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# Recent Developments

The legal status of traditionally disadvantaged women is in constant flux. We hope this Recent Developments section will provide news and updates on current events affecting the legal rights of underrepresented women. We also hope to inspire more in-depth scholarly analysis of these topics.

## Battered Women and the Full Benefit of Self-Defense Laws

Stephanie Duiven†

### I. INTRODUCTION

On March 27, 1992, Albert Hampton narrowly missed when he fired his .357 magnum revolver at Evelyn Humphrey as she stood by their bedroom window.<sup>1</sup> The next day, Hampton frequently hit and argued with Humphrey as they drove into the mountains together.<sup>2</sup> Upon returning home that evening, Hampton threatened, “[t]his time, bitch, when I shoot at you, I won’t miss,” and began reaching for his nearby gun.<sup>3</sup> Humphrey, however, reached it first; when Hampton reached for Humphrey’s hand that was holding the gun, she shot and killed him.<sup>4</sup> A jury later convicted Humphrey of voluntary manslaughter with personal use of a firearm after the trial judge prohibited it from considering expert testimony on Battered Women’s Syn-

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1. *See* *People v. Humphrey*, 921 P.2d 1, 4 (Cal. 1996).

2. *See id.*

3. *Id.*

4. *See id.*

drome (BWS)<sup>5</sup> in determining whether Humphrey's beliefs and actions were reasonable in self-defense.<sup>6</sup> The Court of Appeals affirmed Humphrey's conviction.<sup>7</sup>

In a 1996 reversal of that appellate decision, as well as precedent established in *People v. Aris*,<sup>8</sup> the California Supreme Court held in *People v. Humphrey* that expert testimony on BWS is generally relevant to the determination of the reasonableness component of self-defense claims advanced by battered women defendants who have been charged with killing the men who abuse them.<sup>9</sup> While *Humphrey* may result in more acquittals for many battered women who have killed their abusers in self-defense, the lack of resources in public defender's offices, as well as common misperceptions and attitudes attorneys have regarding battered women, may prevent poor battered women defendants from receiving the full benefit of this decision.

## II. BRIEF REVIEW OF SELF-DEFENSE LAW IN CALIFORNIA

California case law has established that a perfect self-defense claim to a homicide charge under the relevant Penal Code sections<sup>10</sup> consists of two components.<sup>11</sup> The first component requires that the defendant's actions against the victim "were motivated by an actual (also referred to as 'genuine' or 'honest') belief or perception that (a) the defendant was in imminent danger of death or great bodily injury from an unlawful attack or threat by the

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5. Battered Women's Syndrome (BWS) traditionally "refers to the effects of physical or psychological abuse on many women." *Developments in the Law—Legal Responses to Domestic Violence*, 106 HARV. L. REV. 1498, 1578-79 (1993) (citing LENORE E. WALKER, THE BATTERED WOMAN SYNDROME 17-40 (1984)); see also CAL. EVID. CODE § 1107 (West 1995) (listing "the physical, emotional, or mental effects upon the beliefs, perceptions, or behavior of victims of domestic violence" within its definition of Battered Women's Syndrome). But see, e.g., *Humphrey*, 921 P.2d at 7 n.3 (noting criticism by domestic violence experts of the use of the term "Battered Women's Syndrome" to describe the experiences of women in battering relationships); Elizabeth M. Schneider, *Resistance to Equality*, 57 U. PITT. L. REV. 477, 505-09 (1996) (criticizing use of the term "Battered Women's Syndrome"). This article will use the terms "Battered Women's Syndrome" and "BWS."
  6. See *Humphrey*, 921 P.2d at 5.
  7. *Id.*
  8. *Aris*, 264 Cal. Rptr. 167 (Cal Ct. App. 1989), overruled on other grounds by *Humphrey*, 921 P.2d 1.
  9. See *Humphrey*, 921 P.2d at 10.
  10. California Penal Code section 197 provides in pertinent part:  
 Homicide is . . . justifiable when committed by any person in any of the following cases: . . .  
 3. When committed in the lawful defense of such person . . . when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished . . .  
 CAL. PENAL CODE § 197 (West 1988).  
 California Penal Code section 198 states:  
 A bare fear of the commission of any of the offenses mentioned in subdivisions 2 and 3 of Section 197, to prevent which homicide may be lawfully committed, is not sufficient to justify it. But the circumstances must be sufficient to excite the fears of a reasonable person, and the party killing must have acted under the influence of such fears alone.  
 CAL. PENAL CODE § 198 (West 1988).
  11. See, e.g., *People v. Flannel*, 603 P.2d 1 (Cal. 1979); *People v. Day*, 2 Cal. Rptr. 2d 916 (Cal Ct. App. 1992), overruled on other grounds by *Humphrey*, 921 P.2d 1; *Aris*, 264 Cal. Rptr. 167.

victim and (b) the defendant's acts were necessary to prevent the injury."<sup>12</sup> The second component requires that a reasonable person in the same circumstances would have perceived the situation in the same way and acted in the same way as the defendant.<sup>13</sup> Satisfaction of both components results in a finding of perfect self-defense, and thus, acquittal.<sup>14</sup>

If the defense can satisfy only the first component, the defendant's claim is referred to as "imperfect" self-defense.<sup>15</sup> Imperfect self-defense cannot result in the defendant's acquittal.<sup>16</sup> However, the offense will be reduced to voluntary manslaughter since "[a]n honest but unreasonable belief that it is necessary to defend oneself from imminent peril to life or great bodily injury negates malice aforethought, the mental element necessary for murder."<sup>17</sup> A manslaughter conviction can result in imprisonment for three, six, or eleven years.<sup>18</sup>

### III. THE USE OF BWS EXPERT TESTIMONY IN PROVING BATTERED WOMEN DEFENDANT'S SELF-DEFENSE CLAIMS BEFORE HUMPHREY

Before *Humphrey*, the California courts allowed a battered woman defendant to use BWS expert testimony only to establish the first component of her self-defense claim: the defendant's actual belief that danger was imminent and that her actions were necessary to prevent injury. To demonstrate this actual belief, the California Court of Appeals held in *Aris* that the battered woman defendant could present evidence of "all of the circumstances, including the victim's prior assaults on and threats to the defendant."<sup>19</sup> The *Aris* court admitted BWS expert testimony in relation to the first component of self-defense based on its acceptance of the view that the experience of being battered could affect a woman's state of mind in acting to kill her batterer.<sup>20</sup>

The California courts, however, prohibited a battered woman defendant's use of BWS expert testimony with regard to the second component of self-defense: the reasonableness of a defendant's beliefs and actions. The *Aris* court considered BWS expert testimony not to be relevant to that component of self-defense,<sup>21</sup> explaining that the reasonableness component does "not call for an evaluation of the defendant's subjective state of mind, but for an

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12. *Aris*, 264 Cal. Rptr. at 172.

13. *See id.*

14. *See id.*

15. *See Humphrey*, 921 P.2d at 6 (citing *In re Christian S.*, 872 P.2d 574, 583 (Cal. 1994) (footnote omitted)).

16. *See id.*

17. *Flannel*, 603 P.2d at 4 (emphasis omitted).

18. *See CAL. PENAL CODE* § 193 (West 1988).

19. *Aris*, 264 Cal. Rptr. at 174 (citations omitted).

20. *See id.* at 171.

21. *See id.* at 179.

objective evaluation of the defendant's assertedly defensive acts."<sup>22</sup> The *Aris* court's reasoning was upheld in *People v. Day*.<sup>23</sup>

The reasonableness component of a self-defense claim can be difficult for a battered woman defendant to satisfy due to stereotypes and misconceptions about those involved in abusive relationships. "It is simply impossible for many lawyers, judges, legal scholars, and the public at large to imagine that women are acting reasonably when they kill their intimate partners."<sup>24</sup> The situations in which battered women kill often are not ones in which the danger from the abuser clearly appears to be "imminent."<sup>25</sup> Also, jurors may find the deadly force that a woman used to be an unreasonable response to the actions of the abuser.<sup>26</sup> Furthermore, the public often believes that a woman can easily leave an abusive relationship, and that a woman who did not leave is not really a "battered woman."<sup>27</sup>

BWS expert testimony can help dispel these misconceptions. BWS testimony can help explain a battered woman's heightened sensitivity to when her abuser is going to become violent, as well as why a woman acted to kill in a particular instance instead of during past incidents of abuse.<sup>28</sup> Furthermore, testimony on BWS can help explain why a woman might need to use a weapon even though the abuser did not.<sup>29</sup> By excluding the use of BWS expert testimony for the reasonableness component of self-defense, the *Aris* and *Day* courts prevented defendants from addressing these misconceptions, and thus basically foreclosed the possibility of successful perfect self-defense claims for many battered women defendants.

#### IV. EXTENSION OF THE RELEVANCE OF BWS EXPERT TESTIMONY TO THE REASONABLENESS COMPONENT: THE *HUMPHREY* DECISION

At trial, Humphrey argued that the jury should be allowed to consider the BWS expert testimony in deciding both components of her self-defense claim. The trial court, pursuant to *Aris*, disagreed and instructed the jury that it could consider the BWS expert testimony offered by Humphrey "in deciding whether the defendant actually believed it was necessary to kill in self-defense, but not in deciding whether that belief was reasonable."<sup>30</sup> The California Supreme Court reversed, and held that the trial court should have permitted the jury to consider BWS expert testimony in evaluating whether the defendant's beliefs and actions were reasonable.<sup>31</sup> The Court found that the

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22. *Id.* (emphasis omitted).

23. 2 Cal. Rptr. 2d 916, 921 (1992).

24. Schneider, *supra* note 5, at 503-04.

25. See *Developments in the Law—Legal Responses to Domestic Violence*, *supra* note 5, at 1577.

26. See *id.* at 1581.

27. See *id.*

28. See *id.* at 1582.

29. See *id.* at 1581-82.

30. *Humphrey*, 921 P.2d at 2.

31. See *id.*

*Aris* and *Day* decisions were too narrow in their construction of the reasonableness component,<sup>32</sup> and emphasized that “the jury, in determining objective reasonableness, must view the situation from the *defendant’s perspective*.”<sup>33</sup>

Relying on this standard of determining reasonableness, the Court held that BWS expert testimony helps to shed light on the defendant’s perspective, and is thus generally relevant to both aspects of a perfect self-defense claim.<sup>34</sup> The Court emphasized that BWS testimony can show how a battered woman thought at the time of the killing that her abuser’s actions now posed an imminent danger to her life because battered women often possess an increased sensitivity to their abusers’ behavior which enables them to distinguish between different levels of danger.<sup>35</sup> The Court also explained that BWS expert testimony can help dispel myths about the ease with which a battered woman can leave an abusive relationship, and can help enhance a battered woman’s credibility for the jury.<sup>36</sup>

#### V. THE LIMITED EFFECTS OF *HUMPHREY* ON THE SELF-DEFENSE CLAIMS OF LOWER-INCOME BATTERED WOMEN

Lower-income battered women who are charged with killing their abusers will likely turn to public defenders for assistance. However, while this assistance is “free” representation,<sup>37</sup> insufficient funding for public defender programs and the large number of indigent defendants in California may prevent a battered woman defendant from receiving the quality of assistance necessary for a self-defense claim under *Humphrey*.<sup>38</sup> Poor battered women defendants may also be at a disadvantage in being unable to choose or afford an attorney with experience in representing battered women.

Public defenders may often carry a heavy caseload as a result of inadequacy of financial support for the office: “the less money supplied to the office, the less investigative and medical expert support, the fewer public defenders employed, and hence the fewer public defenders available for indigent defense.”<sup>39</sup> The new “Three Strikes” law in California, which has resulted in a huge jump in the number of felony trials,<sup>40</sup> has only exacerbated

32. *See id.* at 8.

33. *Id.*

34. *See id.* at 8-10.

35. *See id.* at 8-9.

36. *See id.* at 9 (citing *Day*, 2 Cal. Rptr. 2d at 922-24).

37. *See* CAL. PENAL CODE § 987.8(b) (West Supp. 1996) (providing in pertinent part: “In any case in which a defendant is provided legal assistance . . . the court may, after notice and a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost thereof.”).

38. *See* Sonia Y. Lee, Comment, *OC’s PD’s Feeling the Squeeze—The Right to Counsel: In Light of Budget Cuts, Can the Orange County Office of the Public Defender Provide Effective Assistance of Counsel?*, 29 LOY. L.A. L. REV. 1895, 1897 (1996) (citing Rebecca Marcus, *Racism in Our Courts: The Underfunding of Public Defenders and Its Disproportionate Impact upon Racial Minorities*, 22 HASTINGS CONST. L.Q. 219 (1994)).

39. *Id.*

40. *See id.* at 1909 (citing Michael G. Turner et al., “*Three Strikes and You’re Out*” Legislation: A National Assessment, FED. PROBATION, Sept. 1995, at 16, 18).

the problems of public defenders since the law requires even more expenditures and resources from an already tapped-out public defender's office.<sup>41</sup> For battered women defendants, this means that public defenders will not have as much time or as many resources to take full advantage of the *Humphrey* decision in mounting an effective self-defense claim.

It is not clear how easy it will be in practice for defense attorneys to use the *Humphrey* decision to admit BWS expert testimony for the reasonableness component of self-defense. While the majority opinion simply states that because BWS evidence is relevant it is therefore admissible under Evidence Code section 1107, the concurring opinions argue that admissibility of BWS is not that simple.

Justice Brown's concurrence gives insight into some of the complicated, practical details of using *Humphrey* in conjunction with the relevant Evidence Code sections.<sup>42</sup> Evidence Code section 1107 makes BWS expert testimony admissible if the evidence is relevant and the expert is qualified.<sup>43</sup> However, section 801 also sets out requirements for the admissibility of expert opinion testimony: the defense attorney not only must establish the expert's qualifications in the relevant field (BWS), but all of the testimony of the expert must be "[r]elated to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact . . . ."<sup>44</sup> Brown argues that "since section 1107 does not specifically abrogate Evidence Code section 801, we may assume that section's definition of the foundational prerequisites for expert testimony remains integral to the assessment of relevance."<sup>45</sup> Therefore, Brown argues that for BWS testimony to be relevant, it must still satisfy the requirements of section 801.<sup>46</sup>

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41. *See id.*

42. *See Humphrey*, 921 P.2d at 14-18 (Brown, J., concurring).

43. California Evidence Code section 1107 provides in pertinent part:

(a) In a criminal action, expert testimony is admissible . . . regarding battered women's syndrome, including the physical, emotional, or mental effects upon the beliefs, perceptions, or behavior of victims of domestic violence . . . .

(b) The foundation shall be sufficient for admission of this expert testimony if the proponent of the evidence establishes its relevancy and the proper qualifications of the expert witness. Expert opinion testimony on battered women's syndrome shall not be considered a new scientific technique whose reliability is unproven.

CAL. EVID. CODE § 1107 (West 1995).

44. California Evidence Code section 801 states:

If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is:

(a) Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact; and

(b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates, unless an expert is precluded by law from using such matter as a basis for his opinion.

CAL. EVID. CODE § 801 (West 1995).

45. *Humphrey*, 921 P.2d at 15 (Brown, J., concurring).

46. *See id.*

Justice Werdegar, in a separate concurrence, disagrees with Brown's views on section 801, but also critiques the majority's generalized view of the relevance and admissibility of BWS expert testimony.<sup>47</sup> She does agree with Justice Brown, however, that BWS expert testimony will not always be relevant in a particular case "unless the defendant's claim of reasonableness is based upon facts that would not, outside of a battering relationship, tend to show the reasonableness of the defendant's belief in the need to use deadly force."<sup>48</sup>

The lack of clarity from the majority and concurring opinions on the practical details of admitting BWS testimony seems to require that a defense attorney take several steps to safely and effectively use the *Humphrey* decision in conjunction with the requirements of the Evidence Code. First, the defense counsel must identify aspects of BWS sufficiently beyond the common experience of the average juror to satisfy section 801(a).<sup>49</sup> Next, the attorney must establish that the expert is qualified. Then, the attorney must determine how this testimony will assist the jury in deciding the reasonableness of the particular defendant's beliefs and actions.<sup>50</sup> Finally, counsel should strategize on how best to get the expert testimony before the jury: even with *Humphrey*, the BWS evidence is not relevant, and thus not admissible, "until the defendant puts at issue conduct or circumstances the jury might not otherwise understand as the basis for self-defense, i.e., that absent BWS evidence would not be considered reasonable."<sup>51</sup> These determinations may be more difficult for public defenders to make due to the limited time and financial resources available to devote to each case.

Beyond the lack of time and resources for public defenders, a basic lack of understanding of battered women by lawyers, judges, and legal scholars may also impede the success of battered women defendants' self-defense claims. Many lawyers who defend battered women "know little about battering and are not knowledgeable about the range of different psychological and psychosocial theories of battering."<sup>52</sup> However, "[a]dequate representation requires insight into common misunderstandings about battering and about battered women, about gender and other inequalities in the criminal law as applied to these women, and of the pitfalls into which many lawyers—experienced and inexperienced—and judges have fallen."<sup>53</sup> Defense attorneys, including public defenders, must be willing to examine their biases and move beyond them in ways most beneficial to their clients. Then, the attorney must spend time and resources researching past cases involving battered

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47. *See id.* at 12-13 (Werdegar, J., concurring).

48. *Id.* at 12 (Werdegar, J., concurring) (emphasis omitted) (citation omitted).

49. *See id.* at 15 (Brown, J., concurring) (citing CAL. EVID. CODE § 801(a); *People v. Cole*, 301 P.2d 854, 856-57 (Cal. 1956)).

50. *See id.* (citing *People v. Scoggins*, 37 Cal. 676, 683 (1869)).

51. *Id.* at 17 (Brown, J., concurring) (citations omitted).

52. Schneider, *supra* note 5, at 508.

53. *Id.* at 503 n.101.

women.<sup>54</sup> This allows for defense counsel to see how the jurisdiction applies laws to battered women and gives defense counsel "indications of courts' and legislators' conceptual misunderstandings or biases about battered women that may require education."<sup>55</sup>

Unfortunately, it may be difficult for lawyers to get beyond stereotypes and to see the beliefs and actions of female clients who killed their abusers as reasonable.<sup>56</sup> For poor women, this means that they could be represented by public defenders unable (or unwilling) to untangle the legal nuances involved in defending battered women. The defense attorney may never attempt to argue self-defense, and thus, never use BWS expert testimony because "the substance of the defense necessarily shapes the content of any testimony, particularly expert testimony, that might be proffered in support of that defense."<sup>57</sup> Women with financial means will be better able to avoid these representation difficulties by hiring defense attorneys who have worked with battered women in the past, who have the time and resources to present an effective self-defense claim, and who can recognize the particular legal needs of battered women.

Allocating more funding to public defenders and eliminating stereotypes about battered women are probably the ideal, but seemingly impossible, solutions to this apparent disparity in the quality of representation. There are some feasible ways, however, to improve the representation of battered women by public defenders. Each public defender's office should hire attorneys who have experience working with or representing battered women. The office should require these attorneys to stay abreast of changes in the law and other areas regarding domestic violence. The office should make sure that it is these experienced defenders who are assigned to cases like *Humphrey*, and then not so overloaded with other work as to be ineffective. By thus setting up a battered women's specialty unit, public defenders should profit by becoming experts in that particular area of law, and should better assist their clients in gaining acquittals.

## VI. CONCLUSION

Battered women defendants with the necessary financial means will likely benefit from the *Humphrey* decision if they face a murder charge for killing the men who abused them. They will have a better opportunity to hire attorneys who are familiar with BWS and the legal nuances of mounting a perfect self-defense claim for battered women defendants. They also can choose defense attorneys who are sensitive to their needs as battered women. It is less certain, however, that lower-income battered women, who often rely

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54. *See id.*

55. *Id.*

56. *See id.* at 503-04.

57. *Id.* at 488.

on public defender's offices to obtain defense assistance, will benefit as greatly at trial. The prevalent stereotypes and misconceptions about battered women and the strain on the time and resources of public defenders as a result of underfunding may prevent poor defendants from receiving the full benefit of *Humphrey*. This problem will only serve to reinforce society's belief that a rich defendant can "buy" an acquittal, while a poor defendant will more likely go to jail.<sup>58</sup>

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58. See *Lee*, *supra* note 38, at 1896.