

'Battered Spouse' Defense Approved

Evidence Limited To General Description, Characteristic Behavior

BY JOANNA STARK ABRAMSON
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An expert's testimony in a murder case that 1) defendant suffered from "battered spouse syndrome" (BSS) and 2) her acts were attributable to the syndrome was improperly ruled as admissible evidence, the Michigan Court of Appeals has decided.

However, the expert could properly testify about the general nature of BSS and that

Defense Counsel
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defendant's behavior was characteristic of BSS victims, said the appeals court.

The expert testimony must be limited to background information or discussion of traits or symptoms experienced by syndrome victims, said the court in *People v. Wilson* (Lawyers Weekly No. MA-4971 - 3 pages).

The issue of admissibility of BSS evidence is one of first impression, said the appeals court.

The BSS testimony was offered in *Wilson* to bolster defendant's self-defense claim. In Michigan, a homicide committed in self defense is justifiable if the defendant believed her life was in imminent danger or that there was threat of serious bodily harm, the appeals court explained.

Scope Narrowed

The trial court could admit expert testimony 1) describing the general syndrome and 2) characterizing defendant's behavior which is already in evidence as characteristic of battered spouse victims generally, but could not allow testimony regarding 3) whether the defendant suffered from the syndrome and 4) whether defendant's criminal acts resulted from the syndrome, said court of appeals Judge Gary R. McDonald. McDonald wrote the July 6 published decision in *Wilson*.

The expert may not testify that the allegations of battery are in fact truthful. This is an issue of credibility for the jury, the judge said.

Both attorneys for the prosecution and the defense agree that *Wilson* provided a much-needed guide to determine the scope of the BSS expert testimony that would be admissible.

Facts

Defendant was charged with open murder and felony firearm arising out of the shooting death of her husband.

While admitting that she shot her husband while he slept, defendant claimed she acted in self-defense following 48 hours of abuse and death threats and years of battery.

Before trial, defendant moved to obtain an advance ruling on the admissibility of an expert's testimony on BSS.

Isabella County Judge Paul S. O'Connell granted defendant's motion in limine, allowing the expert to testify to 1) a general description of the syndrome, 2) that the defendant's particular behavior was characteristic of battered spouse victims generally, 3) whether the defendant suffered from the syndrome and 4) whether defendant's act was a result of the syndrome.

The Michigan Court of Appeals reversed in part, finding the testimony regarding whether the particular defendant suffered from the syndrome and whether her acts were attributable to (See 'BATTERED SPOUSE', Page 23A)

Civil Remedies Available For Spousal Abuse

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Not only is spousal abuse testimony relevant in murder self-defense cases, it has also become a familiar factor in civil litigation — most often in divorce cases.

Surprisingly, says Detroit family law attorney Carole L. Chiamp, many attorneys do not know that both divorce and tort remedies are available for spouse abuse.

"A divorce judgment does not bar the right to seek money damages for tortious acts which occurred during the marriage

because divorce is a purely equitable action," Chiamp said. Divorce does not deal with the same issues and remedies as a tort action, she added.

In 1965, the Michigan Supreme Court abolished interspousal immunity in Michigan in *Mosler v. Carney*, 376 Mich. 532 (1965), allowing one spouse to sue another for personal injuries, said Chiamp.

Now a spouse can sue the other for battery, among other torts, in civil court and recover medical treatment costs and pain, suffering and mental distress dam-

(See CIVIL REMEDIES, Page 23A)



Carole L. Chiamp

Battered-spouse testimony OK'd

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resort to violence instead of getting out of abusive relationships.

"Often, the prosecutor argues that if it was that bad, she would have left," said Rodwan. "Not only are there a lot of reasons why a woman would not leave, but . . . the syndrome can explain why a woman may react at some time other than a moment when the abuser is actually beating or threatening her .

"What a woman might perceive as a point of great danger might be a moment that only she recognizes, because she knows this person and his patterns of behavior."

Wilson was 67 when she shot her 69-year-old husband on Labor Day 1990 while he snoozed in a reclining chair in their rural Isabella County home. The couple had moved from Mt. Clemens to Lake several years ago when Donald P. Wilson, an autoworker, retired.

The night before he died, Donald Wilson bound his wife's hands with a belt, broke one of her fingers and led her about the house with a shotgun pointed at her head, said her attorney, O'Neil.

"Right before he fell asleep he said that if she fell asleep first, he would kill her. She shot him with a double-barrel shotgun," he said.

"I consulted with her the next morning, after she'd spent the night in jail. She said it was the first good night's sleep she'd had in months."

The concept of a "battered wife" started getting national recognition in the late 1970s. That's when Francine Hughes of Dansville was found not guilty by reason of insanity in the death of her abusive husband. She had set fire to his bed while he slept.

The case became the 1984 television movie "The Burning Bed."

Geraldine Wilson is charged with first-degree murder. The trial was delayed while the appeals court determined how much testimony on the syndrome could be admitted. She is free on \$50,000 bond, and has returned to Mt. Clemens.

Isabella County Prosecutor Larry Burdick expects a trial this fall.