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# Seeking Truth, Preserving Rights - Battered Women's Syndrome/ Extreme Emotional Distress: Abuse Excuse or Syndrome Defense

Wanda Lucibello

# Seeking Truth, Preserving Rights—Battered Women's Syndrome/Extreme Emotional Distress: Abuse Excuse or Syndrome Defense

**Wanda Lucibello***

Good afternoon, everyone. The two defenses that we are here to discuss today are battered women's experience and the extreme emotional disturbance defense. One or both of these defenses are proffered in almost every domestic violence homicide case and in many attempted murder cases as well. In Kings County, domestic violence homicides are defined as homicides occurring within intimate partner relationships.

These defenses are controversial for a number of reasons. Prosecutors complain that advocates for battered women claim that every female defendant who has killed or attempted to kill an intimate partner did so because she was a battered woman. On the other hand, advocates for battered women criticize prosecutors for construing the battered women's experience defense too narrowly. Prosecutors and advocates object that defense attorneys attempt to characterize every domestic violence homicide as a "crime of passion."

It is important to maintain the integrity of these defenses and to prevent them from being invoked indiscriminately by defendants who are simply trying to avoid criminal responsibility for their conduct. We must pay close attention to the parameters of each defense or we run the risk of facilitating their misuse by defendants and their misapplication by courts. If these defenses become generic, they will lose their efficacy, and we will thereby do a great disservice to defendants who are genuinely entitled to assert them in particular cases.

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* Wanda Lucibello is the Chief of the Special Victims Division in the Brooklyn District Attorney's Office. She has conducted training programs for police, prosecutors, and service providers in the investigation and prosecution of domestic violence cases in conjunction with the National College of District Attorneys and the New York Prosecutors Training Institute.

What is the defense commonly known as "battered women's experience?" In New York, battered women's experience is really a part of classic self-defense. Under New York State law, a person cannot use deadly physical force against another person unless he or she reasonably believes that the "other person is using or about to use deadly physical force" against him or her.[1] The jury is instructed by the court to make both an objective and a subjective determination.[2] In order to decide if the subjective standard has been met, the jury is instructed to put themselves in the defendant's shoes, so to speak, in order to decide whether or not his or her resort to deadly force was justified under the circumstances.

When can a battered woman legitimately invoke this defense? Battered women's experience traditionally involves a pattern of coercion and control by the abusive partner that takes many forms and includes serious psychological as well as physical abuse.[3] When a woman who has been subjected to such abuse in the past resorts to deadly force in the midst of a violent encounter with her abusive partner, who is using deadly force against her, the battered women's experience defense would clearly be appropriate at her trial for killing her partner.

You should be aware of another factual scenario in which the defense could be valid even though the threat of deadly force is not an imminent one. Under those circumstances, a battered woman uses deadly force while her abuser is sleeping or otherwise off-guard in order to protect herself from future abuse at his hands.[4] Thus, a battered woman may act preemptively and still avail herself of the battered women's experience defense at trial. However, in all of these cases, the history of the relationship between the defendant and the victim must support the assertion of the defense.

Unlike battered women's experience, which is a complete defense, the defense of extreme emotional disturbance is an affirmative defense, which merely mitigates a defendant's culpability from a conviction of intentional murder to a conviction of

1. N.Y. PENAL LAW § 35.15(2)(a) (McKinney 2003).

2. *See* People v. Goetz, 497 N.E.2d 41 (N.Y. 1986).

3. ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING 46 (2000).

4. *See generally* State v. Wanrow, 559 P.2d 548 (Wash. 1977).

first-degree manslaughter.[5] This statutory defense enables a jury to show mercy to an otherwise non-violent individual who claims that under the stress of extraordinary events, he or she "snapped" and reacted with deadly force.

Because this defense is so frequently employed by male defendants charged with domestic violence homicides, many of my colleagues have deemed it the "defense du jour" in such cases. However, this defense, which presupposes a loss of control, actually runs contrary to what we know about the exercise of absolute power by the typical abusive male partner. As a result, when such a man kills his female partner, it is more often than not (in my opinion), simply another manifestation of his controlling, calculated behavior, and not an impulsive deviation from that norm. A recent example of a defendant's attempt to misuse the extreme emotional disturbance defense is the case of *People v. Roche*.[6] After stabbing his common-law wife numerous times, the defendant left the scene, snorted cocaine, told the police that the victim had committed suicide, and then, at trial, claimed that he had been under the influence of extreme emotional disturbance at the time of the killing.[7] The trial judge determined that there was no reasonable view of the evidence on those facts to support a jury charge that the defendant had acted under the influence of extreme emotional disturbance, and the New York Court of Appeals upheld that determination on appeal.[8] Thus, as you see, trial judges perform a valuable screening function to ensure that these defenses are not misused.

In order to preserve the integrity of these defenses, judges, prosecutors, advocates, and defense attorneys must become less dogmatic about when each defense does or does not apply. For instance, there are cases in which a female defendant, even though she fits the definition of a battered woman, would be better served by an extreme emotional disturbance defense. Consider the hypothetical case of a female defendant who kills her boyfriend after discovering him with another woman. Even though the defendant had experienced battering by the victim

5. *See* N.Y. PENAL LAW § 125.25(1)(a) (McKinney 2003).
6. 772 N.E.2d 1133 (N.Y. 2002).
7. *Id.* at 1135-37.
8. *Id.* at 1137-40.

during the course of their relationship, she was not acting under the influence of the battering at the time that she resorted to deadly force, killing him. Rather, the defendant was acting out of jealousy and a desire for revenge. Under those circumstances, an extreme emotional disturbance defense might be applicable if, for example, the defendant demonstrated that her act rose to the level of an extreme emotional response (that she "snapped").

Prosecutors and defense attorneys need to come out of their respective corners and move towards resolutions that fall somewhere between an acquittal and a top-count conviction. Domestic violence cases simply do not lend themselves to traditional notions of winning and losing. I learned that lesson in one of the first cases that I handled as a trial assistant in the Domestic Violence Bureau. In that case, although the female defendant had shot her husband numerous times at close range, she had not seriously injured him. The husband had been terribly abusive and controlling towards the defendant and their four children during the course of the marriage, but official documentation of his abuse in the form of police reports was scarce. Having mustered the courage to take her children and leave the marriage, the defendant had concocted a ruse that their house needed to be exterminated because her husband never allowed all of the children to be out at the same time. Her husband was sleeping while the defendant was packing and making final preparations to leave. However, her husband woke up as the defendant was about to go out the door. Fearing that her husband would kill her when he realized that she was leaving him, the defendant shot him with an unlicensed gun with which her husband had threatened her in the past.

As the trial prosecutor in that case, I initially believed that the defense of battered women's experience did not apply because there was not sufficient documentation of domestic violence in the marital relationship. It was only because the defense attorneys persevered and provided access to the oldest child that I learned about the reign of terror that my putative victim had perpetrated upon the entire family. The defense attorneys and I were then able to agree upon a guilty plea, which was wholeheartedly endorsed by the judge, which involved a felony conviction for the defendant without incarceration and an

order of protection against the husband on behalf of the defendant.

The cases that worry me are those in which the defense of battered women's experience is arguably applicable and no charges are brought against the defendant. While the prosecutor and the defense attorney have reason to be satisfied with the result in such a case, what becomes of that battered woman defendant? Who follows up with her and her children to address the trauma that they have undoubtedly experienced? What role do both parties play in helping to prevent future victimization in that family? To answer those questions, prosecutors and defense attorneys have to expand the context in which each side views its respective role. We have to have more honest conversations about achieving outcomes that go further than mere convictions or acquittals. We have to redefine success if we are to attain real justice.