



## MINNESOTA JUDICIAL TRAINING UPDATE



### BATTERED WOMAN SYNDROME

**QUESTION:** During A Criminal Sexual Conduct (Rape) Jury Trial Involving A Battered Woman Relationship, The Prosecution Attempts To Introduce Evidence Of The “Battered Woman Syndrome” To Explain:

1. Why Some Victims Fail To Timely Report Crimes;
2. Why Some Victims Often Recant Testimony;
3. Why Some Victims Refuse To Leave Abusive Relationships,

**What Is The “Battered Woman Syndrome” And What 4 Step Analysis Should The District Court Follow When Ruling On Admissibility?**

**ANSWER:** **BATTERED WOMAN SYNDROME (BWS):** BWS is a collection of psychological symptoms, often considered a subcategory of Post Traumatic Stress Disorder, and can be measured by a trained mental health professional. BWS is frequently observed in women who report having been physically, sexually, and/or seriously psychologically abused by their male domestic partners. BWS can cause a woman to act in ways that confuse those who wish to help her, thus making it extremely difficult for her to cooperate with the legal system, even though she wants the abuse to stop.

### ADMISSIBILITY OF BWS: FOUR STEP ANALYSIS:

**1. CREDIBILITY:** The Alleged Victim’s Credibility/Testimony must be in Issue:

- a. When the alleged victim’s testimony is at issue, the district court may admit testimony on battered-woman syndrome, during the prosecution’s case-in-chief, even if neither party directly attacks the victim’s credibility. *State v. Vance, 685 N.W.2d 713 (Minn. 2004).*
- i) The victim’s credibility can be placed in issue from comments made by the defense during opening statement or during the victim’s cross examination.

**2) EXPERT TESTIMONY: FOUNDATION: Minn. R. Evid. 702:**

a) Expert Testimony On BWS Is Admissible Under Minn. R. Evid. 702 Because It Has Gained Sufficient Scientific Acceptance To Warrant Admissibility As Expert Testimony And It Satisfies The Helpfulness Test By Explaining A Phenomenon That Is Not Understood By The Average Person.

**3) RELEVANCE: It Must Help The Jury Understand The Alleged Victim's Behavior:**

a) For Example: Why The Victim Failed To Timely Report The Crime; Why She Recanted Her Testimony, Minimized Or Denied The Abuse; Or Refused To Leave An Abusive Relationship, Etc. *State v. Grecinger, 569 N.W.2d 189 (Minn. 1997).*

**4) SCOPE OF TESTIMONY: How Far Can The Expert Go?**

a) Expert Testimony on BWS Is Limited To A Description Of The Syndrome And Its Characteristics. The Expert **CANNOT** Testify On:

i) The Ultimate Fact Of Whether The Alleged Victim Actually Suffers From BWS.

ii) That the complainant was battered, was truthful, or fits the BWS.

iii) The expert may not express an opinion on whether defendant was in fact a batterer.

---

**NOTE: THE FORBIDDEN QUESTION:** When presenting expert testimony on BWS it is difficult for some attorneys to resist the temptation to connect the dots by asking the expert: Are the symptoms exhibited by the victim consistent with the Battered Woman Syndrome? The Court of Appeals recently held that allowing an expert to answer that question was 'Plain Error'. *State v. Daniels, \_\_ N.W.2d \_\_, Court of Appeals, Unpublished, May 18, 2010, A09-0757.* Although the expert cannot answer the above question; the prosecutor, in closing argument, can raise that question and then connect the dots by arguing the answer.

**NOTE: BATTERED WOMAN SYNDROME EVIDENCE (BY DEFENSE):** Expert testimony on BWS is equally admissible by the defense to show self-defense. The same basic analysis as noted above would apply. *State. v. Henum, 441 N.W.2d 793 (Minn. 1989) (wife who was abused during the marriage kills her husband, asserts BWS as a defense).*

**NOTE: PROPOSED JURY INSTRUCTION FOR BWS:** The (State or Defense) is about to introduce evidence on the 'Battered Woman Syndrome'. This evidence is being offered for the limited purpose of describing the 'Battered Woman Syndrome' and characteristics of the syndrome. The admission of this testimony does not mean the victim actually suffered from the syndrome or that it even exists. Those are fact questions for the jury to decide. *State v. Vance, 685 N.W.2d 713 (Minn. 2004).*