

Editor:

There is an increasingly problematic situation in Georgia regarding difficulty in rebutting defense testimony on battered person syndrome (BPS).¹ The difficulty arises from lack of access to defendants who raise BPS and introduce expert testimony to support the claim, yet refuse to permit an independent examination by the state.

Case

A woman charged with murder after her husband's body was found in his car with a gunshot wound to the head gave three conflicting accounts of the events. Expert testimony during the trial indicated that even the final account was probably incorrect.

To justify a claim of self-defense, the defense introduced expert testimony that the accused had battered person syndrome due to years of severe physical and verbal abuse. The expert testified that the victim, a professional boxer, had repeatedly beaten the defendant, using variously his fists, a pan, a fan, and a trophy, and that the victim had stabbed the defendant multiple times with a knife. One beating was said to be so severe that the defendant was taken to the hospital where she had a miscarriage. Despite claims of multiple black eyes, a broken nose, and knife stabbings, there were no medical reports of any injuries; no report was available from the hospital where she claimed to have miscarried; and although child protective services had been involved on multiple occasions when they would have had direct contact with the defendant, there were no reports from social service workers, teachers, or counselors that she had sustained any physical injuries. Further, the defendant (and victim) had called police on several occasions to report physical and verbal abuse, but on only one occasion was there evidence of abuse, which consisted of bruises.

The expert testified that she based her opinions on information from the defendant as well as information from collateral sources whom she used to check the validity of the defendant's reports. These sources

were either family members, some of whom had submitted statements that they had not witnessed physical violence from the victim toward the defendant, or others selected by the defendant. The expert testified that she administered self-report questionnaires that verified the presence of PTSD and ruled out malingering.

I was denied access to the defendant before the trial but was allowed to observe testimony of the defendant and the defense's expert. I testified that the lack of objective evidence of injury was inconsistent with the defendant's claims of severe repeated physical trauma that would have caused her to fear further physical harm or death from the victim, a fear that, when coupled with the cycle of violence and learned helplessness in the defendant, would have formed a credible basis for a finding of BPS, which might have bolstered a claim of self-defense.

During deliberations, the jury asked to view videotapes of the accused's several statements. The defendant decided at this point to enter a plea of guilty to voluntary manslaughter. After the trial, several jurors admitted that they were impressed and persuaded by the defense expert and had voted for acquittal.

Discussion

I have testified in five additional cases involving probable false battered person syndrome. In five of the six cases, I was not allowed to examine the defendant. One woman was acquitted despite her testimony that she had undergone no physical violence at the hands of her husband-victim. In this case I was not allowed to examine the defendant and was not allowed to testify to "clinical issues" (e.g., as to whether the defendant had PTSD as a result of having been battered).

Unlike the situation in Ohio, as reported by Kimmel and Friedman,² there is no decision in Georgia upholding the right of the state to an independent examination when a defendant raises BPS and introduces expert testimony, based on an examination of the defendant, supporting the claim. Thus there is essentially unrebutted testimony from a defense expert on whether the defendant's actions might have been justified on the basis of BPS.

References

1. Russell BL: Battered Woman Syndrome as a Legal Defense: History, Effectiveness and Implications. Jefferson, NC: McFarland & Company, 2010
2. Kimmel S, Friedman SH: Limitations of expert testimony on battered woman syndrome. *J Am Acad Psychiatry Law* 30:585–7, 2011

Richard L. Elliott, MD, PhD
Professor and Director, Medical Ethics
Mercer University School of Medicine
Macon, GA

Disclosures of financial or other potential conflicts of interest: None.