

COMMENT

BEYOND DURESS: SUPPORTING THE ADMISSIBILITY OF EVIDENCE OF BATTERED WOMAN SYNDROME TO AID THE DEFENSES OF BATTERED MOTHERS CHARGED WITH FAILING TO PROTECT THEIR CHILDREN AGAINST THEIR COMMON ABUSER

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Samantha Delcamp's abusive boyfriend killed her three-year-old daughter Arabella. Even though Samantha never laid a hand on her daughter, she was charged with involuntary manslaughter for failing to protect her from her abusive boyfriend. During her trial, Samantha's lawyer was barred from introducing evidence of Battered Woman Syndrome to help explain to the jury why Samantha didn't stop her boyfriend from hurting Arabella. Unfortunately, this is not an isolated incident. Numerous women have been charged with failing to protect their child from harm at the hands of their common abuser and have not been able to introduce evidence on Battered Woman Syndrome to aid the jury in understanding what happened.

This Comment argues that there must be a widespread standard within our court system where judges always allow abused mothers charged with failing to

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protect their children to provide evidence of Battered Woman Syndrome to aid their defense. Currently, there is a growing number of appellate courts that allow evidence of Battered Woman Syndrome to be introduced in cases involving duress. In these decisions, courts have explained that evidence of Battered Woman Syndrome can help the jury understand the reasonableness of the defendant's actions under the circumstances. This reasoning and analysis can be applied to a failure to protect context because reasonableness is a necessary element of both defenses. Furthermore, this Comment examines how battered women who fail to come to the aid of their child when the child is being abused are often acting reasonably under the circumstances when considering the effects of Battered Woman Syndrome. Allowing the admission of evidence of Battered Woman Syndrome in cases involving child neglect or endangerment promotes justice in the American legal system by enabling juries to more fully assess a woman's reasonableness.

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INTRODUCTION

On October 10, 2019, nineteen-year-old Jahrid Josef Burgess was arrested for critically injuring and ultimately murdering three-year-old

Arabella Margaret Parker.¹ Arabella was the daughter of Jahrid's twenty-three-year-old girlfriend, Samantha Delcamp.² After becoming frustrated with the way Arabella was eating her dinner, Jahrid reportedly grabbed the toddler by the throat, picked her up, pushed her into the living room, and shoved her, which caused her to fall.³ As a result, Arabella suffered a seizure and spent weeks in a coma before tragically dying on November 22, 2019.⁴ The Pennsylvania District Attorney's (DA) office quickly charged Jahrid with homicide.⁵ Unsurprisingly, Arabella was not the only one who suffered at the hands of Jahrid.⁶ Jahrid had beaten Samantha multiple times, and she suffered numerous broken ribs and a broken wrist.⁷ Despite suffering the loss of her daughter and being a victim of domestic violence herself, the DA charged Samantha with involuntary manslaughter for being an accomplice by failing to prevent Jahrid's abuse of Arabella.⁸ Despite her lawyer's efforts, Samantha was barred from providing evidence of Battered Woman Syndrome to explain why she did not

1. John Beauge, *Severely Beaten Central Pa. 3-Year-Old Dies After Weeks in a Coma*, PENN LIVE (Nov. 23, 2019, 9:02 AM), <https://www.pennlive.com/news/2019/11/severely-beaten-central-pa-3-year-old-succumbs-to-her-injuries.html> [https://perma.cc/5R59-YJLZ].

2. John Beauge, *Pa. Man Accused of Beating Girlfriend and 3-Year-Old Child, Leaving Her in Critical Condition*, PENN LIVE (Oct. 12, 2019, 6:55 PM), <https://www.pennlive.com/news/2019/10/northumberland-county-man-accused-of-causing-critical-injuries-to-3-year-old-girl.html> [https://perma.cc/GRK2-UK8H].

3. *Id.*

4. *Id.*

5. *Id.*

6. *See id.*; *see also* Statistics, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/STATISTICS> [https://perma.cc/GYF4-DRAS] (stating that every year more than ten million Americans suffer physical abuse at the hands of an intimate partner); Elizabeth M. Schneider, *Particularity and Generality: Challenges of Feminist Theory and Practice in Work on Woman-Abuse*, 67 NYU L. REV. 520, 551 (1992) (citing Nancy S. Erickson, *Battered Mothers of Battered Children: Using our Knowledge of Battered Women to Defend Them Against Charges of Failure to Act*, 1A CURRENT PERSPS. IN PSYCH, LEGAL & ETHICAL ISSUES, 197, 200 (1991)) (noting studies have found there is a high correlation between male battering of women and child abuse).

7. Beauge, *supra* note 2; Francis Scarcella, *Delcamp Weeps as Jury Sees Graphic Photos of Arabella Parker's Injuries at Trial*, DAILY ITEM (May 10, 2022), https://www.dailyitem.com/news/delcamp-weep-as-jury-sees-graphic-photos-of-arabella-parkers-injuries-at-trial/article_f2b09ffc-d0a6-11ec-9e77-bbccd0bcc7df.html [https://perma.cc/QDL6-XG5H].

8. *See* John Beauge, *Pa. Mom Accused in Daughter's Death Can't Use Battered Women's Defense, Judge Rules*, PENN LIVE (Mar. 3, 2022, 12:25 PM), <https://www.pennlive.com/news/2022/03/pa-mom-accused-in-daughters-death-cant-use-battered-womens-defense-judge-rules.html> [https://perma.cc/SD4L-QJX2].

prevent Jahrid from abusing her daughter.⁹ Ultimately, Samantha was found guilty of involuntary manslaughter for the death of her three-year-old daughter.¹⁰

Unfortunately, Samantha's story is a common one. There are numerous examples of abused women who the American legal system has punished for failing to protect their children from death at the hands of the battered woman's abuser.¹¹ Oftentimes, the sentences can be extreme.¹² When Victoria Pedraza's son was beaten to death by her husband, her son's stepfather, Victoria received the maximum sentence of twenty years.¹³ Similarly, in Oklahoma, Victoria Phanttaranth was sentenced to thirty-five years in prison for failing to prevent her husband from killing her child.¹⁴ Most egregiously, Arlena Lindley was sentenced to forty-five years in prison for failing to stop her boyfriend, Alonzo, from murdering her child.¹⁵ During the abuse,

9. *Id.*

10. John Beague, *Pa. Woman Found Guilty of Involuntary Manslaughter in Death of 3-Year-Old Daughter*, PENN LIVE (May 11, 2022, 9:15 PM), <https://www.pennlive.com/news/2022/05/pa-woman-found-guilty-of-involuntary-manslaughter-in-death-of-3-year-old-daughter.html> [<https://perma.cc/W5TJ-DEZ3>].

11. *See* *Brewington v. State*, 98 So. 3d 628, 629-30 (Fla. Dist. Ct. App. 2012) (providing an example of a battered mother convicted of aggravated manslaughter); *In re Glenn G.*, 154 Misc. 2d 677, 688 (N.Y. Fam. Ct. 1992) (showing a battered mother was convicted of neglect for failing to prevent child abuse); *Phelps v. State*, 439 So. 2d 727, 737 (Ala. Crim. App. 1983) (affirming the trial court decision that found the defendant guilty of child abuse for failing to prevent harm to her child by her husband); *Commonwealth v. Howard*, 402 A.2d 674, 675 (Pa. Super. Ct. 1979) (detailing that a mother was convicted of involuntary manslaughter); *see also* Samantha Michaels, *Her Boyfriend Killed Her Baby While She Was at Work. Oklahoma is Sending Her to Prison.*, MOTHER JONES (Feb. 10, 2022), <https://www.motherjones.com/crime-justice/2022/02/child-abuse-mothers-sexist-failure-to-protect-law-rebecca-hogue-oklahoma> [<https://perma.cc/ZP83-46NA>] (telling the story of Rebecca Hogue who was convicted of first-degree murder when her boyfriend killed her child).

12. *See* Alex Campbell, *He Beat Her and Murdered Her Son—and She Got 45 Years in Jail*, BUZZFEED NEWS (Oct. 2, 2014, 10:00 PM), <https://www.buzzfeednews.com/article/alexcampbell/how-the-law-turns-battered-women-into-criminals> [<https://perma.cc/EW3D-KBSY>] (identifying at least thirteen mothers who received sentences of twenty years or more); Samantha Michaels, *She Never Hurt Her Kids. So Why is a Mother Serving More Time than the Man who Abused her Daughter?*, MOTHER JONES (Aug. 9, 2022) <https://www.motherjones.com/crime-justice/2022/08/failure-to-protect-domestic-abuse-child-oklahoma-women-inequality-prison> [<https://perma.cc/LCH5-7DK7>] (noting a mother is serving 30 years in prison for failing to protect her daughter against their common abuser).

13. *Id.*

14. *Id.*

15. *Id.*

Arlena tried to take the child away from Alonzo and leave the house, but Alonzo quickly snatched the baby from Arlena and locked her outside the house.¹⁶

All three of these women were consistently beaten by their boyfriends or husbands.¹⁷ Sometimes, like in the case of Tondalo Hall, the battered woman has even received a longer prison sentence for failing to protect her children from harm than the man who actually abused or killed the child.¹⁸ In that case, Tondalo received a thirty-year sentence for failing to protect her child from her boyfriend, while her boyfriend, the man who actually hurt the child, received only two years.¹⁹ Additionally, like Samantha's case, judges in these kinds of cases have often been unwilling to allow abused women to provide evidence of Battered Woman Syndrome to aid their defenses.²⁰

16. *Id.*

17. *Id.*

18. See Alex Campbell, *This Battered Woman Wants to Get out of Prison*, BUZZFEED NEWS (Nov. 11, 2014, 4:48 PM), <https://www.buzzfeednews.com/article/alexcampbell/this-battered-woman-wants-to-get-out-of-prison> [<https://perma.cc/KS5C-M22W>] (revealing Tondalo Hall's story, a woman who received thirty years in prison for failing to protect her child from her abusive boyfriend who only got two years in prison); Campbell, *supra* note 12 (sharing Arlena Lindley's story, who was sentenced to forty-five years in prison for failing to protect her son from being killed by her boyfriend); Stephanie K. Baer, *A Battered Woman Who Was Imprisoned for 15 Years for Failing to Protect Her Kids from Abuse Has Been Freed*, BUZZFEED NEWS (Nov. 8, 2019, 5:21 PM), <https://www.buzzfeednews.com/article/skbaer/tondalo-hall-abuse-release-prison-oklahoma> [<https://perma.cc/F8U2-FYEN>].

19. Campbell, *supra* note 12.

20. See *Campbell v. State*, 999 P.2d 649, 660 (Wyo. 2000) (ruling evidence of Battered Woman Syndrome is inadmissible to support defense against child endangerment charge); *State v. Mott*, 931 P.2d 1046, 1055 (Ariz. 1997) (en banc) (affirming the district court was correct to preclude expert testimony on Battered Woman Syndrome in a failure to protect case); *Brewington v. State*, 98 So. 3d 628, 632 (Fla. Dist. Ct. App. 2012) (holding evidence of Battered Woman Syndrome is inadmissible in failure to protect cases).

Defense attorneys have historically used evidence of Battered Woman Syndrome²¹ to aid self-defense cases.²² However, there has recently been a growing number of appellate courts that allow evidence of Battered Woman Syndrome to support a duress defense for crimes like robbery, extortion, and various drug offenses.²³ In these decisions, courts have emphasized how evidence of Battered Woman Syndrome can help the jury understand the reasonableness of the defendant's actions under the circumstances.²⁴

The aforementioned appellate courts' explanation that using evidence of Battered Woman Syndrome helps a jury better understand the reasonableness of a person's actions to aid a duress defense can easily extend to cases involving battered women who are charged with offenses like homicide, child endangerment, or child abuse for failing

21. I understand that the term "Battered Woman Syndrome" is inherently gendered and does not consider the experiences of abused men, trans men, trans women, and those who identify as non-binary. There is no doubt that intimate partner abuse is deeply pervasive within our society and does not discriminate based on gender identity. However, Dr. Lenore Walker has stated that the term "Battered Woman Syndrome" is used due to the lack of empirically supported data on the effects of battering on men or those who are gender nonconforming. *See Walker infra* note 22. Thus, this discussion, while deeply worthwhile and important, is outside the scope of this Comment.

22. *See State v. Kelly*, 478 A.2d 364, 378 (N.J. 1984) (determining evidence of Battered Woman Syndrome is admissible in a self-defense case to evaluate reasonableness of defendant's fear for her life). *See generally* Lenore E.A. Walker, *Battered Women Syndrome and Self-Defense*, 6 NOTRE DAME J.L. ETHICS & PUB. POL'Y 321, 324 (1992) (discussing evidence of Battered Woman Syndrome is helpful for showing how it can impact their perception of danger and imminence in self-defense cases).

23. *See, e.g., United States v. Dingwall*, 6 F.4th 744, 746 (7th Cir. 2021) (holding that expert testimony on battering and its effects may be offered in support of a duress defense); *United States v. Lopez*, 913 F.3d 807, 821–22 (9th Cir. 2019) (determining that expert testimony on Battered Woman Syndrome and the effects of past abuse are admissible to support the defendant's duress defense and to rehabilitate her credibility); *United States v. Nwoye*, 824 F.3d 1139, 1141 (D.C. Cir. 2016) [hereinafter *Nwoye II*] (holding that expert testimony on Battered Woman Syndrome may be admissible as a general matter to prove duress because such testimony can be reliable and can be relevant to both prongs of the duress defense); *Dando v. Yukins*, 461 F.3d 791, 801 (6th Cir. 2006) (finding the defendant's counsel was deficient for not exploring a duress defense based on Battered Woman Syndrome).

24. *See Dingwall*, 6 F.4th at 746 (emphasizing that evidence of Battered Woman Syndrome is admissible because it may inform the jury on how an "objectively reasonable" person in defendant's situation might behave); *Lopez*, 913 F.3d at 820 (highlighting that expert testimony of Battered Woman Syndrome can explain how a reasonable person can still be trapped and controlled by another at all times).

to protect their children from their abusers.²⁵ Although a parent owes a legal duty to aid their child, they do not have a legal duty to put themselves in danger of death or great bodily harm to aid their children.²⁶ To determine what the parent should have done to prevent the harm to their child, courts look at the reasonableness of the parent's actions under the specific circumstances.²⁷

This Comment argues that there must be a widespread standard within our court system where judges always allow abused mothers charged with failing to protect their children to provide evidence of Battered Woman Syndrome to aid their defense. Part I of this Comment provides a history of Battered Woman Syndrome and discusses it in the context of self-defense and duress cases.²⁸ It then provides an overview of accomplice liability, focusing on accomplice liability for omissions to act and on the legal duty that arises inherently within a parent-child relationship.²⁹ Part II of this Comment will apply the same analysis that led to the acceptance of Battered Woman Syndrome as evidence of duress to support its use in cases where mothers are charged with failing to protect their children from abuse.³⁰ Part II also argues the same reasoning and analysis used by courts to accept evidence of Battered Woman Syndrome for duress claims should be applied to a failure to protect context because reasonableness is a necessary element to both defenses.³¹ This Part also discusses how battered women who fail to come to the aid of their child when the child is being abused are often acting reasonably under the circumstances when considering the effects of Battered Woman Syndrome.³² Finally, this Comment will conclude that admitting evidence of Battered Woman Syndrome in cases involving child neglect or endangerment promotes justice in the American legal system by enabling juries to more fully assess a women's reasonableness.³³

25. *Infra* subsections II.A–B.

26. *State v. Walden*, 293 S.E.2d 780, 786 (N.C. 1982).

27. *See id.* (noting reasonableness is dependent on the circumstances and a question for the jury).

28. *See infra* Part I.

29. *See infra* Part I.

30. *See infra* Part II.

31. *See infra* Part II.

32. *See infra* Part II.

33. *See infra* Part II.

I. BACKGROUND

This Part details the history of Battered Woman Syndrome and how defense attorneys have used it to aid cases involving self-defense and duress.³⁴ It continues with an overview of accomplice liability, centering on accomplice liability for omissions to act and on the inherent legal duty that arises in a parent-child relationship.³⁵

A. *Battered Woman Syndrome: What is it?*

The term Battered Woman Syndrome was first used by Dr. Lenore Walker in 1977 to describe a pattern of signs and symptoms that occur after a woman has been physically, sexually, or psychologically abused in an intimate relationship, and their partner (usually a man) exerted power over her to coerce her into doing what her partner wanted without regard to her rights or feelings.³⁶ Although people tend to think otherwise, domestic abuse remains pervasive within American society.³⁷ Approximately one in four women experience intimate partner violence in their lifetime.³⁸ Despite the fact that battered women are often stereotyped as uneducated and poor with no job skills, this is not the case.³⁹ In reality, battered women exist in all age groups, races, ethnic and religious groups, education levels, and socioeconomic groups.⁴⁰

Battered Woman Syndrome is a subcategory of Post-Traumatic Stress Disorder (PTSD), and women who suffer from Battered Woman Syndrome typically suffer from one or more of the following six groups of criteria:

- (1) intrusive recollections of the trauma event(s),
- (2) hyperarousal and high levels of anxiety,
- (3) avoidance behavior and emotional

34. See *infra* subsections I.A–D.

35. See *infra* subsection I.E.

36. LENORE WALKER, THE BATTERED WOMAN SYNDROME 41–42 (3rd ed. 2007); see also Kelly Grace Monacella, Comment, *Supporting a Defense of Duress: The Admissibility of Battered Woman Syndrome*, 70 TEMP. L. REV. 699, 702–11 (1997) (providing a more in-depth discussion on development of Battered Woman Syndrome and Dr. Walker’s role as a preeminent researcher in the field).

37. See *Fast Facts: Preventing Intimate Partner Violence*, CTRS. FOR DISEASE CONTROL, <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html> [<https://perma.cc/4V22-28C3>] (stating that intimate partner violence affects millions every year).

38. *Statistics*, *supra* note 6.

39. LENORE WALKER, THE BATTERED WOMAN SYNDROME 18 (1979); see Monacella, *supra* note 36, at 703.

40. WALKER, *supra* note 39, at 18–19.

numbing usually expressed as depression, dissociation, minimization, repression and denial, (4) disrupted interpersonal relationships from batterer's power and control measures, (5) body image distortion and/or somatic or physical complaints, and (6) sexual intimacy issues.⁴¹

On top of the physical scars created by the abuse, the abuse creates debilitating psychological effects that remain invisible to the average person.⁴²

Although Battered Woman Syndrome is considered a subcategory of PTSD, the physical, sexual, and psychological abuse that occurs with an intimate partner has certain characteristics that go beyond typical PTSD.⁴³ For example, a battered woman's typical fear or trauma response triggers her to become hyper-aroused, compelling her to psychologically escape the impending abuse by using a variety of methods such as minimization, denial, disassociation, depression, repression, and even forgetting the abuse happened.⁴⁴ These exercises in psychological escape help the woman suffering from the abuse to survive.⁴⁵

Battered women are not constantly being abused.⁴⁶ Instead, research has determined that there is a definite battering cycle that these women face, known as the cycle of violence.⁴⁷ The cycle of violence consists of three phases: (1) the tension-building phase, (2) the explosion or "acute battering incident," and (3) the calm and often loving respite.⁴⁸ The tension-building phase consists of a slow, gradual

41. See WALKER, *supra* note 36, at 42.

42. Monacella, *supra* note 36, at 702.

43. WALKER, *supra* note 36, at 41–43.

44. *Id.* at 44; see *People v. Smith*, 608 N.E.2d 1259, 1265 (Ill. App. Ct. 1993) (providing an example of a woman who suffered from Battered Woman Syndrome and experienced repression).

45. WALKER, *supra* note 36, at 44; see LISA ADRIANCE, THE INFLUENCE OF CULTURE ON COPING AND EXPERIENCE OF TRAUMA IN BATTERED WOMEN 13 (Jan. 25, 1999) (Ph.D. dissertation, The California School of Professional Psychology at Alameda) (ProQuest) (determining battered women employ psychological escape "to cope with their inescapable reality").

46. Dynamics of Abuse, Nat'l Coal. Against Domestic Violence, <https://ncadv.org/dynamics-of-abuse> [<https://perma.cc/M9U7-BTBW>].

47. WALKER, *supra* note 39, at 46; see *People v. Lafferty*, 9 P.3d 1132, 1134 (Colo. Ct. App. 1999) (holding that expert testimony on Battered Woman Syndrome was admissible to explain the "cycle of violence").

48. See *State v. Worrall*, 220 S.W.3d 346, 349–50 (Mo. Ct. App. 2007) (listing the three phases and explaining that, to be considered battered, an individual must go through the cycle at least twice).

escalation of tension between the woman and her batterer.⁴⁹ This tension is usually composed of discrete acts such as name-calling, other mean behavior, like isolation or a constant barrage of criticism, and sometimes small bouts of physical abuse.⁵⁰ At this phase, the woman is usually focused on calming the batterer down.⁵¹ During the violent explosion or “acute battering incident,” the batterer bombards the woman with verbal and physical aggression.⁵² If the battered woman calls the police during the cycle, she usually calls them during this phase.⁵³ The third and final phase, the calm and loving respite, usually consists of the batterer apologizing and showing remorse and kindness to the battered woman.⁵⁴ In this phase, the woman deeply wants to believe the batterer when he says he is sorry, and she hopes his behavior changes because she does truly love her partner.⁵⁵ This intense hope that the behavior will stop is key to understanding why women often stay in abusive relationships.⁵⁶ Understanding the cycle of violence helps to explain the reasonableness of a battered woman’s actions and why a battered woman might perceive objectively non-threatening conduct from her abuser, like the abuser being asleep, as a serious threat.⁵⁷

A key factor of Battered Woman Syndrome is the idea of learned helplessness—a theoretical construct that helps to explain why

49. WALKER, *supra* note 36, at 91.

50. *Id.*; see Matthew Fine, Note, *Hear Me Now: The Admission of Expert Testimony on Battered Women’s Syndrome—An Evidentiary Approach*, 20 WM. & MARY J. WOMEN & L. 221, 224 (2013) (noting at this stage the batterer uses forms of intimidation, isolation, or direct threats of harm to gain control of their partner).

51. WALKER, *supra* note 36, at 91; see also Campbell, *supra* note 12 (stating that when Arlena Lindley’s boyfriend was exhibiting behaviors common with the tension building phase, her main goal was to calm him down).

52. WALKER, *supra* note 36, at 94.

53. *Id.*; see, e.g., *People v. Brown*, 94 P.3d 574, 576 (Cal. 2004) (detailing a situation where a battered woman called the police after her boyfriend “put his arm around her neck” and “punched her in the stomach”).

54. WALKER, *supra* note 36, at 94–95. *But see* Kathleen Waits, *Battered Women and Their Children: Lessons from One Woman’s Story*, 35 HOUS. L. REV. 29, 35–36 (1998) (telling the story of Mary, a battered woman, who never experienced the third phase of the cycle of violence).

55. WALKER, *supra* note 36, at 94; see, e.g., *People v. Gadlin*, 92 Cal. Rptr. 2d 890, 893 (Cal. Ct. App. 2000) (providing an example of an abuser apologizing to the battered woman, begging for her forgiveness, and telling her that he still loves her).

56. See WALKER, *supra* note 36, at 94.

57. *State v. Smullen*, 844 A.2d 429, 451 (Md. 2004).

battered women find it difficult to leave their abusive partners.⁵⁸ Dr. Martin Seligman and his colleagues originated the general theory of learned helplessness. They discovered that when dogs were repeatedly and non-contingently shocked, they failed to escape, even when escape was possible, and a control group easily exited.⁵⁹ Dr. Walker used this theory to better understand battered women.⁶⁰ She hypothesized, and successfully concluded through a research study, that a battered woman's experience with her attempts to control the violence would, over time, create learned helplessness the way the electric shocks did for the dogs.⁶¹ In his original research, Dr. Seligman concluded that the learned helplessness theory has three basic components: (1) information about what will happen, (2) thinking or cognitive recognition about what will happen, and (3) behavior toward what does happen.⁶² The second component, thinking or cognitive recognition about what will happen, is seen as the most important.⁶³ If a person believes they do not have control over how others respond to them, they will respond with learned helplessness.⁶⁴ Essentially, abusive behavior toward a person can produce the belief in the victim that they will not be able to stop or overcome the abuse, leading them to stop trying to end the abuse and, instead, use coping mechanisms to learn to deal with it.⁶⁵

On top of this learned helplessness, many battered women face serious economic and social barriers that prevent them from leaving their batterers.⁶⁶ These barriers include a lack of financial means to support themselves and their children, fear of homelessness, and lack

58. WALKER, *supra* note 36, at 71–72.

59. *Id.* at 71; *see In re Al-Nashiri*, 835 F.3d 110, 140 (D.C. Cir. 2016) (Tatel, J., dissenting) (explaining that learned helplessness is a concept that was first introduced in the 1960's by Dr. Seligman).

60. WALKER, *supra* note 36, at 72.

61. *Id.* at 73, 75.

62. WALKER, *supra* note 39, at 47.

63. *See id.*

64. *Id.*

65. WALKER, *supra* note 36, at 83–84; *see also* *Reay v. Henry*, No. CIV S-05-0356 GEB DAD P, 2009 WL 1451712, at *5 (E.D. Cal. May 22, 2009) (providing expert testimony stating that the battered woman “believes there is no escape and copes by choosing submissive behaviors”).

66. *See* Ola W. Barnett, *Why Battered Women Do Not Leave, Part 1: External Inhibiting Factors Within Society*, 1 *TRAUMA, VIOLENCE, & ABUSE* 343, 346, 359 (2000) (explaining a variety of socio-economic factors prevent women from leaving their abusers, including the patriarchy, economic dependency, and the criminal justice system creating barriers).

of knowledge or access to any sort of safety or support.⁶⁷ It is also incredibly dangerous for a woman to leave an abuser.⁶⁸ Studies have found that a woman is at a 75% greater risk of being killed when she leaves her abusive partner than when she stays.⁶⁹

Additionally, a common triggering event among men who have committed familicide, namely men who killed their entire families and then committed suicide, is their wife's decision to leave them.⁷⁰ It is also not uncommon for a batterer to harm both his own children and the battered woman's children in response to the battered woman's attempts to leave.⁷¹ Examples of this could include abusing the

67. See V. Pualani Enos, *Prosecuting Battered Mothers: State Laws' Failure to Protect Battered Women and Abused Children*, 19 HARV. WOMEN'S L.J. 229, 235 (1996) (recognizing abusers often times will harm the children if they think the woman is going to leave); Nancy R. Rhodes & Eva Baranoff McKenzie, *Why Do Battered Women Stay?: Three Decades of Research*, 3 AGGRESSION & VIOLENT BEHAV. 391, 400 (1998) (stating that battered women tend to find the police unhelpful); *Why Do Victims Stay?*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/why-do-victims-stay> [<https://perma.cc/999X-R9RN>] (cataloging a variety of various other social and psychological barriers to leaving one's abuser: lack of a support system, lack of knowledge of resources available, and religious beliefs).

68. See Jane Kasperkevic, *Private Violence: Up to 75% of Abused Women who are Murdered are Killed After They Leave Their Partners*, GUARDIAN (Oct. 20, 2014, 4:00 PM), <https://www.theguardian.com/money/us-money-blog/2014/oct/20/domestic-private-violence-women-men-abuse-hbo-ray-rice> [<https://perma.cc/A7ZZ-95W7>] (explaining approximately 50-75% of all domestic violence homicides occur when a victim tries to leave the batterer).

69. Adam Banner, *'Failure to Protect' Laws Punish Victims of Domestic Violence*, HUFFINGTON POST (Feb. 3, 2015), http://www.huffingtonpost.com/adam-banner/do-failure-to-protect-law_b_6237346.html [<https://perma.cc/Q3J7-8M7K>].

70. *Murder-Suicide in Families*, NAT'L INST. JUST. (Apr. 6, 2011), <https://nij.ojp.gov/topics/articles/murder-suicide-families> [<https://perma.cc/8XJZ-Z3TC>]; see WALKER, *supra* note 36, at 242 (emphasizing that "it is clear that [children] are in danger of being killed along with their mothers by their unstable fathers who are unable to tolerate separation from their families"). See generally Tim Stelloh, Antonio Planas & Erik Ortiz, *Man Who Killed His Wife and Her Family in a Murder-Suicide Grew 'More Manipulative, More Controlling' amid Divorce, Lawyer Says*, NBC NEWS (July 15, 2022, 5:20 PM), <https://www.nbcnews.com/news/us-news/man-killed-wife-family-murder-suicide-grew-manipulative-controlling-di-rcna38423> [<https://perma.cc/PN2V-HPXY>] (averring inability to tolerate separation of their family is one triggering event).

71. Enos, *supra* note 67, at 235; see e.g., *Murder-Suicide that Left 3 Kids Dead Part of Ongoing Domestic Dispute, Court Documents Say*, ABC NEWS 4 (Aug. 11, 2022), <https://abcnews4.com/news/nation-world/murder-suicide-that-left-3-kids-dead-part-of-ongoing-domestic-dispute-court-documents-say-fatal-shooting-guns-firearms-oklahoma-francoise-littlejohn-trinity-littlejohn-aliyah-littlejohn-kyren-littlejohn>

children, calling or threatening to call the police to get custody of the children, preventing the battered woman from seeing the children, and threatening or harassing the children.⁷²

Studies have shown that many women are better able to protect their children from abuse when they are living with the batterer as opposed to when they attempt to terminate the relationship.⁷³ Researchers Jaclyn Cravens, Jason Whiting, and Rola Amar conducted a qualitative content analysis of Twitter posts that addressed why women stayed in abusive relationships.⁷⁴ This study found that one of the common barriers to leaving an abusive relationship was protecting children from abuse.⁷⁵ One participant stated, “I was afraid if he wasn’t beating me he would beat his kids. And I valued their lives more than my own.”⁷⁶ Another participant, explaining why she didn’t leave, said, “[b]ecause I was afraid he would hurt our child if I wasn’t there to run interference.”⁷⁷ Like this participant, Arlena Lindley would also run interference to protect her child.⁷⁸ When Arlena’s boyfriend Alonzo would attack her or her child, Lindley’s top priority was to calm him down and get the situation under control.⁷⁹ When Alonzo was calm, the abuse would stop, and her child would be safe.⁸⁰ Similarly, when Victoria Pedraza was asked why she never went to the police to report that her boyfriend Daniel had a habit of brutally beating her, she

[<https://perma.cc/UP8F-B84F>] (stating that the father killed his children because he was upset that his wife left him).

72. *Supporting Your Children*, NAT’L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/plan-for-safety/supporting-your-children> [<https://perma.cc/5X72-X4H9>]; see Kathy Luttrell Garcia, Comment, *Battered Women and Battered Children: Admissibility of Evidence of Battering and its Effects to Determine the Mens Rea of Battered Woman Facing Criminal Charges for Failing to Protect a Child from Abuse*, 24 J. JUV. L. 101, 101 (2004) (telling the story of a woman whose husband would threaten to kill her and the children if she ever took the children away from him or divorced him).

73. WALKER, *supra* note 36, at 249.

74. Jaclyn D. Cravens, Jason B. Whiting & Rola O. Amar, *Why I Stayed/Left: An Analysis of Intimate Partner Violence on Social Media*, 37 CONTEMP. FAM. THERAPY 372, 380 (2015).

75. *Id.* at 378.

76. *Id.*

77. *Id.*; see Garcia, *supra* note 72, at 107 (“The battered woman complies with the batterer’s demands out of fear; not only for her own safety, but also for the safety of her children, even before they are born.”).

78. Campbell, *supra* note 12.

79. *Id.*

80. *Id.*

responded that she feared what Daniel would do to her daughter Aubriana if he was arrested, bailed out, and returned to the house.⁸¹ Pedraza received twenty years in prison for failing to protect her daughter from Daniel.⁸² Another woman, Victoria Phanthtaranth, was forced to watch her abuser beat her daughter and was powerless to stop it because she was holding her son and did not want to subject him to the same torture.⁸³ Although she did what she thought was best in a horrific scenario, Phanthtaranth still agonizes about whether she “chose [her] son over [her] daughter.”⁸⁴ Phanthtaranth received thirty-five years in prison for failing to protect her daughter from the abuse.⁸⁵ These women, and numerous others, are forced to either endure the abuse or risk their lives and the lives of their children and leave.⁸⁶ It is a no-win situation.⁸⁷

B. *Battered Woman Syndrome: How is it Used in Court?*

Battered Woman Syndrome is not a defense in and of itself but can be offered through expert testimony to support other defenses.⁸⁸ In 1979, Dr. Walker’s testimony in *Ibn-Tamas v. United States*⁸⁹ was one of the first times a court affirmed the scientific recognition of Battered Woman Syndrome.⁹⁰ Battered Woman Syndrome has been “tested, submitted to peer review and publication, and is widely accepted within the scientific community.”⁹¹ Since *Ibn-Tamas*, courts have

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. WALKER, *supra* note 36, at 249–50.

87. *See* Fine, *supra* note 50, at 225 (explaining that an abused woman leaving her abuser usually leads to more violence and an increase in danger to the woman).

88. *E.g.*, *Martin v. Ohio*, 480 U.S. 228, 231 (1987) (allowing the use of Battered Woman Syndrome to aid a claim of self-defense); *United States v. Dingwall*, 6 F.4th 744, 749 (7th Cir. 2021) (permitting testimony about Battered Woman Syndrome to aid a duress defense).

89. 407 A.2d 626 (D.C. 1979), *aff’d*, 455 A.2d 893 (D.C. 1983).

90. Monacella, *supra* note 36, at 723.

91. *Id.*; *see also* FED. R. EVID. 702 (stating the requirements of offering expert testimony requires the expert to have “scientific, technical, or other specialized knowledge” that will help the jury understand evidence or understand a case’s facts).

deemed evidence of Battered Woman Syndrome admissible to aid affirmative defenses like self-defense and duress.⁹²

Additionally, courts have admitted evidence of Battered Woman Syndrome to more generally explain the behavior of the battered woman herself.⁹³ For example, in *People v. Humphrey*,⁹⁴ the Supreme Court of California held that Evelyn Humphrey should have been allowed to introduce evidence of Battered Woman Syndrome to aid her claim that she shot her husband in self-defense.⁹⁵ Previously, the appellate court held that the jury may not consider the evidence of Battered Woman Syndrome when evaluating the reasonableness requirement for self-defense.⁹⁶ However, the Supreme Court of California decided that not allowing the jury to consider the evidence of Battered Woman Syndrome when evaluating the reasonableness requirement was a prejudicial error by the appellate court.⁹⁷ Justice Chin emphasized that evidence of Battered Woman Syndrome was admissible because the objective reasonableness standard still incorporated the defendant's perspective, and the evidence was "critical in permitting the jury to evaluate [the defendant's] testimony free of misperceptions regarding battered women."⁹⁸

Similarly, in *Commonwealth v. Stonehouse*,⁹⁹ the court held that evidence of Battered Woman Syndrome must be presented to the jury to negate the myths commonly associated with battered women.¹⁰⁰

92. See *infra* Section II.C for an in-depth discussion on Battered Woman Syndrome and self-defense; *infra* Section II.D for an in-depth discussion on Battered Woman Syndrome and duress; *Dingwall*, 6 F.4th at 746 (allowing Battered Woman Syndrome evidence for a duress defense to help the jury understand if the defendant's actions were reasonable).

93. See *People v. Humphrey*, 921 P.2d 1, 9 (Cal. 1996) (using evidence of Battered Woman Syndrome to combat jury misconceptions about battered women); *Commonwealth v. Stonehouse*, 555 A.2d 772, 784–85 (Pa. 1989) (using evidence of Battered Woman Syndrome to negate myths about battered women and show the reasonableness of the defendant's actions).

94. 921 P.2d 1 (Cal. 1996).

95. *Id.* at 11.

96. *Id.* at 10.

97. *Id.* at 11.

98. *Id.* at 8, 11 (quoting *People v. Day*, 2 Cal. Rptr. 2d 916, 925 (Cal. Ct. App. 1992)).

99. 555 A.2d 772 (Pa. 1989).

100. *Id.* at 785; see *People v. Torres*, 488 N.Y.S.2d 358, 362 (N.Y. Sup. Ct. 1985) (holding that evidence of Battered Woman Syndrome "would also serve to dispel the ordinary lay perception that a woman who remains in a battering relationship is free to leave her abuser at any time").

Without providing this evidence, the jury could not accurately assess whether the defendant, Carol Stone, was justified in her behavior and truly felt she had no other choice but to shoot her abusive husband.¹⁰¹ This evidence was so important that the court deemed Carol's lawyer ineffective for failing to present evidence that Carol had suffered from Battered Woman Syndrome.¹⁰² Another example of this occurred in *People v. Morgan*.¹⁰³ After her husband beat her, Julie Parker reported the assault to the police.¹⁰⁴ However, when called to the witness stand, Julie changed her testimony and claimed her husband had merely restrained her.¹⁰⁵ To explain this, the prosecution introduced expert testimony on Battered Woman Syndrome to clarify to the jury why Julie had changed her mind.¹⁰⁶ The court allowed the jury to hear evidence of Battered Woman Syndrome to demonstrate why a victim might recant her testimony because it helped explain or offer a motive behind Julie's behavior and reconciled inconsistencies in her testimony.¹⁰⁷ In all of these cases, the courts have allowed evidence of Battered Woman Syndrome to help the jury better understand why a battered woman acted the way she did.¹⁰⁸

C. *Battered Woman Syndrome and Self-Defense*

Although Battered Woman Syndrome was originally used to prove diminished mental capacity to aid an insanity defense, that usage has

101. *Stonehouse*, 555 A.2d at 784.

102. *Id.* at 785.

103. 68 Cal. Rptr. 2d 772 (Cal. Ct. App. 1997).

104. *Id.* at 773.

105. *Id.*

106. *Id.*

107. *Id.* at 774–75; see *People v. Lafferty*, 9 P.3d 1132, 1135 (Colo. Ct. App. 1999) (holding that the trial court did not abuse its discretion by allowing evidence of Battered Woman Syndrome and the cycle of violence and how it relates to recanting).

108. See *People v. Humphrey*, 921 P.2d 1, 9 (Cal. 1996) (stating that evidence of Battered Woman Syndrome “would have assisted the jury in objectively analyzing [defendant’s] claim of self-defense by dispelling many of the commonly held misconceptions about battered women” (quoting *People v. Day*, 2 Cal. Rptr. 2d 916, 922 (Cal. Ct. App. 1992)); *Morgan*, 68 Cal. Rptr. 2d at 774 (holding that evidence of Battered Woman Syndrome was admissible to offer a motive for the recantation); *Commonwealth v. Stonehouse*, 555 A.2d 772, 785 (Pa. 1989) (holding that the defendant’s attorney was ineffective because they should have introduced evidence of Battered Woman Syndrome to help the jury determine whether she had a reasonable belief that she was in a life-threatening situation).

been highly criticized and is no longer accepted.¹⁰⁹ Traditionally, the most common employment of evidence regarding Battered Woman Syndrome is to aid a claim of self-defense in cases where the battered woman killed her abuser while he was asleep or had his back turned.¹¹⁰ To successfully prove self-defense, the defendant must prove the following; (1) they were not at fault in creating the situation giving rise to the argument, (2) they had an honest and reasonable belief that she was in imminent danger of death or great bodily harm, and that her only means of escape from such danger was the use of such force, and 3) they did not violate any duty to retreat.¹¹¹ When courts have allowed evidence of Battered Woman Syndrome to be presented to juries in self-defense cases, the explanation focuses on how the evidence can aid a jury in better understanding the reasonableness of the woman's actions or the reasonableness of her fear of imminent danger.¹¹² For

109. See Marybeth H. Lenkevich, Note, *Admitting Expert Testimony on Battered Women Syndrome in Virginia Courts: How Peoples Changed Virginia Self-Defense Law*, 6 WM & MARY J. WOMEN & L. 297, 310-11 (1996) (stating that using Battered Woman Syndrome for an insanity defense is problematic because it depicts a woman as helpless to understand or change her situation and juxtaposes the requirement of not knowing right from wrong in an insanity defense with believing in the justification for her action); *State v. Moore*, 568 So. 2d 612, 618 (La. Ct. App. 1990) (finding Battered Woman Syndrome insufficient to establish proof of insanity).

110. See *Martin v. Ohio*, 480 U.S. 228, 228-30 (1987) (holding that expert testimony on Battered Woman Syndrome can aid jury's evaluation of whether the defendant had a reasonable fear for her life); *Ibn-Tamas v. United States*, 407 A.2d 626, 639 (D.C. 1979), *aff'd*, 455 A.2d 893 (D.C. 1983) (holding that evidence of Battered Woman Syndrome was admissible in self-defense case); *Smith v. State*, 277 S.E.2d 678, 683 (Ga. 1981) (allowing evidence of Battered Woman Syndrome in self-defense case); *Commonwealth v. Mabie*, 359 A.2d 369, 374 (Pa. 1976) (holding counsel ineffective for failing to introduce evidence of defendant's injuries from her abuser that are most relevant to defendant's claim of self-defense); *People v. Reeves*, 362 N.E.2d 9, 14 (Ill. App. Ct. 1977) (providing an example of Battered Woman Syndrome aiding a self-defense defense); *Commonwealth v. McMaster*, No. 2007 WDA 2012, 2013 WL 11255163, *1, *6 (Pa. Super. Ct. Aug. 20, 2013); (holding that defendant was prejudiced by counsel's refusal to call witnesses to testify to defendant's abuse by husband).

111. *Martin*, 480 U.S. at 230; see MODEL PENAL CODE § 3.04 (AM. L. INST.) (requiring reasonable and honest belief of imminent threat for self-defense).

112. See *People v. Aris*, 264 Cal. Rptr. 167, 181 (Cal. Ct. App. 1989) (stating that when a woman kills her abuser and pleads self-defense, expert testimony of Battered Woman Syndrome is admitted to aid jury in understanding how the abuse altered her perspective on danger and her honest belief of its imminence); *Commonwealth v. Dillon*, 598 A.2d 963, 966 (Pa. 1991) (Nix, C.J., concurring) (stating that evidence of Battered Woman Syndrome must be admissible to bear upon the "reasonableness" of

example, in *Francis v. Miller*,¹¹³ the Eighth Circuit held that expert testimony stating that a defendant suffered from Battered Woman Syndrome was admissible to show that she had a “reasonable belief that deadly force was required to protect her from serious harm at the hands of the victim.”¹¹⁴ Furthermore, in *Commonwealth v. Stonehouse*, the court held that the jury should have been aware that the defendant was previously abused because that would have aided the jury’s consideration with respect to the reasonableness of the defendant’s fear of immediate danger.¹¹⁵ Accordingly, evidence of Battered Woman Syndrome can help juries understand that the battered woman’s actions are not unexpected but reasonable and well within the confines of the asserted defense.¹¹⁶

D. Battered Woman Syndrome and Duress

Allowing evidence of Battered Woman Syndrome to aid a self-defense plea is widely accepted in both state and federal courts.¹¹⁷ However, allowing evidence of Battered Woman Syndrome to aid a duress defense is a different story.¹¹⁸ Despite the court in *Arcoren v.*

the person claiming to act in self-defense); *Commonwealth v. Miller*, 634 A.2d 614, 621 (Pa. Super. Ct. 1993) (holding that evidence of Battered Woman Syndrome would establish additional probative evidence of the defendant’s reasonable belief in using deadly force at the time of the incident giving rise to the homicide charge).

113. 557 F.3d 894 (8th Cir. 2009).

114. *Id.* at 900.

115. *Id.* at 781.

116. Michael Dowd, *Dispelling the Myths About the “Battered Woman’s Defense:” Towards a New Understanding*, 19 FORDHAM URB. L.J. 567, 574 (1992) (stating that testimony of Battered Woman Syndrome “transforms the battered woman into ‘everywoman,’ a reasonable person who uses force in self-defense”).

117. See *United States v. Marengi*, 893 F. Supp. 85, 95 (D. Me. 1995) (stating that Battered Woman Syndrome is admissible as part of a self-defense theory); *State v. Kelly*, 478 A.2d 364, 375 (N.J. 1984) (allowing expert testimony of Battered Woman Syndrome in a self-defense case); see also *Nwoye II*, 824 F.3d 1129, 1138 (D.C. Cir. 2016) (stating that the vast majority of courts hold that expert testimony of Battered Woman Syndrome can aid a claim of self-defense); Janet Parrish, *Trend Analysis: Expert Testimony on Battering and Its Effects in Criminal Cases*, U.S. DEP’T OF JUST., <https://www.ojp.gov/pdffiles/batter.pdf> [<https://perma.cc/A25B-GU6L>] (May 1996) (stating that ninety percent of states allow evidence of Battered Woman Syndrome in self-defense cases).

118. *United States v. Dixon*, 901 F.3d 1170, 1185 (10th Cir. 2018) (concluding that Battered Woman Syndrome cannot support a duress defense); *United States v. Willis*, 38 F.3d 170, 176 (5th Cir. 1994) (finding that evidence of Battered Woman Syndrome is not admissible for duress cases).

*United States*¹¹⁹ holding that there was no reason to limit evidence of Battered Woman Syndrome to “cases in which it is offered to bolster a claim of self-defense,” federal courts have ruled inconsistently regarding the admission of Battered Woman Syndrome to aid a defense of duress, resulting in a circuit split.¹²⁰

1. The majority approach

The majority approach allows evidence of Battered Woman Syndrome to be admitted to aid a defense of duress.¹²¹ A duress defense does not follow one uniform standard across jurisdictions, but generally, in order to prove a defense of duress, a defendant must prove 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.¹²² Essentially, the battered woman pleading a duress defense argues that she was forced into the criminal behavior because her husband or boyfriend would severely beat her and threaten to kill

119. 929 F.2d 1235 (8th Cir. 1991).

120. *Id.* at 1241; *see Monacella, supra* note 36, at 700 (stating that federal courts have been inconsistent on the admissibility of Battered Woman Syndrome as it relates to duress). *Compare* *United States v. Dingwall*, 6 F.4th 744, 746 (7th Cir. 2021) (holding that evidence of battering and its effects support a duress defense because it may inform the jury how an objectively reasonable person under the defendant’s circumstances might behave), *and* *United States v. Lopez* 913 F.3d 807, 820 (9th Cir. 2019) (holding that evidence of Battered Woman Syndrome is admissible to aid a duress defense), *and Nwoye II*, 824 F.3d at 1140 (holding that expert testimony of Battered Woman Syndrome is relevant to duress to help the jury understand whether the battered woman’s actions were reasonable), *and Dando v. Yukins*, 461 F.3d 791, 801 (6th Cir. 2006) (holding that evidence of Battered Woman Syndrome can explain why a reasonable person dealing with a history of violent abuse and the imminent violent threats might resort to certain behavior), *with Dixon*, 901 F.3d at 1183–84 (holding that evidence of battering and its effects are inadmissible because it is not an “external, concrete factor[.]”), *and Willis*, 38 F.3d at 177 (holding that evidence of Battered Woman Syndrome is inherently subjective and not relevant to a duress defense).

121. *See Dingwall*, 6 F.4th at 746. Most recently on July 30, 2021, the Seventh Circuit joined the District of Columbia, Ninth, and Sixth circuits in allowing evidence of Battered Woman Syndrome to aid a duress defense. *Id.*

122. *United States v. Jovic*, 207 F.3d 889, 892 (7th Cir. 2000); *see* MODEL PENAL CODE § 2.09(1) (AM. L. INST.) (defining duress to include coercion by threat of unlawful force that is not possible to resist).

her if she refused.¹²³ With a duress defense, the use of the term “reasonable” requires the defendant’s behavior to be judged “according to what an ordinary, prudent person would have done in the [defendant’s] situation.”¹²⁴ This means that the jury evaluates the defendant’s actions by comparing them to a hypothetical reasonable person who shares the defendant’s character traits.¹²⁵ The majority’s approach to allowing evidence of Battered Woman Syndrome focuses heavily on the idea of reasonableness.¹²⁶ In *Dando v. Yukins*,¹²⁷ the Sixth Circuit was the first appellate court to allow evidence of Battered Woman Syndrome to aid a duress defense.¹²⁸ In the opinion, the Sixth Circuit stated:

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. Although those of us who are not so unfortunate to have to live with constant, imminent threats of violence might look at the actions of a defendant . . . from the relative comfort of a judge’s chambers or a jury box and wonder what reasonable person would have facilitated [a] shocking crime spree, evidence of Battered Woman’s Syndrome can explain why a reasonable person might resort to such actions given a history of violent abuse and the imminent violent threats.¹²⁹

Following the ruling in *Dando*, the D.C. Circuit allowed evidence of Battered Woman Syndrome in *United States v. Nwoye*¹³⁰ (*Nwoye II*). Writing for the majority, then-Judge Kavanaugh emphasized that

123. See *Dingwall*, 6 F.4th at 748 (stating that the defendant claimed she only participated in the robberies because her boyfriend pistol whipped her when she initially refused); *Lopez*, 913 F.3d at 812 (explaining that the defendant lied to get a gun for her abusive boyfriend only after he threatened to kill her and her entire family if she refused); *Dando*, 461 F.3d at 794 (stating that the defendant claimed to participate in the robberies only because her boyfriend beat her and threatened to kill her).

124. Nadine Klansky, Comment, *Bernard Goetz, A “Reasonable Man”: A Look at New York’s Justification Defense*, 53 BROOK. L. REV. 1149, 1150 (1988).

125. Alafair S. Burke, *Equality, Objectivity, and Neutrality*, 103 MICH. L. REV. 1043, 1043 (2005).

126. See *Dingwall*, 6 F.4th at 754 (“[E]xpert 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 . . .”).

127. 461 F.3d 791 (6th Cir. 2006).

128. *Id.* at 801.

129. *Id.*

130. 824 F.3d 1129 (D.C. Cir. 2016).

evidence of Battered Woman Syndrome can be relevant to both prongs of the duress defense.¹³¹ Regarding the first prong of duress—imminent harm—Judge Kavanaugh wrote, “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 been repeatedly abused might recognize the danger.’”¹³² Regarding the second prong of the defense—no reasonable alternative—Judge Kavanaugh explained, “battered women face significant impediments to leaving abusive relationships.”¹³³ Therefore, “[e]xpert testimony on those impediments to separation can help explain why a battered woman did not take advantage of an otherwise reasonable-sounding opportunity to avoid committing the alleged crime.”¹³⁴

In 2019, the case *United States v. Lopez*¹³⁵ allowed the Ninth Circuit to join the D.C. Circuit and the Sixth Circuit, holding that evidence of Battered Woman Syndrome was admissible to aid a duress defense.¹³⁶ Once again, the Ninth Circuit emphasized the “reasonableness” requirement of the duress defense and how evidence of Battered Woman Syndrome can provide the jury with an understanding of how

131. *Id.* at 1137.

132. *Id.* (quoting Walker, *supra* note 22, at 324).

133. *Nwoye II*, 824 F.3d at 1137 (citing Mary Ann Dutton, *Validity of “Battered Woman Syndrome” in Criminal Cases Involving Battered Women*, DEP’T OF JUST. REPORT PT. I, 14–15 (1996), <https://www.ojp.gov/pdffiles/batter.pdf> [<https://perma.cc/QVA9-3JVA>]).

134. *Nwoye II*, 824 F.3d at 1138.

135. 913 F.3d 807 (9th Cir. 2019).

136. *Id.* at 823, 827 (stating that expert testimony on Battered Woman Syndrome serves an important role in helping dispel many of the misconceptions regarding women in abusive relationships); *see* *United States v. Ceballos*, 593 F. Supp. 2d 1054, 1060–63 (S.D. Iowa 2009) (allowing evidence of Battered Woman Syndrome to aid a duress defense); *Wonnum v. State*, 942 A.2d 569, 572–73 (Del. 2007) (holding that the jury should have received expert testimony on Battered Woman Syndrome to help determine the reasonableness of the defendant’s actions); *State v. Williams*, 937 P.2d 1052, 1058 (Wash. 1997) (en banc) (holding that expert testimony of Battered Woman Syndrome can show how “severe, ongoing abuse can affect the defendant’s perceptions and reactions in ways that may not be apparent to the average juror,” and the evidence is introduced to explain both the defendant’s subjective mental state and the reasonableness of the defendant’s actions); *see also* *United States v. Navedo-Ramírez*, No. 10-344 (PG), 2012 U.S. Dist. LEXIS 30772, *6–7 (D.P.R. Mar. 6, 2012) (holding that expert evidence on battering and its effects could be relevant in a case where the defendant asserts a duress defense but was not in the particular case).

a battered woman's actions were reasonable at that moment.¹³⁷ Most recently, in *United States v. Dingwall*,¹³⁸ the Seventh Circuit deemed evidence of Battered Woman Syndrome as admissible in a duress case and stated that:

The duress defense uses 'reasonable' twice, first in terms of the defendant's reasonable fear of harm, and second in terms of whether a reasonable and legal alternative course was available . . . expert evidence on battering and its effects may give a lay jury useful insights about the situation in which a person of reasonable firmness finds herself.¹³⁹

Federal appellate courts are not the only ones to have employed this reasoning. In *State v. B.H.*,¹⁴⁰ the New Jersey Supreme Court held that expert testimony on Battered Woman Syndrome was admissible to aid the defendant's duress defense to determine the reasonableness and honesty of the defendant's belief that her husband was going to hurt her daughter if the defendant did not participate in criminal activity.¹⁴¹ The court explained that a true belief that one's husband would hurt their daughter was one in which a person of "reasonable firmness" in the defendant's situation would have been unable to resist.¹⁴²

2. *The minority approach*

Notwithstanding the sound arguments provided by the majority approach, some courts argue that allowing evidence of Battered Woman Syndrome to aid a duress defense would inject too much subjectivity into the reasonableness analysis and, as such, the evidence must be inadmissible.¹⁴³ The Fifth Circuit, in *United States v. Willis*,¹⁴⁴ held that allowing evidence of Battered Woman Syndrome to be presented to a jury would turn an objective inquiry into the

137. See *Lopez*, at 820 (stating that "in effect [Battered Woman Syndrome] expert testimony may be characterized as explaining how 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" (quoting *United States v. Marengi*, 893 F. Supp. 85, 95 (D. Me. 1995))).

138. 6 F.4th 744 (7th Cir. 2021).

139. *Id.* at 747.

140. 834 A.2d 1063 (N.J. Super Ct. App. Div. 2003), *aff'd*, 183 N.J. 171 (2005).

141. *Id.* at 1073.

142. *Id.*

143. See *United States v. Dixon*, 901 F.3d 1170, 1182 (10th Cir. 2018) (holding that evidence of Battered Woman Syndrome is inadmissible to aid a duress defense); *United States v. Willis*, 38 F.3d 170, 176 (5th Cir. 1994) (same).

144. 38 F.3d 170 (5th Cir. 1994).

reasonableness of one's actions into a subjective one because it would ask the jury to analyze a woman's behavior "in light of the psychological condition from which she suffers."¹⁴⁵ Similarly, the Tenth Circuit, in *United States v. Dixon*,¹⁴⁶ has stated that allowing evidence of Battered Woman Syndrome to be admissible would demonstrate to the jury the "subjectively distorting" impact that Battered Woman Syndrome has on one's ability to reasonably perceive a threat of harm or legal alternatives to avoid it.¹⁴⁷ This demonstration is incompatible with the objectively reasonable requirement of the duress defense and cannot be presented to the jury.¹⁴⁸

The Fifth and Tenth Circuits take the minority approach by not admitting evidence of Battered Woman Syndrome to aid a duress defense; although the majority approach is to allow such evidence.¹⁴⁹ The decisions among the majority have emphasized that evidence of Battered Woman Syndrome helps the jury accurately assess the reasonableness of the defendant's actions.¹⁵⁰

E. Accomplice Liability and Omission of Legal Duty

This Section discusses how the legal concept of accomplice liability relates to cases of women charged with failing to protect their children from abuse. Like Samantha Delcamp's situation, when women are charged with violating failure to protect laws, they can be charged as

145. *Id.* at 176.

146. 901 F.3d 1170 (10th Cir. 2018).

147. *Id.* at 1182 (emphasis omitted).

148. *Id.*

149. *Compare Willis*, 38 F.3d at 176 (holding that evidence of Battered Woman Syndrome is inadmissible to aid a duress defense), *and Dixon*, 901 F.3d at 1185 (holding that the district court did not err in rejecting evidence of Battered Woman Syndrome to aid a duress defense) *with United States v. Dingwall*, 6 F.4th 744, 746 (7th Cir. 2021) (allowing expert evidence of Battered Woman Syndrome to aid a duress defense), *and United States v. Lopez*, 913 F.3d 807, 811, 823 (9th Cir. 2019) (same); *Nwoye II*, 824 F.3d 1129, 1138 (D.C. Cir. 2016) (same), *and Dando v. Yukins*, 461 F.3d 791, 801 (6th Cir. 2006) (same).

150. *See Dingwall*, 6 F.4th at 746 (holding that expert evidence of battering and its effects may be permitted to support a duress defense because it may inform the jury how an objectively reasonable person under the defendant's circumstances might behave); *Lopez*, 913 F.3d at 823 (same); *Nwoye II*, 824 F.3d at 1139 (same); *Dando*, 461 F.3d at 801 (reasoning that evidence of Battered Woman Syndrome can explain why a defendant's actions were reasonable given a history of violent abuse and imminent violent threats).

accomplices to the crime that their abusers committed.¹⁵¹ The doctrine of accomplice liability states that a person may be guilty of a crime that somebody else perpetrated.¹⁵² However, this statement is subject to certain limitations.¹⁵³ Historically, common law distinguished between principals and accessories.¹⁵⁴ Major actors were considered principals in the first degree, and those that had some sort of role in assisting the principal in the first degree were called principals in the second degree.¹⁵⁵ People who helped the principals before and after the crime was committed were called accessories before the fact and accessories after the fact.¹⁵⁶ Aside from those who are considered accessories after the fact, all accomplices are now treated equally in the American criminal justice system.¹⁵⁷ As such, each person is guilty of the crime regardless of the part that they played.¹⁵⁸

Accomplice liability helps to explain how women who never harmed their child or participated in abuse perpetrated against their child can be held liable for crimes like murder, child abuse, and rape.¹⁵⁹ A person can be deemed an accomplice if they (1) solicit another person

151. See Beague, *supra* note 10 (stating that Samantha Delcamp was charged as an accomplice); see also Lissa Griffin, “Which One of you Did It?” *Criminal Liability for “Causing or Allowing” the Death of a Child*, 15 IND. INT’L & COMPAR. L. REV. 89, 95 (2004) (stating that “accountability” statutes, or failure to protect statutes, can render a parent who does not participate in the abuse criminally liable as an accomplice for the abuser’s crime).

152. Audrey Rogers, *Accomplice Liability for Unintentional Crimes: Remaining within the Constraints of Intent*, 31 LOY. L.A. L. REV. 1351, 1351 (1998). For a discussion of a first degree assault conviction under accomplice liability, see *State v. Young*, 986 A.2d 497, 503–04 (N.H. 2009).

153. See LAFAVE & SCOTT, *SUBSTANTIVE CRIMINAL LAW* § 6.2 (3d ed. 1986) (stating the requirements for the actus reus and mens rea for accomplice liability).

154. Michael Heyman, *Losing All Sense of Just Proportion: The Peculiar Law of Accomplice Liability*, 87 ST. JOHN’S L. REV. 129, 136–37 (2013).

155. *Id.* at 137.

156. See *id.* (“Under the common law, actors were categorized as principals or accessories.”).

157. Heyman, *supra* note 154, at 134.

158. See *Hicks v. United States*, 150 U.S. 442, 449 (1893) (discussing the defendant’s mere use of words without more was insufficient to support an aiding and abetting charge).

159. See, e.g., *State v. Ainsworth*, 426 S.E.2d 410, 415-16 (N.C. Ct. App. 1993) (explaining that the defendant was found guilty of aiding and abetting the rape of her child because she failed to take any steps to prevent it and because she “did not appear to be in any danger” at the time); *People v. Peters*, 586 N.E.2d 469, 477 (Ill. App. Ct. 1991) (affirming a mother’s murder conviction because she did not protect her son from her boyfriend despite opportunities to do so, even though she was not present when the abuse occurred), *aff’d*, 606 N.E.2d 1201 (Ill. 1992).

to commit the crime for them, (2) help or attempt to help the other person in planning or committing the crime, or (3) if they had a legal duty to prevent the commission of the crime and fail to try to do so.¹⁶⁰

Battered women who fail to protect their children from abusers are usually prosecuted as an accomplice under the third option.¹⁶¹

Criminal liability usually requires both an actus reus (a voluntary act) and requisite mens rea (guilty mind) to have committed a crime.¹⁶²

Without these requirements, a person could be held criminally liable for unconscious actions or for thoughts that never materialize.¹⁶³

Additionally, the law does not recognize a legal duty even if there is a moral duty to act.¹⁶⁴ However, in some jurisdictions, people can be punished for failing to act in specified contexts where a legal duty exists.¹⁶⁵ Therefore, instead of being held liable for an action they have voluntarily taken, as is otherwise generally required by the American criminal law system, a person can be criminally liable if they fail to take an action.¹⁶⁶ At common law, there are seven established legal duties:¹⁶⁷

(1) special relationships such as spouses and the parent-child

160. MODEL PENAL CODE § 2.06(3); *see also* 18 U.S.C. § 2 (federal aiding and abetting statute).

161. *See* Bryan A. Liang & Wendy L. Macfarlane, *Murder by Omission: Child Abuse and the Passive Parent*, 36 HARV. J. ON LEGIS. 397, 411, 414–15 (1999) (explaining that in some states one can become an accomplice for failing to act when there is a legal duty, but generally accomplice liability requires an affirmative act; and that parents have been found guilty under accomplice liability for crimes including rape, assault, and murder).

162. Ian P. Farrell & Justin F. Marceau, *Taking Voluntariness Seriously*, 54 B.C. L. REV. 1545, 1548 (2013).

163. Judith Inglis Schneider, Note, *When Children Die as a Result of Religious Practices*, 51 OHIO ST. L.J. 1429, 1433 (1990).

164. *People v. Beardsley*, 113 N.W. 1128, 1131 (Mich. 1907).

165. LAFAVE & SCOTT, *supra* note 153, § 6(2). For an example of a statute that criminalizes failure to act in certain contexts see 18 PA CONS. STAT. § 301(b) (West) (“Liability . . . may not be based on an omission . . . unless: (1) the omission is expressly made sufficient by the law defining the offense; or (2) a duty to perform the omitted act is otherwise imposed by law.”); *see also* Liang & Macfarlane, *supra* note 161, at 411 n.113 (collecting statutes and case law that recognize omission or a legal duty to prevent an act).

166. Schneider, *supra* note 163 (“When failure to act causes harm, criminal liability may . . . follow . . . [if there was] the existence of a legal duty to act.”).

167. LAFAVE & SCOTT, *supra* note 153, § 6.2(a).

relationship,¹⁶⁸ (2) contractual duty,¹⁶⁹ (3) statutory duty,¹⁷⁰ (4) the creation of risk,¹⁷¹ (5) the voluntary assumption of care,¹⁷² (6) the duty to control others,¹⁷³ and (7) the duty of a landowner.¹⁷⁴ Because the recognition of these legal duties allows courts to punish someone for an omission instead of an action, they are quite narrow in scope.¹⁷⁵ If a duty does not fall into one of these categories, the law does not impose a legal duty to act.¹⁷⁶

Furthermore, there are important limitations to punishing someone with a legal duty for failing to act.¹⁷⁷ First, the person must have been aware of the harm that was occurring and have been capable of preventing it.¹⁷⁸ Thus, a person may be acquitted of a hit-and-run if he

168. *Id.* § 6.2(a)(1); *see* Commonwealth v. Howard, 402 A.2d 674, 676 (Pa. Super. Ct. 1979) (holding that the mother had a legal duty to protect her child from harm).

169. LAFAVE & SCOTT, *supra* note 153, § 6.2(a)(3); *see* State v. Benton, 187 A. 609, 615–16, 618 (Del. 1936) (holding that the railroad gateman was guilty of involuntary manslaughter when he failed to perform his contractual duty and a man was killed).

170. LAFAVE & SCOTT, *supra* note 153, § 6.2(a)(3); *see* State v. Kanavy, 4 A.3d 991, 995 (Md. 2010) (stating that Department of Juvenile Services employees had a legal duty under state law to provide appropriate medical care to children in the Department's custody).

171. LAFAVE & SCOTT, *supra* note 153, § 6.2(a)(5); *see* United States v. Hatatley, 130 F.3d 1399, 1406 (10th Cir. 1997) (“When a person puts another in a position of danger, he creates for himself a duty to . . . rescue the person from that danger.”) (citation omitted).

172. LAFAVE & SCOTT, *supra* note 153, § 6.2(a)(4); *see* Sickel v. State, 363 P.3d 115, 118 (Alaska Ct. App. 2015) (applying common law principle of voluntary assumption of care to define the scope of a cruelty to animals statute).

173. LAFAVE & SCOTT, *supra* note 153, § 6.2(a)(6); *see* Moreland v. State, 139 S.E. 77, 79 (Ga. 1927) (affirming a conviction of involuntary manslaughter for a car owner who failed to stop his chauffeur from speeding).

174. LAFAVE & SCOTT, *supra* note 153, § 6.2(a)(7); *see* Commonwealth v. Welansky, 55 N.E.2d 902, 909 (Mass. 1944) (holding that a nightclub owner, who had a duty of care for the safety of patrons, was criminally liable for the deaths of patrons killed in the club because he failed to provide fire escapes).

175. *See supra* notes 168–174 and accompanying text (discussing the narrow scope of the affirmative duty to act); Farrell & Marceau, *supra* note 162, at 1548–49 (discussing the importance of the actus reus requirement).

176. *See* People v. Beardsley, 113 N.W. 1128, 1131 (Mich. 1907) (holding that there is no legal duty to help a person simply because they are in your home, unlike a legal duty as between husband and wife).

177. LAFAVE & SCOTT, *supra* note 153, § 6.2(b)–(c).

178. *Id.*

was unaware that the accident occurred.¹⁷⁹ Similarly, a person can be acquitted of failing to timely file financial records if he can prove he was unable to file on his own.¹⁸⁰ Second, an omission or failure to act may be excused because of the risk to third persons involved in acting.¹⁸¹ Following this logic, the Northern District of California has held that a ship captain would not necessarily be held liable for failing to come to the rescue of an overboard passenger if doing so would endanger the rest of the crew.¹⁸²

In 1960, the Court of Appeals of Maryland was the first to impose a duty upon a parent to prevent abuse of their child at the hands of another.¹⁸³ In 1982, the Supreme Court of North Carolina articulated this parent-child legal duty in-depth in *State v. Walden*,¹⁸⁴ where the defendant was convicted of assault because she failed to take all reasonable steps to prevent her boyfriend from beating her child.¹⁸⁵ In *Walden*, the court advanced a case-by-case reasonableness test to determine whether a parent acted sufficiently to protect their child.¹⁸⁶

179. See, e.g., *State v. Tennant*, 319 S.E.2d 395, 401 (W. Va. 1984) (holding that the West Virginia hit-and-run statute required the actor to have known or reasonably should have known that the accident occurred); *Kimoktoak v. State*, 584 P.2d 25, 31 (Alaska 1978) (stating that legislature intended the hit-and-run statute to require that the actor knowingly fail to stop and assist); *Touchstone v. State*, 155 So. 2d 349, 351 (Ala. Ct. App. 1963) (holding that the defendant was not liable under the hit-and-run statute because he did not know he hit someone).

180. *United States v. Spingola*, 464 F.2d 909, 912 (7th Cir. 1972) (concluding that the district court erred in excluding evidence that showed appellant failed to timely file because of his limited education).

181. LAFAYE & SCOTT, *supra* note 153, § 6.2(c).

182. *United States v. Knowles*, 26 F. Cas. 800, 802 (N.D. Cal. 1864) (stating that the ship captain did not have to risk the lives of his crew to come to the aid of an overboard passenger).

183. *Palmer v. State*, 164 A.2d 467, 473 (Md. 1960) (upholding an involuntary manslaughter conviction on findings that mother negligently failed to protect infant from her boyfriend's brutal beatings); see Jeanne A. Fugate, Note, *Who's Failing Whom? A Critical Look at Failure-to-Protect Laws*, 76 N.Y.U. L. REV. 272, 278 n.21 (2001) (citing *Palmer* as the first failure to protect case).

184. 293 S.E.2d 780 (N.C. 1982).

185. *Id.* at 787.

186. *Id.* at 786; see also *State v. Claypoole*, 639 S.E.2d 466, 469 (S.C. Ct. App. 2006) (holding that defendant did not take reasonable steps to prevent sexual abuse of her child by her husband when she allowed him to reside in the same house with her daughters, was fully aware of the abuse, and husband was a registered sex offender with a court order preventing him from contacting daughters); *People v. Peters*, 586 N.E.2d 469, 477 (Ill. App. Ct. 1991) (holding that the defendant failed to take any action to protect her son when it was reasonably possible for her to seek medical

Most importantly, the court also explained that parents do not have a legal duty that requires them to place themselves in “danger of death or great bodily harm.”¹⁸⁷ Further, the *Walden* court stated that requiring parents to put themselves in danger of death or serious bodily injury would require parents to exhibit courageous and heroic behavior that cannot reasonably be required of every parent.¹⁸⁸

Since *Walden*, courts have consistently held that parents have a legal duty to reasonably prevent harm to their child or face criminal liability.¹⁸⁹

The *Walden* reasonableness analysis is present in the jury instructions of failure to protect cases.¹⁹⁰ For example, in *People v. Rolon*,¹⁹¹ the defendant was convicted of murder because she failed to stop her husband from killing her son.¹⁹² The court instructed the jury to determine whether the defendant had taken “every step reasonably necessary under the circumstances.”¹⁹³

Additionally, most jurisdictions have child abuse statutes that specifically hold parents responsible for failing to protect their

attention or contact authorities, and she had full knowledge of the abuse), *aff'd*, 606 N.E.2d 1201 (Ill. 1992); *cf. In re Betty J.W.*, 371 S.E.2d 326, 332–33 (W. Va. 1988) (holding that a mother took reasonable steps to protect her children when she moved them to her parents’ house as soon as she could after learning about sexual abuse by the father and reported him to authorities).

187. *Walden*, 293 S.E.2d at 786; *see also* *People v. Swanson-Birabent*, 7 Cal. Rptr. 3d 744, 754 (Cal. Ct. App. 2003) (stating that parents do not have the “legal duty to place themselves in danger of death or great bodily harm in coming to the aid of their children”).

188. *Walden*, 293 S.E.2d at 786

189. *Accord* *Degren v. State*, 722 A.2d 887, 899 (Md. 1999) (extending parents’ legal duty to protect their child from sexual abuse to a non-parent responsible for a child); *Lane v. Commonwealth*, 956 S.W.2d 874, 875 (Ky. 1997) (stating that a mother had a statutory legal duty to take action to prevent an assault on her infant daughter); *State v. Claypoole*, 639 S.E.2d 466, 468–69 (S.C. Ct. App. 2006) (holding that a mother had a legal duty to prevent her husband’s sexual abuse against her daughter or otherwise protect her); *C.G. v. State*, 841 So. 2d. 281, 289 (Ala. Crim. App. 2001) (listing states that recognize a parent’s legal duty to protect their child from sexual abuse of others and adopting such a position), *aff'd*, 841 So. 2d 292 (Ala. 2002).

190. *See Walden*, 293 S.E.2d at 786 (“What is reasonable in any given case will be a question for the jury after proper instructions from the trial court.”).

191. 73 Cal. Rptr. 3d 358 (Cal. Ct. App. 2008).

192. *Id.* at 361.

193. *Id.* at 368.

children from abuse.¹⁹⁴ Far too often, abuse and neglect statutes work disproportionately to punish mothers and battered women for failing to protect their children and failing to stop the abuse themselves.¹⁹⁵ Battered women are punished under these statutes regardless of whether they intervened or attempted to stop their husbands from abusing their children or whether they, too, would be beaten or killed.¹⁹⁶ The laws do not consider that these mothers cannot avoid their criminal behavior without a serious risk of death.¹⁹⁷ There is little difference between these mothers who are charged with failing to protect their children from abuse and women who commit several

194. Kristian Miccio, *In the Name of Mothers and Children: Deconstructing the Myth of the Passive Battered Mother and the "Protected Child" in Child Neglect Proceedings*, 58 ALB. L. REV. 1087, 1089 (1995); *see also* examples of these failure to protect statutes: N.C. GEN. STAT. ANN. § 14-316.1 (West); N.Y. PENAL L. § 260.10 (McKinney); ME. REV. STAT. ANN. Tit. 17-a, § 554 (West); CAL. WELF. & INST. § 300 (West); COLO. REV. STAT. ANN. § 18-6-401 (West).

195. Miccio, *supra* note 194, at 1088–89 (stating that abuse and neglect statutes codify cultural notions that mothers are only either “good” or “bad”); *see* Fugate, *supra* note 183, at 284 (predicting how widening failure to protect laws would disproportionality affect mothers); *see also* *Brewington v. State*, 98 So. 3d 628, 629 (Fla. Dist. Ct. App. 2012) (mother convicted of aggravated manslaughter for child’s death at hands of mother’s boyfriend under failure to provide essential needs statute); *In re Glenn G.*, 154 Misc. 2d 677, 688 (N.Y. Fam. Ct. 1992) (mother held accountable for failing to stop abuse to her child by child’s father under neglect statute), *aff’d*, 630 N.Y.S.2d 348 (App. Div. 1995); *People v. Peters*, 586 N.E.2d 469, 476 (Ill. App. Ct. 1991) (mother convicted of murder for failing to prevent child’s death at the hands of her boyfriend under accountability statute and common law), *aff’d*, 606 N.E.2d 1201 (Ill. 1992); *Phelps v. State*, 439 So. 2d 727, 730, 732, 734 (Ala. Crim. App. 1983) (mother convicted of child abuse for failing to prevent stepfather from abusing and killing her child under child abuse statute that courts interpreted to include acts of omissions); *Commonwealth v. Howard*, 402 A.2d 674, 678 (Pa. Super. Ct. 1979) (mother found guilty under involuntary manslaughter statute when mother’s boyfriend killed her child).

196. *See United States v. Webb*, 747 F.2d 278, 281, 283 (5th Cir. 1984) (affirming abused mother’s conviction of injury to child under abuse statute for failure to obtain medical care after father abused son, which resulted in death, because mother was “afraid . . . of what [the father] would do to her, her other children, and her parents”); *State v. Williams*, 670 P.2d 122, 124 (N.M. Ct. App. 1983), *overruled by Santillanes v. State*, 115 N.M. 215 (N.M. 1993), (affirming conviction of child abuse for mother for failing to prevent her husband from beating her daughter after he beat and threatened her while five months pregnant); *Campbell*, *supra* note 12 (detailing the story of how Arlena Lindley attempted to stop her boyfriend from beating her son, but her boyfriend, who also beat her, threatened to kill her if she took her son out of the house).

197. *See Campbell*, *supra* note 12 (stating that Arlena Lindley’s boyfriend threatened to kill her if she removed her child from the home to stop his abuse).

robberies and assert defenses of duress.¹⁹⁸ If the woman steps in to stop the abuse of her child, her abuser may kill her.¹⁹⁹ If the woman does not rob the bank, her abuser may kill her.²⁰⁰

II. ANALYSIS

Up until this point, this Comment has explained what Battered Woman Syndrome is, how it has evolved, and how it has been used to aid self-defense and duress cases. It has also explained how accomplice liability and failure to protect laws work to punish battered mothers of children who have been severely abused or even killed by the mother's husband or boyfriend. Now, this Comment will explain that because a jury evaluates whether a parent satisfied their legal duty to protect their child using a reasonableness test, the same analysis and reasoning that the courts have used to accept evidence of Battered Woman Syndrome for duress claims supports its use in the context of failure to protect laws. Evidence of Battered Woman Syndrome must always be deemed admissible in cases where battered women are charged with failing to protect their children from their common abuser. In Samantha Delcamp's case, she and her lawyer attempted to introduce evidence of Battered Woman Syndrome to aid her defense against charges of involuntary manslaughter, aggravated assault, and child endangerment.²⁰¹ Samantha was charged as an accomplice for failing to prevent her boyfriend, a man that was also abusing her, from abusing and killing her three-year-old daughter Arabella.²⁰² Unfortunately, the judge in Samantha's case ruled that the evidence of Battered Woman Syndrome was inadmissible because "[t]here is no court authority that allows such a defense where the victim is not the aggressor."²⁰³ However, the federal appellate courts' reasoning in allowing evidence of Battered Woman's Syndrome to inform the

198. *Compare Williams*, 670 P.2d at 1055, 1058 (stating that the defendant feared she and her children would be abused, or even killed, if she disobeyed him), *with Dando v. Yukins*, 461 F.3d 791, 794 (6th Cir. 2006) (explaining that defendant claimed to participate in the robberies only because immediately before the robberies her boyfriend beat her and threatened to kill her).

199. *See Campbell*, *supra* note 12 (stating that Arlena Lindley's boyfriend threatened to kill her if she removed her child from the home to stop his abuse).

200. *See Dando*, 461 F.3d at 794 (explaining that defendant claimed to participate in the robberies only because immediately before the robberies her boyfriend beat her and threatened to kill her).

201. *Supra* notes 6–10; Beauge, *supra* note 7.

202. Beauge, *supra* note 7.

203. *Id.*

reasonability determination in a duress defense supports a finding that Courts must admit evidence of Battered Woman Syndrome to inform the reasonability determination of a battered woman's failure to come to her child's aid when they both are being abused and in grave danger.

A. Similarity to a Duress Defense

A battered woman being unable to prevent her abusive partner from hurting or killing her child without fear of being beaten or killed is similar to a battered woman being forced by her abuser to rob various businesses under duress.²⁰⁴ Both of these battered women are unable to avoid their criminal behavior.

Courts have affirmed time and time again that parents have a legal duty to prevent harm to their children.²⁰⁵ However, this is not a duty imposed without limitations.²⁰⁶ Similar to the duress defense, the standard to act created by the parent-child legal duty is to act "reasonably . . . under the circumstances."²⁰⁷ When discussing the legal duty of a parent, the court in *Walden* stated:

[T]his is not to say that parents have the legal duty to place themselves in danger of death or great bodily harm in coming to the aid of their children. But parents do have the duty to take every step reasonably possible under the circumstances of a given situation to prevent harm to their children.²⁰⁸

204. *United States v. Dingwall*, 6 F.4th 744, 755 (7th Cir, 2021).

205. *State v. Walden*, 293 S.E.2d 780, 786 (N.C. 1982); *accord* *State v. Rundle*, 500 N.W.2d 916, 922 (Wis. 1993) (stating that parents have a legal duty to protect their child from harm); *State v. Cacchiotti*, 568 A.2d 1026, 1030 (R.I. 1990) (same); *Commonwealth v. Cardwell*, 515 A.2d 311, 314 (Pa. Super. Ct. 1986) (same); *Commonwealth v. Howard*, 402 A.2d 674, 676 (Pa. Super. Ct. 1979) (same); *Palmer v. State*, 164 A.2d 467, 473 (Md. 1960) (same).

206. *See* LAFAYE & SCOTT, *supra* note 153, § 6.2(a)(7) (explaining one limitation of enforcing criminal liability for failing to accomplish a legal duty is when a trespasser is injured on the owner's land).

207. *State v. Walden*, 293 S.E.2d 780, 786 (N.C. 1982); *see* *Hammer v. City of Lafayette*, 502 So. 2d 301, 304 (La. Ct. App. 1987) (stating that parents have a duty to take reasonable steps to provide for the safety of their child); ME. REV. STAT. ANN. TIT. 17-a, § 554 (West, Westlaw through the 2022 Sec. Reg. Sess. of the 130th Legis.) (stating that a parent is responsible if they fail to take reasonable measures to protect their child); N.Y. PENAL LAW § 260.10 (McKinney, through L.22) (stating that a person is guilty of endangering a child if they fail to exercise reasonable diligence to prevent harm to the child).

208. *Walden*, 293 S.E.2d at 786.

The words “under the circumstances” in this articulation of the parent’s legal duty are crucial. The court in *Walden* reiterates this point by stating:

In some cases, depending upon the size and vitality of the parties involved, it might be reasonable to expect a parent to physically intervene and restrain the person attempting to injure the child. In other circumstances, it will be reasonable for a parent to go for help or to merely verbally protest an attack upon the child. What is reasonable in any given case will be a question for the jury after proper instructions from the trial court.²⁰⁹

The emphasis on reasonableness when determining if a parent should be criminally liable for failing to protect their child is also evident in the jury instructions provided in failure to protect cases.²¹⁰ For example, in *Rolon*, the court provided instructions to the jury that stated, “[a] parent has a legal duty to his or her minor child to take every step reasonably necessary under the circumstances in a given situation to exercise reasonable care for the child, to protect the child from harm, and to obtain reasonable medical attention for the child.”²¹¹ The courts’ directive to look at each situation and understand the reasonableness of a parent’s actions on a case-by-case basis is profoundly similar to the discussion the courts have been having regarding the admissibility of Battered Woman Syndrome to support a duress defense.²¹²

209. *Id.* at 786.

210. *See* *People v. Rolon*, 73 Cal. Rptr. 3d 358 (Cal. Ct. App. 2008).

211. *Id.* at 362; *see* *Staples v. Commonwealth*, 454 S.W.3d 803, 811 (Ky. 2014) (allowing jury instructions that stated that defendant “failed to make an effort reasonable under the circumstances” to protect a child from harm); *Walden*, 293 S.E.2d at 784 (upholding jury instructions that state “[a] parent is bound to provide such reasonable care as necessary, under the circumstances facing them at that particular time. However, a parent is not required to do the impossible or the unreasonable in caring for their children”); *see also* VERNON’S OKLA. FORMS 2D, OUJI-JUV 3.19A (2018 ed.) (providing an example of jury instructions from Oklahoma saying that failure to protect means the failure to take reasonable action to remedy or prevent child abuse or neglect).

212. *Compare Walden*, 293 S.E.2d at 784 (upholding jury instructions that state “[a] parent is bound to provide such reasonable care as necessary, under the circumstances facing them at that particular time. However, a parent is not required to do the impossible or the unreasonable in caring for their children”), *with* *United States v. Dingwall*, 6 F.4th 744, 746 (7th Cir. 2021) (holding that evidence of Battered Woman Syndrome is admissible because it may inform the jury on how an “objectively reasonable” person in defendant’s situation might behave).

Looking once again at the elements of duress, a defendant must prove that they had (1) an immediate or imminent threat of death or serious bodily injury, (2) a well-grounded or reasonable fear that the threat will be carried out, and (3) no reasonable opportunity to escape the threatened harm except by committing the criminal act.²¹³ As discussed in *Dingwall*, the term reasonableness plays a crucial part in a duress defense, requiring that the jury evaluate the defendant's behavior for reasonability twice.²¹⁴ When courts have allowed evidence of Battered Woman Syndrome to be introduced to aid a duress defense, they have all focused in some aspect on the connection of evidence of Battered Woman Syndrome to the reasonableness requirements within the duress defense.²¹⁵ The court in *Dingwall* stated, "expert evidence of battering and its effects may be permitted to support a duress defense because it may inform the jury how an objectively reasonable person under the defendant's circumstances might behave."²¹⁶ The court also stated that evidence of Battered Woman Syndrome "may give a lay jury useful insights about the situation in which a person of reasonable firmness finds herself."²¹⁷ In *Dando*, the court held a similar view, writing, "the 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."²¹⁸

The importance of how the testimony of Battered Woman Syndrome relates to the reasonableness requirement within a duress defense is again emphasized in *Nwoye II*, where the court said, "[a]lthough a jury might not find the appearances sufficient to provoke a reasonable

213. *United States v. Jovic*, 207 F.3d 889, 892 (7th Cir. 2000).

214. *Dingwall*, 6 F.4th at 747.

215. *See id.* (stating that evidence of Battered Woman Syndrome may inform jury about how an objectively reasonable person under the defendant's circumstances might behave); *United States v. Lopez*, 913 F.3d 807, 820 (9th Cir. 2019) (stating that a reasonable person who is battered can accurately perceive the seriousness of a situation before a reasonable person who is not battered); 824 F.3d 1129, 1138 (D.C. Cir. 2016) (holding that evidence of Battered Woman Syndrome could make a jury conclude an action was reasonable when they otherwise would not have if they had not been given the evidence); *Dando*, 461 F.3d 791, 801 (6th Cir. 2006) (stating that evidence of Battered Woman Syndrome can bolster the argument that the defendant was acting reasonably).

216. *Dingwall*, 6 F.4th at 747.

217. *Id.*

218. *Dando*, 461 F.3d at 801.

person's fear, they might conclude otherwise as to a reasonable person's perception of the reality when enlightened by expert testimony on the [Battered Woman Syndrome and the] concept of hypervigilance."²¹⁹ In *Lopez*, the court articulated, "people who are battered 'accurately perceive the seriousness of the situation before another person who had not been repeatedly abused might recognize the danger.'"²²⁰ Each opinion within the majority approach makes it clear that you cannot accurately assess the reasonability of a battered woman's actions without providing the jury with evidence of Battered Woman Syndrome.²²¹

The minority approach argues that a jury must analyze a duress defense by determining what an objectively reasonable person would have done in the defendant's situation.²²² If a court allows evidence of Battered Woman Syndrome to be presented to the jury, then the jury would no longer be participating in an objective inquiry; it would now be considered subjective and, as such, must be deemed inadmissible.²²³ However, this argument ignores the various other instances within the law where juries have been allowed to examine evidence of a person's history or circumstances to evaluate their decision, even if the question the jury is facing is one of objective reasonableness.²²⁴ The Seventh

219. *Nwoye II*, 824 F.3d at 1138.

220. *Lopez*, 913 F.3d at 820 (quoting Lenore E.A. Walker, *supra* note 22, at 324).

221. See *Dingwall*, 6 F.4th at 747 (suggesting evidence of Battered Woman Syndrome may inform jury about how an objectively reasonable person under the defendant's circumstances might behave); *Lopez*, 913 F.3d at 820 (determining a reasonable person who is battered cannot accurately perceive the seriousness of a situation before a reasonable person who is not battered); *Nwoye II*, 824 F.3d at 1138 (holding that evidence of Battered Woman Syndrome could make a jury conclude an action was reasonable when they otherwise would not have if they had not been given the evidence); *Dando*, 461 F.3d at 801 (finding that evidence of Battered Woman Syndrome can bolster the argument that the defendant was acting reasonably).

222. See *United States v. Dixon*, 901 F.3d 1170, 1180–81 (10th Cir. 2018) (stating that the jury instructions made clear that the test to determine whether the defendant was subjected to duress is determined by "applying an objective lens"); *United States v. Willis*, 38 F.3d 170, 176 (5th Cir. 1994) (stating that the requirements of a duress defense set out an objective test).

223. *Dixon*, 901 F.3d at 1182 (holding that allowing evidence of Battered Woman Syndrome to be presented to a jury would demonstrate to the jury Battered Woman Syndrome subjectively distorted the defendant's ability to reasonably perceive a threat); *Willis*, 38 F.3d at 176 (holding that evidence of Battered Woman Syndrome is inherently subjective).

224. See *United States v. Chambers*, 642 F.3d 588, 593 (7th Cir. 2011) (demonstrating that in a child sex abuse case the court used communications between

Circuit in *Dingwall* speaks to this directly and mentions that courts have allowed the examination of a person's history or circumstances in human trafficking cases, hostile employment cases, and child sex abuse cases.²²⁵ In doing so, the Seventh Circuit reiterates that this concept is far from novel.²²⁶

The reasonable person test is used to analyze both the duress defense and the actions of the parent. Thus, it would be illogical to allow admissibility of the evidence in the duress defense but not in a defense against a failure to protect charge.

B. Admissibility of Evidence of Battered Woman Syndrome Generally

Courts bound by the precedent of the minority approach to the circuit split are not without other options and can still reasonably deem evidence of Battered Woman Syndrome admissible in a situation where a battered woman is being held liable for failing to protect her child.²²⁷ It is not uncommon for courts to allow evidence of Battered Woman Syndrome to be presented to the jury in order to help the jury understand the reasonableness of the battered woman's behavior more generally.²²⁸ For example, courts have allowed evidence of Battered Woman Syndrome to be introduced pertaining to the reasonableness of a victim's decision to recant her testimony.²²⁹

victim and defendant to prove grooming without looking at defendant's subjective thoughts); *Tademy v. Union Pac. Corp.*, 614 F.3d 1132, 1145 (10th Cir. 2008) (showing a hostile work environment case where the court took into account complainant's race when deciding if environment was objectively hostile); *United States v. Calimlim*, 538 F.3d 706, 713 (7th Cir. 2008) (providing an example of a human trafficking case where jury evaluated if the victim felt threatened and imprisoned under the circumstances); *see also Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (stating that a workplace hostile environment case requires the environment to be both objectively and subjectively abusive).

225. *Dingwall*, 6 F.4th at 747 (7th Cir. 2021).

226. *See Dixon*, 901 F.3d at 1180–81 (stating that the jury instructions made clear that the test to determine whether or not the defendant was subjected to duress is determined by “applying an objective lens”); *Willis*, 38 F.3d at 176 (stating that the requirements of a duress defense set out an objective test); *see also Liang & Macfarlane*, *supra* note 161, at 438 (supporting the argument that allowing evidence of Battered Woman Syndrome to aid a duress case would turn an objective reasonable standard into a subjective one).

227. *See supra* Section I.B.

228. *See supra* Section I.A.

229. *See People v. Lafferty*, 9 P.3d 1132, 1135 (Colo. Ct. App. 1999) (holding that trial court did not abuse its discretion by allowing evidence of Battered Woman

Evidence of Battered Woman Syndrome has also been deemed admissible to combat more generally the notions and stereotypes about battered women and to allow the jury to better understand their daily struggles.²³⁰ Women suffering from Battered Woman Syndrome suffer from a form of PTSD, and their behavior, while not always rational to an outsider not afflicted with the syndrome, might be entirely reasonable when understood in the context of their distress.²³¹ It is essential that courts allow evidence of Battered Woman Syndrome in failure to protect cases in order to better understand what is going on inside the minds of these abused women.

C. The Battered Woman and Reasonability

Abused women suffering from Battered Woman Syndrome are often acting “reasonably” under the circumstances in their abusive situations when they do not come to the aid of their child.²³² The standard to act created by the parent-child legal duty is a reasonable standard.²³³ When the court in *Walden* articulated this duty, it emphasized that courts should determine the reasonability of a parent’s actions would be determined on a case-by-case basis.²³⁴ Battered women are better able to protect their children from abuse when they are living under the same roof as the batterer as opposed to when they try to leave.²³⁵ Women like Samantha Delcamp, Victoria Pedraza, and Victoria

Syndrome and the cycle of violence and how it relates to recanting); *People v. Morgan*, 68 Cal. Rptr. 2d 772, 775 (Cal. Ct. App. 1997) (allowing evidence of Battered Woman Syndrome to go to the jury to understand why a victim recanted her testimony).

230. See *Linn v. State*, 929 N.W.2d 717, 732 (Iowa 2019) (holding that admissibility of evidence of Battered Woman Syndrome is crucial to help contextualize facts of the case to a jury); *State v. Stewart*, 719 S.E.2d 876, 885 (W. Va. 2011) (holding that evidence that a defendant meets the profile of the syndrome is admissible to explain to the jury how domestic abuse may affect a defendant’s reasoning, beliefs, perceptions, or behavior); *People v. Humphrey*, 921 P.2d 1, 11 (Cal. 1996) (holding that evidence of Battered Woman Syndrome was not “only relevant, but critical in permitting the jury to evaluate [defendant’s] testimony free of the misperceptions regarding battered women”) (quoting *People v. Day*, 2 Cal. Rptr. 2d 916, 925 (Cal. Ct. App. 1992)).

231. *Dando v. Yukins*, 461 F.3d 791, 801 (6th Cir. 2006).

232. This Comment is not arguing that every battered woman whose child dies at the hands of the woman’s boyfriend or husband should necessarily be acquitted. Obviously if a woman has actively engaged in the abuse or murder of her child, she should not be deemed to have been acting reasonably.

233. *State v. Walden*, 293 S.E.2d 780, 785–86 (N.C. 1982).

234. *Id.* at 786.

235. WALKER, *supra* note 36, at 249.

Phanthtaranth were terrorized, severely abused, and focused on keeping themselves and their children alive each day.²³⁶ With a 75% increase in the likelihood that a woman is murdered by her abusive husband or boyfriend when she attempts to leave, the statistics have made it clear that it can be safer for women and their children to stay with the abuser than to attempt to leave.²³⁷ Aside from the intense danger that a woman puts herself in when leaving her abuser, children are also at an increased risk of being beaten or killed by the abuser when the abused woman leaves her husband or boyfriend.²³⁸ It is not difficult to understand how it might be incredibly reasonable for a battered woman not to step in and stop the abuse of her child while it is happening.²³⁹ Although it is likely reasonable for a battered woman to fail to act and prevent the abuse to her child, when a second child is present, like in Victoria Phanthtaranth's situation, the omission to act is completely justified. Common law emphasizes that the omission to act may be excused when third persons would be put at risk.²⁴⁰ Following this logic, battered women with several children present while the abuse occurs cannot be penalized for failing to prevent the abuse of one of their children.²⁴¹

Furthermore, the court in *Walden* emphasized that in order to fulfill the legal duty imposed on a parent, they do not have to place themselves in danger of death or great bodily harm in coming to the

236. John Beauge, *Pa. Mom's Homicide Trial Delayed while Potential Defense Explored*, PENN LIVE, (Feb. 3, 2022, 6:49 PM), <https://www.pennlive.com/news/2022/02/pa-moms-homicide-trial-delayed-while-potential-defense-explored.html> [<https://perma.cc/8CJU-GFEC>]; Campbell, *supra* note 12.

237. Banner, *supra* note 69; see U.S. DEP'T OF JUST., EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE (2000) (stating that interviews with men who have killed their wives indicate that threats of leaving or actual separation are most often the precipitating events that lead to murder); *Why do Victims Stay?*, *supra* note 67 (stating that leaving an abuser is the most dangerous time for a victim of domestic violence).

238. Enos, *supra* note 67, at 235; see NATIONAL INSTITUTE OF JUSTICE, *supra* note 70 (explaining that a common triggering event for a man committing familicide is his wife leaving him); ABC NEWS 4, *supra* note 71 (telling the story of a man who killed his children after his wife left him).

239. There are states that recognize this danger and have included defenses to failure to protect laws within the statute recognizing that acting to stop or prevent the harm would result in substantial bodily harm to the defendant. See Minn. Stat. Ann. § 609.378 (West, Westlaw through July 1, 2022, from the 2022 Reg. Sess.).

240. LAFAVE & SCOTT, *supra* note 153, § 6.2(c).

241. See *id.* (explaining the third-party exception for being criminally liable for failing to act).

aid of their child.²⁴² No parent is legally required to be heroic.²⁴³ Oftentimes, courts will acknowledge a battered woman's fear or acknowledge that the battered woman suffered abuse or would have suffered abuse when she tried to intervene, but this still does not allow the jury to consider it to determine the reasonableness of her actions.²⁴⁴ For example, after Victoria Pedraza's husband Daniel beat Aubriana so hard that her organs ruptured, Victoria began CPR and begged her husband to call 911.²⁴⁵ In response, Daniel told Victoria that if Aubriana died, he would kill her.²⁴⁶ Victoria, focused on trying to save her daughter, told Daniel, "kill me later, just help me please."²⁴⁷ In this case, Victoria did what courts have said is not required of a parent and put herself in danger of death.²⁴⁸ Yet, she still received the maximum sentence of twenty years for failing to protect her child.²⁴⁹

When courts fail to consider Battered Woman Syndrome evidence and then hold the women criminally liable for failing to protect their children, courts effectively require the "reasonable steps" these women must take to satisfy the legal duty is to die.²⁵⁰ This standard directly goes against the limitation on the parent-child legal duty emphatically

242. *State v. Walden*, 293 S.E.2d 780, 786 (N.C. 1982).

243. *See id.* (stating that "[t]his is not to say that parents have the legal duty to place themselves in danger of death or great bodily harm in coming to the aid of their children. To require such, would require every parent to exhibit courage and heroism which, although commendable in the extreme, cannot realistically be expected or required of all people").

244. *Enos*, *supra* note 67; *see In re C.D.C.*, 455 N.W.2d 801, 807 (Neb. 1990) (stating that defendant was severely physically abused by batterer but not taking it into account for analysis of failure to protect); *In re J.L.S.*, 793 S.W.2d 79, 83 (Tex. Ct. App. 1990) (stating that defendant would get beaten if she tried to prevent her boyfriend from hurting her child, but did not factor that into the analysis); *Commonwealth v. Cardwell*, 515 A.2d 311, 313, 315 (Pa. Super. Ct. 1986) (providing an example of a court ignoring testimony of defendant's abuse by the batterer).

245. *Campbell*, *supra* note 12.

246. *Id.*

247. *Id.*

248. *See State v. Walden*, 293 S.E.2d 780, 786 (N.C. 1982).

249. *Campbell*, *supra* note 12.

250. *See Michelle S. Jacobs, Requiring Battered Women Die: Murder Liability for Mothers Under Failure to Protect Statutes*, 88 J. CRIM. L. & CRIMINOLOGY 579, 589 (1998) (arguing that courts should consider that some mothers are not able to provide requisite protection for fear of their own death or serious injury).

stated in *Walden* and cannot be one that continues to be espoused by judges within the American justice system.²⁵¹

CONCLUSION

Samantha Delcamp was never allowed to explain to the jury how the fear she felt living with her boyfriend's wrath and abuse affected her daily life and altered her psychologically. As such, the jury in her case was never given an accurate opportunity to evaluate the reasonableness of her actions. This can no longer stand. Following the majority approach's reasoning to allow Battered Woman Syndrome evidence in a duress defense, judges must create a standard that allows this evidence to be admissible to understand the reasonableness of a battered woman's inaction in failing to prevent her abuser from also abusing, and oftentimes killing, her child. Not only is this standard logical, but it would allow courts to better understand the complexities of how battering can psychologically alter a woman and allow juries to more accurately determine the reasonableness of a battered woman's action or inaction.

251. *Walden*, 293 S.E.2d at 786. *But see In re Glenn G*, 154 Misc. 2d 677, 688 (N.Y. Fam. Ct. 1992) (stating that because the defendant was afflicted with Battered Woman Syndrome, the defendant did not condone the father's sexual abuse of the children but was powerless to stop it).