

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA

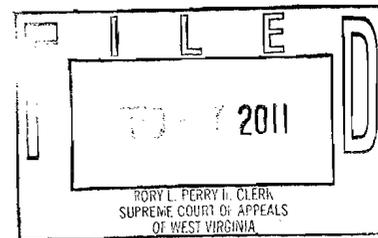
v.

Supreme Court No. 101179

Circuit Court No. 09-F-396  
(Kanawha County)

RHONDA K. STEWART,

Petitioner.



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BRIEF OF AMICI CURIAE--THE WEST VIRGINIA COALITION AGAINST  
DOMESTIC VIOLENCE AND THE NATIONAL CLEARINGHOUSE FOR THE  
DEFENSE OF BATTERED WOMEN--IN SUPPORT OF RHONDA K. STEWART'S  
PETITION FOR REVERSAL OF THE TRIAL COURT'S RULING

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**Other Authorities**

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## STATEMENT OF AMICI CURIAE<sup>1</sup>

Amici curiae are the West Virginia Coalition Against Domestic Violence (WVCADV) and the National Clearinghouse for the Defense of Battered Women (NCDBW), organizations that work to improve the responses of communities and institutions to victims of battering and their children, and to increase the awareness of the public and professionals, such as attorneys and the courts, about the realities of battering and its effects. This brief is submitted pursuant to the West Virginia Rules of Appellate Procedure, Rule 30 (2010), provided that this Court grants Amici's motion for leave to file.

Amici have special interest in the need for jurors to be able to hear about, and fully consider, the impact and effects of battering on defendants who are victims of domestic violence, including (and sometimes especially) in cases that do not involve a self-defense claim. As organizations that work on behalf of battered and sexually assaulted victims, and that are committed to justice, Amici are greatly concerned that the jurors in Ms. Stewart's case did not have the opportunity to hear Ms. Stewart's full story, which included her victimization by the decedent. Without this essential information about Ms. Stewart's experiences of abuse, the jurors lacked the factual knowledge they needed to fairly evaluate Ms. Stewart's claim that she went to the hospital to kill herself and that the gun went off accidentally. Because expert and lay testimony about battering were precluded, the jurors were forced to assess Ms. Stewart's state of mind at the time of the incident in a relative vacuum, one that contained only the State's version of the case. As a result, Amici strongly believe that Ms. Stewart was denied her due process

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the Amici Curiae or its counsel made a monetary contribution to its preparation or submission.

right to present a defense. Amici respectfully request that Rhonda Stewart's conviction and sentence be reversed and that her case be remanded to the trial court for a new trial.

The individual statements of interest of the Amici curiae are included below.

The **West Virginia Coalition Against Domestic Violence** (WVCADV) is a membership, statewide nonprofit organization committed to ending personal and institutional violence in the lives of women, children and men. WVCADV's statewide Coalition Office coordinates a strong network of shared resources that support policy analysis and social change work in the broad and expansive area of violence against women issues. These efforts provide statewide systems and local communities viable options and frameworks in responding meaningfully to the needs of victims of domestic violence.

The Coalition's fourteen member programs provide direct services to victims and operate outreach offices throughout the state. Direct service providers respond to the needs of victims on a 24-hour basis by providing the following services: safe emergency housing, case management, peer counseling and group support, information and referral, advocacy, and victims' rights information. Each program's service area varies from two to eight counties and provides direct services through residential and outreach centers. The Coalition and member programs work in partnership to integrate experience, knowledge, and skill toward efforts to transform social norms and public policy on issues related to violence against women.

The **National Clearinghouse for the Defense of Battered Women**, founded in 1987, works to ensure justice for battered women charged with crimes, where a history of abuse is relevant to the woman's legal claim or defense. The National Clearinghouse is a national, nonprofit organization, based in Pennsylvania, which provides technical assistance to battered women defendants, defense attorneys, battered women's advocates, expert witnesses, and others.

The National Clearinghouse works on a wide variety of cases, including those involving self-defense/defense of others, coercion and duress, and cases in which the history of abuse helps explain the defendant's behavior, reduce culpability and/or mitigate punishment.

The National Clearinghouse does not advocate special legal rules for battered women charged with crimes. Rather, it believes that all defendants, including battered women defendants, should receive the full benefit of all rights and protections designed to safeguard fair trials, accurate verdicts, and appropriate and proportionate sentences. To this end, NCDBW seeks to educate those involved in the criminal justice system about battering and its effects, so that legal decisions that affect battered women defendants are not based on misconceptions.

## **DISCUSSION OF LAW**

THE EXCLUSION OF LAY AND EXPERT EVIDENCE ON BATTERING VIOLATED MS. STEWART'S RIGHT TO DUE PROCESS BECAUSE IT DEPRIVED THE JURY OF RELEVANT, NECESSARY, AND CLEARLY ADMISSIBLE INFORMATION WITH WHICH TO ACCURATELY ASSESS HER DEFENSE AND STATE OF MIND.

Rhonda Stewart was physically, sexually, and psychologically abused by her husband, Sammy Stewart, throughout the course of their thirty-seven-year marriage. Her experiences of abuse are not disputed. In fact, at the sentencing hearing, the judge specifically noted that Ms. Stewart was abused "throughout her life" by her husband; he acknowledges the abuse of their two daughters as well. (3/2/10 Sentencing Transcript 11).

On the day of the incident, Ms. Stewart's husband once again behaved in extremely cruel and hurtful ways towards his family. He rudely ordered Ms. Stewart and their daughter, Micky, from the room in the hospital where he was being treated. (Trial Transcript (Tr.) 369, 538-539). After witnessing Micky being hurt once again, Ms. Stewart concluded that her husband's cruel treatment of her and her children would only stop if she killed herself. (Tr. 541, 543). Intending to kill herself in front of the decedent, she went home, retrieved a gun, and went back to the hospital. (Tr. 540, 544). When Ms. Stewart nudged the decedent in order to wake him, the gun went off. Sammy Stewart was killed by a bullet that Ms. Stewart intended for herself. (Tr. 544 ).

Ms. Stewart was convicted of first-degree murder and sentenced to life with mercy. In their efforts to show that Ms. Stewart intended to kill her husband, the prosecutor relied on a series of inferences that purported to show Ms. Stewart's state of mind. Available and reliable lay and expert evidence about battering and its effects that would have challenged these inferences was wholly excluded from her defense. As a result of this omission and other grave errors made at the trial level, Ms. Stewart was prevented from presenting her defense.

The jury was asked to evaluate Ms. Stewart's actions and intentions on the day of the incident in order to draw inferences that would support a finding of specific intent. But they were deprived of information that was critical to this assessment – a full understanding of the history and effects of the abuse and control that Petitioner suffered at the hands of her husband. Because they did not hear this evidence, the jury was left without information necessary to fairly assess Ms. Stewart's conduct on the day of the incident, and they were unable to fully and accurately contextualize and evaluate Ms. Stewart's own testimony. As a result, the jury was deprived of crucial evidence that could have raised doubt about the inferences of guilt on which the conviction of first-degree murder was based.

Testimony related to the effects of battering was relevant to Ms. Stewart's state of mind, and could have helped rebut the state's purported proof of malice and premeditation. Without this information, the jury was left with absolutely no evidence with which to examine Ms. Stewart's claim that she went back to the hospital to commit suicide, and that the killing of her husband was a tragic accident. They were left with no reason to believe Ms. Stewart's testimony about her state of mind at the time of the incident. Without information about the realities of battered women's experiences in general, and about Ms. Stewart's experiences of abuse specifically, the jury could not accurately connect the dots between Ms. Stewart's desire to protect and shield her family at any cost to herself, the decedent's behavior towards her and her daughter on the day of the incident, and Ms. Stewart's decision to commit suicide. Courts, including those in West Virginia, social scientists, and legal experts recognize that specialized education on the effects of battering is often critical to enable a jury to fairly assess the defendant's conduct, her state of mind, and the issues in the case.

Evidence of battering and its effects was directly relevant to, and would have corroborated, Ms. Stewart's claim that she was going to the hospital to commit suicide. Without the lay and

expert evidence about her experiences of abuse, the jury was forced to evaluate her claims in a relative vacuum that contained only the prosecutor's version of events. As a result, the jury didn't have the full story; they didn't have the information necessary to fully evaluate Ms. Stewart's claim that her husband's death was an accident. The result of the exclusion of the expert and lay evidence of battering and its effects was that Ms. Stewart was deprived of her right to present her defense. For these reasons, Amici respectfully request that this Court reverse the trial court's ruling, and remand the case for a new trial.

**1. When a defendant's experiences of being abused are relevant to her conduct and state of mind, lay and expert testimony on battering is admissible, and is essential for a fair and reliable assessment of the evidence, whether or not the case involves a claim of self-defense.**

The admissibility of evidence of battering and its effects in West Virginia is well-established. "For more than twenty-five years this Court has recognized the significance of permitting a battered individual to introduce evidence about the abuse suffered 'in order that the jury may fully evaluate and consider the defendant's mental state at the time of the commission of the offense'" *State v. Whittaker*, 221 W. Va. 117, 134, 650 S.E.2d 216, 233 (2007) (quoting *State v. Dozier*, 163 W.Va. 192, 197, 255 S.E.2d 552, 555 (1979)). Equally clear is this Court's repeated acknowledgement that this evidence is not limited to cases involving claims of self-defense.<sup>2</sup> On the contrary, the West Virginia Supreme Court understood very early the importance of evidence of battering and its effects<sup>3</sup> beyond the context of self-defense. Over twenty-five years ago, in *State v.*

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<sup>2</sup> In their motion *in limine* to exclude any evidence of "battered women's syndrome," the prosecution repeatedly asserted that the law in West Virginia limited such evidence to cases involving self-defense. (Tr. 48, 52). After excluding evidence of battering and its effects, the trial judge stated "I am [sic] pretty cleanly ruled out that self-defense argument in this case." (Tr. 83).

<sup>3</sup> The term "battering and its effects" describes lay and expert evidence regarding a defendant's experiences of abuse, including "the nature and dynamics of battering, the effects of violence, battered women's responses to violence, and the social and psychological context in which the violence occurs." Sue Osthoff & Holly Maguigan, *Explaining Without Pathologizing: Testimony on Battering and its Effects*, in *Current Controversies in Domestic Violence*, Second Edition 225, 231 (Donileen R. Loseke, Richard J. Gelles & Mary M. Cavanaugh eds., 2005). The

*Lambert*, a case in which the defendant claimed that she had been coerced by her abusive husband into committing welfare fraud, this Court noted that evidence of battering was admissible and stated that the “battered spouse syndrome” could “go to negate criminal intent.” 173 W. Va. 60, 64, 312 S.E.2d 31, 35 (1984). Much more recently, this Court went out of its way to hold that evidence of battering and its effects is specifically admissible outside the context of self-defense. In *State v. Harden*, this Court reversed the murder conviction of the defendant for the shooting death of her abusive husband after a “night of domestic terror,” finding that the prosecution did not disprove self-defense beyond a reasonable doubt. 223 W. Va. 796, 814, 679 S.E.2d 628, 646 (2009). After discussing the admissibility of evidence of battering in self-defense cases, this Court stated:

(w)e further hold that where it is determined that the defendant's actions were not reasonably made in self-defense, evidence that the decedent had abused or threatened the life of the defendant is nonetheless relevant and may negate or tend to negate a necessary element of the offense(s) charged, such as malice or intent.

*Id.* at 805, 679 S.E.2d at 637; accord *State v. Wyatt*, 198 W. Va. 530; 482 S.E.2d 147 (1996) As *Harden* reconfirmed, this Court has long understood that evidence of battering and its effects is admissible and relevant in a variety of cases and situations.

Despite the clarity of state law on this issue, the record in this case demonstrates confusion about well-settled principles concerning evidence of battering. During the trial, the prosecutor repeatedly mischaracterized the circumstances under which lay and expert testimony on battering is admissible, as well as the content and purpose of expert testimony on battering. It is extremely likely that these repeated mischaracterizations contributed to the trial court’s erroneous decision to exclude such testimony from evidence. See discussion *supra* note 3.

For example, the prosecution stated that one of their primary reasons for wanting this

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term “battering and its effects” is a more accurate and inclusive term for what was initially labeled “battered women’s syndrome,” and is now widely used by courts, legislatures, and in the scholarly literature. However, it must be noted that “battered women’s syndrome” still appears frequently in statutes and case law.

evidence excluded from trial is that the defendant was never “diagnosed” with “battered woman’s syndrome.” (Tr. 51, 76). Further, the trial judge stated that

The only two ways that the abuse would get in is if there was a diagnosable abuse spouse syndrome.... There isn’t one, either one of the experts. Or secondly, that it is self-defense. There isn’t any evidence of self defense. No evidence of self-defense in this case.

(Tr. 83).

Dr. Clayman evaluated Ms. Stewart and determined she “has a long history as a victim of verbal, emotional, physical, and sexual spousal abuse” and that she “fits the model of a battered woman” and is a “stereotyp[ical] battered spouse.” (Tr. 76, 50, 46-47). The fact that Dr. Clayman did not make a formal diagnosis is not germane, as the characterization of this evidence as proof of pathology or a disease is inaccurate. MARY ANN DUTTON, VAWNET, THE NAT’L ONLINE RES. CTR. ON VIOLENCE AGAINST WOMEN, UPDATE OF THE “BATTERED WOMAN SYNDROME” CRITIQUE 1, 4 (2009), [http://new.vawnet.org/category/Main\\_Doc.php?docid=2061](http://new.vawnet.org/category/Main_Doc.php?docid=2061) [hereinafter Dutton, *Update*].

Over time, understanding of evidence about battering and its effects by social scientists and the courts has changed and evolved. Today researchers, advocates and experts largely describe battering and its effects not as a syndrome, pathology, or something that requires a diagnosis, but as a category of social framework evidence that encapsulates “the nature and dynamics of battering, the effects of violence, battered women’s responses to violence, and the social and psychological context in which domestic violence occurs.” Osthoff & Maguigan, *supra* note 4, at 231.

Expert testimony [on battering and its effects] may cover a wide range of topics, such as domestic violence and abuse, characteristics of abusers, the emotional and physical effects of violence and abuse on women and children exposed to domestic violence, women’s efforts to protect herself and her children, women’s use of strategies to cope with domestic violence, including the use and responsiveness of community resources, the impact of domestic violence on economic stability,

employment, and social and family relationships and the influence of contextual factors (e.g., race and ethnicity, economic status, prior trauma history, alcohol and substance abuse, physical and mental health status) on battering and the effects of battering.

Dutton, *Update* at 4.

Both expert and lay testimony about battering and its impact and effects are often critical in providing jurors with this needed social context. Not only was the defense prohibited from offering expert evidence about battering and its effects, including evidence about Ms. Stewart's own experiences of abuse, but the court also ruled that her fact witnesses were prohibited from presenting evidence about her experiences of abuse as well. (Tr. 590). In combination, this evidence would have provided the jurors with a much better understanding of Ms. Stewart's intentions and actions on the day of the incident.

Courts around the country have repeatedly recognized that, when relevant evidence of battering and its effects is excluded from consideration by the jury, grave injustice can result. In fact, the evidentiary rules of virtually every jurisdiction have long admitted evidence of a history of abuse between the parties when relevant to the issues in the case.<sup>4</sup> For the past several decades, courts around the country have increasingly recognized that both lay and expert testimony on battering and its effects are often essential for a just outcome. *See* discussion *infra* note 6.

The rationale of courts and legislatures for admitting evidence about the history of abuse in criminal trials of battered women is that jurors cannot understand or evaluate an abused person's claim or defense without fully understanding her experiences of abuse and history with her abusive partner. In other words, evidence about battering provides the *context* necessary for the jury to

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<sup>4</sup> *See, e.g.,* Holly Maguigan, *Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals*, 140 U. PA. L. REV. 379, 408, 421, 422 (1991) (noting that overwhelming majority of jurisdictions provide for admission of "social context" evidence of decedent's abusive conduct toward defendant and toward third persons on theory that it is relevant to defendant's state of mind).

appraise the defense.<sup>5</sup>

Likewise, expert testimony on battering and its effects is introduced in criminal trials to “show the trier of fact the context of a defendant’s actions.” Holly Maguigan, *supra* note 5, at 426. Expert testimony educates the jury as to the *cumulative effects* of the abuse on the defendant and provides information that is not within the understanding of the average juror regarding the defendant’s experiences of being abused, as well as the impact, effects, and consequences of being abused.

It is now widely recognized that such evidence is relevant to various other types of claims and defenses as well. Evidence of battering and its effects might be offered for a wide variety of reasons, including to negate the prosecution’s proof of intent, to support a defense of duress, to explain why a victim might recant her allegations of abuse, to rebut aggravating factors, to explain the seemingly inexplicable conduct of a battered person, and to corroborate a battered woman’s testimony.<sup>6</sup> Recognizing the importance of understanding the range of uses of evidence about

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<sup>5</sup> The National Institute of Justice/Department of Justice reported on and confirmed the validity and importance of evidence about battering in criminal trials. NATIONAL INSTITUTE OF JUSTICE, U.S. DEP’T OF JUSTICE, THE VALIDITY AND USE OF EVIDENCE CONCERNING BATTERING AND ITS EFFECTS IN CRIMINAL TRIALS: REPORT RESPONDING TO SECTION 40507 OF THE VIOLENCE AGAINST WOMEN ACT, NCJ 160972 (May 1996), § 1, at 2-4. This report concluded, in part, that “[e]vidence and testimony about battering and its effects provide information germane to factfinders’ deliberations in criminal cases involving battered women.” *Id.* § I, at 22. In particular, “an extensive body of scientific and clinical knowledge” strongly supports the validity and relevance of battering as a factor in the reactions and behavior of victims of domestic violence. *Id.* at Foreword, at ii.

<sup>6</sup> *Ceballos v. US*, 593 F.Supp.2d 1054, 1060 (S.D. Iowa 2009) (finding evidence of battering relevant in duress case if it might show whether the defendant committed act voluntarily); *Wonnum v. State*, 942 A.2d 569, 573 (Del. 2007) (overruling lower court’s decision to exclude defendant’s expert report which included evidence of past abuse because report was relevant to duress defense as it offered relevant explanation of why defendant did not “intentionally and recklessly” place herself in situation and because report could have explained why the victim wouldn’t believe she could ignore the demands of batterer); *State v. Townsend*, 186 N.J. 473, 491; 897 A.2d 316, 327 (2006) (allowing an expert to testify about traits of battered victim, even though victim was never diagnosed as suffering from “the syndrome” because average juror would not otherwise understand actions of that woman); *Pickle v. State*, 280 Ga.App 821, 827, 635 S.E.2d 197, 203-05 (2006) (finding battered person syndrome evidence admissible to negate specific intent); *State v. B.H.*, 183 N.J. 171, 183, 870 A.2d 273, 279 (2005) (holding that evidence about battered women is “useful in explaining conduct exhibited by battered women toward their abusers”); *Harris v. State*, 947 So.2d 1079, 1130 (Ala. Crim. App. 2004), *adhered to on denial of rehearing* (May 27, 2005), *cert. denied* (Oct 21, 2005) (finding that omitted evidence of abuse would have rebutted, in part, certain aggravating factors at sentencing phase of trial); *People v. Brown*, 33 Cal. 4th 892, 904-08, 94 P.3d 574, 756-60 (2004) (finding no error in allowing expert testimony on battering by prosecution to explain complainant’s

battering and its effects in criminal trials, Congress asked for a report on the subject back in 1996.

See NIJ, *supra* note 6, § 1, at 2-4.

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recantation and other behaviors even though there were no prior instances of abuse and that expert testimony was also independently admissible under general rule authorizing helpful expert testimony because it explained tendency of victims of domestic violence to recant and other conduct that might otherwise have led to incorrect assumptions); *Mott v. Stewart*, 2002 U.S. Dist. LEXIS 23165, at \*20-21 (D. Ariz. 2002) (granting battered woman's petition for habeas corpus because trial court erred by precluding expert on battering offered to negate intent element of child abuse offense); *Marley v. State*, 747 N.E.2d 1123, 1128-29 (Ind. 2001) (affirming that expert testimony regarding battering can be used in child neglect case to negate intent); *Porter v. State*, 243 Ga.App. 498, 503-05, 532 S.E.2d 407, 413-14 (2000) *cert. denied* (Sep 29, 2000) (holding that expert testimony regarding battering of defendant in child abuse case should have been admitted so that the jury could better understand defendant's actions); *United States v. Ramos-Oseguera*, 120 F.3d 1028 (9<sup>th</sup> Cir. 1997) (allowing expert testimony of battering to support duress claim in federal case); *State v. Williams*, 132 Wash.2d 248, 259, 937 P.2d 1052, 1058 (1997) (allowing expert testimony regarding duress defense in a welfare fraud case because the testimony was important for jury's understanding of defendant's actions); *Carnahan v. State*, 681 N.E.2d 1164, 1167 (Ind. App. 1997) (allowing expert testimony to explain why a prosecution witness who was a victim of domestic abuse might recant an allegation of abuse); *Barrett v. State*, 675 N.E.2d 1112, 1116-17 (Ind. App. 1996), *superseded by statute*; *United States v. Marengi*, 893 F. Supp. 85, 96 (D. Me. 1995) (finding no reason to preclude expert testimony in duress cases if the testimony is admissible in self-defense cases, explaining that expert testimony on battering is relevant to battered woman's duress defense because it will help jury understand reasonableness of actions and further "to [explain] 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"); *United States v. Brown*, 891 F. Supp. 1501 (D. Kan. 1995) (finding expert testimony on battering admissible to support duress defense to drug charges); *State v. Freeney*, 228 Conn. 582, 590; 637 A.2d 1088, 1092 (1994) (affirming that expert testimony was properly used to explain behavior of kidnapping victim); *State v. Cababag*, 9 Haw.App. 496, 507, 850 P.2d 716, 722 (1993) (allowing the testimony of an expert to explain the seemingly unusual actions of a victim which would not otherwise have been understood by the jurors); *State v. Borrelli*, 227 Conn. 153, 171-72; 629 A.2d 1105, 1114-15 (1993) (allowing expert testimony to explain that "victim's recantation was a pattern of typical behavior consistent with" being a victim of battering and noting that expert testimony could be helpful to jury when determining the credibility of victim); *People v. Romero*, 13 Cal.Rptr.2d 332, 338-40 (1992), *rev'd on other grounds*, 35 Cal.Rptr.2d 270, 883 P.2d 388 (1994) (holding that expert testimony about battering is admissible for duress claim and "relevant to the woman's credibility"); *Dunn v. Roberts*, 963 F.2d 308, 314 (10<sup>th</sup> Cir. 1992) (finding denial of funds for expert on battering violated due process because battering was relevant to negate the specific intent element of the aiding and abetting statute where defendant charged as conspirator with batterer in killing third person); *United States v. Peralta*, 941 F.2d 1003, 1010 (8<sup>th</sup> Cir. 1991) (allowing expert testimony regarding reactions of hostages to explain victims' conduct after kidnapping); *Arcoren v. United States*, 929 F.2d 1235, 1240 (8<sup>th</sup> Cir. 1991) (permitting "battered woman syndrome" evidence by state to explain battered woman's recantation of abuse claimed in her original police report); *Fennell v. Goolsby*, 630 F.Supp. 451, 459-61 (E.D.Pa. 1985) (finding on federal habeas that defendant who killed her husband six months after separation should have been allowed to have an expert testify about battering because it might have "corroborated [her] testimony and supported her credibility" concerning her mental state, and helped explain "why she remained with her husband for so many years"); *People v. Minnis*, 118 Ill. App. 3d 345, 357-57, 455 N.E.2d 209, 217-18 (1983) (expert testimony admissible to explain battered woman defendant's conduct, not only at time of homicide, but also afterwards in dismembering abuser, to rebut state's interpretation as showing consciousness of guilt); *cf. Commonwealth v. Pike*, 431 Mass. 212, 221-22, 726 N.E.2d 940, 947-48 (2000) (acknowledging that expert testimony concerning battered woman syndrome has many purposes, such as explaining erratic behavior, explaining why statements to police were not made voluntarily, negating specific intent, and further that "evidence of battered woman syndrome may constitute 'newly discovered' evidence, even though the condition may have existed prior to, or at the time of, trial" even though in this case defendant was not found credible by the judge); *United States v. Rouse*, 168 F.3d 1371 (D.C. Cir. 1999) (ruling newly discovered evidence that defendant suffered abuse from her codefendant/batterer, including expert testimony, was relevant to defense of fraud charge but not grounds for relief here since trial court made credibility determination).

- 2. The excluded lay and expert evidence on battering and its effects was extremely relevant as it would have given the jury information necessary to evaluate Ms. Stewart's claim that she was suicidal, offered explanations for her seemingly inexplicable conduct, and helped to negate the prosecution's arguments about Ms. Stewart's mens rea.**

When the trial court excluded the lay and expert evidence of Ms. Stewart's experiences of abuse, Ms. Stewart was deprived of the right to present her defense.<sup>7</sup> In the present case, the jury wasn't allowed to hear the facts and circumstances of her life which supported Ms. Stewart's defense that the killing was an accident, including the brutal and horrendous experiences of abuse that Ms. Stewart had been subjected to throughout the course of her marriage. Without this information, Ms. Stewart's claim that she went to the hospital to kill herself must have rung quite hollow. It was impossible for the jury to evaluate her claim of suicidal intention. In short, had Ms. Stewart been allowed to present evidence about her experiences of battering, the jury would have had a basis on which to understand and believe her claim that she intended to kill only herself, and that the killing of the decedent was an accident.

An expert on battering and its effects could have educated the jury about the correlation between experiencing abuse and suicidality. Researchers have found a significant relationship between domestic violence, suicide ideation, and suicide attempt. Amy S. Leiner et al., *Intimate Partner Violence, Psychological Distress and Suicidality: A Path Model Using Data from African-American Women Seeking Care in an Urban Emergency Department*, 23 J. FAM. VIOLENCE 473 (2008). For instance, findings from a research study with a community sample of

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<sup>7</sup> The United States Supreme Court has found that due process requires that defendants be allowed to put forth a full and complete defense, including the right to present all relevant evidence, subject to reasonable evidentiary rules. See, e.g., *Crane v. Kentucky*, 476 U.S. 683, 690 (1986). In addition, while the West Virginia Rule of Evidence 403 allows relevant evidence to be excluded if its probative value is outweighed by the danger of prejudice, is cumulative, is a waste of time, is confusing, or is misleading, that is not the case here. The judge stated that he omitted the evidence because this isn't a self-defense case, and because there is no diagnosis of "Battered Woman Syndrome." (Tr. 83). These reasons for excluding the evidence were based on a complete misunderstanding of the content and purpose of evidence of battering and its effects, discussed *supra*. However, the trial judge conceded the relevance of evidence of battering and its effects when he suggested that this evidence should be presented as part of

women found that women who had been abused were four times more likely to attempt suicide than those with no such history of abuse. Jeanne McCauley et al., *Clinical Characteristics of Women with a History of Childhood Abuse: Unhealed Wounds*, 277 J. AM. MED. ASS'N 1362 (1997). Another team of researchers found that among hospitalized women, those who had previously identified themselves as abused and filed for a protection order against their abusive partners were four times more likely to have attempted suicide than those who had never identified themselves as abused by seeking such an order. Mary A. Kernic, Marsha E. Wolf, & Victoria Holt, *Rates And Relative Risk Of Hospital Admission Among Women In Violent Intimate Partner Relationships*, 90 AM. J. OF PUB. HEALTH 1416, 1418 (2000).

Further, expert testimony could have given the jury information with which they could have evaluated the testimony about Ms. Stewart's overall emotional state and its connection with her claim that she intended suicide on the day in question. For example, one researcher interviewed battered women who experienced coercive control<sup>8</sup> from their partners. Participants reported behaviors of self-harming and suicide attempts as a result of their abuse. "Attempting suicide was, for some of these women, a release valve with which to expel the very negative feelings they had about themselves as a result of the abuse." Emma Williamson, *Living in the World of the Domestic Violence Perpetrator: Negotiating the Unreality of Coercive Control*, 16 VIOLENCE AGAINST WOMEN 1412, 1420 (2010).

The exclusion of such crucial and illuminating evidence meant that the jury had to evaluate Ms. Stewart's story with only the prosecution's description of events. Because they did not have access to evidence that would have squarely backed up Ms. Stewart's claim that she

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Ms. Stewart's sentencing hearing. (Tr. 62).

<sup>8</sup> "Coercive control in intimate partner violence is a dynamic process linking a demand with a credible threatened negative consequence for noncompliance." Mary Ann Dutton & Lisa Goodman, *Coercion in Intimate Partner*

was suicidal, the jury had incomplete information with which to understand and evaluate her claim.

Further, absent evidence of battering and its effects, it is likely that the jury misunderstood or was confused by evidence presented at trial that could have supported Ms. Stewart's defense. For example, Ms. Stewart testified that, when she and her daughter Micky left the hospital separately after the decedent had told them to leave his hospital room, Ms. Stewart went home, retrieved a gun, and wrote a note to her children. "I told Micky and Samantha [her other daughter] that I loved them. And that I was sorry. I told Micky I was sorry that I had invited her in, back into Sam[my]'s life and he hurt her again." (Tr. 540, 541). Evidence of battering and its effects could have provided much-needed context for these feelings and conduct, making her claim more understandable and believable. *See* Mary Ann Dutton, *Battered Women's Strategic Response to Violence: The Role of Context, in Future Interventions with Battered Women and Their Families* 105 (Jeffrey L. Edleson & Zvi C. Eisikovits eds., Sage Publications 1996).

Had the jury been permitted to hear the ways in which the decedent had physically and mentally harmed Ms. Stewart and her children over the years, as well as the cumulative psychological effects of that trauma, they would have had the information needed to assess why the events leading up to the incident were devastating enough to cause Ms. Stewart to conclude that suicide was a solution that would shield her children from further abuse. One scholar described a battered woman's decision to protect her children by removing herself from the equation:

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*Violence: Toward a New Conceptualization*, 52 *SEX ROLES* 743, 746 (2005); *see also* EVAN STARK, *COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE* 320 (Oxford University Press 2008).

Her decision was based on her final analysis that it was better for her children to live without her than for them to live in the constant turmoil of her relationship with their father. It was better to risk losing them than for them to witness his continued violence against her and possibly her death at his hands ... Lydia risked losing her relationship to her children to give them peace and to save her life.

Ruth Ann Belknap, *Why Did She Do That? Issues of Moral Conflict in Battered Women's Decision Making*, 20 ISSUES IN MENTAL HEALTH NURSING 387, 394-95 (1999). As the jury was never permitted to hear about the abuse and the ongoing impact it had on Ms. Stewart, they had little reason to believe Ms. Stewart's explanation about the relationship between the events of the day in question and her decision to kill herself.

Without lay and expert evidence about battering, the defense had little, if any, opportunity to rebut or explain numerous otherwise incriminating facts and allegations. For example, the prosecutor argued that Ms. Stewart came to visit her husband in the hospital several times because she was just "fooling herself into believing that when he woke up he was going to love her again." (Tr. 687). This version of events went unchallenged, and helped to support the prosecutor's theory that Ms. Stewart killed her husband because he rejected her. Had the excluded evidence been presented, the jury could have heard about how many battered women feel controlled by their abusive partners even after separation, sometimes for long periods of time. Stark, *supra* note 10, at 330. As an expert on battering could have explained, because many battered women continue to be controlled after separation, they may employ the same strategies they used while living with the abusive partner to try to reduce the violence and abuse, such as being extremely attentive to their batterer and compliant with their batterer's demands. In other words, battered women may continue to act in response to threats and violence that occurred in the past. "A single threat may dictate a target's behavior for years, while she or he holds the (accurate or inaccurate) assumption that the threat is real and ongoing." Dutton & Goodman, *supra* note 10, at 751. Evidence of battering and

its effects could have provided alternative explanations to those the prosecution offered as to why Ms. Stewart was coming to see her husband in the hospital, even after their separation. It is also important to note that, despite the fact that they lived in separate houses, the decedent was still very much involved in Ms. Stewart's life. (Tr. 529-530). She felt that she was still his wife. (Tr. 530). These important facts would likely have been seen in a very different light had the jury possessed the information it needed to evaluate them.

The jury was asked to evaluate Ms. Stewart's actions and intentions but never got to have the information necessary to conduct a full and fair evaluation. The prosecution painted a picture of Ms. Stewart as a scorned woman who was so upset and angry at being rejected that she decided to kill the decedent. (Tr. 687-702). The prosecution relied on this portrayal in arguing the presence of premeditation and malice. In closing, the prosecutor argues

She was angry....You can also believe that she was angry and that there was malice in her heart when she did it. You can believe that by the words that she spoke and the actions that she took. That's Rhonda Kay Boyd [Ms. Stewart's maiden name], that means he [decedent] wants it [the relationship] to be over. Up there on the stand, [Ms. Stewart testified,] I was crushed, I was angry.

(Tr. 691-92).

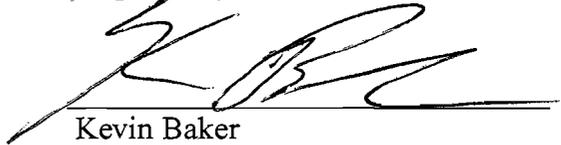
The jurors in this case only heard part of Ms. Stewart's story and they were forced to render a verdict without having the information necessary to make decisions about the elements of the crimes with which she was charged. By precluding relevant and necessary evidence, the defense had no opportunity to challenge the inaccurate and incomplete portrayal of Ms. Stewart offered by the prosecution. The excluded evidence would have allowed the jury to consider a very different picture; one that included alternative explanations for what happened on the day of the incident, supported by evidence that would have rebutted the prosecutor's purported proof of premeditation and malice. In short, evidence of battering and its effects was directly relevant to Ms. Stewart's

intent and state of mind. Without it, Ms. Stewart was deprived of her Constitutional right to present a defense.

### CONCLUSION

For the foregoing reasons, Amici respectfully request that this Court reverse Ms. Stewart's conviction and remand this case for a new trial.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Kevin Baker, hereby certify that on this 7<sup>th</sup> day of February, 2011, a copy of the foregoing Motion for Leave to File Amicus Brief and Brief of Amici Curiae were sent via hand delivery to:

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