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EXPLAINING THE WHYS: ALLOWING BATTERED WOMAN SYNDROME IN AID OF A DURESS DEFENSE

SAMANTHA M. MUSICK*

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INTRODUCTION

Gabby Petito's disappearance gripped the nation during the summer of 2021. Millions of Americans and people across the globe viewed the body camera footage depicting what appeared to be the aftermath of a domestic dispute between Gabby and her fiancée, with indications of underlying abuse and harm.¹ The world watched as a broken family pled for information, and—despite all odds—longed for her safe return. However, like the distraught families of so many others, when a body was found matching Gabby's description, their

*J.D. candidate, May 2022, Chicago-Kent College of Law, Illinois Institute of Technology. I would like to thank my father for his constant support and encouragement as well as my mother, whose love of reading and writing has inspired me all of my life. I would further like to thank my fiancé for his constant patience and well-timed humor, they have provided immeasurable relief throughout this process. I would like to dedicate this piece to my grandmothers, Mildred Musick, undoubtedly the strongest woman I have ever known, and Leona Klimek, the woman that saw to it that I could live out my dreams. I also wish to acknowledge Professor Hal Morris, Erin Monforti, and all of the talented members of this year's *Review* who have supported me and inspired me to become a better writer, thinker, and listener.

¹ Fox 13 Tampa Bay, *Gabby Petito Case: Full Utah Bodycam Video*, YOUTUBE (Sept. 16, 2021), <https://www.youtube.com/watch?v=fCGsW41aQEw>.

flickering hope extinguished.² Following the discovery, the flood of social media posts showcased Gabby as the newest addition to the list of so many other victims of domestic violence, serving as a reminder that these abhorrent acts remain a pervasive reality for many women today.³

According to the National Coalition Against Domestic Violence, on average, nearly twenty people per minute are physically abused by an intimate partner in the United States.⁴ Notably, female victims sustain injuries three times more often than their male counterparts.⁵ One consequence of this violence manifests in what is known as Battered Woman Syndrome (BWS).⁶

² Eyewitness News, *Gabby Petito Timeline: Everything we know about her Disappearance*, ABC7 NEW YORK (Nov. 23, 2021, 12:44 PM), <https://abc7ny.com/gabby-petito-disappearance-timeline-brian-laundrie/11024821/>.

³ See Shannan Catalano, Ph.D. et al., *Bureau of Justice Statistics Selected Findings: Female Victims of Violence*, U.S. DEPARTMENT OF JUSTICE (Oct. 23, 2009), <https://bjs.ojp.gov/content/pub/pdf/fvv.pdf> (providing selected findings on statistics of female victims of violence from 2009); see also Danielle Wallace, *Gabby Petito Joins Other Missing Women Whose Partners were Investigated*, FOX NEWS (Sept. 15, 2021), <https://www.foxnews.com/us/gabby-petito-brian-laundrie-missing-persons-cases> (listing other woman either missing or found dead because of their spouses or intimate partners, most having a history of domestic abuse).

⁴ National Coalition Against Domestic Violence, *Statistics*, <https://ncadv.org/STATISTICS>.

⁵ S.G. Smith, et al., *The National Intimate Partner and Sexual Violence Survey: 2010-2012 State Report*, NATIONAL CENTER FOR INJURY PREVENTION AND CONTROL DIVISION OF VIOLENCE PREVENTION (2017), <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>.

⁶ See Alexander Detchelt, *Recognizing Domestic Violence Directed Towards Men: Overcoming Societal Perceptions, Conducting Accurate Studies, and Enacting Responsible Legislation*, 12 KAN. J.L. & PUB. POL'Y 249, 251 (2003) (acknowledging that Battered Woman Syndrome's exclusion of male victims creates a disparity in the protection and support afforded to male victims of domestic violence under the law). Since BWS is currently *de facto* denied as a legal defense to male victims, this Comment will focus solely on female victims with the hopes that change will come for male victims.

In 1979, Lenore Walker proposed the concept of BWS.⁷ She described it as consisting of “the pattern of the signs and symptoms that have been found to occur after a woman has been physically, sexually, and/or psychologically abused in an intimate relationship, when the partner . . . exerted power and control over the woman to coerce her into doing whatever he wanted.”⁸ This theory has since developed and is now also associated with Post Traumatic Stress Disorder.⁹ Outside of the judicial system, BWS helps explain the “whys”—why she stayed, why she thought she was in danger, why she recanted, why she resorted to violence, why she went back, why she committed the crime—that mystify the public in cases like Gabby Petito’s.¹⁰ But inside the courtroom, BWS has emerged as a common legal defense.¹¹ While BWS has historically been used in homicide cases, it has increasingly been used to aid in providing a defense of duress to a myriad of criminal cases.¹²

The duress defense has two elements: (1) reasonable fear of imminent death or serious injury, and (2) the absence of reasonable,

⁷ John McClennen, Ph.D., et al., *The Battered Woman Syndrome*, SOCIAL WORK AND FAMILY VIOLENCE: THEORIES, ASSESSMENT, AND INTERVENTION 184 (Springer 2017).

⁸ *Id.*

⁹ Michelle Strucke & Kate Hajjar, *Battered Woman Syndrome*, CORNELL UNIVERSITY LAW SCHOOL SOCIAL SCIENCE AND LAW (2010), https://courses2.cit.cornell.edu/sociallaw/student_projects/BatteredWomanSyndrome.htm.

¹⁰ See, e.g., *People v. Evans*, 631 N.E.2d 281, 288 (Ill. App. Ct. 1994) (“The law must finally step up to the times and itself comprehend the reality of domestic violence cases which involve victims of battered woman's syndrome. If the law does not keep up with the times in this area, a system whose *raison d'être* is justice will mete out injustice under the guise of unenlightened rationalizations.”).

¹¹ See Strucke, *supra* note 9 (explaining that use of Battered Woman Syndrome as evidence of self-defense in homicide cases is currently admissible in seventy-six percent of states, 39 states as of 2000).

¹² *Id.*; see Susan D. Appel, Note, *Beyond Self-Defense: The Use of Battered Woman Syndrome in Duress Defenses*, 1994 U. ILL. L. REV. 955, 957–58 (1994) (listing instances where defendants have raised evidence of battered woman syndrome to support defense of duress for committing crimes like forging checks to pay bills, steal food or other items denied to children involved in the relationship, selling drugs fuel the abuser’s addictions, and other crimes against third parties).

legal alternatives to committing the crime.¹³ Hence, when battered women commit crimes while under the control of their abuser’s threats of or actual violence, the battered woman is now presumed to have acted under duress.¹⁴ Women suffering from BWS are often coerced by their abusers—directly or indirectly—to commit crimes. Typically, these women are intimidated into committing crimes (usually theft or other drug-related offenses)¹⁵ against third parties.¹⁶ The victims commit these crimes because of the immense pressure to comply with their abuser’s demands to prevent further abuse. One advocate of allowing BWS as evidence of duress aptly stated, “battered women live in continual, unpredictable insecurity and terror, fostered by the presence of escalating violence.”¹⁷ Further, experts have “equated the experience of a battered woman with that of a hostage or prisoner of war.”¹⁸ One such woman is Marjory Dingwall.

Dingwall was a single mother recovering from alcohol abuse when she moved in with her soon-to-be-abuser, Aaron Stanley.¹⁹ After a string of violent physical and emotional attacks, Dingwall was coerced into committing three robberies at Stanley’s behest.²⁰ Eventually, this string of criminal activity led to Dingwall’s arrest.²¹ In the United States District Court for the Western District of Wisconsin, Dingwall was charged with three counts of robbery and three counts of brandishing a firearm during a crime of violence.²² While she admitted to the robberies, she claimed to have committed

¹³ *United States v. Sawyer*, 558 F.3d 705, 711 (7th Cir. 2009).

¹⁴ Kelly Grace Monacella, *Supporting a Defense of Duress: The Admissibility of Battered Woman Syndrome*, 70 TEMP. L. REV. 699 (1997).

¹⁵ Lenore E. Walker, *THE BATTERED WOMAN SYNDROME* 109, 142 (1984).

¹⁶ Distinguishable from crimes committed against their batterers, such as homicide.

¹⁷ Monacella, *supra* note 11 at 699.

¹⁸ *Id.*

¹⁹ *United States v. Dingwall*, 6 F.4th 744, 747–48 (7th Cir. 2021).

²⁰ *Id.* at 748–49.

²¹ *Id.* at 749.

²² *Id.* at 745.

them under duress—in fear of brutal violence at the hands of, Stanley.²³ Thus, Dingwall filed a motion in limine seeking a ruling on evidence to support her duress defense, including expert evidence on battering and its effects.²⁴ The district court denied Dingwall’s motion,²⁵ reasoning that “even if Dingwall’s evidence were credited, the duress requirements of imminence and of no legal alternatives could not be satisfied.”²⁶ The district court judge also observed the absence of circuit precedent on the issue and stated he was looking “forward to seeing what the Seventh Circuit says about it.”²⁷ On appeal in *United States v. Dingwall*, the Seventh Circuit reversed the district court’s judgment, holding that the immediate physical presence of a threat is not always essential to find a duress defense.²⁸ Further, any expert evidence of battering and its effects may be permitted to support a duress defense.²⁹ The Seventh Circuit reasoned that it could inform the jury how an “objectively reasonable” person under the Defendant’s circumstances might act.³⁰ In doing so, the Seventh Circuit joined the District of Columbia, Sixth, and Ninth Circuits.³¹ On the other end of the spectrum, the Fifth and Tenth Circuits hold the contrary belief that evidence of battered woman’s syndrome should be excluded from duress defenses.³²

This Comment will address the current circuit split with emphasis on the Seventh Circuit’s case of *United States v. Dingwall*.³³ Part I will examine the legal rules surrounding duress and how BWS has developed into an important evidentiary tool for woman claiming this

²³ *Id.*

²⁴ *Id.* at 746.

²⁵ *Id.*

²⁶ *Id.* at 750.

²⁷ *Id.*

²⁸ *Id.* at 746.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 746.

³³ *Id.* at 745.

defense. This section will also acknowledge the myriad of critiques surrounding BWS and how the use of expert testimony legitimizes its use in criminal courtrooms. Part II analyzes how the various circuits have interpreted BWS as evidence in duress claims resulting in a split among them. Part III analyzes the Seventh Circuit case of *Dingwall*, and how this court of appeals reached the correct decision.

I. ESTABLISHING DURESS: THE APPLICATION AND RISKS ASSOCIATED WITH BWS

A. *The Legal Rules of Duress*

Although duress is sometimes used in civil law settings (such as defending against the enforceability of contracts), BWS is most commonly employed in the criminal context.³⁴ That being said, many courts, scholars, and even the Model Penal Code (“MPC”) have defined and interpreted duress. According to the Supreme Court, the defense of duress “may excuse conduct that would otherwise be punishable.”³⁵ This is because the defendant “nevertheless acted under a threat of greater immediate harm that could only be avoided by committing the crime charged.”³⁶ To present a duress defense, the defendant must produce evidence that (1) “she reasonably feared immediate death or serious bodily harm unless she committed the offense;” and (2) “there was no reasonable opportunity to refuse to commit the offense and avoid the threatened injury.”³⁷ In addition, to satisfy a threshold showing of a duress defense, “a defendant must

³⁴ See Christopher A. Jensen, *Duress: A Breach-of-Contract Defense in Minnesota*, THE JENSEN LITIGATION FIRM PLLC (Jun. 29, 2020), <https://www.jensenlawmn.com/duress-coercion-defense>; see also The Tormey Law Firm, LLC, *Battered Woman Syndrome: A Pattern of Abuse, A Form of Evidence*, BLOG (Sept. 27, 2021), <https://www.njrestrainingorderlawyers.com/blog/battered-woman-syndrome-a-pattern-of-abuse-a-form-of-evidence/> (stating BWS can be used in both the criminal and civil setting).

³⁵ *Dixon v. United States*, 548 U.S. 1, 6 (2006).

³⁶ *United States v. Sawyer*, 558 F.3d 705, 711 (7th Cir. 2009).

³⁷ *Id.*

introduce sufficient evidence as to all the elements of the defense.”³⁸ It should also be noted, that the duress defense uses the term “reasonable” twice.³⁹ First, in terms of the defendant's reasonable fear of harm; and second, in terms of whether a reasonable and legal alternative was available.⁴⁰ The MPC also interprets the use of reasonableness stating it as an affirmative defense where the actor engaged in the conduct “because he was coerced to do so by the use of, or threat to use, unlawful force against his person . . . that a person of reasonable firmness in his situation would have been unable to resist.”⁴¹ Additionally, the D.C. Circuit has held that “reasonableness is the touchstone of a duress defense . . . Whether an alternative is reasonable turns on whether a reasonable person would have availed herself of it.”⁴² In a similar vein, expert evidence on battering and its effects may give a jury useful insight about the situation in which a person of reasonable firmness finds herself unable to avoid committing crime.⁴³ Applying an objective or subjective standard to expert testimony is one of the primary causes for the circuit split on cases involving use of expert testimony on BWS to prove duress.

1. Reasonable Fear of Imminent Violence

A wealth of precedent explains the requirements for fulfilling the first requirement of showing duress. To begin, Supreme Court precedent suggests that any defendant who presents a duress defense must show that they stopped committing the crime as soon as the claimed duress “lost its coercive force.”⁴⁴ In addition, the Seventh

³⁸ *United States v. Tanner*, 941 F.2d 574, 588 (7th Cir. 1991); *see also Dixon*, 548 U.S. at 17 (holding a defendant must establish duress defense by preponderance of evidence).

³⁹ *United States v. Dingwall*, 6 F.4th 744, 747 (7th Cir. 2021).

⁴⁰ *Id.*

⁴¹ Model Penal Code § 2:09(1) (1985).

⁴² *United States v. Nwoye*, 824 F.3d 1129, 1136-37 (D.C. Cir. 2016).

⁴³ *Id.* at 1137; MPC § 2:09.

⁴⁴ *See United States v. Bailey*, 444 U.S. 394, 412-13, (1980).

Circuit has explained that there must be evidence that the threatened harm was “present, immediate, or impending.”⁴⁵ Furthermore, the D.C. Circuit has held that “reasonableness—under both the imminence prong and the no-reasonable alternative prong—is not assessed in the abstract.”⁴⁶ While some circuits believe this is evaluated on a subjective basis, several others have rejected this notion.⁴⁷ In essence, these courts implement a much more rigid objective standard. Yet, the general consensus agrees that to fulfill this element, a defendant must show that they committed the crime strictly while under a coercive influence and was afraid of adverse and violent consequences if they did not do so.

2. Lacked a Reasonable Alternative to Breaking the Law

According to the Supreme Court, legal alternatives to violating the law (such as a chance to refuse to do the criminal act and the option to avoid the threatened harm) will undue a duress defense.⁴⁸ In response, many of the circuits believe expert testimony is crucial for a jury to evaluate whether victims of BWS truly believed they had no options to avoid violence from their abusers. Contrary to this, several circuits believe evidence of the defendant’s individual circumstances cut against duress’s objective standard and should not be admitted at all on this point.⁴⁹

B. Establishing Battered Woman Syndrome

Dr. Lenore Walker, a psychology professor at Nova Southwestern University College of Psychology coined the phrase “Battered Woman

⁴⁵ United States v. Tanner, 941 F.2d 574, 587 (7th Cir. 1991).

⁴⁶ Nwoye, 824 F.3d at 1137.

⁴⁷ See discussion *infra* Section II.

⁴⁸ Bailey, 444 U.S. at 411 (1980); see also United States v. Dingwall, 6 F.4th 744, 758 (7th Cir. 2021) (listing options Dingwall could have taken such as escape, calling for help, or refusing to commit the crime).

⁴⁹ See discussion *infra* Section II.

Syndrome” in the late 1970s and developed a theory and method for identifying and diagnosing this condition.⁵⁰ Walker argued that abusive relationships trap women in a three-stage “cycle of violence” that often prevents women from seeking help.⁵¹ Walker’s first stage in the cycle is called “tension-building,” wherein a woman experiences minor physical violence and verbal attacks from her abuser.⁵² Accordingly, the abused woman tends to minimize the importance of these incidents, and often blames herself for the abuse.⁵³ As a result, the woman attempts to placate her batterer and act in ways that she believes will prevent physical violence, like walking on egg shells and not express their thoughts or feelings.⁵⁴ This stage can last for years.⁵⁵

As minor incidents progressively become more frequent, pressure increases until the woman can no longer appease her batterer. This leads to Walker’s second stage in the cycle referred to as “acute battering incidents”⁵⁶ or violent episode phase.⁵⁷ By this point,

⁵⁰ See Walker *supra* note 15 at XV. The concept of “Battered Women Syndrome” was first coined by Dr. Lenore E Walker. Originally, her work focused on the idea of “learned helplessness” as the defining characteristic of a battered woman, explicitly why the woman believes she lacks control over her situation and feels it is impossible to escape, even if escape is a feasible possibility. In the 1990s, Walker revised her idea of BWS as being a subset of Post-Traumatic Stress Disorder. Then, in the 2000s, Walker added three additional criteria to the identification of BWS that do not exist for other forms of PTSD; see Mary Dutton, *Update of the “Battered Woman Syndrome” Critique*, NAT’L ONLINE RES. CTR. FOR VIOLENCE AGAINST WOMEN (2009), https://vawnet.org/sites/default/files/materials/files/2016-09/AR_BWSCritique.pdf.

⁵¹ See Dutton, *supra* note 50 at 2.

⁵² *Id.*

⁵³ See Women’s Center-Youth & Family Services, *Cycle of Violence*, (2021), <https://www.womenscenteryfs.org/index.php/get-info/prevention/education/14-cycle-of-violence> (listing emotions women often feel during this phase, such as hopelessness, fear, embarrassment, humiliation, disgust, and depression).

⁵⁴ *Id.*; see also Exploring Your Mind, *Lenore Walker’s Cycle of Abuse*, (July 6, 2020), <https://exploringyourmind.com/lenore-walkers-cycle-abuse/> (explaining how after every incident of minor aggression, the aggressor’s “tension” increases, and the victim’s “apparent passivity” can actually provoke the aggressor).

⁵⁵ See Exploring Your Mind, *supra* note 54.

⁵⁶ Dutton, *supra* note 50 at 2.

incidents of violence become so severe that the woman begins to fear major physical injury or death.⁵⁸ Walker suggests it is the more obvious lack of control and its major destructiveness that distinguishes this from those that occur in the first stage.⁵⁹ She compares the abuser's temperament to Dr. Jekyll and Mr. Hyde, where he acts out of control and has a deliberate desire to hurt and act irrationally.⁶⁰

The final stage is known as the "honeymoon phase," which begins almost immediately following the battering incident.⁶¹ This stage is often characterized by the batterer's lack of violence and showing of what Walker calls "contrite, loving behavior."⁶² Throughout this phase, the batterer is "charming and apologetic" as he begs for forgiveness.⁶³ The batterer states that he will never hurt the woman again, and usually tries to take some action—such as giving up alcohol—as a gesture of goodwill.⁶⁴ Walker argues that such repeated cycles of violence can cause a woman to develop "learned helplessness."⁶⁵ According to Walker, the woman believes that she lacks control over her situation and believes escape is impossible—even if it is in fact a possibility.⁶⁶ The woman becomes increasingly passive, and her motivation and will to leave the relationship diminish.⁶⁷ Because she

⁵⁷ See Women's Center-Youth & Family Services, *supra* note 53.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Rebecca D. Cornia, *Current Use of Battered Woman Syndrome: Institutionalization of Negative Stereotypes About Women*, 8 UCLA WOMEN'S L.J. 99, 103 (1997).

⁶³ April Paredes, et al., *Domestic Violence*, 19 GEO. J. GENDER & L. 266, 282 (2018).

⁶⁴ See Women's Center-Youth & Family Services, *supra* note 53 (describing how women in these situations often hope and believe these changes will last, even to the point of denial over the seriousness of the incidents).

⁶⁵ Paredes, *supra* note 62 at 282.

⁶⁶ *Id.*

⁶⁷ *Id.*

cannot leave the relationship, the woman suffers more abuse and remains “trapped in the cycle of violence.”⁶⁸

While this model is widely recognized as the standard for understanding BWS,⁶⁹ there is an array of criticisms towards Walker’s interpretation and use of BWS as evidence in criminal proceedings.

C. Critiques of Battered Woman Syndrome

BWS testimony can be especially useful in cases where a duress defense is employed. However, this evidence has elicited criticism and has been negatively perceived by many legal scholars for some of the reasons explored below.

1. Jury Misunderstanding & Stereotypes

David L. Faigman, a staunch critic of Walker’s work, believes that use of BWS is meant to educate the jury about the realities of domestic violence, and notes that courts disagree whether this evidence acts as justification or an excuse for the woman’s behavior.⁷⁰ In addition, there is concern that juries will misconstrue BWS testimony as suggesting that the defendant “possesses a diminished capacity or lack of responsibility for the act.”⁷¹

In a similar vein, Cheryl A. Terrance, an Associate Professor of Psychology at the University of North Dakota fears that BWS testimony will create a stereotypical battered woman. In turn, this

⁶⁸ *Id.*

⁶⁹ Alafair S. Burke, *Rational Actors, Self-Defense, and Duress: Making Sense, Not Syndromes, Out of the Battered Woman*, 81 N.C. L. REV. 211, 221 (2002) (“Although not universally embraced by legal commentators, Walker’s description of battered women and her labeling of them as syndromic has found widespread acceptance. For example, the theory is taught to counselors, police officers, prosecutors, parole board officials, and social-service providers to improve the quality of their responses to domestic violence”).

⁷⁰ David L. Faigman, *Science in the Law: Social and Behavioral Science Issues* (West Group, 2002).

⁷¹ Strucke, *supra* note 9.

would create a “rigid classification that may serve to exclude many battered women whose circumstances deviate from the BWS standard.”⁷² This “ideal” victim of BWS appears to be “helpless, passive, and has no history of violent or confrontational behavior.”⁷³ Thus, any woman that actively defends herself from a domestic abuser will be barred from utilizing BWS as evidence should the need ever arise; as they no longer fit the mold of a battered woman. However, Terrance’s critiques were primarily concerned with women using BWS as evidence in cases of self-defense—where history of the woman protecting herself from her abuser would be pertinent. But there is no evidence to support the assertion that using BWS as evidence for duress defenses mandate a purely passive victim who has never defended or attempted to defend herself from her abuser. Although a “generalized” depiction of women suffering from BWS has emerged, legally, there is no categorical prohibition that women submitting BWS as evidence of duress cannot have defended themselves from their attackers.⁷⁴

2. Feminist Critique

Anne M. Coughlin, Assistant Professor of Law at Vanderbilt Law School asserts that BWS testimony (when used as evidence of an element of defense) “paints women as irrational sufferers of a mental health disorder incapable of self-control.”⁷⁵ She compares the application of BWS in duress cases as “reminiscent of the old marital

⁷² Cheryl A. Terrance, et al., *Expert Testimony in Cases Involving Battered Women Who Kill: Going Beyond the Battered Woman Syndrome*, 88 NORTH DAKOTA L. REV. ART. 4 (921).

⁷³ Pamela Jenkins & Barbara Davidson, *Battered Women in the Criminal Justice System: An Analysis of Gender Stereotypes*, 8 BEHAV. SCI. & L. 161, 169 (1990).

⁷⁴ The legal elements of duress require a fear of imminent death or serious injury and the absence of reasonable, legal alternatives. Defending oneself does not negate the fact that a woman suffering from BWS may still experience duress even after standing up to her attacker.

⁷⁵ Strucke, *supra* note 9.

coercion doctrine, which presumed that woman acted at the command of their husbands.”⁷⁶ She further explains that this suggests that “women should not be held to the same rigorous legal standards as men”⁷⁷ and that this supports a “gender hierarchy” where men must “control their ‘irresponsible’ wives.”⁷⁸ However, this completely overlooks the deterrent mental health effects BWS has on a woman. Trauma does not adhere to a gendered hierarchy and preventing victims of BWS from utilizing it as evidence to bring their abusers to justice leaves women at a disadvantage in the legal system—not the opposite.

3. Additional Criticisms

There are several other nebulous concerns surrounding the use of BWS as evidence. Some criticize the lack of a standard definition, while others complain about the evidence of scientific validity and lacking incorporation of current research.⁷⁹ But, courts have largely ignored these concerns and held “that scientific evidence regarding the syndrome is sufficiently reliable to meet evidentiary standards.”⁸⁰

BWS has primarily persisted because it “conveniently packages in a single phrase a far more complex issue” that juries need to decide in cases of this nature.⁸¹ This evidence, coupled with expert testimony, can explain the state of mind and behavior of a woman “who has experienced domestic violence and who has been charged with criminal conduct that was influenced by her history of [experiencing]

⁷⁶ Burke, *supra* note 68 at 262 n. 218.

⁷⁷ Strucke, *supra* note 9.

⁷⁸ *Id.*

⁷⁹ Dutton, *supra* note 50 at 7.

⁸⁰ Burke, *supra* note 68 at 247.

⁸¹ Dutton, *supra* note 50 at 9 (explaining how juries “need to understand the unique experiences of each defendant informed by the large and continually growing body of scientific literature that is pertinent for understanding an individual’s experience and reaction to having been exposed to domestic violence).

violence and abuse.”⁸² Hence, BWS evidence is most impactful when presented with expert testimony.

D. Expert Testimony Lends Credence to BWS

Including expert testimony as evidence of BWS has heightened its reliability and become a cornerstone of support for this evidence in aid of a duress claim. But before expert testimony about BWS is deemed relevant and becomes admissible, the party seeking to use expert testimony must establish that: (1) the victim is a battered woman and (2) the jury would be aided by expert testimony to explain her behavior.⁸³ Once these are established, BWS testimony must pass an admissibility test, and show that the probative value outweighs any prejudicial impact.⁸⁴ McCormick on Evidence devised a three-prong test governing the admissibility of expert testimony.⁸⁵ To pass this hurdle, (1) the BWS testimony’s subject matter must be “so distinctly related to some science, profession, business or occupation as to be beyond the ken of average layman,” (2) the witness “must have sufficient skill, knowledge, or experience in that field or calling as to make it appear that his opinion or inference will probably aid the trier in his search for truth,” and (3) the expert testimony is inadmissible if “the state of the pertinent art or scientific knowledge does not permit a reasonable opinion to be asserted even by an expert.”⁸⁶ This standard was employed in *Dyas v. United States*, and is widely implemented by courts when admitting BWS as evidence for duress.⁸⁷

Expert testimony is extremely important because jurors often bring misunderstandings and biases towards battered women

⁸² *Id.*

⁸³ Strucke, *supra* note 9.

⁸⁴ *Id.*

⁸⁵ § 13 at 29–31 (E. Cleary, 2d. ed. 1972).

⁸⁶ *Ibn-Tamas v. United States*, 407 A.2d 626, 632–33 (1979) (citing *Dyas v. United States* 376 A.2d 827, 832 (1977)).

⁸⁷ *Dyas*, 376 A.D. at 832.

stemming from myths, misconceptions, and limited experiences.⁸⁸ Without information to “better understand the defendant’s experiences and behaviors,”⁸⁹ juries often inaccurately evaluate and unfairly judge defendants with these claims.⁹⁰ Also, jurors can be inclined to hold the abuse against defendants if they had not previously reported it, thinking that she is “not to be believed” when she later asserts that she was abused in form of defense for breaking the law.⁹¹ Thus, it is essential that juries have the information to “fairly understand a defendant’s situation.”⁹²

Also, expert testimony on battering and its effects are accepted by roughly 90% of the states.⁹³ While this is generally reserved for traditional self-defense situations, a substantial number of state courts have allowed expert testimony in nontraditional situations such as duress.⁹⁴ In addition, two-thirds of the federal courts admitting expert testimony have done so in duress cases.⁹⁵ The Department of Justice supported use of expert testimony, by explaining that “[d]escribing the pattern, over the course of the relationship, of a battered woman’s compliance in the context of the batterer’s violence or threats can

⁸⁸ See Dutton, *supra* note 50 at 4.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ U.S. Department of Justice, *The Validity and Use of Evidence Concerning Batters and Its Effects in Criminal Trials: Report Responding to Section 40507 of the Violence Against Women Act*, x (1996).

⁹⁴ *Id.*; see also Dutton, *supra* note 50 at 4 (listing an array of topics that can be covered by expert testimony, including but not limited to: “domestic violence and abuse, characteristics of abusers, the emotional and physical effects of violence and abuse on woman and children exposed to domestic violence, women’s efforts to protect herself and her children, and women’s use of strategies to cope with domestic violence,” including the use and responsiveness of community resources).

⁹⁵ See U.S. Department of Justice, *supra* note 91 at 6 (explaining that of the states allowing expert testimony on battering and its effects believe this testimony is relevant to the question of “why the defendant did not leave the battering relationship or to explain other conduct, such as acts performed under duress”).

provide a framework for jury evaluation of whether the alleged criminal conduct resulted from duress or coercion.”⁹⁶

Although most courts can agree on the helpfulness of expert testimony in understanding BWS, there is much division on admitting this testimony as evidence.

II. THE CIRCUIT SPLIT

Regardless of legal scholars’ thoughts and interpretations regarding BWS in use of duress defenses, many circuit courts have weighed in on the subject—causing a divide. The main point of contention is whether the standard of duress is subjective or objective. Both the Fifth and Tenth Circuits believe that these cases should be interpreted through an objective lens. On the other hand, the D.C., Sixth, and Ninth Circuits all agree that reasonableness should be viewed more subjectively. The Seventh Circuit aligned closely with the latter circuits through their decision in *Dingwall*, adopting an objective standard applied in light of specific circumstances.

Starting in 1994, the Fifth Circuit held that expert testimony in these cases is irrelevant, because the standard for duress is objective.⁹⁷ In *United States v. Willis*, a woman was arrested after selling marijuana to an undercover police officer and was found to have a gun in her purse.⁹⁸ She admitted to her involvement with the marijuana transactions but claimed to be under duress because her boyfriend placed the gun in her purse, and she had a fear of him from past violence.⁹⁹ At trial, the United States District Court for the Eastern District of Texas excluded expert testimony concerning BWS and the jury ultimately convicted the defendant.¹⁰⁰ On appeal, the Fifth Circuit affirmed the conviction, holding that the defendant failed to show “the coercive force of the threat was sufficient such that a person of

⁹⁶ *Id.* at 3.

⁹⁷ *United States v. Willis*, 38 F.3d 170, 173 (5th Cir. 1994).

⁹⁸ *Id.* at 173.

⁹⁹ *Id.* at 174.

¹⁰⁰ *Id.*

ordinary firmness would succumb [and be involved in the drug transactions and possess his gun in her purse].”¹⁰¹ The court also concluded that BWS evidence was irrelevant, because it only related to the defendant’s “weakened mental condition”¹⁰² and expert testimony would relate to the defendant’s personal susceptibility which is irrelevant as the standard for duress is objective.¹⁰³ Ultimately, the court was weary of allowing BWS testimony, fearing that it would change the inquiry from whether “a person of ordinary firmness could have resisted,”¹⁰⁴ to whether “this individual woman, in light of the psychological condition from which she suffers, could have resisted.”¹⁰⁵ And the court was not willing to change the objective inquiry of duress to a subjective one.

However, twelve years later, the Sixth Circuit reached a different conclusion. In *Dando v. Yukins*, the Sixth Circuit reviewed a case regarding ineffective counsel, in which a defendant’s attorney failed to consult an expert and otherwise investigate the validity of a duress defense based on BWS.¹⁰⁶ In Michigan, there was no direct precedent addressing whether BWS is relevant to a duress defense.¹⁰⁷ So, the Michigan Court of Appeals compared this to previous cases where BWS was admitted for self-defense claims.¹⁰⁸ In doing so, the court decided that BWS should likewise be allowed when claiming duress, because it relates to the question of whether the defendant “reasonably

¹⁰¹ *Id.* at 170.

¹⁰² *Id.*

¹⁰³ *Id.* at 176.

¹⁰⁴ *Id.* at 176.

¹⁰⁵ *Id.*

¹⁰⁶ *Dando v. Yukins*, 461 F.3d 791, 803 (6th Cir. 2006).

¹⁰⁷ *Id.* at 801.

¹⁰⁸ *Id.* (relying on *People v. Wilson*, 194 Mich. App. 599, 604, 487 N.W.2d 822 (Mich. Ct. App. 1992), where the Michigan Court of Appeals endorsed the use of evidence of a defendant’s BWS “to explain how a battered spouse reacts to the batterer, to explain the reasonableness of the battered spouse’s perception that danger or great bodily harm is imminent, and also to rebut the prosecution’s inference that the defendant could have left rather than [commit the crime]”).

believed her life was in danger.”¹⁰⁹ The Sixth Circuit affirmed this holding, believing that the totality of the defendant’s circumstances (history of abuse, comparison to BWS in self-defense cases, and inability to get an expert’s opinion) as compelling enough for duress citing BWS as evidence.¹¹⁰ Thus, the Sixth Circuit established a more subjective approach than the Fifth Circuit.

Ten years later, the D.C. Circuit expanded on this reasoning. In *United States v. Nwoye*, the D.C. Circuit held that a “duress defense requires a defendant to have acted reasonably under the circumstances, and expert testimony can help a jury assess whether a battered woman’s actions were reasonable.”¹¹¹ The court further clarified that determining if expert testimony is relevant to the duress defense “turns on whether such testimony can identify any aspects of the defendant’s particular circumstances that can help the jury assess the reasonableness of her actions.”¹¹² The D.C. Circuit cited Dr. Lenore Walker when analyzing how expert testimony can impact the imminent-harm prong of duress, noting how “women in battering relationships are often ‘hypervigilant to cues of impending danger and accurately perceive the seriousness of the situation before another person who had not repeatedly abused might recognize the danger.’”¹¹³ Following this, the court noted how “[r]emarks or gestures that may seem harmless to the average observer might be reasonably understood to presage imminent and severe violence when viewed against the backdrop of the batterer’s particular pattern of violence.”¹¹⁴ Thus, the D.C. Circuit provided a more modern and subjective framework, emphasizing the importance of allowing BWS as evidence accompanied by expert testimony for duress cases.

¹⁰⁹ *Id.* (quoting *Wilson*, 194 Mich. App. at 602).

¹¹⁰ *Id.* at 801–02; *but see Id.* at 802 (Guy, J., dissenting) (questioning whether evidence of BWS would be relevant to the defense of duress, aligning more closely with the Fifth Circuit’s interpretation).

¹¹¹ *United States v. Nwoye*, 824 F.3d 1129, 1136 (D.C. Cir. 2016).

¹¹² *Id.* at 1137.

¹¹³ *Id.* (quoting Lenore E.A. Walker, *Battered Women Syndrome and Self-Defense*, 6 NOTRE DAME J.L. ETHICS & PUB. POL’Y 321, 324 (1992)).

¹¹⁴ *Id.*

However, two years later, in 2018, the Tenth Circuit aligned with the Fifth Circuit, holding that duress is determined by applying an objective lens.¹¹⁵ The court had no qualms about using expert testimony to prove duress, but found failure to present sufficient evidence for a threshold showing.¹¹⁶ Furthermore, the court relied on the plain text of federal duress, which makes clear that the “legal propriety of a defendant’s assessment of, and response to, the circumstances that allegedly have subjected her to duress is determined by applying an objective lens—that is, a defendant’s subjective beliefs or perspectives are only relevant insofar as they are objectively reasonable.”¹¹⁷ In effect, the court sided with a more objective method.

And yet, one year later, the Ninth Circuit favored a more subjective standard, closely resembling the D.C. Circuit. In *United States v. Lopez*, the Ninth Circuit reaffirmed *Nwoye’s* proposition that “reasonableness is not assessed in the abstract.”¹¹⁸ Rather, any assessment of the reasonableness of a defendant’s actions must consider the defendant’s particular circumstances, at least to a certain extent.¹¹⁹ The court was persuaded that “expert testimony on how BWS can cause individuals to become hypervigilant to impending harm does not . . . seek to alter the duress defense’s reasonable-person standard,”¹²⁰ unlike the Fifth Circuit in *United States v. Willis*.¹²¹ Hence, the Ninth Circuit held that expert testimony does not do away with duress’s objectively reasonable person standard. Which brings the analysis to the Seventh Circuit’s decision in July of 2021.¹²²

¹¹⁵ *United States v. Dixon*, 901 F.3d 1170, 1184 (10th Cir. 2018).

¹¹⁶ *Id.* at 1179.

¹¹⁷ *Id.* at 1180–1181.

¹¹⁸ *United States v. Lopez*, 913 F.3d 807, 819–20 (9th Cir. 2019) (quoting *United States v. Nwoye*, 824 F.3d 1129, 1137 (D.C. Cir 2016)).

¹¹⁹ *Lopez*, 913 F.3d at 820.

¹²⁰ *Id.* at 821–22.

¹²¹ 38 F.3d 170, 175 (5th Cir. 1994).

¹²² *United States v. Dingwall*, 6 F.4th 744 (7th Cir. 2021).

III. THE SEVENTH CIRCUIT’S RECENT ANALYSIS OF BWS EVIDENCE IN DURESS CASES

In July of 2021, the Seventh Circuit joined with the D.C., Sixth, and Ninth Circuits in holding that evidence of BWS, including expert testimony, can be admitted to prove a duress defense.

A. *Facts of the Case*

The Seventh Circuit reported the following facts. Dingwall met Aaron Stanley while at a treatment center for alcohol abuse, and the two began a relationship.¹²³ At the time, Dingwall and her daughter were living an unstable lifestyle, constantly in and out of shelters and friends’ houses.¹²⁴ So when Stanley asked Dingwall to stay with him, she accepted.¹²⁵ However, Dingwall quickly became concerned when Stanley began using crack cocaine and turned emotionally and physically abusive towards her.¹²⁶ Stanley began beating Dingwall, starting with hitting and progressing to eventually “dragging Dingwall down the stairs, breaking her nose, and boxing her ear.”¹²⁷ Soon enough, a pattern of abuse emerged. Stanley would beat Dingwall, apologize profusely, and then things would return to “normal” for a while; until Stanley would fly into a rage again.¹²⁸ However, the beatings and controlling behavior escalated once Stanley bought a gun.¹²⁹ Stanley began engaging in erratic and even more dangerous

¹²³ *Id.* at 747.

¹²⁴ *Id.* 747–48.

¹²⁵ *Id.* at 748.

¹²⁶ *Id.*; see also Jeffrey Juergens, *What is Domestic Violence?*, ADDICTION CENTER (Oct. 21, 2021), <https://www.addictioncenter.com/addiction/domestic-violence/> (explaining that nearly 80% of domestic violence crimes are related to the use of drugs, and that abuse of drugs rewires the chemicals in the individual’s brain to “. . . seek out the substance, despite any future consequences of their behavior . . . [resulting] in irrational, violent or controlling behavior within a relationship.”).

¹²⁷ *Dingwall*, 6 F.4th at 748.

¹²⁸ *Id.*

¹²⁹ *Id.*

behavior. Some examples include: shooting the gun into the mattress on the side where Dingwall slept, walking around the house holding the gun, frequently looking through Dingwall's phone, and taking her food-stamp card thus preventing her from buying food.¹³⁰ Stanley also began robbing stores to get money for drugs.¹³¹ When he felt he was too "hot" and ran out of money, he would insist that Dingwall owed him money.¹³² Dingwall tried begging her parents for money, but they refused.¹³³ Out of anger, Stanley pistol-whipped Dingwall.¹³⁴ And on January 6, 2019, Stanley demanded that Dingwall rob a Stop-N-Go gas station near Madison.¹³⁵ Stanley put his gun in her hand, and Dingwall subsequently entered the gas station.¹³⁶ Dingwall showed the clerk the gun and "asked" for money, taking approximately \$80 and ran out.¹³⁷ That night, Stanley did not hit Dingwall—sending the message that committing the crime was a way to avoid his abuse.¹³⁸ However, the money did not last long, and Dingwall was coerced into committing two more robberies.¹³⁹ After the third robbery, Stanley strangled Dingwall and punched her in the face.¹⁴⁰ She later texted him asking him to "please try to be nice to me. I'm so sore from this

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.* Some of the text messages sent from Stanley to Dingwall include "hope it all goes well can u plz lmk asap when u get ur money!!!!"; "U and ur mother need 2 figure this S*** OUT."; "I see NO reason ur mom can't deposit this f***ing money."; "Unless ur lying." Dingwall responded, "Just F***in Kill me already."

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.* Dingwall committed the second robbery while Stanley was at work. The third robbery happened on January 8, 2019, after Dingwall received a phone call from Stanley "yelling and demanding the rest of the money . . . [telling] Dingwall that Mobil would be a good gas station to 'hit.'"

¹⁴⁰ *Id.* at 749.

morning,” and “I’ve never been hit so hard in all my life.”¹⁴¹ The police arrested Dingwall a few days after the third robbery.¹⁴²

B. Procedural History

A federal grand jury charged Dingwall with three counts of Hobbs Act robbery¹⁴³ and three counts of brandishing a firearm in relation to a crime of violence.¹⁴⁴ In response, Dingwall filed a pretrial motion in limine “seeking a ruling on evidence she planned to offer about battering and its effects to support a duress defense.”¹⁴⁵ The evidence included various components, including a statement from Dingwall herself, emails and text messages exchanged between Dingwall and Stanley, and an expert report from Dr. Darald Hanusa, Ph.D., LSAC, of the Midwest Domestic Violence Resource Center.¹⁴⁶ After spending a full day with Dingwall and applying over a dozen “standardized measures”¹⁴⁷ of questionnaires and checklists to evaluate her mental state, Dr. Hanusa diagnosed Dingwall with Post-Traumatic Stress Disorder and BWS.¹⁴⁸ In his report, Dr. Hanusa summarized that battering can transform a victim’s cognition and perception through “loss of an assumption of safety . . . [and] development of a ‘continuum of tolerance’ . . . for abuse from the partner and rationalization of such abuse, and increased tolerance for ‘cognitive inconsistency’ as a means of adjusting to the partner’s unpredictable conduct.”¹⁴⁹ He concluded that battered women “are typically fearful

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.* (violating 18 U.S.C. § 1951(a): Interference with commerce by threats or violence).

¹⁴⁴ *Id.* (violating 18 U.S.C. § 924(c)(1)(A)(ii): Firearm Penalties).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* (diagnosing BWS based on the derivation of its definition in the DSM-5, 309.81 (2013), as “an extraordinarily extreme case of relationship abuse”).

¹⁴⁹ *Id.*

and off balance”¹⁵⁰ and their efforts to lessen, reduce, and stop the abuse can include “cajoling the abuser, engaging in self-destructive [behaviors] including self-blame, criminal or illegal behaviors or any other way that they can.”¹⁵¹ He compared women suffering from BWS with victims of terrorism or those held hostage, as their “perception of her situation and reality in general is changed and substantially altered.”¹⁵² Further, he explained that this altered reality causes her “capacity to evaluate options [to diminish] substantially”¹⁵³ and a woman in this situation will “take whatever action that has the highest predictability stopping the violence against her, even if—in the long run—it is detrimental to her own wellbeing.”¹⁵⁴ Dr. Hanusa also explained that battered women’s trauma challenges and changes their basic beliefs about the world and themselves,¹⁵⁵ causing great impact on her perceptions of choices and the consequences of those choices.¹⁵⁶ Aside from better understanding a victim of BWS’ perceptions, Dr. Hanusa concluded that Dingwall “was at extreme risk for being killed in [her relationship with Stanley].”¹⁵⁷ He further concluded that Dingwall was “not in a position to question [Stanley’s] demands to commit robbery let alone act against them, even though she knew that these activities were illegal.”¹⁵⁸

Ultimately, the district court was unpersuaded by the evidence, and concluded that Dingwall’s proffer “was not sufficient under existing circuit precedent.”¹⁵⁹ As a result, Dingwall pled guilty to three

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.* This conclusion was reflected in Dingwall’s statement, where she explained her belief that “the only thing that would predictably stop [Stanley’s] abuse of her was to do exactly what he said, even committing robbery.”

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 750.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

counts of Hobbs Act robbery and one count of brandishing a firearm during and in relation to a crime of violence.¹⁶⁰ However, Dingwall reserved her right to appeal the denial of her motion in limine.¹⁶¹ She brought this appeal before the Seventh Circuit¹⁶² which reversed and remanded for further proceedings.¹⁶³

C. Analysis

To begin, the Seventh Circuit reviewed the case de novo,¹⁶⁴ and initially grappled with the admissibility of expert testimony.¹⁶⁵ After reviewing other circuit courts' existing approaches to expert evidence on BWS, the court sided with the Sixth, Ninth, and D.C. Circuits, holding that “expert testimony on battering and its effects may be offered in support of a duress defense because it may help a jury understand the objective reasonableness of a defendant's actions in the situation she faced, which included the history of violent and psychological abuse.”¹⁶⁶ The court reasoned that a “judge or jury must

¹⁶⁰ *Id.* Dingwall's pleas were conditional under Federal Rules of Criminal Procedure 11(a)(2).

¹⁶¹ *Id.* at 745.

¹⁶² *Id.* at 750.

¹⁶³ *Id.* at 761.

¹⁶⁴ Decisions on the admission or exclusion of evidence are ordinarily reviewed for abuse of discretion. *United States v. Wade*, 962 F.3d 1004, 1011 (7th Cir. 2020). But, because the district court denied the motion based on its determination that, as a matter of law, Dingwall had failed to meet the requirements to introduce evidence needed to support the duress defense, the Seventh Circuit reviewed the case de novo. *See generally* *United States v. Vargas*, 689 F.3d 867, 877 (7th Cir. 2012) (review is de novo when a defendant objects to the court's refusal to give theory-of-defense instruction).

¹⁶⁵ *Dingwall*, 6 F.4th at 750–54.

¹⁶⁶ *Id.* at 754; *see also* discussion *supra* Section II; *Dando v. Yukins*, 461 F.3d 791, 801 (6th Cir. 2006) (“[T]he theory of Battered Woman's Syndrome is not at odds with a reasonableness requirement—if anything, evidence of Battered Woman's Syndrome can potentially bolster an argument that a defendant's actions were in fact reasonable”); *United States v. Lopez*, 913 F.3d 807, 815 (9th Cir. 2019) (“[I]n

consider the defendant's situation, and the reasonableness of her actions and choices may be considered in light of what is known about the objective effects of such violent and psychological abuse, not on the particular defendant but more generally."¹⁶⁷

The government in the case opposed this viewpoint, and urged the court to consider a narrower standard for "objective reasonableness"¹⁶⁸ closely resembling the Tenth Circuit's holding in *Dixon*.¹⁶⁹ But, the court rejected this proposition, holding that "existence of a mental condition should be admissible to help the factfinder consider how a reasonable person with that condition may have responded to the situation."¹⁷⁰ The court did agree with the government's stance that mental conditions are a subjective factor, and that finders of fact cannot consider "the particular defendant's own value judgments and prudential calculations of the information she perceives."¹⁷¹ But, the court ultimately concluded that the "factual existence of a mental condition is an 'external, concrete factor' that may be demonstrated with evidence,"¹⁷² and the existence of the condition "carries with it relevant factors that can assist in the reasonable person inquiry."¹⁷³ The court further delineated between objective and permissible expert

determining whether a fear is well-grounded, the jury may take into account the objective situation in which the defendant was allegedly subjected to duress.").

¹⁶⁷ *Dingwall*, 6 F.4th at 754; see also Stephanie M. Wildman & Dolores A. Donovan, *Is the Reasonable Man Obsolete?: A Critical Perspective on Self-Defense and Provocation*, 14 LOY. L.A. L. REV. 435, 445-46 (1980-81) ("A reasonable man is not likely to fear death or great bodily injury when a person advances towards him during a verbal altercation. However, a woman who has been repeatedly beaten and once choked into unconsciousness by her husband is likely to fear death or great bodily injury when he advances towards her during a quarrel.").

¹⁶⁸ *Dingwall*, 6 F.4th at 754.

¹⁶⁹ *Dixon*, 901 F.3d at 1183 (permitting consideration of only "external, concrete factors unique to her" but not whether her "conduct has been influenced by non-tangible psychological conditions that ostensibly alter the defendant's subjective beliefs or perceptions.").

¹⁷⁰ *Dingwall*, 6 F.4th at 755.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

evidence—those showing “battering and its effects to determine how a reasonable person who has been battered may have perceived a situation,”¹⁷⁴ with subjective and impermissible evidence—to show how the victim “*actually* perceived the situation.”¹⁷⁵ Thus, the court adopted an objective reasonableness standard, informed by the victim’s personal situation and how that would have impacted her decision making explained through expert testimony.

After solidifying these conclusions, the court grappled with the two prongs of duress. First, because Stanley was not in Dingwall’s direct proximity when committing the robberies, the court contended with whether immediate proximity is needed to establish reasonable fear of imminent violence.¹⁷⁶ After looking to the other circuits’ decisions regarding this,¹⁷⁷ and taking the Seventh Circuit’s precedent into consideration,¹⁷⁸ the court rejected a strict physical proximity requirement to fulfill this prong.¹⁷⁹ The court reasoned that a jury

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* (emphasis added).

¹⁷⁶ *Id.* at 751.

¹⁷⁷ See *Dando v. Yukins*, 461 F.3d 791, 802 (6th Cir. 2006) (concluding that a defendant participating in crime while accompanied by her heavily armed boyfriend who had previously threatened her life would lead a reasonable person in her situation to fear death or serious bodily harm); see also *United States v. Nwoye*, 824 F.3d 1129, 1141 (D.C. Cir. 2016) (reasoning an abuser monitoring the victim’s actions and conversations while several states away could be sufficient to establish fear of imminent violence especially when accompanied by expert testimony explaining the concept of hypervigilance); *United States v. Lopez*, 913 F.3d 807, 820 (9th Cir. 2019) (“ . . . a reasonable person can nonetheless be trapped and controlled by another at all times even if there is no overt threat of violence at any given moment.”).

¹⁷⁸ See *United States v. Tanner*, 941 F.2d 574, 587 (7th Cir. 1991) (holding that threatened harm must be either “present, immediate, or *impending*”) (emphasis added).

¹⁷⁹ *Dingwall*, 6 F.4th at 757; see also 2 Wayne R. LaFare, *Substantive Criminal Law* § 9.7(b) (3d ed. 2020) (“[t]he danger need not be real; it is enough if the defendant reasonably believes it to be real.”).

could conclude that Stanley’s conduct demonstrated “an expectation of and level of control over Dingwall, even when physically separate.”¹⁸⁰

The court noted that while “proximity is *not* an explicit requirement under the ‘imminence’ element,”¹⁸¹ it could appear “implicit to a commonsense jury that has not heard expert evidence on battering and its effects and knows the defendant had a gun in her possession.”¹⁸² Thus, the court emphasized the importance of allowing expert testimony, because it can help a jury evaluate the reasonableness of the victim’s beliefs and actions regarding threats of violence.¹⁸³

Next, the court considered whether Dingwall believed Stanley would further abuse her *unless* she committed the offenses.¹⁸⁴ The objective reasonableness standard for a duress defense asks how a reasonable person in Dingwall’s shoes would have perceived Stanley’s demands. After reviewing Stanley’s actions towards Dingwall in relation to the robberies,¹⁸⁵ the court concluded that a jury could find that Stanley’s violence, contrasted with his congeniality towards her after complying with his demands, “showed a level of manipulation

¹⁸⁰ *Dingwall*, 6 F.4th at 758–59. The court compared Stanley’s unpredictable beatings of Dingwall and his demanding and demeaning phone calls to the circumstances in *Nwoye*, where the batterer was not within the victim’s immediate proximity, yet demanded prompt communication from her.

¹⁸¹ *Id.* at 757. (emphasis added).

¹⁸² *Id.*

¹⁸³ *Id.* at 758.

¹⁸⁴ *Id.*

¹⁸⁵ The court cited the following considerations: “The day before the first robbery, Stanley hit Dingwall in the eye socket with his gun after she failed to obtain money from her parents. Stanley was worried he was ‘hot’ from committing several robberies himself, drove Dingwall to a Stop-N-Go, told Dingwall it was her ‘turn,’ told her to put on a sweatshirt backwards, and put his gun in her hand. The next day, Stanley repeatedly texted and called Dingwall angrily demanding more money. After she committed the second robbery, Stanley was ‘nice’ to her but ‘de-mand[ed] degrading sex.’ The next day, Stanley warned Dingwall that she better have the remaining money by the end of the day and told her that Mobil would be a good gas station to ‘hit.’ Even though Dingwall committed the robbery, Stanley still beat her the morning after, strangling her in front of her daughter.”

and a style of communication that could lead a reasonable person in her situation to have interpreted Stanley's demands and behavior as a threat of imminent violence unless she committed each robbery.”¹⁸⁶ Thus, presentation of this evidence coupled with expert testimony explaining battering and its effects on the victim would be helpful to a jury when assessing this prong.

Finally, the court considered whether Dingwall had a reasonable alternative to breaking the law. The government argued that because of Stanley's distance from Dingwall while committing the crimes, she arguably could have “escaped, called for help, or otherwise refused to commit each crime.”¹⁸⁷ While the court concluded that a jury could be persuaded by this argument, they noted that physical proximity is not determinative of this element.¹⁸⁸ The court went on to explain that the circumstances that Dingwall faced must be the focus of the analysis.¹⁸⁹ Moreover, the court once again emphasized that “repeated abuse and its impact on an objectively reasonable person” are crucial to this analysis, and can be explained through expert testimony.¹⁹⁰

Overall, the court found that Dingwall presented sufficient evidence and should not have been denied the opportunity to offer evidence of BWS, including Dr. Hanusa's opinion, to support a duress defense.

CONCLUSION

While the Seventh Circuit's decision did not guarantee Dingwall's success with her duress defense, it established that evidence of BWS and expert testimony are relevant and should be allowed to support a duress defense.

Some courts have taken the critiques and muddled history of BWS into consideration and have begun opting for the phrasing

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

“battering and its effects” with the belief that it is more inclusive and less stereotypical.¹⁹¹ Regardless of the terminology employed to describe those suffering from the harsh realities of domestic violence and abuse, the Seventh Circuit’s decision has taken steps in the way of de-stigmatizing and de-mystifying abuse, and better ensured that these victims obtain justice.

¹⁹¹ *Id.* at n.2.