ADMISSIBILITY OF BATTERED-SPOUSE-SYNDROME EVIDENCE IN ALASKA

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ABSTRACT

Despite the exceptionally high rates of domestic violence in Alaska, Alaskan jurisprudence affords battered women varied and sparse guidance for the use of their experience as a battered woman in criminal trials. Of the minimal guidance offered, none arises in the form of a binding Alaska Supreme Court opinion, rule of evidence, or governing statute. As one of the few states lacking established jurisprudence on evidence of battered spouse syndrome, Alaska would benefit from a clearer rule regarding the admissibility of battered-spouse-syndrome evidence. This rule would interpret "reasonableness" to include a "reasonable battered woman" standard when the relevant party was battered and claims a related altered perception or extreme emotional disturbance colored her actions. Under this standard, the consequences of the battering inform and define the reasonable person against whom the battered woman is judged.

INTRODUCTION

Over one-third of women in the United States experience domestic violence at the hands of an intimate partner.[1] In Alaska, this statistic is even higher: approximately *half* of the women in Alaska suffer domestic violence from an intimate partner during their lifetimes.[2] Indeed, Alaska

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1. Nat'l Ctr. for Injury Prevention & Control, Div. of Violence Prevention, *National Intimate Partner and Sexual Violence Survey 2010 Summary Report*, CENTERS FOR DISEASE CONTROL & PREVENTION 2 (2010), http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf.

2. *Facts & Statistics*, ALASKA NETWORK ON DOMESTIC VIOLENCE & SEXUAL ASSAULT, http://www.andvsa.org/facts/ (last visited Feb. 3, 2015).

ranks first in the United States for intimate partner homicide.[3] However, out of the 220 rural communities in Alaska, only one has a shelter for domestic violence victims.[4] Alaska Native women are especially vulnerable—although they make up less than twenty percent of the state's overall population, they represent nearly half of all reported rape victims.[5] And until very recently, the Violence Against Women Act (VAWA)[6] excluded Alaska Native tribes from provisions specifically designed to expand tribal jurisdiction over domestic violence crimes, leaving many Alaska Native women without recourse if they were assaulted.[7]

Despite their prevalence, sexual assault and domestic violence are two of the most underreported violent crimes due to fear, shame, loyalty to family members, and intimate relations with the perpetrator.[8] Furthermore, it is difficult to prosecute domestic violence crimes, even those that are actually reported, because the offense often intertwines with familial or emotional relationships.[9] Victims may hesitate to testify due to shame or fear, and the fact that physical evidence is infrequently documented often results in the case becoming a "he said—she said" argument.[10]

Notwithstanding the high rates of intimate partner abuse in Alaska,

3. Council on Domestic Violence & Sexual Assault, *Intimate Partner Violence and Sexual Violence in the State of Alaska: Key Results from the 2010 Alaska Victimization Survey*, UAA JUST. CENTER (2010), http://justice.uaa.alaska.edu/research/2010/1004.avs_2010/1004.07a.statewide_summary.pdf.

4. Indian Law and Order Comm'n, *A Roadmap for Making Native America Safer: Report to the President and Congress of the United States*, UCLA AM. INDIAN STUDS. CENTER ch. 2, at 41 (Nov. 2013), http://www.aisc.ucla.edu/iloc/report/.

5. *Id.*

6. The Violence Against Women Act was originally passed as Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat. 1796. The 2013 revisions were passed as the Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54.

7. *See* Violence Against Women Reauthorization Act of 2013, 18 U.S.C.A. § 2265(e) note (West 2013) ("In the State of Alaska, the amendments made by sections 904 and 905 [which recognize civil domestic violence jurisdiction over 'any person'] shall apply only to the Indian country . . . of the Metlakatla Indian Community, Annette Island Reserve."); Repeal of Special Rule for State of Alaska, Pub. L. No. 113-275, 127 Stat. 2988 (2014) (to be codified at 18 U.S.C. § 2265), *available at* http://www.gpo.gov/fdsys/pkg/PLAW-113publ275/pdf/PLAW-113publ275.pdf (repealing this provision).

8. *See* Irene Hanson Frieze & Angela Browne, *Violence in Marriage*, 11 CRIME & JUST. 163, 172, 186–90 (1989) (discussing underreporting of spousal abuse and marital rape).

9. Michelle Byers, *What Are the Odds: Applying the Doctrine of Chances to Domestic-Violence Prosecutions in Massachusetts*, 46 NEW ENG. L. REV. 551, 551 (2012).

10. Lisa Marie De Sanctis, *Bridging the Gap Between the Rules of Evidence and Justice for Victims of Domestic Violence*, 8 YALE J.L. & FEMINISM 359, 367–71 (1996).

courts have said little about the role of domestic violence evidence in supporting affirmative criminal defenses, including self-defense claims, in the state. These defenses would allow defendants accused of homicide to receive a lesser punishment upon showing that they were battered by the murder victim. Additionally, Alaska has no binding precedent, statutes, or rules of evidence governing the admissibility of evidence of battered spouse syndrome or other evidence of domestic violence.[11] This needs to change.

Part I of this Note provides a general overview of the battered spouse syndrome framework and describes its functions and roles in criminal cases. Part II details the development of battered-spouse-syndrome jurisprudence in Alaska. Finally, Part III proposes a framework for allowing Alaskans to admit battered-spouse-syndrome evidence in criminal trials.

I. A GENERAL FRAMEWORK FOR EVIDENCE OF BATTERED SPOUSE SYNDROM

Battered spouse syndrome, also referred to as battered wife syndrome or battered woman's syndrome, is the physical and psychological condition of a person subject to repeated forceful, physical, or psychological abusive behavior by an intimate partner.[12] Battered spouse syndrome has been identified as a sub-category of post-traumatic stress disorder.[13] Courts began recognizing the relevance of battered-spouse-syndrome evidence in criminal prosecutions in the late 1970s and early 1980s.[14] Evidence of battered spouse syndrome, with or without an official diagnosis, can explain the presence of a series of traits and characteristics that are common to women who have been physically or emotionally abused by dominant male figures over a prolonged time period.[15]

11. Cynthia Lynn Barnes, Annotation, *Admissibility of Expert Testimony Concerning Domestic-Violence Syndromes to Assist Jury in Evaluating Victim's Testimony or Behavior*, 57 A.L.R. 5th 315 § 1(a) (1998).

12. Mira Mihajlovich, *Does Plight Make Right: The Battered Woman Syndrome, Expert Testimony and the Law of Self-Defense*, 62 IND. L.J. 1253, 1258 (1987).

13. *See, e.g.*, State v. Ciskie, 751 P.2d 1165, 1169 (Wash. 1988) (en banc) (describing expert testimony that battered woman's syndrome is a subgroup of post-traumatic stress syndrome).

14. *See, e.g.*, Ibn-Tamas v. United States, 407 A.2d 626, 639 (D.C. 1979) (considering the application of testimony similar to battered spouse syndrome to a homicide case and concluding that the evidence was admissible to demonstrate that the defendant's behavior may have been similar to traits shown by other battered women).

15. People v. Ellis, 650 N.Y.S.2d 503, 505 (Sup. Ct. 1997).

According to experts, a relationship in which an individual suffers from battered spouse syndrome cycles between three phases. In the first—the tension-building stage—minor domestic violence episodes transpire.[16] The second stage is characterized by violent, uncontrollable, or brutal abuse.[17] Following that abuse, in the final stage, the batterer asks for forgiveness, demonstrates loving and caring behavior, and promises that the abuse will not reoccur.[18] Couples then reconcile, but the cycle begins anew.[19]

A. The General Role of Evidence of Battered Spouse Syndrome in Criminal Cases

Battered spouse syndrome is not a stand-alone defense to a criminal charge and does not automatically compel acquittal. Instead, the battered defendant introduces evidence of her syndrome in support of another recognized defense,[20] as a characteristic of the relevant reasonable person standard, or to demonstrate her mental state at the time of the alleged offense.[21]

Evidence of battered spouse syndrome does not remove any question of fact from the jury because, in most jurisdictions, the expert does not testify specifically as to whether the particular defendant demonstrates characteristics of battered spouse syndrome. Rather, the expert assists in dispelling an ordinary layperson-juror's perception that a woman in a battering relationship can leave at any time.[22] Because the average layperson-juror has a minimal understanding of the conduct of a woman in an abusive or domestic violence situation, expert testimony assists the jury in establishing the proper framework with which to decide its questions of fact.[23] Courts have often admitted expert testimony explaining the nature and effect of battered spouse syndrome, just as expert testimony is admissible to explain the mental state of hostages, prisoners of war, and other long-term, life-threatening

16. State v. Bednarz, 507 N.W.2d 168, 170 (Wis. Ct. App. 1993).
17. *Id*.
18. *Id*.
19. *See id*. (explaining that the victim feels needed and may even change her story to exonerate her batterer).
20. *See* Jeffrey Robinson, Note, *Defense Strategies for Battered Women Who Assault Their Mates:* State v. Curry, 4 HARVARD WOMEN'S L.J. 161, 162 (1981) (recognizing the use of battered spouse syndrome as evidence rather than as a defense itself).
21. Jimmy E. Tinsley, *Criminal Law: The Battered Woman Defense*, 34 AM. JUR. 2D Proof of Facts § 3 (1983).
22. People v. Humphrey, 13 Cal. 4th 1073, 1087 (Cal. 1996).
23. Fielder v. State, 756 S.W.2d 309, 319–20 (Tex. Crim. App. 1988).

conditions.[24]

B. Admissibility of Battered-Spouse-Syndrome Evidence: When is it Allowed?

There are four main circumstances in which courts have historically permitted defendants to introduce evidence of battered spouse syndrome: claims of self-defense, claims of provocation, mitigation of sentencing, and appeals claiming ineffective counsel. Each of these is discussed in greater detail below.

1. *Battered-Spouse-Syndrome Evidence and its Role in Self-Defense Claims: The Reasonableness of the Defendant's Perception of Danger, Imminence, and Options*

Battered women may offer expert testimony regarding battered spouse syndrome to support a defense of insanity, diminished capacity, heat of passion, or duress.[25] Defendants most commonly, however, offer battered-spouse-syndrome evidence to support a self-defense claim.[26] An individual may justifiably use deadly force in self-defense against another if she reasonably believes that she was in imminent danger of death or great bodily harm at the hands of an attacker.[27] A majority of United States jurisdictions judge defendants using the standard of a reasonable person in the person's situation, but the nuances of this standard vary.[28]

Defendants face several problems of proof in establishing self-defense using evidence of battered spouse syndrome. Most notably, defendants must demonstrate why they perceived *imminent* danger in a situation where a non-battered person may not believe the danger to be imminent.[29] This requires breaking down the layperson-jurors'

24. State v. Hundley, 693 P.2d 475, 479 (Kan. 1985).
25. Tinsley, *supra* note 21, at §§ 3, 4.5.
26. *Id*. at § 3.
27. John F. Wagner Jr., Annotation, *Standard for Determination of Reasonableness of Criminal Defendant's Belief, for Purposes of Self-Defense Claim, that Physical Force Is Necessary – Modern Cases*, 73 A.L.R. 4th 993 § 2 (1989).
28. *See, e.g.*, People v. Maggio, 70 A.D.3d 1258, 1258–60 (N.Y. App. Div. 2010) (viewing forcible compulsion through the "state of mind produced in the victim by the defendant's conduct" while also considering numerous other factors, including the victim's age, the sizes and strengths of defendant and victim, and the defendant's relationship with the victim); *but cf.* People v. Romero, No. B170885, 2006 WL 2808132, at *27–31 (Cal. Ct. App. Oct. 3, 2006) (holding that cultural factors that shape defendant's perceptions relevant to his situation are not permissible at trial).
29. Tinsley, *supra* note 21, at § 4.

previously held stereotypes or misconceptions about domestic violence. Defendants establish this imminence factor by demonstrating that battered women become sensitive to indicators of forthcoming violence by their batterers.[30] As a result, while perhaps not subject to an immediate threat of harm at the exact moment she used force, the defendant knew, by virtue of her intimate partner's past violent acts, that violence was approaching.[31] If she waited until the violence began, it may be too late to defend herself.[32]

This problem of proof is exacerbated when the defendant kills her intimate partner from behind, or while he is asleep. It is difficult for a jury to understand how there could have been an imminent threat of death or great bodily harm to the defendant when her batterer was resting. Some states preclude using evidence of battered spouse syndrome to support a self-defense claim when the defendant kills or assaults a sleeping or resting intimate partner.[33] In states that allow such evidence, the defendant must explain to the jury how her status as a battered woman influenced her perceptions of imminent danger and the need to use deadly force.[34]

Unlike typical self-defense cases, defense experts offering evidence of battered spouse syndrome emphasize past occurrences as the lens through which to interpret the details surrounding the alleged crime. Individuals suffering from battered spouse syndrome may genuinely and reasonably believe that they are in imminent danger, justifying the use of deadly force, in scenarios and circumstances where a non-battered person would not hold that same belief. In light of this, battered defendants may offer expert testimony on battered spouse syndrome to explain the defendant's perception that use of deadly force was justified and reasonable in light of the circumstances.[35] For example, experts may explain that the cyclical nature of a relationship characterized by domestic violence allows a battered woman to anticipate an oncoming escalation of violence, demonstrating the reasonableness of her fear and belief in the immediacy of the danger.[36] In homicide cases, the defendant may introduce evidence establishing the nature of the battering relationship to support the conclusion that she reasonably perceived

30. *Id.*
31. *Id.*
32. *Id.*
33. For example, North Carolina precludes evidence of battered spouse syndrome when the defendant assaults a sleeping intimate partner. State v. Norman, 324 N.C. 253, 266 (N.C. 1989).
34. Tinsley, *supra* note 21, at § 4.
35. *Id.* at § 3.
36. *See, e.g.*, People v. Ellis, 650 N.Y.S.2d 503, 505 (Sup. Ct. 1996).

imminent danger requiring the use of deadly force.[37] Expert testimony can also detail the similarities between the circumstances preceding the prior instances of domestic violence and the specific assault or homicide in question.[38] Thus, the expert assists the jury in understanding why the defendant perceived imminent danger under circumstances that may not have suggested danger to the average non-battered individual.[39]

Furthermore, expert testimony portrays the defendant to the jury as someone facing guaranteed future injury and reasonably perceived no other means of defending herself.[40] This perception may stem from prior fruitless attempts to obtain police assistance, a previous inability to defend herself against her batterer, or earlier unsuccessful attempts to leave her home.[41] Thus, from the defendants' perspective, no alternative way of preventing harm to herself existed other than seriously injuring or killing her intimate partner.[42] To demonstrate that the theoretical option of leaving was unrealistic, defendants may offer evidence or testimony providing her reasons for staying in the relationship.[43] These reasons may include her children, financial concerns, or her batterer's forcible prevention of her previous attempts to leave.[44]

2. Battered-Spouse-Syndrome Evidence Admitted to Explain Provocation and the Defendant's State of Mind

Many jurisdictions permit evidence of battered spouse syndrome to be admitted to provide a reasonable explanation for the defendant's provocation in murder prosecutions.[45] These courts recognize that a person may have reason to assault or kill her persistent abuser, even despite the absence of a contemporaneous provocation that the average layperson would find suggestive of an imminent threat of death or serious bodily harm.[46] Thus, where evidence of the victim-batterer's prior physical abuse of the defendant exists, juries may base a finding of provocation on a course of abusive treatment which "can induce a homicidal response to a person of ordinary firmness and which the

37. Tinsley, *supra* note 21, at § 3.
38. Donald L. Creach, *Partially Determined Imperfect Self-Defense: The Battered Wife Kills and Tells Why*, 34 STAN. L. REV. 615, 618 (1982).
39. *Id.*
40. Tinsley, *supra* note 21, at § 5.
41. *Id*.
42. *Id*.
43. 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, 640, 644–45 (1980).
44. *Id.* at 626–27.
45. Brooks v. State, 630 So. 2d 160, 163 (Ala. Crim. App. 1993).
46. State v. Smullen, 844 A.2d 429, 440 (Md. Ct. Spec. App. 2004).

accused reasonably believes is likely to continue."[47] In determining whether the defendant acted in the heat of passion resulting from reasonable provocation, the jury may consider testimony related to battered spouse syndrome.[48] The jury may consider not only the decedent's conduct at the time of the alleged offense, but also his prior abuse of the defendant.[49]

3. Battered-Spouse-Syndrome Evidence as a Mitigating Circumstance for Sentencing

In some jurisdictions, defendants offer evidence of battered spouse syndrome as a mitigating circumstance during sentencing. For example, in *People v. Johnson*,[50] New York's intermediate appellate court reduced the defendant's sentence from six-to-eighteen years of imprisonment to four-to-twelve years of imprisonment due to the defendant's diagnosis as a battered woman.[51] Additionally, in *United States v. Whitetail*,[52] the Eighth Circuit Court of Appeals held that the District Court erred when it concluded that the sentencing guidelines foreclosed consideration of battered spouse syndrome as a mitigating factor in sentencing.[53] The fact that the jury rejected the defendant's claim of self-defense based upon evidence of battered spouse syndrome in *Whitetail* did not preclude the District Court from considering battered-spouse-syndrome evidence in sentencing.[54] Finally, in *State v. Pascal*,[55] the Supreme Court of Washington affirmed a ninety-day sentence for first-degree manslaughter, a sentence significantly below the Washington state sentencing guidelines range.[56] The deviation below the sentencing range was based in part on evidence in the record that the defendant's experience as a battered woman significantly impaired her ability to appreciate the wrongfulness of her conduct.[57]

Other courts and panels, however, reject battered spouse syndrome as a mitigating circumstance during sentencing. For example, in *People v.*

47. State v. Kelly, 97 N.J. 178, 219 (1984) (citations omitted); *see also* State v. Tierney, 356 N.J. Super. 468, 480 (App. Div. 2003) ("[A] prolonged course of physical abuse by the deceased that the defendant reasonably believed would continue might be considered adequate provocation.").
48. *Tierney*, 356 N.J. Super. at 480.
49. *Kelly*, 478 A.2d at 219.
50. 205 A.D.2d 344 (N.Y. App. Div. 1994).
51. *Id*.
52. 956 F.2d 857 (8th Cir. 1992).
53. *Id*. at 864.
54. *Id*. at 862–63.
55. 736 P.2d 1065 (Wash. 1987) (en banc).
56. *Id*. at 1072–73.
57. *Id*. at 1071–72.

Ambrose,[58] the New York intermediate appellate court determined that neither the defendant's emotional disturbance when she shot her boyfriend with a rifle in the head, nor her long history of abuse by men, demonstrated sufficiently extraordinary circumstances to justify the reduction of her prison sentence when the sentencing judge had already chosen not to impose a maximum sentence based on other potential mitigating factors.[59] Remarkably, the New York intermediate appellate court is the same court that *allowed* similar evidence for a sentencing reduction just four years later in *Johnson*. Additionally, in *Ex parte Haney*,[60] the Supreme Court of Alabama declined to hold that the defendant's evidence of domestic violence and a battering relationship precluded the death penalty.[61] This split between, and especially within, courts shows that when, why, and how courts accept evidence of battered spouse syndrome is inconsistent and that determinative patterns are elusive.

4. Ineffective Counsel and Battered Spouse Syndrome Appeals

Some jurisdictions allow battered defendants to appeal their convictions by alleging counsel's inadequate presentation of battered-spouse-syndrome evidence at trial.[62] For example, a California state appellate court accepted an ineffective assistance of counsel argument when the defense counsel was unaware of battered spouse syndrome and failed to investigate the possibility of proffering evidence of it.[63] A court in Delaware accepted an argument that defense counsel's inaccurate notions of battered spouse syndrome influenced his advice to the defendant to plead guilty to a lesser-included charge.[64] In Tennessee—in just one case among many—a court found an allegation of incompetent representation supportable where the lead defense counsel failed to present evidence of battered spouse syndrome after the prosecution rested its case, despite the associate defense counselor's opening statement that the jury would hear expert evidence on the syndrome.[65] Courts have also accepted ineffective assistance of counsel

58. 160 A.D.2d 1097 (N.Y. App. Div. 1990).
59. *Id*. at 1097–98.
60. 603 So. 2d 412 (Ala. 1992).
61. *See id*. at 418–19 (affirming a death penalty sentence for capital murder after the trial court found the evidence to not be mitigating).
62. *See, e.g.*, State v. Feltrop, 803 S.W.2d 1 (Mo. 1991) (en banc).
63. People v. Day, 2 Cal. App. 4th 405, 419–20 (Cal. Ct. App. 4th 1992).
64. State v. Scott, Nos. K86-09-0161, K86-09-0162, 1989 WL 90613, at *3–4 (Del. Super. Ct. July 19, 1989).
65. *See, e.g.*, State v. Zimmerman, 823 S.W.2d 220, 225–27 (Tenn. Crim. App. 1991).

contentions where defense counsel failed to present expert testimony on battered spouse syndrome[66] and where defense counsel failed to seek a jury instruction on battered spouse syndrome after proffering expert testimony.[67]

Conversely, some courts have rejected ineffective assistance of counsel claims involving evidence of battered spouse syndrome when counsel has had a good faith basis for including or excluding evidence of battered spouse syndrome in trial evidence, or when the defendant suffered no prejudice. For example, in *Meeks v. Bergen*,[68] the Sixth Circuit Court of Appeals rejected an ineffective assistance of counsel claim despite defense counsel's failure to introduce testimony regarding battered spouse syndrome.[69] Unlike the cases mentioned above, defense counsel made a strategic decision to assert a claim of self-defense without evidence of battered spouse syndrome, and the facts of the case supported a strong self-defense claim.[70] Thus, the petitioner did not suffer any prejudice.[71] And in another case, defense counsel's failure to submit jury instructions on battered spouse syndrome also failed to establish incompetent representation because evidence of battered spouse syndrome was inconsistent and inappropriate with counsel's alleged defense of "accident."[72]

C. Admission of Battered-Spouse-Syndrome Evidence Through Expert and Layperson Testimony

1. *Battered-Spouse-Syndrome Evidence Introduced Through Expert Testimony*

Evidence establishing the context for understanding battered spouse syndrome is traditionally provided by expert testimony. After establishing their qualifications, the expert provides testimony describing battered spouse syndrome generally.[73] In some jurisdictions, the expert also describes the extent to which the relationship in question demonstrates characteristics typical of battering relationships.[74] This testimony explains why the defendant behaved as she did given the

66. *See, e.g.*, *Day*, 2 Cal. App. 4th at 419–20.
67. Commonwealth v. Stonehouse, 555 A.2d 772, 782 (Pa. 1989).
68. 749 F.2d 322 (6th Cir. 1984).
69. *Id*. at 328. *But cf. Day,* 2 Cal. App. 4th at 419–20.
70. *Meeks*, 749 F.2d at 328.
71. *Id.*
72. McBrayer v. State, 383 S.E.2d 879, 881–82 (Ga. 1989). *But cf. Stonehouse*, 555 A.2d at 784–85.
73. Tinsley, *supra* note 21, at § 9.
74. *Id.*

circumstances.[75] The expert testimony helps the jury understand the case from the perspective of the defendant by dispelling myths about women in battering relationships.[76] For example, the expert testimony may assist the jury in understanding that the behavior of the woman and the decedent matches behavior commonly exhibited in abusive relationships.[77] Additionally, expert testimony explains why battered defendants may recant testimony, fail to recall details, or seem uncertain or unreliable on the witness stand.[78]

Experts commonly identify the facts and circumstances that are characteristic of battered spouse syndrome. These facts include the intimate partner's extreme jealousy, dominance over the battered defendant, gradual change in behavior throughout the course of the relationship, and repeated use of physical force against the defendant.[79] Experts explain common features of actual abuse to explain why battered women's conceptions of imminence or provocation may differ from those of the average layperson.[80] These characteristics can include a habit of abuse taking place when the batterer is intoxicated, the trivial nature of incidents that can trigger the abuse, and the need for medical treatment after prior incidents of abuse.[81] Experts also explain factors of domestic violence to dispel prior misconceptions about battering relationships.[82] These components include the defendant's inability to defend herself without using deadly force due to the intimate partner's greater size or her practical inability to leave the family home.[83]

Experts explain the similarities between prior beatings and the circumstances leading to the defendant's offense to demonstrate the reasonableness of the defendant's perception of danger and need to use deadly force.[84] This can include the police's prior refusal to arrest the intimate partner after previous instances of violence, and the defendant's prior futile attempts to defend herself without using deadly

75. *Id*.
76. *See, e.g.*, United States v. Winters, 729 F.2d 602, 605 (9th Cir. 1984) (explaining that expert testimony discussing post-traumatic stress disorders was beyond the common knowledge of an average person, and concluding that expert testimony assists the jury in understanding why victims do not attempt to escape or call for help).
77. Creach, *supra* note 38.
78. Barnes, *supra* note 11, at § 2(a) n.19; *see also Winters*, 729 F.2d at 605.
79. Tinsley, *supra* note 21, at § 9.
80. *Id*.
81. *Id*.
82. *Id*.
83. *Id*.
84. *Id*.

force.[85] These similarities and circumstances, according to the expert, lead the defendant to believe that no other options existed to protect herself other than to commit the offense.[86] Some experts also offer evidence of the intimate partner's prior relationships, including the use of physical force against previous wives or partners, to demonstrate the similarities between the circumstances surrounding the abuse of prior partners and the defendant.[87]

2. The Role of Layperson Testimony

After expert testimony provides relevant context regarding battered spouse syndrome, many jurisdictions allow testimony by laypersons, including the defendant herself, to provide evidence from which the jury can conclude that the defendant suffered from battered spouse syndrome as explained by the expert. Testimony from friends, neighbors, hospital personnel, or others can help to explain the history or characteristics of domestic violence in the specific relationship in question.[88] Additionally, the testimony may address instances of prior abusive behavior in the relationship in question or the defendant's prior failed attempts to obtain help or defend herself.[89]

Jurisdictions differ on the admissibility of layperson testimony describing domestic violence. For example, the Tenth Circuit Court of Appeals upheld a District Court's decision to preclude testimony from three lay witnesses and a physician regarding the defendant's fear of her husband and his previous violent behavior when the defendant presented insufficient additional evidence of self-defense.[90] Conversely, courts in other jurisdictions have permitted defendants to provide lay testimony about previous abuse by the decedent in support of their self-defense claims.[91] Still another court found that excluding three eyewitness laypeople from testifying about the abuse the defendant suffered at the time of the offense was not harmless error.[92] Although the defendant in that case offered expert testimony and did not herself

85. *Id*.
86. *Id*.
87. *Id*.
88. Robinson, *supra* note 20, at 173.
89. Schneider, *supra* note 43 at 644–45.
90. Lumpkin v. Ray, 977 F.2d 508, 508–09 (10th Cir. 1992).
91. *See, e.g.*, State v. Dozier, 255 S.E.2d 552, 555 (W. Va. 1979) ("[T]he defense would be entitled, in the event of a retrial, to elicit testimony about the prior physical beatings she received in order that the jury may fully evaluate and consider the defendant's mental state at the time of the commission of the offense.").
92. Weiand v. State, 732 So. 2d 1044, 1057–58 (Fla. 1999).

remember all of the details of the significant events, the court determined that "expert testimony . . . does not replace the importance of eyewitness testimony to corroborate the offense" when "the excluded witnesses would have provided the only direct testimony to support [defendant's] claims of prior abuse."[93] When allowed, this lay testimony assists the jury in understanding the defendant's mental states leading up to, and at the time of, the offense.[94]

In jurisdictions that admit layperson testimony about the specific characteristics of battered spouse syndrome, further variances exist regarding whether the layperson testifies before or after the expert. Jurisdictions that allow laypersons to testify prior to experts give the expert the ability to expand on the meaning of battered spouse syndrome, setting a framework that the jury could use to find that the relationship in question was one typical of battering relationships.[95] More commonly, however, jurisdictions permit laypersons to testify only after expert testimony has been presented. In these jurisdictions, the expert defines and contextualizes battered spouse syndrome, after which lay witnesses provide evidence that the relationship in question demonstrated the characteristics of battered spouse syndrome described by the expert.[96] Some jurisdictions permit laypersons to testify specifically about battered spouse syndrome or generally regarding the abusive characteristics of the relationship in question without any expert testimony.[97]

II. BATTERED-SPOUSE-SYNDROME EVIDENCE IN ALASKA

There are relatively few cases discussing the evidentiary role of battered spouse syndrome in Alaska. Of these cases, even fewer discuss battered spouse syndrome in its most common evidentiary context. This context involves a battered woman who has allegedly killed or assaulted

93. *Id*.
94. *Id.*
95. *See* Robinson, *supra* note 20, at 172 (describing this ordering of testimony and the effect it had on the total body of evidence).
96. *See, e.g.*, Commonwealth v. Rodriquez, 633 N.E.2d 1039, 4–7 (Mass. 1994) (holding that the trial judge abused his discretion in excluding lay testimony regarding the defendant's prior history of abuse at the hands of the victim and excluding expert testimony regarding battered spouse syndrome).
97. *See, e.g.*, Tourlakis v. Morris, 738 F. Supp. 1128, 1140 (S.D. Ohio 1990) (holding that the lower court's decision to preclude expert testimony regarding battered spouse syndrome was not a constitutional violation and did not amount to prejudicial error when the court permitted the defendant to proffer significant lay testimony describing the victim's previous violent and abusive behavior).

her spouse proffering evidence of battered spouse syndrome to explain her state of mind or to support a self-defense claim. Rather, to articulate the nuances of the syndrome, Alaska courts have utilized atypical cases where non-battered defendants analogized their situation to those involving battered spouse syndrome.

Section A will detail the sporadic development of battered-spouse-syndrome jurisprudence in Alaska. This includes the use of evidence of battered spouse syndrome to explain a battered woman's state of mind, and to characterize fear, reasonableness, imminence, and provocation in light of the battered woman's situation. This jurisprudence also involves the role of battered-spouse-syndrome evidence in supporting a self-defense claim, as a mitigating factor in sentencing, and in ineffective assistance of counsel appeals. Section B will go on to explain the parameters under which parties may offer evidence of battered spouse syndrome, including through expert testimony and layperson testimony.

A. Development of Battered-Spouse-Syndrome Jurisprudence in Alaska

1. *Role of Battered-Spouse-Syndrome Evidence in Relation to Defining the Defendant's State of Mind, Reasonableness, Fear, Imminence, and Provocation*

Early in Alaska's battered-spouse-syndrome jurisprudence, the state court of appeals acknowledged, but avoided defining, the parameters of the admissibility of battered-spouse-syndrome evidence. In *Halberg v. State*,[98] the defendant killed her husband, and defended against her murder charge by arguing that she stabbed him in self-defense.[99] During her trial, the defendant testified about the domestic violence characterizing her relationship with the deceased.[100] She explained that, on the night of her husband's death, he "pushed her and threatened her, putting her in fear for her life."[101] The defendant introduced expert testimony to support her self-defense claim.[102] The expert witness testified that the defendant's "history showed that she had suffered from battered woman syndrome and that she was controlled by her husband."[103] In response, the prosecution offered

98. No. A–3733, 1993 WL 13156720 (Alaska Ct. App. Apr. 28, 1993).
99. *Id.* at *6.
100. *Id.*
101. *Id.*
102. *Id.*
103. *Id.*

evidence rebutting the defendant's battered-spouse-syndrome evidence through testimony about the defendant's prior assaultive and combative actions towards others.[104] The judge admitted this evidence under Alaska Rule of Evidence 404(b)(1).[105]

The Alaska Court of Appeals declined to explore the "several issues concerning the nature of the battered woman syndrome defense and the evidentiary effect that raising such a claim has on the normal rules governing character evidence."[106] Rather, the court bypassed the issue, explaining that, even if the trial court committed error in admitting the testimonies, the error was harmless.[107] Nonetheless, the court acknowledged that the evidentiary role of battered spouse syndrome is a complicated subject lacking straightforward answers in Alaska case law.[108]

Unfortunately, the Alaska courts soon thereafter began to conflate the defenses of non-battered defendants with those actually suffering from battered spouse syndrome. In *Ha v. State*,[109] the court of appeals opined on the role of battered-spouse-syndrome evidence in defining imminence in criminal trials by analogizing battered spouse syndrome to the decedent's "reputation for violence and extortion" and recent threats of violence.[110] In *Ha*, the trial court articulated an objective test of how a reasonably prudent battered woman would perceive the aggressor's demeanor.[111]

Although this case itself did not involve a battered spouse, it involved the most significant discussion of the evidentiary role of battered spouse syndrome to date, using that role as an analogy to the

104. *Id*.

105. *Id.* The rule states that "[e]vidence of other crimes, wrongs, or acts is not admissible if the sole purpose for offering the evidence is to prove the character of a person in order to show that the person acted in conformity therewith [but] [i]t is, however, admissible for other purposes." ALASKA R. EVID. 404(b)(1).

106. *Halberg*, 1993 WL 13156720, at *7.

107. *Id*.

108. *Cf.* Hancock v. State, 706 P.2d 1164, 1166–68 (Alaska Ct. App. 1985). *Hancock* was the first Alaska court of appeals case to use the term "rape trauma syndrome." In *Hancock*, the state sought permission to offer testimony of social workers and mental health care professionals about "rape trauma syndrome" in a child sexual assault case where the defendant allegedly assaulted the same victim multiple times. *Id.* at 1166. The social workers testified that "victims of sexual abuse act in certain ways, thereby manifesting that they had been sexually abused." *Id.* The trial court judge ruled that "any testimony about the alleged syndrome would not be permitted without a hearing outside the jury's presence." *Id.* The appellate court confirmed that the superior court's actions were not an abuse of discretion. *Id.* at 1173–74.

109. 892 P.2d 184 (Alaska Ct. App. 1995).

110. *Id*. at 188.

111. *Id*.

issues explored in the case itself. In *Ha*, the defendant argued self-defense.[112] But the defense offered no expert testimony; rather, the defendant testified about the imminent danger he perceived due to the decedent's allegedly violent nature and history with previous threats that turned deadly.[113] The court expressed hesitation with the defendant's depiction of imminence, since the killing happened the day after the threat and fear-inducing altercation between the two men.[114] In response, the defendant's attorney analogized the present case to cases involving battered spouse syndrome.[115] The attorney argued, "in cases where battered women shot their husbands while they slept, courts had ruled that the trial juries should receive instructions on self-defense."[116] The defense attorney reasoned that "the fact that [the victim] was shot from behind is irrelevant, just like the fact that a husband is shot while he's asleep."[117] The important issue was whether the defendant felt like he was in imminent fear for his own safety.[118] The court noted that the defense counsel's statement inaccurately characterized current law, as the majority of jurisdictions did not permit a self-defense instruction when a woman killed her sleeping abusive spouse, and refused to instruct the jury on self-defense.[119]

In rejecting the self-defense instruction, the *Ha* court discussed two cases to substantiate its conclusion that a trial judge can reject self-defense instructions when no evidence of imminent threat of harm exists.[120] The first case, *Paul v. State*,[121] is discussed below in Part II.A.2. The second case, *State v. Stewart*,[122] dealt with a battered woman who killed her sleeping husband.[123] There, the Kansas Supreme Court held:

> Because of prior history of abuse, and the difference in strength and size between the abused and the abuser, the accused in such cases may choose to defend during a momentary lull in the abuse, rather than during [an active] conflict . . . . However, in order to warrant the giving of a self-defense instruction, the facts of the case must still show that the spouse was in

112. *Id.* at 185.
113. *Id.* at 188–89.
114. *Id.* at 188.
115. *Id.* at 188–89.
116. *Id.* at 189.
117. *Id.*
118. *Id.*
119. *Id.* at 195-96.
120. *Id.* at 191–92.
121. 655 P.2d 772 (Alaska Ct. App. 1982).
122. 763 P.2d 572 (Kan. 1988).
123. *Id.* at 574.

imminent danger close to the time of the killing.[124]

The *Ha* opinion explained that the Kansas court found evidence of prior abuse and a woman's knowledge of her husband's propensity for violence relevant to demonstrate that the husband's conduct on the particular occasion in question indicated the immediacy of another abusive episode.[125] The Kansas court also stated that "in cases involving battered spouses, the objective test is how a *reasonably prudent battered wife* would perceive the aggressor's demeanor."[126] However, the Kansas court ultimately decided that a battered woman who kills her sleeping spouse does not merit a self-defense instruction because the danger is not immediate or reasonably necessary.[127] The *Ha* court applied the Kansas court's reasoning and rejected the self-defense instruction because the defense failed to demonstrate imminence.

Alaska courts have also resisted permitting evidence of battered spouse syndrome when it distracts from other issues or fails to meaningfully assist the jury. In *Woods v. State*,[128] a police officer attempted to test the defendant's blood-alcohol level because he suspected her of driving under the influence of alcohol (DWI).[129] However, the defendant became "upset and started crying, screaming, and cursing . . . and kicked back at [the officer] several times, striking him in the legs," and "remained hysterical during the entire DWI processing."[130] The defendant attempted to call two experts[131] to testify that it is common for women victimized by domestic violence to be hostile to the police when they believe law enforcement have not assisted or helped in the past.[132] The court denied both requests.[133] The judge refused to admit the evidence of battered spouse syndrome because it was too attenuated and distracting from the actual issues at hand, and would not have assisted the jury in any meaningful way.[134]

124. *Id.* at 577 (citation omitted), *quoted in Ha*, 892 P.2d at 192.
125. *Ha*, 892 P.2d at 192.
126. *Stewart,* 763 P.2d at 579 (emphasis added), *quoted in Ha*, 892 P.2d at 192 (emphasis added).
127. *Ha*, 892 P.2d at 192.
128. No. A–6853, 1999 WL 189664 (Alaska Ct. App. April 7, 1999).
129. *Id.* at *1.
130. *Id.*
131. *Id.* at *2.
132. *Id.*
133. *Id.*
134. *Id.* at *3.

2. Role of Battered-Spouse-Syndrome Evidence in Alaskan Self-Defense Claims

Alaska courts primarily have discussed the role of battered-spouse syndrome-evidence in self-defense claims through analogies. Courts compare typical cases, such as when the defendant killed her abusive spouse out of fear of grave bodily injury in an episode of domestic violence, to other types of cases involving similar cycles of fear and abuse. The Alaska court system's first discussion of the relation of battered-spouse-syndrome evidence to self-defense claims was in a footnote in *Paul*.[135] In that case, a man killed his brother after an altercation.[136] At trial, the defendant testified that violence marred the brothers' relationship.[137] On the evening of the crime, the defendant told a witness, "[h]e hits me all the time."[138]

In the footnote, the court opined about the intersection between self-defense and its imminence requirement by using "battered wife syndrome" as an example.[139] The Court explained:

> This is not to say that self-defense instructions cannot be rejected by the court when there is some evidence that the defendant acted to defend himself, but no evidence of imminent peril. An example of circumstances under which self-defense instructions might be denied based on lack of imminent peril may be found in "battered wife syndrome" homicides. Typically, these cases involve a battered wife who kills her husband in his sleep. Although in such instances there is commonly ample evidence to support a finding that the killing was motivated by fear and that the fear may have been as real and as urgent at the time of the killing as it was when the husband was awake and actually capable of immediate physical abuse, cases have uniformly refused to apply self-defense to this category of crime. The basis for refusal has been lack of an immediate threat of harm.[140]

The state attempted to analogize the case at hand to cases involving evidence of battered spouse syndrome.[141] However, the court found this

135. 655 P.2d 772, 778 n.8 (Alaska Ct. App. 1982).
136. *Id*. at 773–75.
137. *Id*. at 774.
138. *Id*.
139. *Id*. at 778 n.8.
140. *Id.* (citing Doris Del Tosto, Comment, *The Battered Spouse Syndrome as a Defense to a Homicide Charge Under the Pennsylvania Crimes Code*, 26 VILL. L. REV. 105, 132–33 (1980)).
141. *Id*.

comparison inappropriate.[142] The court explained that in cases incorporating evidence of battered spouse syndrome, uncontroverted facts established a lack of imminent danger, rendering instructions on self-defense inappropriate.[143] Conversely, in *Paul*, the defense presented some evidence of imminent danger.[144] Thus, the reasonableness of the defendant's belief necessitated evaluation by the jury.[145]

Despite eventually allowing admission of the evidence, the *Paul* court reached several erroneous conclusions in its evaluation and application of the role of battered spouse syndrome to the circumstances before it. First, the court mistakenly assumed that cases "uniformly refused"[146] to issue instructions on self-defense when battered women kill their intimate partners in their sleep, despite the absence of Alaska case law discussing the matter and variance in the case law between other jurisdictions. Some courts, for example, have held that "[o]ften the terror does not wane, even when the batterer is absent or asleep."[147] Thus, when "torture appears interminable and escape impossible, the belief that only the death of the batterer can provide relief may be reasonable in the mind of a person of ordinary firmness."[148] Second, the court inaccurately characterized the role of battered-spouse-syndrome evidence in defining imminence.[149] In many cases involving evidence of battered spouse syndrome, uncontroverted facts do not establish a lack of imminent danger as stated by the court.[150] Rather, the facts of the case and the woman's status as a battered woman redefine her understanding of imminence in the context of the alleged offense.[151] Additionally, determining whether the parties provided sufficient evidence of imminence, or the reasonableness of the defendant's belief of imminence in the circumstances, necessitates evaluation by the jury in cases involving evidence of battered spouse syndrome.[152]

142. *Id*.
143. *Id*. But this is an incorrect statement of the law. *See infra* Part II.A.3.
144. *Paul*, 655 P.2d at 778 n.8.
145. *Id*.
146. *Id*.
147. Robinson v. State, 417 S.E.2d 88, 91 (S.C. 1992).
148. *Id*.
149. *See Paul*, 655 P.2d at 778 n.8 ("In the cases dealing with 'battered wife syndrome' killings, the uncontroverted facts establish the lack of any immediate danger, hence justifying refusal to instruct on self defense.").
150. *See supra* text accompanying notes 120–34.
151. *See supra* text accompanying notes 120–34.
152. *See supra* text accompanying notes 120–34.

3. Role of Battered-Spouse-Syndrome Evidence as a Mitigating Factor in Sentencing

Unlike for self-defense claims, Alaska courts *do* admit evidence of battered spouse syndrome as a mitigating factor in determining an appropriate sentence. Although the Alaska Supreme Court did not use "battered spouse syndrome" by name, it first utilized expert testimony regarding domestic violence causing an altered perception in *Ripley v. State*.[153] There, the lower court convicted the defendant of killing her ex-live-in boyfriend.[154] The defendant appealed, arguing her sentence was excessive "in light of the tragic circumstances of this case" and that this evidence should have played a role in sentencing.[155]

The defendant provided expert testimony from a psychiatrist to explain that the defendant "felt herself to be in real physical danger" and that her ability to perceive such danger did not differ from that of a "normal person."[156] The expert then offered testimony applying the

153. 590 P.2d 48 (Alaska 1979).
154. *Id*. at 49.
155. *Id*. at 52.
156. *Id*. at 52–53. Portions of the psychiatric evaluation were admitted at trial and included in Footnote 8 of the opinion, which states:

> Suffice it to say for this report that Mrs. Ripley felt herself to be in real physical danger due to threats made directly to her from Mr. Lucas [the decedent] and from her perception that Mr. Lucas was a dangerous man and had a past history of having been involved in a homicide. There is evidence that she was in great fear over the safety of her minor children and had . . . severely limited the activities of her children. There is the clear history of a snowballing of threats and fear with signs of the development of a severe anxiety/fear state. This state is characterized by the continued perception of physical danger, the physical concomitants of anxiety including motor agitation, emotional liability, frequent crying episodes, poor sleep pattern, poor appetite, etc. There is also some history of emotional overreactiveness like the call to the Anchorage police on November 3, 1976 when the whole family heard "someone crawling under the trailer." . . . Examples which demonstrate the presence of the anxiety/fear state in Mrs. Ripley are extremely plentiful. In summary, prior to the shooting, and building in intensity up to the time of the shooting, Mrs. Ripley was suffering from increasing anxiety/fear based on her perception of the threats made upon her life. Further, in summary, her ability to perceive would not be that divergent from the "normal person", there being no serious distortion in her ability to perceive her environment due to mental disorder. . . . As I have said above Mrs. Ripley's perceptions may have very well been those of the normal person placed in a situation of threat and may be more accurately placed in the area of a fear reaction. This is not a mental disorder. My own understanding of the situation would be along the lines of a fear reaction to a real threat.

Id. at 53 n.8 (third ellipsis in original).

contours of altered perceptions due to ongoing violence generally to the specific defendant.[157] The psychiatrist explained that the defendant "lived in fear" that her abuser and victim "might attempt to kill her and her children" and that "[h]er fear was based upon his expressed intent to kill her or have her killed."[158] In discussing the deterrent effect of sentences, the Alaska Supreme Court explained that the psychiatric report evidenced the defendant's perception of imminent danger of death or seriously bodily injury.[159] Ultimately, the court concluded that the specific facts of this case, including the defendant's perception of danger, necessitated lowering the sentence from three years of incarceration down to one year.[160]

B. Admission of Battered-Spouse-Syndrome Evidence in Alaska

1. Expert Testimony

Alaska, like the majority of jurisdictions in the United States, permits defendants to offer expert testimony regarding battered spouse syndrome when the defendant assaulted or killed her allegedly abusive intimate partner. Furthermore, Alaska is one of over twenty states accepting some form of expert testimony regarding battered spouse syndrome from prosecutors in cases where the battered spouse is not the criminal defendant.[161]

In a series of cases, the Alaska courts defined the credentials necessary for testifying experts and the parameters for appropriate testimony regarding trauma-related syndromes. In *Rodriquez v. State*,[162] a child sexual-abuse case, the court discussed the logistics of "presenting a witness who can state that the behavior of a [defendant] falls within a common pattern."[163] The court explained that expert testimony using scientific principles to establish "that another witness is telling the truth treads on dangerous legal ground."[164] Conversely, expert witness testimony "provid[ing] useful background information to aid the jury in

157. *Id*. at 53 n.8.
158. *Id*.
159. *Id*. at 54.
160. *Id*. at 55. *But see* Ambrose v. State, No. A–5112, 1996 WL 341743 (Alaska Ct. App. May 22, 1996) (considering and rejecting a similar defense because the record indicated that the defendant acted out of anger rather than out of fear).
161. Jessica N. Heaven, *Battered Woman Syndrome*, 9 GEO. J. GENDER & L. 593, 599 (2008).
162. 741 P.2d 1200 (Alaska Ct. App. 1987).
163. *Id*. at 1204.
164. *Id*.

evaluating the testimony of another witness is admissible."[165] The court found that, because of the expert's significant credentials and experience in a relevant field as a social worker, the expert's testimony describing common characteristics among sexually exploited children was admissible as falling under the latter category.[166]

The court later clarified the standard articulated in *Rodriquez* in *Anderson v. State*,[167] holding that expert testimony is appropriate to demonstrate that members of a relevant class often exhibit certain characteristics that are otherwise unexpected of victims of abuse, despite having in fact suffered from abuse. In *Anderson*, another child sexual-abuse case, a doctor who never met or examined the victims testified at trial.[168] The expert's testimony "was limited to identifying certain behavioral characteristics that mental health professionals associate with victims of sexual abuse."[169] The court in *Anderson* recognized that the *Rodriquez* court described how expert testimony is offered for multiple purposes, and concluded that formulating one rule to cover all circumstances for expert testimony would be difficult.[170] However, the court identified one situation in which expert testimony is consistently appropriate:

> When a complaining witness testifies that he or she has been the subject of sexual or physical abuse and the defense seeks to discredit this testimony by showing that the witness' conduct (*i.e.*, remaining with the allegedly abusive partner or parent or expressing love or affection for that allegedly abusing person) was inconsistent with the claimed abuse and therefore that the claim of abuse was false, the state should be permitted to offer expert testimony that other members of the relevant class (*i.e.*, abused or battered women or sexually abused children) characteristically exhibit such conduct even though they are, in fact, abused.[171]

The *Anderson* court left the door open for future courts to define further parameters regarding the subjects and situations in which expert testimony may be permitted.

While expert testimony is appropriate in some circumstances,

165. *Id*.
166. *Id*. at 1204–05.
167. 749 P.2d 369 (Alaska Ct. App. 1988), *superseded by statute*, ALASKA STAT. § 11.81.900(b)(52), *as recognized by* Boeggess v. State, 783 P.2d 1173 (1989).
168. *Id*. at 373.
169. *Id*.
170. *Id*.
171. *Id*.

experts in Alaska must testify only about battered spouse syndrome generally, and may not opine on whether the defendant herself is a member of a specific group by comparing the defendant's characteristics to that of a larger group. The *Anderson* court explained that Alaska courts are "critical of testimony suggesting that children never lie about sexual abuse."[172] Additionally, Alaska courts "never authorized expert testimony seeking to establish that a person is a member of a class or group, *i.e.*, battered women or sexually abused children, by showing that they exhibit behavioral characteristics common to that group."[173] However, in *Haakanson v. State*,[174] the Alaska Court of Appeals read *Rodriquez* and *Anderson* together to "permit expert testimony that responds to a defense claim that a complaining witness' conduct is inconsistent with being sexually abused by showing that similar conduct is exhibited by those who are sexually abused."[175] However, the cases "do not permit testimony offered to prove that the complaining witness is sexually abused by showing that the complaining witness exhibits behavior similar to that exhibited by sexually abused children."[176]

A few months after the *Haakanson* decision, this reasoning was applied to an adult sexual-assault case. In *Hilburn v. State*,[177] the court of appeals held that an expert may properly testify that the withdrawn behavior of an Alaska Native woman who was the victim of repeated sexual assaults from the same man is consistent with that of an Alaska Native woman from a village having undergone a traumatic experience.[178] This testimony demonstrated that the victim's conduct was that of a reasonable person in the scenario.[179]

When the victim, rather than the defendant, demonstrates characteristics of battered spouse syndrome, evidence of battered spouse syndrome may not be offered as an offensive weapon. Rather, experts may testify about the syndrome only as a response to a defendant's claim that the victim's behavior was inconsistent with that of an abuse victim. In *Russell v. State* (*Russell I*),[180] the defendant-husband was charged with raping his estranged wife.[181] The victimized woman offered a doctor's expert testimony diagnosing her with battered spouse

172. *Id.* (citing Colgan v. State, 711 P.2d 533 (Alaska Ct. App. 1985)).
173. *Id.* at 373.
174. 760 P.2d 1030 (Alaska Ct. App. 1988).
175. *Id.* at 1036.
176. *Id.*
177. 765 P.2d 1382 (Alaska Ct. App. 1988).
178. *Id.* at 1385.
179. *Id.*
180. 934 P.2d 1335 (Alaska Ct. App. 1997) (*Russell I*).
181. *Id.* at 1339.

syndrome, and the court found that evidence admissible.[182]

The expert used the battered spouse syndrome framework to counter the defendant's allegations that the victim's behavior following the alleged incident was inconsistent with the behavior of a raped woman by applying the traits of battered women generally to the victim specifically.[183] The defendant argued that the expert testimony diagnosing the victim as a battered woman "improperly vouched for [the victim's] credibility."[184] The court interpreted its case law as prohibiting introducing "evidence that there is a psychological 'profile' characteristic of sexual abuse [victims] . . . to prove that the victim in a particular case fits the profile, and thus that the victim must be telling the truth. . . ."[185] However, previous courts *had* permitted "profile" testimony "in response to a defense claim that the victim's conduct was inconsistent with a claim of . . . sexual abuse."[186] The expert testimony in *Russell I* fell in the latter category.[187] Thus, the court permitted the state to introduce the evidence.[188]

Nevertheless, in *Russell v. State* (*Russell II*),[189] which reexamined the case on an appeal claiming ineffective assistance of counsel, the Alaska Court of Appeals revisited its original understanding of the general role of expert testimony in offering evidence of battered spouse syndrome.[190] The court clarified that experts may only explain the syndrome, and may not identify a particular party as exhibiting characteristics of battered spouse syndrome.[191] The unpublished opinion explained that at the close of the expert's voir dire, the judge reiterated that the expert may "describe battered woman syndrome," but may neither "draw specific parallels between [the victim's] behavior and any conclusion that a crime had occurred," nor "say that his diagnosis of battered woman syndrome made [the victim's] account of what happened or her explanation of events any more true or credible."[192]

182. *Id*. at 1343.
183. *Russell I*, 934 P.2d at 1343–44.
184. *Id*. at 1343. To support this contention, the defendant cited *Haakanson v. State*, 760 P.2d 1030 (Alaska Ct. App. 1988), and *Cox v. State*, 805 P.2d 374 (Alaska Ct. App. 1991), which found psychological "profile" evidence against male defendants of sexual assault to be impermissible. *Russell I*, 934 P.2d at 1343.
185. *Russell I*, 934 P.2d at 1343.
186. *Id*.; *see also Haakanson*, 760 P.2d at 1036 (stating that such testimony is allowed if first raised by the defendant).
187. *Russell I*, 934 P.2d at 1343.
188. *Id*.
189. No. A–7618, 2002 WL 31667313 (Alaska Ct. App. November 27, 2002) (*Russell II*).
190. *Id.* at *1.
191. *Id*. at *18–20.
192. *Id*. at *19.

2. Layperson Testimony

Alaska courts distinguish between the roles of expert testimony and lay testimony, but ultimately permit parties to offer both as evidence of battered spouse syndrome.

Alaska courts permit the use of layperson testimony to discuss the history of domestic violence in the specific relationship to support expert testimony that offers only a general explanation of battered spouse syndrome. For example, in *Anderson*, lay witnesses testified that the child-victims "manifested some of the behavioral characteristics" of abused children previously described by a doctor in his expert testimony.[193] These lay witnesses included parents of other children at the child's day care.[194] Additionally, in *Russell I*, the court permitted the rape victim to offer evidence of the abuser-defendant's prior physical abuse to explain why she did not physically resist the defendant during the rape.[195] Before trial, the defendant asked the Superior Court to bar the state from introducing evidence of his prior physical abuse from when he was married to the victim.[196] The defendant argued that Alaska Rule of Evidence 404(b)[197] barred the evidence because it would add no value other than painting the defendant as an abusive husband.[198] However, the court admitted this evidence to explain the relationship between the two people.[199] In particular, the court found the evidence useful in assisting the jury to understand why one person may fear another person or submit to another person's will.[200] The court also explained that courts employ the same rationale to admit evidence of a victim's bad acts when a defendant is charged with assault or homicide and proffers a self-defense claim in response.[201] In deciding whether a defendant acted reasonably in using force upon their victim, the defendant may "introduce evidence that he was aware of the victim's

193. 749 P.2d 369, 373 (Alaska Ct. App. 1988), *superseded by statute*, ALASKA STAT. § 11.81.900(b)(52), *as recognized by* Boeggess v. State, 783 P.2d 1173 (1989).
194. *Id*.
195. 934 P.2d 1335, 1341 (Alaska Ct. App. 1997).
196. *Id*. at 1340–41.
197. This rule states that evidence of prior bad acts "is not admissible if the sole purpose for offering the evidence is to prove the character of a person in order to show that the person acted in conformity therewith." ALASKA R. EVID. 404(b). However, evidence of prior bad acts is permitted under the rule if its purpose is to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." *Id.*
198. *Russell I*, 934 P.2d at 1340.
199. *Id*. at 1341.
200. *Id*.
201. *Id*.

past acts of violence."[202]

III. A PROPOSAL FOR AN APPROACH TO THE ADMISSION OF BATTERED-SPOUSE-SYNDROME EVIDENCE IN ALASKA

A. Battered Spouse Syndrome in Alaska Today: More Questions than Answers

Alaska has no binding case law or statutes regarding the admissibility of battered-spouse-syndrome evidence, and appellate opinions on the topic are sparse, incomplete, and inconsistent with each other. There have been no easily available appellate opinions (whether termed "published" or "unpublished") discussing battered spouse syndrome in Alaska since *Russell II*[203] in 2002. Moreover, many of the published opinions before then demonstrate that evidence of battered spouse syndrome has been used against abuser-defendants, rather than for battered defendants charged with offenses against their abusers.[204] However, case law remains unclear regarding avenues for battered women as defendants for crimes allegedly committed against abusers.

The absence of binding precedent, coupled with high rates of domestic violence in Alaska and battered spouse syndrome's varied evidentiary uses in Alaska courts of appeals, suggests that Alaska jurisprudence would benefit from a clearer rule discussing the admissibility of battered-spouse-syndrome evidence. Most other states have these clear rules and case law.[205] Some of these rules are independent statutes governing battered-spouse-syndrome evidence, and others are incorporated into general evidentiary rules regarding expert testimony.[206]

B. Proposed Framework

1. *Define "Reasonableness" to Include a "Reasonable "Battered Woman"*

Alaska should interpret "reasonableness" to include a "reasonable

202. *Id*.
203. No. A–7618, 2002 WL 31667313 (Alaska Ct. App. November 27, 2002).
204. *See generally*, *Russell I*, 934 P.2d 1335.
205. *See* Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801 (1993) (providing a comprehensive survey of case law and statutes in all fifty states, the District of Columbia, and Puerto Rico).
206. *Id*.

battered woman" standard when the relevant party has been battered and claims an altered perception or extreme emotional disturbance as a result. This "reasonable battered woman" standard could mirror the standard used by the Supreme Court of Ohio in *State v. Thomas*.[207] Under this standard, the jury first objectively considers whether the defendant, in her situation and in light of her personal characteristics, reasonably believed danger was imminent.[208] Then, the jury determines whether the particular defendant had a genuine belief that she faced imminent danger.[209] The woman's experience as a battered woman suffering from battered spouse syndrome makes her perception of the situation different than a woman who has not been battered. Therefore, the consequences of the abuse inform and define the reasonable person against whom she is judged. The Supreme Court of North Dakota provided another explanation of this standard when it held that, in cases involving battered defendants, "conduct is not to be judged by what a reasonably cautious person might . . . consider necessary[,] . . . but what he himself in good faith honestly believed and had reasonable ground to believe was necessary for him to do to protect himself."[210] The battered defendant's actions "are to be viewed from the standpoint of a person whose mental and physical characteristics are like the accused's."[211] The role of expert testimony in this analysis would be to allow the jury to better understand battered spouse syndrome.

2. The Role Of Expert And Layperson Testimony

Alaskan jurisprudence is fairly consistent regarding the role of expert testimony. However, due to the absence of statutes or Alaska supreme court case law discussing the use of testimony in battered spouse syndrome contexts, Alaska should codify or formalize its existing practices regarding the role and permissibility of expert and layperson testimony regarding battered spouse syndrome. First, experts should be allowed to describe battered spouse syndrome generally to provide a psychological context, dispel myths about women in battering relationships regarding why women stay or may fail to recall details of the incident, and provide a new framework through which the jury views the case. There is no need for formality with regard to expert witnesses. They are qualified based on "knowledge, skill, experience,

207. 77 Ohio St. 3d 323, 330–31 (1997).
208. *Id*.
209. *Id*.
210. State v. Leidholm, 334 N.W.2d 811, 818 (N.D. 1983) (quoting State v. Hazlett, 113 N.W. 374, 380 (N.D. 1907)).
211. *Id*.

training, or education," and their usefulness is based on whether the fact-finder or jury "can receive appreciable help" from the expert, and "whether the witness's opinion rests on specialized knowledge that is likely not shared by the jury." This means that there is no need for the expert to be licensed in the state of Alaska or hold an advanced degree. For example, a police officer could testify as an expert in a case pertaining to sexual assault and tampering with evidence of domestic violence if they have received training in the investigation of domestic violence.

After expert testimony is offered, laypeople should be allowed to provide evidence that the specific party in the case was battered and that she exhibits the characteristics of battered individuals as explained by the expert. This evidence may include past instances of abuse or domestic violence. For example, Florida courts permit layperson testimony because "expert testimony about domestic violence . . . does not replace the value of eyewitness testimony to corroborate the claim of prior acts of abuse." The battered woman herself should also be allowed to testify about her experiences as a layperson.

CONCLUSION

Despite the high rates of domestic violence in Alaska, Alaska jurisprudence affords battered women varying and sparse guidance on the admissibility of evidence of their experience as a battered woman in criminal trials. Of the minimal guidance offered, none arises in the form of a binding Alaska Supreme Court opinion, rule of evidence, or governing statute. As one of the few states lacking clear jurisprudence on evidence of battered spouse syndrome, Alaska would benefit from a clearer rule discussing the role of battered-spouse-syndrome evidence.