

7.06 Abused Person Syndrome

(1) (a) The “abused person syndrome” has historically been referred to as the “battered women’s syndrome.” The syndrome, however, is not limited to a “battered” woman or indeed to “women”; rather the syndrome refers to a constellation of medical and psychological symptoms of a person of any gender who, at the hands of a “member of the complainant’s family or household” has suffered physical, sexual, or emotional abuse or has been coerced to do something contrary to their right not to do so.

(b) The term “member of the complainant’s family or household” is defined in the Criminal Procedure Law and Family Court Act to include:

(i) persons related by consanguinity or affinity;

(ii) persons legally married to one another;

(iii) persons formerly married to one another regardless of whether they still reside in the same household;

(iv) persons who have a child in common, regardless of whether such persons have been married or have lived together at any time; and

(v) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time.

(2) The admissibility of expert testimony about an identifiable syndrome reaction depends on meeting the criteria of Guide to New York Evidence rule 7.01 and

on the reason given that the evidence would be relevant and helpful to a jury to understand an issue in the proceeding.

(3) The expert may not testify that the complainant should be believed or that the conduct at issue in the case constituted abuse; the expert may describe the general behavior patterns of domestic violence perpetrators and victims in order to explain behaviors of an abused person that might be beyond the ken of the average juror.

(4) The syndrome is not per se a defense to a criminal charge. Evidence of the syndrome may, however, be admissible in support of a defense. In a prosecution for assault or homicide, for example, evidence of the syndrome may be admissible when relevant and probative of an issue presented by the defense of justification.

(5) The reasons evidence of the syndrome may be admissible include, but are not necessarily limited to:

(a) when relevant, to place before the finder of fact a reason for a complainant's: (i) delayed reaction to abuse; or (ii) inability to leave the marital home; or (iii) recantation of allegations of abuse; or (iv) failure to testify at defendant's domestic violence trial;

(b) when, in a child sexual abuse and neglect proceeding, the mother asserts she was the victim of the "domestic violence syndrome," in order to place before the finder of fact a reason why she could not be said to have "allowed" the sexual abuse of her child by the person who abused her.

Note

Introduction

Expert testimony relating to what the decisional law has historically referred to as the “battered women’s syndrome” has been held admissible as set forth in this Guide to New York Evidence rule. The “battered women’s syndrome” terminology, however, has been found wanting because the syndrome is gender neutral, not limited to abused women, and the syndrome may involve sexual and emotional abuse that is not reflected in the term “battering.” Decisional law has moved towards referring to expert evidence of the syndrome under the umbrella of “domestic violence” evidence, which is gender neutral and encompasses abuse that is other than just physical. (*People v Shoshi*, 177 AD3d 779, 781 [2d Dept 2019] [the trial court properly permitted “an expert in the field of domestic violence to testify on the subject of domestic violence generally. The expert’s testimony was relevant to explain the behavior patterns of victims of domestic violence that might appear unusual or that jurors might not be expected to understand”]; *People v Levasseur*, 133 AD3d 411, 412 [1st Dept 2015] [“The court also correctly admitted expert testimony describing typical features of the cycle of domestic violence”]; *People v Walters*, 127 AD3d 889, 889 [2d Dept 2015] [“the expert described the general behavior patterns of domestic violence perpetrators and victims in order to explain behaviors of a battered woman that might be beyond the ken of the average juror”].)

This Guide to New York Evidence rule relates to the testimony of an expert with respect to an “abused person syndrome” whether under the historical terminology of “battered women’s syndrome” or under the present-day “domestic violence” terminology. There are other types of evidence that may be admitted in a “domestic violence” case that are not the subject of this rule. (*See* Guide to NY Evid rule 4.28, Evidence of Crimes and Wrongs (*Molineux*); *People v Frankline*, 27 NY3d 1113, 1115, 1117 [2016] [“Previous acts of intimate partner violence may be nonpropensity evidence ‘probative of (a defendant’s) motive and intent to assault (the) victim’ and which ‘provide(s) necessary background information on the nature of the (defendant and victim’s) relationship’ (*People v Dorm*, 12 NY3d 16, 19 [2009])”].)

The Court of Appeals has not expressly addressed the admissibility of expert testimony on a syndrome related to domestic violence although the nature of the syndrome and reasons for admissibility are analogous to the “rape trauma syndrome” and the “child abuse syndrome” that the Court of Appeals has recognized. Other courts have accordingly held admissible expert testimony of the syndrome under the circumstances set forth in this rule.

The Rule

Subdivision (1) (a) is derived in part from a portion of the definition of “battered-woman syndrome” set forth in Black’s Law Dictionary (11th ed 2019) (“A constellation of medical and psychological symptoms of a woman who has suffered physical, sexual, or emotional abuse at the hands of a spouse or partner”); and in part from Psychological and Scientific Evidence in Criminal Trials § 7:3 (defining a “battered woman” in part as “ ‘a woman who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without any concern for her rights’ ” [citation omitted]). (See *People v Ellis*, 170 Misc 2d 945, 950 [Sup Ct, NY County 1996] [“The battered woman syndrome is described as ‘a series of common characteristics found in women who are abused both physically and emotionally by the dominant male figures in their lives over a prolonged length of time’ ”]; see generally R. Keith Perkins, Domestic Torts: Civil Lawsuits Arising From Criminal Conduct Within Family Relationships §§ 2:18 [“Battered woman syndrome”], 2:21 [“Battered husbands”]; 1 NY Law of Domestic Violence § 2:98 [3d ed].)

Subdivision (1) (b) attempts to provide guidance on the type of relationship that may involve an “abused person,” as may be testified to by an expert in a particular case. The stated definition recites verbatim the definition of “members of the same family or household” as it appears in both CPL 530.11 (1) (a) to (e) and Family Court Act § 812 (1) (a) to (e). With respect to subdivision (1) (b) (v) of this rule, CPL 530.11 (1) (e) and Family Court Act § 812 (1) (e) add:

“Factors the court may consider in determining whether a relationship is an ‘intimate relationship’ include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an ‘intimate relationship’.”

There is, however, no uniform definition in decisional or statutory law. Other statutory definitions may be found in: Real Property Law § 227-d (1) (for the purposes of the law addressing discrimination based on “domestic violence victim status,” defining the term “domestic violence victim”); Social Services Law § 459-a (1) (for purposes of the “Domestic Violence Prevention Act,” defining “victim of domestic violence”); and Executive Law § 292 (34) (for purposes of the “Human Rights Law,” defining the term “victim of domestic violence” to have the same meaning as defined in the Social Services Law). (See also CPL 440.47 [2] [c]

[allowing an application for resentencing where the defendant was a “victim of domestic violence subjected to substantial physical, sexual or psychological abuse inflicted by a member of the same family or household” as defined in CPL 530.11 (1)].)

Subdivision (2) recognizes that the syndrome has been held to meet the criteria for expert opinion testimony (*see* Guide to NY Evid rule 7.01 [1]) and is thus admissible when the proffered reason for the expert testimony is relevant and helpful to the finder of fact to understand a litigated issue. (*People v Byrd*, 51 AD3d 267, 274 [1st Dept 2008] [holding that it was not necessary for the trial court to hold a *Frye* hearing before admitting the expert testimony because: “Battered person syndrome is not novel or experimental. The courts of this state have accepted it since 1985”]; *People v Johnson*, 22 AD3d 600, 601 [2d Dept 2005] [expert testimony about “battered women’s syndrome” was properly admitted “to aid the jury in understanding the unusual behavior of one of the female victims after the attack”]; *Matter of Pratt v Wood*, 210 AD2d 741, 743 [3d Dept 1994] [“it has come to be recognized that expert testimony in the field of domestic violence is admissible since the psychological and behavioral characteristics typically shared by victims of abuse in a familial setting are not generally known by the average person”].)

Subdivision (3) states a rule commonly governing the admissibility of syndrome evidence and is derived principally from the following decisions: *People v Walters* (127 AD3d at 889 [in approving the receipt of evidence of the syndrome, the Appellate Division noted: “The court did not allow the expert to offer an opinion as to whether the conduct at issue constituted domestic violence or whether the complainant exhibited symptoms of battered women’s syndrome. Instead, the expert described the general behavior patterns of domestic violence perpetrators and victims in order to explain behaviors of a battered woman that might be beyond the ken of the average juror”]); *People v Anglin* (178 AD3d 839, 840 [2d Dept 2019] [the expert “did not testify as to the particular facts of the case or offer an opinion as to whether the conduct at issue constituted domestic violence”]); *People v Whitson* (166 AD3d 663, 664 [2d Dept 2018] [noting with approval that the trial court “did not allow the expert to testify regarding the particular facts of the case or offer an opinion as to whether the conduct at issue constituted domestic violence. Instead, the expert described the general behavior patterns of domestic violence perpetrators and victims in order to explain behaviors of a battered woman that might be beyond the ken of the average juror”]); and *People v Thompson* (119 AD3d 966, 966-967 [2d Dept 2014] [“The court did not allow the expert to offer an opinion as to whether the conduct at issue constituted domestic violence, or to testify regarding any prior bad acts by the defendant”]).

Subdivision (4) sets forth decisional law holdings that “battered women’s syndrome is not itself a defense” to a criminal charge. (*People v Wilcox*, 14 AD3d 941, 943 [3d Dept 2005]; see *People v Bryant*, 278 AD2d 7, 7 [1st Dept 2000] [“battered women’s syndrome” evidence was properly excluded where “there was overwhelming evidence that defendant personally inflicted vicious abuse and severe injuries upon the deceased, her four-year-old child, entirely of her own volition and ill-will toward the child, and that the purported abuser, defendant’s husband, was not even present during some of this abuse”]; *People v Neathway*, 43 Misc 3d 1235[A], 2014 NY Slip Op 50936[U], *7 [Sup Ct, NY County 2014] [“battered women’s syndrome” evidence was properly excluded where the defendant was charged with “grand larceny,” “falsifying business records” and “offering a false instrument for filing,” noting that: “All three crimes, like the vast majority of other crimes in the Penal Law, require that the State prove the Defendant acted with a particular mental state. Mental culpability under the Penal Law, however, is obviously distinguishable from the motivation an offender may have to commit a crime”].)

As subdivision (4) further states, however, evidence of the syndrome may be admissible in support of a defense, such as a defense of justification. In a defense of justification, for example: “To have been justified in the use of deadly physical force, the defendant must have honestly believed that it was necessary to defend himself/herself [or someone else] from what he/she honestly believed to be the use or imminent use of such force by [the person injured or killed], and a ‘reasonable person’ in the defendant’s position, knowing what the defendant knew and being in the same circumstances, would have believed that too.” (CJI2d[NY] Defenses—Justification: Use of Deadly Physical Force in Defense of a Person [last rev Jan. 2018].) Thus, coupled with the defendant’s testimony, expert testimony of what constitutes an “abused person syndrome” may be relevant and probative.

Some trial courts in a justification defense case have even permitted an expert to testify that the defendant was in fact a battered person, but those decisions were not reviewed by an appellate court. (*People v Seeley*, 186 Misc 2d 715, 723 [Sup Ct, Kings County 2000]; *People v Torres*, 128 Misc 2d 129, 135 [Sup Ct, Bronx County 1985]; *People v Colberg*, 182 Misc 2d 798, 802 [Sullivan County Ct 1999]; compare *People v De Sarno*, 121 AD2d 651, 654-655 [2d Dept 1986] [in a case involving a defense of justification and proffered expert testimony on a defendant’s personality disorder as it bore on his state of mind, the trial court properly allowed an expert to testify about the “impact such a personality disorder has upon a person’s perception, state of mind and behavior” and properly precluded the expert from opining that the defendant believed the decedent was going to kill the defendant because “the explanation of the defendant’s alleged ‘personality disorder with explosive and paranoid features’ would have furnished a sufficient basis to aid the jury in forming an accurate conclusion as to the defendant’s

subjective belief and the reasonableness of the belief”]; *People v Hamel*, 96 AD2d 644, 645 [3d Dept 1983] [in a case involving a defense of justification and proffered expert psychiatric testimony regarding “past psychological trauma involving instances when (the defendant) had been sexually assaulted and threatened,” the trial court did not err in precluding the expert testimony, given that the “defendant testified fully about her thoughts and actions on the evening of the shooting and her unfortunate personal history. In light of this testimony, the jury could properly fulfill its function of making the required judgment based upon objective standards. Injection of psychiatric testimony into the normal case where justification is claimed would effectively usurp the jury’s role in determining what is reasonable”].)

Subdivision (5) sets forth some examples of where evidence of the syndrome has thus far been accepted; it is not designed to place limitations on the application of the syndrome in other appropriate circumstances.

Subdivision (5) (a) is derived from the following: *People v Roblee* (83 AD3d 1126, 1128 [3d Dept 2011] [the expert testimony was properly allowed “to explain the victim’s delay in seeking aid or attention immediately following the attack, to the extent that it was otherwise unexplained”]); *Matter of Pratt v Wood* (210 AD2d 741, 743 [3d Dept 1994] [in a child custody case, evidence of the syndrome should have been admitted to explain the failure of the child’s mother “to tell anyone about the abuse or to seek help (since that) is a characteristic typically shared by victims of domestic violence”]); *Matter of V.C. v H.C.* (257 AD2d 27, 35 [1st Dept 1999] [Family Court should have admitted evidence of the syndrome which, “according to petitioner’s offer of proof, would have helped explain her delayed reaction to the abuse inflicted upon her, her inability to leave the marital home on her own, and the impact of her deafness on her ability to function under hostile circumstances”]); *Matter of Erin R. v Ronald R.* (36 Misc 3d 1213[A], 2012 NY Slip Op 51263[U], *3 [Fam Ct, Kings County 2012] [“Testimony from an ‘expert on battered women’s syndrome who can explain a victim’s delayed reaction to the abuse inflicted, her inability to leave the marital home on her own, and her ability to function under hostile circumstances’ will be relevant and material evidence admissible at fact-finding as well as disposition”]); *People v Byrd* (51 AD3d at 269 [a complainant’s grand jury testimony was admissible after the trial court determined at a hearing that “the complainant was unavailable to testify at trial because of battered person syndrome”]); and *People v Ellis* (170 Misc 2d at 955 [“It is now accepted that ‘it is not common knowledge that one reason for a recantation may be the existence of battered woman’s syndrome’ ”]).

Subdivision (5) (b) is derived from *Matter of Glenn G.* (154 Misc 2d 677 [Fam Ct, Kings County 1992], *affd sub nom. Matter of Josephine G.*, 218 AD2d 656 [2d Dept 1995]).