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## Recent Cases

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## RECENT CASES

### CRIMINAL LAW—Battered Women and Self-Defense—Pennsylvania Allows Expert Evidence on Battered Woman Syndrome as a Basis for Proving Justification in the Use of Deadly Force When Evidence Indicates Defendant is Victim of Abuse: *Commonwealth v. Stonehouse*, 521 Pa. 41, 555 A.2d 772 (1989).\*

In *Commonwealth v. Stonehouse*,<sup>1</sup> the Supreme Court of Pennsylvania<sup>2</sup> overturned the defendant's conviction for killing her former boyfriend, concluding that the defendant's trial counsel was ineffective for failing to present expert testimony regarding the battered woman syndrome.<sup>3</sup> Although the issue was not raised on appeal,<sup>4</sup> the

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\* In order to reward outstanding legal writing, the staff of the *Dickinson Law Review* has elected to publish annually one casenote submitted in the *Dickinson Law Review* Summer Casenote Writing Competition. Melissa A. Lengyel, 1989-90 Notes Editor, conducted the research associated with this note.

1. 521 Pa. 41, 555 A.2d 772 (1989).

2. Justice Larsen delivered the opinion of the court, joined by Justices Flaherty, Zappala, Papadakos, and Stout. Justice Zappala filed a concurring opinion in which Justice Flaherty joined. Chief Justice Nix filed a dissenting opinion in which Justice McDermott joined.

3. *Stonehouse*, 521 Pa. at 65, 555 A.2d at 785. The court also concluded that trial counsel was ineffective for failing to request proper jury instructions on self-defense and voluntary manslaughter. *Id.* at 61, 555 A.2d at 782. The court reasoned that the jury should have been instructed to consider the cumulative effects of psychological and physical abuse. *Id.* at 60-61, 555 A.2d at 782.

4. The defendant's appellate counsel clearly stated that defendant's position on the self-defense issue should not be "mischaracterized as a failure to raise the 'battered woman syndrome' issue." *Id.* at 67, 555 A.2d at 785 (Zappala, J., concurring). The amici made the only reference in the briefs to the battered woman theory. *Id.*

supreme court held that the absence of expert testimony on the battered woman syndrome was prejudicial to the defendant because it allowed the jury to base the verdict on unfounded myths surrounding the battered woman.<sup>5</sup> The court effectively established the admissibility of expert testimony regarding battered woman syndrome to justify the use of deadly force.<sup>6</sup> Although not all jurisdictions agree that such expert testimony is admissible,<sup>7</sup> many courts have allowed the use of expert evidence on the battered woman syndrome to establish the reasonableness of a defendant's claim of self-defense.<sup>8</sup> *Stonehouse* appears to go one step further, permitting expert testimony regarding the battered woman syndrome to expand the justification for the use of deadly force in self-defense beyond traditional statutory limits.<sup>9</sup>

At her trial, Carol Stonehouse offered uncontradicted testimony concerning the years of abuse she suffered at the hands of the victim, William Welsh, her former boyfriend and former co-worker.<sup>10</sup> On

5. *Stonehouse*, 521 Pa. at 66, 555 A.2d at 785. The court stated that "[a] battered woman is a woman who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without any concern for her rights." *Id.* at 61-62, 555 A.2d at 783 (quoting L. WALKER, *THE BATTERED WOMAN* at xv (1979)). The court believed that the prosecutor improperly suggested to the jury that: (1) battered women are generally masochists who enjoy being abused; (2) battered women are uneducated, with few job skills; (3) battered women can be protected by the police; (4) battered women are free to leave the battering relationship at any time; and (5) battered women suffer their beatings passively. *Id.* at 62-64, 555 A.2d at 783-84 (citing L. WALKER, *THE BATTERED WOMAN* 20, 23, 26).

6. *Id.* at 61, 555 A.2d at 783.

7. See 1 W. LAFAVE & A. SCOTT, *SUBSTANTIVE CRIMINAL LAW* § 5.7 (1986). Compare *State v. Thomas*, 66 Ohio St. 2d 518, 423 N.E.2d 137 (1981) (inadmissible) and *Burhle v. State*, 627 P.2d 1374 (Wyo. 1981) (inadmissible as applied to facts of the case) with *State v. Kelly*, 97 N.J. 178, 478 A.2d 364 (1984) (admissible) and *People v. Torres*, 128 Misc. 2d 129, 488 N.Y.S.2d 358 (N.Y. Sup. Ct. 1985) (admissible). See generally Annotation, *Admissibility of Expert or Opinion Testimony on Battered Wife or Battered Woman Syndrome*, 18 A.L.R.4TH 1153 (1982).

8. See, e.g., *State v. Allery*, 101 Wash. 2d 591, 682 P.2d 312 (1984); *State v. Anaya*, 438 A.2d 892 (Me. 1981).

9. Although it is not clear that the plurality intended to recognize the battered woman syndrome as a separate defense, the concurring and dissenting opinions interpreted the plurality's holding to do precisely that. Justice Zappala stated, "I would not address the second issue of whether a separate defense referred to as 'battered woman syndrome' is recognizable under the law of this Commonwealth." *Stonehouse*, 521 Pa. at 66, 555 A.2d at 785 (Zappala, J., concurring). Indeed, this observation suggests that the portion of the plurality opinion addressing the battered woman syndrome may not be binding, because only three of the seven justices actually agreed with that portion of the opinion.

10. *Id.* at 44-45, 555 A.2d at 774. Stonehouse and Welsh were members of the Pittsburgh police force. During the three years prior to the shooting, Welsh's harassment and abuse of Stonehouse became increasingly destructive. The abuse began with harassing phone calls that occurred at least twenty times a day and progressed to acts of vandalism in which Welsh regularly destroyed Stonehouse's clothing, apartment furnishings, and automobile. The harassment ended with Welsh's continuous surveillance of Stonehouse, assaults on her person, and threats of death. *Id.* at 44-45, 555 A.2d at 774-79.

## BATTERED WOMAN SYNDROME

March 17, 1983, after enduring three years of constant harassment, physical violence, and threats of death, Stonehouse shot and killed Welsh from the balcony of her apartment, two floors above Welsh.<sup>11</sup> At trial, Stonehouse's attorney made no attempt to introduce expert evidence regarding the battered woman syndrome.<sup>12</sup> The jury did not believe that Stonehouse acted in self-defense, and found her guilty of third degree murder.<sup>13</sup>

On appeal,<sup>14</sup> the Pennsylvania Superior Court held that the Commonwealth successfully disproved Stonehouse's claim of self-defense<sup>15</sup> because: (1) Welsh did not present a threat of imminent danger of death at the time of the shooting because he stood two floors below Stonehouse and was in retreat; (2) the continuing relationship that existed between Stonehouse and Welsh further indicated the unreasonableness of Stonehouse's self-defense claim; and (3) Stonehouse was an experienced police officer trained to solve problems without the use of unnecessary force.<sup>16</sup> The Superior Court also held that Stonehouse's trial counsel was not ineffective for failing to raise the battered woman syndrome because Pennsylvania did not recognize the syndrome as a viable defense in a case of homicide.<sup>17</sup>

Under current Pennsylvania law, deadly force may be used if the actor honestly *and* reasonably believes such force is necessary to protect against death or serious bodily injury.<sup>18</sup> Prior case law recog-

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11. *Id.* at 56, 555 A.2d at 780. Immediately prior to the shooting, Welsh broke into Stonehouse's apartment, held a gun within six inches of her face, and told her she was going to die. Welsh then beat Stonehouse with the gun. When Stonehouse managed to locate her own gun, Welsh disappeared. Stonehouse stated that she stepped onto her balcony and saw Welsh standing below pointing a gun up at her. Stonehouse claimed that she fired at Welsh in the mistaken belief that Welsh had shot first. *Id.* at 55-56, 555 A.2d at 779-80.

12. *Id.* at 61, 555 A.2d at 782.

13. *Id.* at 56-57, 555 A.2d at 780. Stonehouse was sentenced to serve 7-14 years in jail. *Id.* at 57, 555 A.2d at 780.

14. *Commonwealth v. Stonehouse*, 358 Pa. Super. 270, 517 A.2d 540 (1986).

15. The Superior Court set forth the following test for self-defense:

To establish self-defense, the following elements must be shown: (1) the slayer must have been free from fault in provoking or continuing the difficulty which resulted in the killing; (2) the slayer must have reasonably believed that he was in imminent danger of death, great bodily harm or some felony, and that there was necessity to kill in order to save himself therefrom; and, (3) the slayer must not have violated any duty of retreat to avoid the danger.

*Id.* at 278, 517 A.2d at 544 (quoting *Commonwealth v. Smith*, 484 Pa. 71, 76-77, 398 A.2d 948, 951 (1979)).

16. *Id.* at 278, 517 A.2d at 544.

17. *Id.* The court further stated, however, that its opinion should not be construed as a position on the validity of the battered woman syndrome. "We only state that in the present evolution of the law it is not a recognized defense to homicide." *Id.* at 278 n.1, 517 A.2d at 544 n.1.

18. See Comment, *The Battered Spouse Syndrome as a Defense to a Homicide Charge Under the Pennsylvania Crimes Code*, 26 VILL. L. REV. 105, 123-24 (1980).

nized that psychiatric testimony should be admitted to establish the defendant's honest, subjective belief of imminent danger.<sup>19</sup> Pennsylvania courts previously rejected the use of psychiatric testimony to prove the reasonableness of the defendant's belief, however, because the peculiarities of a given defendant are irrelevant to the Pennsylvania standard, which is objective.<sup>20</sup> Nevertheless, the Pennsylvania Supreme Court required courts to take into account special circumstances in analyzing the reasonableness of a wife's belief of imminent danger of death or serious bodily injury from her husband.<sup>21</sup> These special circumstances included a history of spousal abuse, the wife's familiarity with her husband's past behavior, and changes in the husband's behavior toward his wife immediately prior to the killing.<sup>22</sup>

The Pennsylvania Superior Court followed this holding in *Commonwealth v. Grove*,<sup>23</sup> in which an abused woman killed her husband while he was sleeping.<sup>24</sup> The court added, however, that the history of spousal abuse is merely one factor to be considered in determining the honesty and reasonableness of the accused's fear; it does not alter the requirement that the deadly force be "immediately necessary . . . on the present occasion"<sup>25</sup> in order to make self-defense an issue.<sup>26</sup> The court refused to extend the statutory limit on the use of deadly force simply because the defendant was a battered women.<sup>27</sup> In this context, the *Stonehouse* decision will likely have a great impact on the criminal prosecution of battered spouses. This is precisely the context in which admissibility of expert testimony regarding the battered woman syndrome has created such a controversy in other jurisdictions.

Although some courts have held that the battered woman syndrome is scientifically undeveloped and inconclusive, and therefore inadmissible as expert evidence,<sup>28</sup> the emerging position supports the

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19. *Id.* at 123.

20. *Id.*

21. *Commonwealth v. Watson*, 494 Pa. 467, 472-73, 431 A.2d 949, 952 (1981).

22. *Id.* (no issue was raised regarding the use of expert evidence to help the defendant establish a self-defense claim).

23. 363 Pa. Super. 328, 526 A.2d 369, *appeal denied*, 517 Pa. 630, 539 A.2d 810 (1987).

24. *Id.* at 331, 526 A.2d at 371.

25. 18 PA. CONS. STAT. ANN. § 505(a) (Purdon 1983).

26. *Grove*, 363 Pa. Super. at 336, 526 A.2d at 373.

27. *Id.* at 336, 526 A.2d at 373.

28. *See, e.g., State v. Thomas*, 66 Ohio St. 2d 518, 423 N.E.2d 137 (1981); *Burhle v. State*, 627 P.2d 1374 (Wyo. 1981). *See generally* Note, *The Battered Woman Syndrome and Self-Defense: A Legal and Empirical Dissent*, 72 VA. L. REV. 619 (1986) (criticizing methodology used by researchers of the battered woman syndrome).

## BATTERED WOMAN SYNDROME

use of such testimony as scientifically reliable and relevant to an accused's claim of self-defense.<sup>29</sup> The issue then becomes how the jury should consider such expert evidence.

This question is difficult to analyze because some courts have based decisions regarding the self-defense claims of battered women on fine semantic distinctions. In *State v. Kelly*,<sup>30</sup> for example, the court held that expert testimony could not be used to show that a battered woman might believe her life to be in danger when indeed it was not and when no reasonable person would have so believed.<sup>31</sup> The court stated that an expert could inform the jury that the defendant suffered from battered woman syndrome and could explain the syndrome in detail, relating its characteristics to the defendant, but only to assist the jury in determining the honesty and reasonableness of the defendant's belief.<sup>32</sup> The expert may explain how a battered defendant might reasonably fear harm yet remain with her husband,<sup>33</sup> but the expert may not usurp the jury's function of determining whether the defendant's actual belief was in fact reasonable.<sup>34</sup>

The *Stonehouse* court agreed that the jury must apply an objective standard, but altered the definition of that standard. If trial counsel had introduced evidence of the battered woman syndrome, the jury would have weighed *Stonehouse's* actions in light of how the reasonably prudent *battered woman* would have perceived and reacted to *Welsh's* behavior.<sup>35</sup> Although the court tried to maintain an objective standard, *Stonehouse* essentially creates a class for battered women that is separate from other defendants claiming self-defense.<sup>36</sup> The reasonable battered woman, not the reasonable man, is the measuring stick by which the jury is to determine the reasona-

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29. See, e.g., *State v. Hundley*, 236 Kan. 461, 693 P.2d 475 (1985); *State v. Kelly*, 97 N.J. 178, 478 A.2d 364 (1984).

30. 97 N.J. 178, 478 A.2d 364 (1984).

31. *Id.* at 204, 478 A.2d at 377.

32. *Id.* at 207, 478 A.2d at 378. Cf. *People v. Torres*, 128 Misc. 2d 129, 133, 488 N.Y.S.2d 358, 362 (N.Y. Sup. Ct. 1985) (expert testimony would assist jury in understanding unique pressures that are part and parcel of battered woman's life, and would enable jury to disregard prior conclusions as being common myths).

33. *Torres*, 128 Misc. 2d at 133, 488 N.Y.S.2d at 362.

34. *Id.* at 135, 488 N.Y.S.2d at 363. See also *Kelly*, 97 N.J. at 207, 478 A.2d at 378.

35. *Stonehouse*, 521 Pa. at 65, 555 A.2d at 784. Cf. *State v. Hundley*, 236 Kan. 461, 467, 693 P.2d 475, 479 (1985) (supporting use of objective test of the reasonably prudent battered woman).

36. Cf. Note, *The Battered Woman Syndrome and Self-Defense: A Legal and Empirical Dissent*, 72 VA. L. REV. 619, 626 n.30 (citing Vaughn & Moore, *The Battered Spouse Defense in Kentucky*, 10 N. KY. L. REV. 399, 399 (1983)) (suggesting that defense of battered women is slowly developing a unique style that is similar to, but distinct from, self-defense and diminished capacity).

bleness of the defendant's beliefs and actions. Although this standard does not take into consideration the individual defendant's idiosyncrasies,<sup>37</sup> it does recognize the uniqueness of battered women as a class and offers them a tailor-made defense.<sup>38</sup>

The court did not merely uphold the admissibility of expert testimony on the battered woman syndrome, however.<sup>39</sup> The court stated that when a pattern of battering has been shown, the battered woman syndrome *must* be presented to the jury through the introduction of relevant evidence.<sup>40</sup> This in itself is a giant step away from the prior law of Pennsylvania.<sup>41</sup> This requirement is also important because it forces a defendant's counsel to pursue the battered woman syndrome as a defense or risk being branded ineffective by the courts of Pennsylvania.

This definitive language distinguishes the *Stonehouse* decision from prior cases that seem similar in theory but are actually dissimilar in effect. One such case is *State v. Stewart*,<sup>42</sup> in which the Supreme Court of Kansas overturned a jury's finding that a battered woman acted in self-defense when she killed her sleeping husband.<sup>43</sup> The *Stewart* court approved the reasonably prudent battered wife test to measure the reasonableness of the defendant's belief of imminent danger in asserting self-defense.<sup>44</sup> The court added, however, that the law of self-defense is no more generous to a battered woman than to any other defendant claiming self-defense.<sup>45</sup> Battered woman syndrome is not a defense to murder,<sup>46</sup> and there must be a showing of imminent threat before a jury will be instructed on self-defense.<sup>47</sup> For this reason, the court concluded that an instruction on self-defense was not warranted.<sup>48</sup> To hold that it could be reasonable to kill a sleeping victim would be to permit the execution of an abuser for

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37. See *State v. Stewart*, 243 Kan. 639, 659, 763 P.2d 572, 585 (1988) (Herd, J., dissenting).

38. See *supra* note 36 and accompanying text.

39. *Stonehouse*, 521 Pa. at 61, 555 A.2d at 783.

40. *Id.* at 66, 555 A.2d at 785. The plurality reasoned that expert testimony was essential to the fair defense of a battered defendant "because of the unique psychological condition of the battered woman and because of the myths commonly held about battered women." *Id.*, 555 A.2d at 785.

41. See *supra* notes 18-26 and accompanying text.

42. 243 Kan. 639, 763 P.2d 572 (1988).

43. *Id.* at 649, 763 P.2d at 579.

44. *Id.*

45. *Id.*

46. *Id.* at 646, 763 P.2d at 577.

47. *Stewart*, 243 Kan. at 646, 763 P.2d at 577. See also *State v. Norman*, 324 N.C. 253, 378 S.E.2d 8 (1989); *Commonwealth v. Grove*, 363 Pa. Super. 328, 526 A.2d 369, *appeal denied*, 517 Pa. 630, 539 A.2d 810 (1987).

48. *Stewart*, 243 Kan. at 648, 763 P.2d at 579.

## BATTERED WOMAN SYNDROME

past or future acts.<sup>49</sup>

If the *Stonehouse* rule is applied to the facts of *Stewart*, it is not clear that the Pennsylvania Supreme Court would reach the same conclusion as its Kansas counterpart. The court, in *Commonwealth v. Grove*,<sup>50</sup> stated that the use of deadly force must be justified by a showing that the deadly force is "immediately necessary . . . on the present occasion."<sup>51</sup> The *Stonehouse* court stated, however, that "expert testimony regarding battered women is admissible as the basis for proving justification in the use of deadly force where the defendant has been shown to be a victim of psychological and physical abuse."<sup>52</sup> This language does not clearly indicate that the *Stonehouse* plurality intends the battered woman syndrome to operate as a separate defense.<sup>53</sup> It does appear to suggest, however, that if the evidence presented at trial reveals the defendant to be a victim of abuse, the jury should be allowed to decide, based on expert testimony regarding the battered woman syndrome, whether the defendant reasonably believed her use of deadly force to be immediately necessary.<sup>54</sup> This contradicts the results in *Stewart* and *Grove*, in which the courts determined the necessity of deadly force *before* allowing submission of the expert evidence to the jury.<sup>55</sup>

Although the ramifications of *Stonehouse* are currently unclear, the decision is certain to have an immediate impact by causing a significant increase in the number of defendants claiming self-defense. The effects will be widespread, and will not be limited to Pennsylvania. The plurality's language suggests that the principles of justification may be extended in certain cases to allow a jury to condone the offensive use of deadly force in self-defense, such as when a battered woman kills her sleeping husband. The potential ramifications of such an interpretation of this decision will require future litigation in order to establish some control over the power of the jury in the criminal justice system. Courts must set limits to ensure that the imminence requirement of the self-defense statute is not sidestepped by a jury sympathetic to an abused defendant's pitiable

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49. *Id.*

50. 363 Pa. Super. 328, 526 A.2d 369, *appeal denied*, 517 Pa. 630, 539 A.2d 810 (1987).

51. *See supra* notes 23-26 and accompanying text.

52. *Stonehouse*, 521 Pa. at 61, 555 A.2d at 783.

53. *See supra* note 9 and accompanying text.

54. "Where a person believes she must kill or be killed and there is the slightest basis in fact for this belief, it is a question for the jury as to whether the danger was imminent." *Stewart*, 243 Kan. at 659, 763 P.2d at 585 (Herd, J., dissenting).

55. *See supra* notes 24-26, 42-49 and accompanying text.



circumstances. If courts do not beware, the jury may allow any defendant who has suffered some anguish at the hands of his or her victim to literally get away with murder.

*Gayle P. Lafferty*