the circumstances and knowledge of the particular defendant when assessing reasonableness in a self-defense case. (Respondent's Brief on the Merits, p. 12.)

The requirement of reasonableness provides an element of objectivity. *Amici* agree that this standard results in a fair trial for battered women, if battered women are allowed to explain to the jury their circumstances and experiences, which are relevant to the assessment of reasonableness.

The issue in this case is whether expert testimony on battered women's syndrome is relevant to the assessment of whether the defendant's perceptions and actions were reasonable. *Amici* believe that under existing California law, expert testimony on battered women's syndrome must be considered by the jury in their determination of whether a reasonable person in the circumstances of the defendant would have behaved as she did.

Allowing Expert Testimony on Domestic Violence to Be Part of the Reasonableness Determination Would Not Create a Special Law for Battered Women or a Purely Subjective Test

Amici are not advocating a special self-defense law for battered women.ⁱⁱ *Amici* simply wish to ensure that battered women defendants have their self-defense claims judged in the same manner as other criminal defendants. California law recognizes that the trier of fact must consider the circumstances of the defendant and the knowledge of facts which she had when determining whether her actions were reasonable. Expert testimony on domestic violence explains important aspects of the circumstances of battered women that are commonly misunderstood by laypersons. The trial court instructions in this case therefore prevented the jury from properly considering Appellant's circumstances, by excluding the use of expert testimony in the reasonableness determination.

Amici are not advocating a purely subjective test for determining reasonableness in a self-defense case. Allowing the jury to consider the expert testimony on domestic violence as part of the reasonableness determination simply allows them to understand the context of the defendant's actions. The jury would still have to determine whether, knowing what the defendant knew about the decedent, and understanding the context of the relationship, her actions were reasonable.

The issue in this case is an evidentiary one, not a question of changing the standards of self-defense law in California. The trial court gave an instruction that limited the jury's consideration of "evidence about battered women's syndrome" in ways that denied the jury information that was relevant and crucially important to its determination of what harm a reasonable person, in the defendant's position and knowing what she knew, would have thought was imminent. The limiting instruction restricted the jury's proper application of the existing standards of self-defense. The evidentiary ruling made by the court shows a fundamental misunderstanding of the nature of evidence regarding battered women's syndrome.

EXPERT TESTIMONY ON BATTERED WOMEN'S SYNDROME IS RELEVANT AND NECESSARY TO ASSIST THE JURY IN UNDERSTANDING THE CIRCUMSTANCES FACED BY A BATTERED DEFENDANT

Expert Testimony on Battered Women's Syndrome Describes the General Dynamics of an Abusive Relationship and the Effects of Abuse Upon a Battered Intimate

In the 1970s, experts who studied battered women coined the term "battered women's syndrome" to describe both the general dynamics of an abusive relationship, and the effects of abuse upon the battered partner. While "battered women's syndrome" was first used by Lenore Walker to describe her research findings on the common reactions of battered women to abuse, the term has taken on a much broader significance, and is commonly used to describe both the general dynamics of domestic violence, and common behavior of both batterers and the people they abuse. Expert testimony on battered women's syndrome has always included descriptions of the battering partner's behavior as well as the range of experiences and reactions of battered women to the abuse.

The contents of expert testimony on battered women's syndrome may include: (1) general information on the dynamics of domestic violence;ⁱⁱⁱ (2) explanations of behavior of a victim of battering that may seem inconsistent with her being battered;² (3) discussion of common myths

² Dutton, "Understanding Women's Responses to Domestic Violence," *supra*, 21 *Hofstra L. Rev.* at 1195.

or misconceptions about battered women;³ (4) common reactions that women have to battering;⁴ (5) a discussion of the particular facts in a case, to show how they are (or are not) consistent with a battering relationship.⁵

Battered women's syndrome testimony is sometimes misunderstood to be solely concerned with the individual psychology of the battered woman, but it always includes much more:

Typically, the testimony offered in forensic cases is not limited to the psychological reactions or sequelae of domestic violence victims, and this has led to confusion about what is encompassed by the term "battered woman syndrome." Expert witness testimony may also be offered to explain the nature of domestic violence in general, to explain what may appear to be puzzling behavior on the part of the victim, or to explain a background or behavior that may be interpreted to suggest that the victim is not the "typical" battered woman or that she herself is the abuser.

Dutton , "Understanding Women's Responses to Domestic Violence," supra, 21 Hofstra L. Rev. at 1195. Expert testimony does not deal solely with the subjective state-of-mind of the battered woman.

Respondent tries to draw a clear distinction between testimony on prior violence and expert testimony on battered women's syndrome. This characterization of battered women's syndrome also misstates the nature of expert testimony. Expert testimony is often about prior violence, as the expert may explain the dynamics of the abusive relationship by referring to the particular acts of violence present in the relationship at hand.

This brief uses the term "battered women's syndrome" because it is the term used in

³ Schneider, "Describing and Changing," supra, 9 Women's Rts.L.Rep. at 202; Dutton, "Understanding Women's Responses to Domestic Violence," supra, 21 Hofstra L.Rev. at 1195 (1993).

⁴ Schneider, "Describing and Changing," supra, 9 Women's Rts. L.Rep. at 202; Martha Mahoney, "Images of Battered Women: Redefining the Issue of Separation," 90 Mich. L.Rev. 1, 36 (1991).

⁵ Julie Blackman, "Potential Uses for Expert Testimony: Ideas Toward the Representation of Battered Women Who Kill," 9 Women's Rts.L.Rep. 227, 228 (1986); Dutton , "Understanding Women's Responses to Domestic Violence," supra, 21 Hofstra L.Rev. at 1195; State v. Kelly (N.J., 1984) 478 A.2d 364, 378; State v. Richardson (Wisc. Ct. App., 1994) 525 N.W. 2d 378, 381.

Evidence Code § 1107 and published California case law. However, *Amici* note that the preferred term among many experts today is "expert testimony on battering and its effects" or "expert testimony on battered women's experiences."⁶ Domestic violence experts have critiqued the phrase "battered women's syndrome" because (1) it implies that there is one syndrome which all battered women develop,⁷ (2) it has pathological connotations which suggest that battered women suffer from some sort of sickness,⁸ (3) expert testimony on domestic violence refers to more than women's psychological reactions to violence,⁹ (4) it focuses attention on the battered woman rather than on the batterer's coercive and controlling behavior¹⁰ and (5) it creates an image of battered women as suffering victims rather than as active survivors.¹¹ The idea that battered women's syndrome testimony is about purely subjective factors may indeed stem in part from confusion about the meaning of the term "battered women's syndrome."

Triers of Fact Misunderstand the Dynamics of Domestic Violence and What Is Reasonable Behavior for a Person Being Abused

Advocates working with battered women have long recognized that juries and judges harbor many misconceptions about domestic violence, and that persons knowledgeable about battering and its effects must educate triers of fact about domestic violence to counter these misconceptions.^{iv} Recent research on the average person's knowledge of domestic violence has found that laypersons still differ significantly from domestic violence experts in their

⁶ A resolution passed by the U.S. Congress in 1992 urged that "expert testimony concerning the nature and effect of domestic violence, including the descriptions of the experiences of battered women, should be admissible when offered in a state court by the defendant in a criminal case to assist the trier of fact in understanding the behavior, beliefs, or perceptions of such defendant in a domestic relationship in which abuse has occurred." H.Con.Res. 89, 102nd Congress, 2nd Session (1992).

⁷ Dutton, "Understanding Women's Responses to Domestic Violence," *supra*, 21 *Hofstra L.Rev.* 1191; Schneider, "Describing and Changing," *supra*, 9 *Women's Rts.L.Rep.* at 207.

⁸ Dutton, "Understanding Women's Responses to Domestic Violence," *supra*, 21 *Hofstra L.Rev.* 1191; Schneider, "Describing and Changing," *supra*, 9 *Women's Rts.L.Rep.* at 207.

⁹ Dutton, "Understanding Women's Responses to Domestic Violence," *supra*, 21 *Hofstra L.Rev.* 1191.

¹⁰ Evan Stark, "Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control," 58 *Alb.L.Rev.* 973, 975-976 (1995).

¹¹ Stark, "Re-Presenting Woman Battering," *supra*, 58 *Alb. L.Rev.* at 1000; Mahoney, "Images of Battered Women," *supra*, 90 *Mich. L.Rev.* at 40.

understanding of the dynamics of intimate battering.¹²

In particular, these misconceptions center around what are normal, reasonable reactions to being battered.¹³ Battered women defendants have employed expert testimony primarily to show the reasonableness of their actions.¹⁴ Expert testimony on domestic violence is necessary because jurors' misconceptions about what is reasonable behavior for a woman who has been battered are likely to interfere with their ability to fairly evaluate the self-defense claims raised by battered women defendants.

As the New Jersey Supreme Court explained in State v. Kelly, expert testimony on battered women's syndrome does not take the reasonableness determination away from the jury, but is necessary to aid the jury in making that determination:

The difficulty with the expert's testimony is that it sounds as if an expert is giving knowledge to a jury about something the jury knows as well as anyone else, namely, the reasonableness of a person's fear of imminent serious danger. That is not at all, however, what this testimony is directly aimed at. It is aimed at an area where the purported common knowledge of the jury may be very much mistaken, an area where juror's logic, drawn from their own experience, may lead to a wholly incorrect conclusion, an area where expert knowledge would enable jurors to disregard their prior conclusions as being common myths rather than common knowledge.

478 A.2d at 378. Expert testimony on battered women's syndrome exposes the jury to the circumstances faced by battered persons, to assist the trier of fact in properly evaluating what a reasonable person in those circumstances might do.

In the case at hand, expert testimony was particularly important because the Prosecution relied upon some of the common myths about battered women in its closing arguments to the jury. The Prosecution described some of Appellant's actions as inconsistent with her story of

¹² Regina A. Schuller, Vicki L. Smith & James M. Olson, "Jurors' Decisions in Trials of Battered Women Who Kill: The Role of Prior Beliefs and Expert Testimony," 24 Journal of Applied Social Psychology 316, 317 (1994).

¹³ Schneider, "Equal Rights to Trial for Women," supra, 15 Harv. C. R.-C.L. L.Rev. at 629.

¹⁴ See Schneider, "Describing and Changing," supra, 9 Women's Rts.L.Rep. at 198; Lawrence S. Lustberg and John V. Jacobi, "The Battered Woman as Reasonable Person: A Critique of the Appellate Division Decision in State v. McClain," 22 Seton Hall L.Rev. 365, 380 (1992).

being abused. Expert testimony on the common reactions to battering was crucial in assisting the jury in evaluating whether Appellant's conduct was reasonable.

For example, one of the crucial areas of misunderstanding that expert testimony can address is the relationship between prior acts of violence by the decedent and the incident for which a defendant is on trial. Respondent asserts that it is common sense that someone who has been attacked previously will respond more vigorously to a subsequent attack, and that jurors do not need expert testimony about this topic. (Respondent's Brief on the Merits, p. 19.) However this is exactly one of the areas in which jurors may make mistaken assumptions about the normal reactions of battered women in these situations:

Subtle motions or threats that might not signify danger to an outsider or to the trier of fact acquire added meaning for a battered woman whose survival depends on an intimate knowledge of her assailant.

Schneider, "Equal Rights to Trial for Women," supra, 15 Harv. C.R.-C.L. L.Rev. at 634.¹⁵

Expert testimony can help the jury decide whether a reasonable person in the battered person's circumstances would have perceived escalating danger.

This case underscores the importance of expert testimony, since the Prosecution exploited this very misconception in its closing argument. The Prosecution argued that because the decedent had repeatedly threatened Appellant in the past, there was no reason for her to take the threat he made before she killed him any more seriously: "The threat that she says he made was like so many threats before. There was no reason for her to react that way." (RT 11-9-92, p. 41.)

Dr. Bowker's testimony explained that Appellant's ability to perceive escalating danger was relevant to the reasonableness of her perception that her life was in danger, and was necessary to rebut the Prosecution's argument that there was nothing special about the danger that evening:

¹⁵ See also Stark, "Re-Presenting Woman Battering," supra, 58 Alb. L.Rev. at 999.

They [battered women] become very sensitive to what sets off batterers. They watch for this stuff very carefully...Anybody who is abused over a period of time becomes sensitive to the abusers behavior and when she sees a change acceleration begin in that behavior, it tells them something is going to happen (RT 338-39).

Expert testimony on the Appellant's ability to predict a violent attack from her boyfriend was not only relevant but essential to the jury's assessment of the reasonableness of Appellant's claim that she was in imminent danger of great harm.¹⁶

One of the most common misconceptions is that battered women can just leave at any time, and that women are responsible for their "failure" to leave the relationship.¹⁷ Jurors who ascribe to this belief are willing to believe that self-defensive force was not necessary for a battered defendant if she had an opportunity to leave earlier in the relationship. Jurors may also rely on the belief that leaving is an option to infer that if the violence was as bad as the defendant describes, she would have left, so therefore she can't be telling the truth about the level of prior violence:

Failure to exit is often treated, in law and elsewhere in society, as evidence against the woman's account of the facts, her competence, even her honesty. Either the abuse never happened (if it really happened, she would have left), or it was not severe (if things were that bad, she would have left) -- and in either instance, her veracity is subject to challenge.

Martha Mahoney, "Victimization or Oppression? Women's Lives, Violence, and Agency," in The Public Nature of Private Violence, 59, 78 (Fineman and Mykitiuk, eds., 1994).¹⁸

Indeed, the Prosecution in this case relied on exactly this myth. In closing arguments to

¹⁶ Appellant concentrates on this use of expert testimony in her opening brief (Appellant's Brief on the Merits, p. 31). As discussed above, there are several additional arguments for the relevance of expert testimony to the reasonableness determination.

¹⁷ Mahoney, "Images of Battered Women," supra, 90 Mich.L.Rev. 1; See also Schuller, Smith, & Olson, "Juror's Decision in Trial of Battered Women Who Kill," supra, 24 Journal of Applied Social Psychology 316.

¹⁸ See also State v. Kelly, supra, 478 A.2d at 377; Martha Mahoney, "Exit: Power and the Idea of Leaving in Love, Work, and the Confirmation Hearings," 65 S.Cal.L.Rev. 1283, 1285 (1992).

the jury, the District Attorney argued that if Appellant really believed that the decedent had shot at her the night before his death, then she would have left. The District Attorney argued that the fact that she stayed indicated that the violence didn't happen: "If she really believed that he had tried to shoot her, she would not have stayed...It is not believable to suggest that Albert shot at her on March 27." (RT 11-9-92, p. 26.)

Dr. Bowker specifically addressed the issue of "leaving" in abusive relationships in general (RT 287) and in Appellant's relationship with decedent in particular (RT 341). Dr. Bowker testified that Appellant believed that she could "never escape" decedent (RT 341), and that when she had left in the past, he had always found her and gotten her to come back (RT 342). Clearly Dr. Bowker's testimony was relevant for the jury's assessment of the reasonableness of Appellant's actions in response to being shot at by decedent on the day before his death.

It is another commonly held misconception to view battering mainly by its most sensationally violent behaviors, rather than as the cumulative pattern composed of the batterer's violent behaviors, threats and coercive control.¹⁹ However, experts on battering emphasize that individual acts of violence in an abusive relationship do "not occur as a series of discrete events," but rather are part of a "continuing state of siege," coupled with ongoing psychological abuse. Dutton, "Understanding Women's Responses to Domestic Violence," supra, 21 Hofstra L.Rev. at 1208.²⁰ Expert testimony on battered women's syndrome can assist the jury in understanding prior acts of violence as part of an ongoing pattern of violence and coercive behavior engaged in to effectuate control over an intimate partner, a concept that is not readily understood by laypersons.

Another commonly held myth about battered women is that they are passive and meek. In fact, as Dr. Bowker's research has shown, battered women use a variety of strategies to

¹⁹ Stark, "Re-Presenting Woman Battering," supra, 58 Alb.L.Rev. at 980-981; Mahoney, "Images of Battered Women," 90 Mich. L.Rev. at 28.

²⁰ See also Stark, "Re-Presenting Woman Battering," supra, 58 Alb.L.Rev. at 980-981.

survive, and almost no battered women are entirely passive (RT 273).²¹ Battered women may talk back or even fight back, but that behavior does not change the fact that they are the person being controlled in the relationship. Jurors who believe that to be battered is to be a silent pin-cushion, absorbing all blows without response, may disbelieve the testimony of a battered woman who does not conform to their image. Expert testimony on the range of normal responses to battering is crucial to allow jurors to fairly evaluate the credibility and reasonableness of the defendant's words and actions.

Jurors also commonly incorrectly believe that battered women are in some way to blame for the abuse -- "they must have done something to deserve it."²² For example, in Evelyn Humphrey's case, the jury may have believed that Evelyn could control her batterer's behavior by refraining from "talking back." One of the essential dynamics of an abuser's behavior is that he maintains the power, and nothing his partner does can prevent a violent outbreak. Jurors must be educated about the nature of battering behavior to understand the circumstances faced by a battered defendant.

The expert witness can remove jurors' misconceptions about domestic violence by educating them about the range of common reactions that women have to battering. The expert's review of scientific literature on domestic violence and the expert's personal experience working with battered women or batterers provide the expertise that jurors lack. Battered women learn the dynamics of abuse from living in a violent relationship. People who are not battered learn about the dynamics of abuse from an expert.

Expert Testimony on Domestic Violence is Necessary to Assist Juries in Determining What a Reasonable Person in the Circumstances of a Battered Defendant Would Have Done

If the jury does not properly understand the circumstances faced by a domestic violence

²¹ See also Mahoney, "Images of Battered Women," *supra*, 90 *Mich.L.Rev.* at 44.

²² Lenore Walker, *The Battered Woman* 29 (1979); Schneider, "Equal Rights to Trial," *supra*, 15 *Harv. C. R.-C.L. L.Rev.* at 625; *State v. Hodges* (Kan., 1986) 716 P.2d 563, 567; *State v. Kelly*, 478 A.2d at 370.

victim, it cannot properly consider those circumstances. Expert testimony on battered women's syndrome is an essential element of the self-defense reasonableness determination, because it enables the jury to understand the circumstances which it is required to consider, as it weighs the reasonableness of the defendant's perceptions of danger and her actions in response.^v Without expert testimony, jurors may retain their misinformed views about battered women. Since the very issue jurors do not understand is what is reasonable behavior for a person in a battering relationship, clearly their misconceptions will affect their assessment of a battered defendant's reasonableness.

The majority of courts that have admitted expert testimony on battered women's syndrome have done so precisely because the expert testimony assists the jury in evaluating the reasonableness of someone who is battered.²³

The California courts which have addressed the relevance and admissibility of expert testimony on battered women's syndrome are confused and inconsistent in their reasoning. The court in People v. Day acknowledged that jurors need expert testimony to understand what would be reasonable conduct for a person in the circumstances of a battered defendant:

Jurors are told to evaluate and react to evidence by what a reasonable person would do or not do. Frequently, conduct appears unreasonable to those who have not been exposed to the same circumstances. Fortunately, most people are not raped, assaulted, molested or abused. It is only natural that people might speculate as to how they would react and yet be totally wrong about how most people in fact react.

People v. Day (1992) 2 Cal.App.4th 405, 419. Yet the Day court held that expert testimony on battered women's syndrome was not relevant to the reasonableness of the defendant's belief that she was in danger. Id. at 414-415. If, as the court in Day admits, expert testimony on battered women's syndrome is necessary to rebut misconceptions about reasonable behavior for a person

²³ See State v. Kelly, 478 A.2d 364; State v. Kelly (Wash., 1984) 685 P.2d 564; State v. Janes (Wash., 1993) 850 P.2d 495; Hawthorne v. State, 408 So.2d 801; Terry v. State (Fla. Ct. App., 1985) 467 So.2d 761; State v. Stewart (Kan., 1988) 763 P.2d 572; Banks v. State (Md. Ct. App., 1992) 608 A.2d 1249; People v. Torres (N.Y. Sup. Ct., 1985) 488 N.Y.S.2d 358; State v. Richardson, 525 N.W.2d 378; Bechtel v. State (Okla. Ct. App., 1992) 840 P.2d 1.

who is battered, then it defies logic to prevent juries from considering the expert testimony when determining the reasonableness of a battered person's fear. Despite its holding, Day implicitly concedes that reasonable behavior for a person who is battered might not seem reasonable for a juror without knowledge of domestic violence (a person "not exposed to the same circumstances,") and that battered women's syndrome testimony is necessary to help the jurors evaluate reasonableness.

The court in People v. Aris (1989) 215 Cal.App.3d 1178, and the Respondent in this case, confuse the nature of expert testimony on battered women's syndrome by assuming that it deals only with subjective, psychological reactions of battered women. As noted earlier, expert testimony on battered women's syndrome in this case and others covers far more than the state of mind of the defendant. Much of expert testimony goes to rebut misconceptions about domestic violence and to detail the range of reactions that battered women have to battering. Furthermore, contrary to Respondent's assertions, there is no clear line between testimony on prior violent acts by the victim and expert testimony on battered women's syndrome. Rather, expert testimony consists of information that runs a continuum from general information on battering dynamics to specific facts in the defendant's particular relationship.

In the Aris case, for example, expert Lenore Walker planned to testify to numerous aspects involving domestic violence generally and the defendant in particular. Her testimony would have included: the cycle of violence common in abusive relationships; the concept of hypervigilance; why battered women may stay in violent relationships; her psychological evaluation of the defendant; her conclusion that defendant was a battered woman; and the psychological impact of the violence on the defendant's state of mind. Id. at 1194-95.

Yet when the court in Aris analyzed the relevance of Dr. Walker's testimony to the reasonableness of the defendant's fears, it conflated all of her proposed testimony as concerned with the defendant's "mental processes." Id. at 1197. The court found that Dr. Walker's opinion on the defendant's mental processes was irrelevant to the reasonableness of the defendant's

beliefs, but ignored entirely whether the rest of her testimony might have been relevant to reasonableness.

Allowing Expert Testimony On Battered Women's Syndrome To Be Considered When Determining Reasonableness Does Not Remove the Ultimate Determination of Reasonableness from the Jury

Allowing the jury to consider expert testimony on domestic violence when determining the reasonableness of the defendant's actions does not mean that the expert makes the ultimate determination of the defendant's reasonableness. The jury must still determine, given all the testimony about the context of the incident, whether the defendant's actions and perceptions were reasonable. *Amici* do not argue that expert testimony would substitute for the jury's determination of the defendant's reasonableness.

Respondent argues that to allow expert testimony to be considered when determining reasonableness would result in a "battle of the experts." However, *Amici* are not advocating that experts be allowed to testify as to the ultimate issue of defendant's reasonableness. This is an issue reserved for the jury. Expert testimony on battered women's syndrome does not, in and of itself, prove that a defendant is reasonable. The expert does not tell the jury that a particular defendant was or was not reasonable. The expert testimony informs the jury about circumstances and patterns it needs to know about in order to determine what a reasonable person in those circumstances would have perceived and done.

PEOPLE'S SPECIAL JURY INSTRUCTION ON BATTERED WOMEN'S SYNDROME DEPRIVED DEFENDANT OF HAVING THE JURY CONSIDER THE TOTALITY OF HER CIRCUMSTANCES

People's Special Jury Instruction on Battered Women's Syndrome Prevented the Jury from Considering the Expert's Testimony on the Decedent's Violent and Coercive Behavior, and the Ranges of Common Reactions to Battering Among Abused Persons

In the case at hand, People's Special Jury Instruction on Battered Women's Syndrome prevented the jury from considering any of the expert testimony on battered women's syndrome

when deliberating on the reasonableness of the Defendant's belief that her life was in danger. Appellant's expert, Dr. Bowker, testified about the general dynamics in an abusive relationship and the survival techniques employed by battered women. (RT 273-282) He testified about misconceptions around battered women, including in particular that it is a myth that battered women are passive (RT 273), or that they can't be "mouthy" (RT 341). Dr. Bowker also testified at length about several battering incidents involving the decedent and the Defendant (RT 328-339). He also testified that knowing what she knew about the decedent, the Defendant was better able to judge cues for danger than someone outside of the relationship (RT 338-339). Dr. Bowker also clearly told that the jury that the specific term "battered woman's syndrome" was not just about the subjective, psychological responses of the particular battered woman:

Battered woman syndrome is not just a psychological construction, but it's a term for a wide variety of controlling mechanisms that the man...uses against the woman, and for the effect that those control mechanisms have (RT 279).

Because the expert testimony presented by Dr. Bowker contained much information on (1) the circumstances of the Defendant's relationship with the decedent, (2) her knowledge of the decedent's past behavior, (3) her heightened ability to sense when decedent was about to become violent, and (4) what was reasonable behavior for a battered person, the People's Special Jury Instruction on Battered Women's Syndrome impermissibly restricted the jury from considering information relevant under California law. Indeed, this restriction was particularly problematic because it was inconsistent with the other jury instructions.

First, the instruction on prior threats (Supp. CT 78) explicitly allowed the jury to consider prior threats to the Defendant. Yet People's Special Jury Instruction on Battered Women's Syndrome prohibited the jury from considering the prior violent acts toward Defendant which were part of Dr. Bowker's testimony. So while one instruction permitted the jury to consider prior threats when considering reasonableness, the other jury instruction knocked out consideration of the prior violence when considering reasonableness, by ruling all of Dr.

Bowker's testimony off-limits to the reasonableness determination.

Second, while the jury was instructed that self-defense is justified if it appears necessary "to a reasonable person in a similar situation and with similar knowledge," (Supp. CT 80) the jury was unable to evaluate how a reasonable person in a similar situation to Evelyn Humphrey (i.e. in a battering relationship) would have acted, when they could not take what Dr. Bowker had said into their assessment of reasonableness. The jury depended upon the expert testimony to know how a reasonable person in a similar situation and with similar knowledge would have acted because jurors on their own do not understand what is reasonable behavior for a battered person.

People's Special Jury Instruction on Battered Women's Syndrome Is Narrower Than What Evidence Code § 1107 Permits

Evidence Code § 1107, which governs the use of battered women's syndrome testimony, provides: "expert testimony is admissible by either the prosecution or the defense regarding battered women's syndrome, including the physical, emotional or mental effects upon the beliefs, perceptions or behavior of victims of domestic violence..." By choosing the word "including," the Legislature clearly meant for the "physical, emotional or mental effects" to be only a partial list of the components of battered women's syndrome testimony. Significantly, Evidence Code § 1107 merely enumerates what battered women's syndrome can include, but does not limit it to the uses prescribed by the People's Special Jury Instruction on Battered Women's Syndrome.^{vi} As noted above, from the very beginning, battered women's syndrome testimony has always included testimony about battering behavior and common reactions of victims of battering. Dr. Bowker's testimony fits squarely in this tradition and is relevant to reasonableness.

Even CALJIC No. 9.35.1, which again limits the uses of battered women's syndrome testimony more narrowly than Evidence Code § 1107, implicitly recognizes the relevance of expert testimony on battered women's syndrome to the reasonableness determination. CALJIC No. 9.35.1 instructs juries to use the expert testimony to see whether the defendant's reactions are

consistent with the behavior of victims of domestic violence. "Consistence" in this context should be understood as the equivalent of reasonableness. The inquiry of CALJIC No. 9.35.1 is, essentially, were this particular defendant's actions reasonable (consistent) for someone who is being abused?

People's Special Instruction on Battered Women's Syndrome Constituted Prejudicial Error

The jury's inability to consider the expert testimony on battered women's syndrome as part of their reasonableness determination clearly prejudiced Appellant. The jury's determination of Appellant's reasonableness made the difference between a conviction on voluntary manslaughter or an acquittal on perfect self-defense. The jury struggled precisely with the issue of reasonableness, as evidenced by its request for a clarification of "subjectively honest and objectively unreasonable." (CT 139; RT 945-950) The jury found Appellant guilty of manslaughter, rather than murder, thereby showing that Appellant honestly believed that her life was in danger. If, as Respondent contends, the jury disbelieved Appellant's testimony about grabbing the gun because she was afraid decedent would use it on her, then they would have been hard-pressed to find that she honestly believed that she was in danger. If the jury disbelieved Appellant's testimony, they would have convicted her of murder rather than manslaughter.

The evidence on prior violence presented by non-expert witnesses did not give jurors the context to understand Defendant's circumstances, and her expertise in perceiving cues for danger. Only Dr. Bowker's expert testimony provided this kind of information, which was crucial to evaluating the reasonableness of Appellant's beliefs. Yet it was exactly this testimony that the jury was prohibited from considering in their reasonableness calculation. Respondent's argument that the jury could have acquitted Appellant under traditional self-defense analysis without benefit of the expert testimony belies the very reason that courts have found expert testimony on battered women's syndrome necessary.^{vii} Even when battered women kill in "traditional" confrontational situations, juries may still have misconceptions about domestic violence that

make it difficult for them to fairly evaluate the defendant's situation. This is precisely why expert testimony on battered women's syndrome was developed by advocates and admitted by courts throughout the country.

OTHER STATES HAVE RECOGNIZED THAT EXPERT TESTIMONY IS
ADMISSIBLE TO SHOW THE REASONABLENESS OF A BATTERED
DEFENDANT'S BELIEF THAT SHE WAS IN DANGER

The majority of states which have self-defense laws similar to California's and which have considered the use of expert testimony on battered women's syndrome in self-defense cases, have found that expert testimony is relevant to the reasonableness of a defendant's belief. No state which admits expert testimony has refused to allow it to be used to weigh the reasonableness of a defendant's beliefs.^{viii} The states of Florida, Kansas, Maryland, New Jersey, New York, Washington, and Wisconsin all have specifically found that expert testimony on battered women's syndrome is relevant to the reasonableness prong of the self-defense test.

The Supreme Court of New Jersey was one of the first states to take up the issue of the admissibility of expert testimony on battered women's syndrome in a self-defense case. Like California, New Jersey requires that a person claiming self-defense have both an honest and a reasonable belief that they were in imminent danger of death or serious injury. In State v. Kelly, 478 A.2d 364, the court specifically found "the expert testimony relevant to the reasonableness of the defendant's belief that she was in imminent danger of death or serious injury." 478 A.2d at 377. The court found that by educating the jury and giving them information that they were otherwise unaware of, the expert is able to assist the jury in deciding what it is that a reasonable person would do. Without this testimony, the jury is unable to determine what would be reasonable conduct for a person in the battered woman's position. The court reasoned that the objective reasonableness test requires that the jury consider the accused's circumstances, and that the expert testimony on battered women's syndrome is necessary to properly consider a battered woman's circumstances.

Kelly is still the law in New Jersey. Respondent cites a lower court opinion in State v. McClain (N.J. Super. App. Div., 1991) 591 A.2d 652, 657, cert. denied (N.J., 1991) 598 A.2d 897, which misquoted Kelly to hold that expert testimony on battered women's syndrome was not relevant to the reasonableness determination in a self-defense case. McClain ignores the unambiguous holding of Kelly that explicitly found that expert testimony was relevant both to the honesty and to the reasonableness of a defendant's belief that her life was in danger. Another appellate court in New Jersey has criticized McClain's interpretation of Kelly. See State v. Vigilante (N.J. Super. App. Div., 1992) 608 A.2d 425, 430.²⁴

Washington also requires that expert testimony on battered women's syndrome be considered as part of the objectively reasonable determination in a self-defense case. In State v. Kelly, the Washington Supreme Court found that "the expert testimony was offered to aid the jury in understanding the reasonableness of [the defendant's] apprehension of imminent death or bodily injury." 685 P.2d at 570. See also State v. Allery, (Wash., 1984) 682 P.2d 312, 316. More recently, in State v. Janes, 850 P.2d 495, the Washington Supreme Court again affirmed that:

Expert testimony on the battered person syndromes is critical because it informs the jury of matters outside common experience. Once the jury has placed itself in the defendant's position, it can then properly assess the reasonableness of the defendant's perceptions of imminence and danger.

Id. at 505. Since Respondent acknowledges that Washington law mirrors California's in its standards for determining self-defense (Respondent's Brief on the Merits, pp. 29-30), then the analysis of the Washington Supreme Court is extremely relevant to the issues presented in this case.

Florida courts also have ruled expert testimony on battered women's syndrome to be relevant to the determination of a defendant's reasonableness. In Hawthorne v. State, the court found that "expert testimony would have been offered in order to aid the jury in interpreting the

²⁴ See also Lustberg and Jacobi, "The Battered Woman as Reasonable Person," supra, 22 Seton Hall L.Rev. 365.

surrounding circumstances as they affected the reasonableness of her belief." 408 So. 2d 801, 806-807. Again in Terry v. State, a Florida court held that expert testimony on battered women's syndrome was relevant to the reasonableness determination. 467 So.2d at 763. The court did not confuse the nature of expert testimony, but understood that expert testimony includes both testimony about prior violent acts that may explain why a defendant reasonably believed her life was in danger and testimony on common misperceptions about battered women which is also relevant to the reasonableness determination because "[i]t is precisely because a jury would not understand why appellant would remain in the environment that the expert testimony would have aided them in evaluating the case." 467 So. 2d at 764.

Kansas is another state that has a self-defense structure similar to California's.²⁵ In State v. Stewart, 763 P.2d 572, the Kansas Supreme Court specifically addressed the relevance of expert testimony on battered women's syndrome to the reasonableness of a defendant's beliefs. The court found that, "[i]n cases involving battered spouses, expert evidence of the battered woman syndrome is relevant to a determination of the reasonableness of the defendant's perception of danger." 763 P.2d at 577.

Maryland has also found expert testimony on battered women's syndrome relevant to the reasonableness determination. In Banks v. State, a Maryland appeals court interpreted Maryland's "battered spouse syndrome" statute and found that expert testimony is "offered to prove the honesty and reasonableness of the defendant's belief that he or she was in imminent danger at the time of the offense." 608 A.2d at 1253 (emphasis added). Contrary to Respondent's claim that Banks did not rule on the relationship of battered women's syndrome testimony to the reasonableness prong of self-defense, the court quite clearly stated that expert testimony was relevant to both the honesty and the reasonableness of the defendant's beliefs.

²⁵ "We first use a subjective standard to determine whether the defendant sincerely and honestly believed it necessary to kill in order to defend. We then use an objective standard to determine whether defendant's belief was reasonable -- specifically, whether a reasonable person in defendant's circumstances would have perceived self-defense as necessary." State v. Stewart, 763 P.2d at 579.

New York similarly has ruled that testimony on battered women's syndrome is "relevant to the jury's evaluation of the reasonableness of her perceptions and behavior at that time."

People v. Torres, 488 N.Y.S.2d at 362.

Wisconsin also has case law holding that expert testimony on battered women's syndrome, "would assist the jury to evaluate the reasonableness of [defendant's] fear, without invading the jury's province to determine the historical facts." State v. Richardson, 525 N.W.2d at 381.²⁶ The Richardson court limited only the expert's ability to opine as to the reasonableness of the defendant's actions, a position with which *Amici* agree, and which is again consistent with California law.

Respondent also misstates the law in Pennsylvania. Respondent contends that the court in Commonwealth v. Dillon (Pa., 1991) 598 A.2d 963, found that expert testimony was inadmissible to show reasonableness in a battered women's self-defense case. In fact, the majority opinion in Dillon is simply silent on the issue of expert testimony and reasonableness, and three judges joined in a concurring opinion expressly urging the court to rule that expert testimony on battered women's syndrome is relevant to the issue of reasonableness.

CONCLUSION

The use of expert testimony on battered women's syndrome to assess the reasonableness of a defendant's belief that she was in danger is consistent with current California law. Expert testimony is necessary to enable the jury to understand the battered defendant's circumstances, an inquiry which California law requires. *Amici* do not seek to create a special law for battered women, or change the self-defense standard in any way. *Amici* simply seek to put before the jury all the relevant information it needs to determine what a reasonable person in the circumstances of a battered defendant would think and do.

²⁶ The court went on to say that expert testimony "would have provided a context from which the jury could understand why Richardson might perceive herself to be in imminent danger at the time of the killing and could assess whether such a belief would have been reasonable." 525 N.W.2d at 382.

RELIEF REQUESTED

For the above reasons, *Amici Curiae* respectfully request that the Court reverse the judgment against Appellant.

DATED: December 29, 1995

Respectfully submitted,

MINOUCHE KANDEL
On behalf of the
California Alliance Against Domestic Violence, et. al.
Amici Curiae in Support of Appellant

^{i.} *Amici* are various non-profit national, state and local organizations that represent the interests of battered women and children across this country. Appendix A to the Application for Leave to File a Brief *Amici Curiae* contains our respective statements of interest.

^{ii.} Indeed, when Senate Bill 1144 was introduced in the California Legislature in 1993, *Amicus* California Alliance Against Domestic Violence and the author of this brief went on record as opposing this legislation, which would have created a special self-defense law for battered women.

^{iii.} Elizabeth M. Schneider, "Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering," 9 Women's Rts.L.Rep. 195, 202 (1986); Mary Ann Dutton, "Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome," 21 Hofstra L.Rev. 1191, 1195 (1993).

^{iv.} Lenore E. Walker, Roberta K. Thyfault, Angela Browne, "Beyond the Juror's Ken: Battered Women," 7 Vt.L.Rev. 1 (1982); Elizabeth M. Schneider, "Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense," 15 Harv. C.R.-C.L. L.Rev. 623, 625 (1980); Mahoney, "Images of Battered Women," supra, 90 Mich.L.Rev. at 36.

^{v.} Lustberg and Jacobi, "The Battered Woman as Reasonable Person," supra, 22 Seton Hall L.Rev. at 377; Hawthorne v. State (1982, Fla. Ct. App.) 408 So.2d 801, 806-807.

^{vi.} The limits placed on the use of expert testimony in Evidence Code § 1107 have to do with preventing prosecutorial use of the testimony against a batterer to prove that battering has taken place. Evidence Code § 1107(a).

^{vii.} See State v. Kelly, 478 A.2d at 377-78.

^{viii.} The Mississippi case, Lentz v. State (Miss., 1992) 604 So. 2d 243, which Respondent cites in support of their position is entirely inapplicable in California because the Lentz court found expert testimony on battered woman's syndrome completely inadmissible, and California Evidence Code § 1107 clearly mandates the admission of expert testimony in these cases.