

Confronting Battered Woman Syndrome in Iowa: Admissibility of Expert Testimony in the Compulsion Defense

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Abstract:

In the United States, a woman is assaulted or beaten every nine seconds, making domestic violence the leading cause of injury to women. Evidence of battered woman syndrome (BWS) is generally admissible in criminal trials to bolster a woman’s claim of self-defense for the murder or serious injury of her batterer. However, there is pushback from courts when it comes to the admissibility of expert testimony on BWS in the context of a duress defense. This Note asserts that expert testimony regarding BWS should be admissible to support a duress defense. Specifically, this Note urges that, when faced with a battered defendant who asserts a defense of duress, Iowa courts should admit expert testimony on BWS, regardless of the factual context in which the duress occurred. To effectively present a claim of duress, the jury must understand how domestic violence operates—the kinds of coercive, manipulating, and violent tactics that a batterer employs and the impact that those tactics may have upon a victim. Expert testimony would aid the jury in their assessment of the requisite elements the defense. Without such evidence, jurors cannot accurately assess the reasonableness of the victim’s decision to commit a particular crime.

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I. INTRODUCTION

Marjory Dingwall felt she had no other options. Dingwall was charged with three counts of robbery and three counts of brandishing a firearm during a crime of violence.¹ At trial, Dingwall admitted to the alleged conduct, but asserted a defense of duress, claiming she committed the crimes out of fear that her boyfriend, Aaron Stanley, would abuse her.² A deeper look into the facts paints an unsettling and complex picture.

Dingwall and Stanley began their relationship after meeting at a treatment center for alcohol abuse.³ At the time, Dingwall and her daughter were living an unstable lifestyle, constantly in and out of shelters.⁴ With nowhere else to turn, Dingwall and her daughter moved in with Stanley.⁵ It was not long before things escalated, and Stanley turned emotionally and physically abusive.⁶ The abuse began with verbal insults and gradually

¹ *United States v. Dingwall*, 6 F.4th 744, 745 (7th Cir. 2021).

² *Id.* at 745–46.

³ *Id.* at 747.

⁴ *Id.* at 748.

⁵ *Id.*

⁶ *Id.*

escalated into violent outbursts.⁷ First hitting her, then strangling her, dragging her down the stairs, breaking her nose, boxing her ear, and finally shooting his gun into her mattress.⁸ It was not long before a pattern of abuse emerged. Stanley would beat Dingwall, “apologize profusely,” and then things would return to “normal” until a subsequent violent episode inevitability followed.⁹ Stanley’s controlling behavior continued and became more erratic—walking around the house holding a gun, looking through Dingwall’s phone, and stealing Dingwall’s food-stamp card to prevent her from buying food.¹⁰

Stanley was a crack cocaine addict and robbed stores to fund his addiction.¹¹ Soon, Stanley began demanding money from Dingwall.¹² After unsuccessful attempts to obtain money, Dingwall committed three armed robberies.¹³ The first was after Stanley put a gun to Dingwall’s head and insisted that she rob a gas station while he sat in the car.¹⁴ That night, Stanley’s violence stopped and he sent Dingwall a message reading, “that committing the crime as ordered was a way to avoid his abuse.”¹⁵ However, Stanley’s demands for money continued the next day and Dingwall was coerced into committing two more robberies.¹⁶ Dingwall committed her second robbery while Stanley was at work.¹⁷ Stanley was “nice” that night, but the money did not protect Dingwall for long.¹⁸ When Stanley demanded yet another payment, Dingwall committed her third robbery—though again while he was at work.¹⁹ Despite Dingwall’s efforts to placate her partner, Stanley’s violence did not cease. After the third robbery, Stanley strangled Dingwall and punched her in the face.²⁰

⁷ *Dingwall*, 6 F.4th at 748.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Dingwall*, 6 F.4th at 748.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Dingwall*, 6 F.4th at 748.

²⁰ *Id.* at 749.

At trial, Dingwall asserted a defense of duress and sought to admit expert testimony on “Battered Woman’s Syndrome” (BWS).²¹ The district court rejected Dingwall’s motion to admit the evidence, reasoning that “even if Dingwall’s evidence were credited, the duress requirements of imminence and of no legal alternatives could not be satisfied.”²² On appeal, the Seventh Circuit properly reversed the district court’s judgment, holding that expert evidence of BWS is admissible to support a duress defense, reasoning that the immediate physical presence of a threat is not always essential to find a duress defense.²³ The Seventh Circuit found that expert testimony could inform the jury how “an objectively reasonable person under the defendant’s circumstances” might act.²⁴

The experience of BWS survivors, like Marjory Dingwall, is not exceptional. When a BWS defendant²⁵ commits a crime in response to an abuser’s violence, threats, intimidation, isolation, and/or control, a defense of duress is often raised.²⁶ The prototypical victim under duress acts during a “gun to the head” moment.²⁷ In *United States v. Dingwall*, the abuser was at work, not brandishing weapons or punching with fists, when the defendant decided to commit two robberies.²⁸ A BWS defendant who commits a crime

²¹ *Id.* at 749–51 (arguing “that she needs expert testimony from Dr. Hanusa to explain her situation to a jury, including how abuse affects victims’ perceptions, choices, and behavior.”). See *infra* Part II.A for a detailed discussion on BWS. This Note uses the term “Battered Woman Syndrome” because it continues to be used by Iowa courts and courts in many other jurisdictions. Some scholars, however, advocate for abandoning the term, in favor of a gender-neutral term such as “battered person syndrome,” or “battering and its effects” to describe the experiences of victims exposed to domestic violence. See, e.g., Mary Ann Dutton, *Understanding Women’s Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191, 1196 (1993) (“Referring simply to testimony concerning battered women’s experiences, rather than to ‘battered woman syndrome,’ more accurately captures the range of information typically covered in expert testimony.”); *Dingwall*, 6 F.4th at 747 n.2 (“We use the phrase ‘battering and its effects’ because it is more inclusive and less prone to stereotyping of victims.”). But see *United States v. Nwoye*, 824 F.3d 1129, 1144 n.1 (D.C. Cir. 2016) (using the term “battered woman syndrome”).

²² *Dingwall*, 6 F.4th at 750.

²³ *Id.* at 746.

²⁴ *Id.*

²⁵ For purposes of this Note, the terms BWS defendant, BWS survivor, battered victim, battered woman, and abuse victim are considered synonymous and are used interchangeably to refer to individuals who were coerced into committing crimes by their abusers.

²⁶ See, e.g., *United States v. Willis*, 38 F.3d 170, 173 (5th Cir. 1994) (raising duress defense for battered woman indicted for carrying firearm during drug trafficking crime); *United States v. Homick*, 964 F.2d 899, 905 (9th Cir. 1992) (raising duress defenses for wire fraud); *United States v. Marengi*, 893 F. Supp. 85, 91–97 (D. Me. 1995) (raising duress defenses for conspiracy to possess and distribute controlled substance).

²⁷ See Heather R. Skinazi, *Not Just a “Conjured Afterthought”*: Using Duress as a Defense for Battered Women Who “Fail to Protect”, 85 CALIF. L. REV. 993, 1003 (1997); see also *Dingwall*, 6 F.4th at 751 (listing cases where the person posing the threat was not physically present).

²⁸ *Dingwall*, 6 F.4th at 750.

during one of these nonconfrontational moments encounters two related problems when claiming a duress defense: the law of duress and her failure to leave the relationship.²⁹

The first obstacle in these nonconfrontational situations is the reasonableness of the defendant's behavior. A finding of duress requires the defendant to demonstrate that her³⁰ belief was reasonable, that criminal behavior was necessary to avoid imminent harm, and no reasonable opportunity to escape was possible.³¹ Yet, the circumstances surrounding the battered victim's situation are typically at odds with this conception of legally excusable criminal behavior. Most of crimes committed under duress are not confined to the proverbial "gun to the head" situation where there is an overt threat of violence.³² Rather, many battered victims commit crimes when the abuser is not physically present or when a threat may not seem immediately apparent to an outside observer.³³ For many in abusive relationships, the threat of abuse is not *always* isolated and outwardly imminent. And in these

²⁹ See *id.* at 750–51.

³⁰ In the vast majority of cases, women are the victims of domestic violence and men the perpetrators. See, e.g., NAT'L COAL. AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE 1 (2020), https://assets.speakcdn.com/assets/2497/domestic_violence-2020080709350855.pdf?1596828650457 [<https://perma.cc/8X6K-PRF7>] ("1 in 4 women and 1 in 10 men experience sexual violence, physical violence and/or stalking by an intimate partner during their lifetime . . ."); see generally SHARON G. SMITH ET AL., CDC, NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2015 DATA BRIEF (2018), <https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf> [<https://perma.cc/M7PW-VBJ2>] (providing data on the prevalence of intimate partner violence in men and women). This Note will use the female pronouns when referring to victims of domestic violence but acknowledges that abusive relationships have no boundaries and impact the entire spectrum of heterosexual, LGBTQIA, or gender-nonconforming relationships. For a discussion of these relationships, see Cheryl Paradis et al., *Intimate Partner Violence: Psychological Effects and Legal Defenses*, in ASSESSING TRAUMA IN FORENSIC CONTEXTS 351, 351 (2020) ("[A]busive behaviors are observed in all manner of relationships including former or current same-sex, heterosexual, or gender-nonconforming intimate partners. Males and females can be both perpetrators and victims."); Leonard D. Pertnoy, *Same Violence, Same Sex, Different Standard: An Examination of Same-Sex Domestic Violence and the Use of Expert Testimony on Battered Woman's Syndrome in Same-Sex Domestic Violence Cases*, 24 ST. THOMAS L. REV. 544, 544–46 (2012) (discussing domestic violence in same-sex partnerships); Kristi Baldwin, *Battered Child Syndrome as a Sword and a Shield*, 29 AM. J. CRIM. L. 59, 61 (2001) (examining battered child syndrome in self-defense cases).

³¹ See Alafair S. Burke, *Rational Actors, Self-Defense, and Duress: Making Sense, Not Syndromes, Out of the Battered Woman*, 81 N.C. L. REV. 211, 252–53 (2002); Jennifer Gentile Long & Dawn Doran Wilsey, *Understanding Battered Woman Syndrome and Its Application to the Duress Defense*, 40 APR PROSECUTOR 36, 37–38 (2006).

³² See Skinazi, *supra* note 27, at 1003; Laurie Kratky Doré, *Downward Adjustment and the Slippery Slope: The Use of Duress in Defense of Battered Offenders*, 56 OHIO ST. L.J. 665, 697 n.128 (1995); see also Burke, *supra* note 31, at 252–54, 311–13 (discussing how women faced with a non-imminent do not fit into the traditional duress paradigm, instead battered women are perpetually threatened).

³³ See, e.g., United States v. Dingwall, 6 F.4th 744, 746 (7th Cir. 2021) (noting that batterer was not physically present for any of the defendant's robberies); United States v. Nwoye, 824 F.3d 1129, 1137 (D.C. Cir. 2016) (noting that the defendant was away from her abuser three days a week and thousands of miles away at certain other points).

types of cases, a battered victim's actions do not fit neatly into the traditional duress paradigm. The lapse in time between a victim's experiences of domestic abuse and her alleged crimes can render the immediacy of the threat and reasonableness of the criminal actions questionable under the duress defense's objective standard.³⁴

A second problem is the misconceptions that people hold about the consequences and effects of battering relationships. Not surprisingly, the complexities of battering relationships may make it difficult for judges and jurors to understand the defendant's actions. Jurors often hold a set of misconceptions about domestic abuse that may influence their perception of a defendant and their evaluations of the reasonableness of her actions.³⁵ Specifically, jurors may struggle to understand the "whys" of a battered relationship—why she stayed, why she went back, why she thought she was in danger, why she committed the crime, why she did not take advantage of a seemingly reasonable opportunity to avoid committing a crime.³⁶ The rigid, objective elements of the duress defense fails to adequately capture the battered victim's circumstances and leaves no room for consideration of the psychological impact of battering relationships.³⁷

Expert testimony on BWS is an important evidentiary tool used to overcome these obstacles. Battered defendants use expert testimony on BWS in criminal proceedings to advance a duress defense that might otherwise fail.³⁸ Specifically, expert testimony provides jurors with relevant information about the cumulative effects of abuse and the psychology and decision-making of survivors of abuse.³⁹ Such testimony helps jurors to determine whether the defendant had an objectively reasonable belief that harm was imminent.⁴⁰ Expert testimony may, therefore, legitimize the reasonableness of a battered defendant's actions, despite the apparent lack of imminency of the current situation.

³⁴ See Doré, *supra* note 32, at 714–16, 738.

³⁵ See, e.g., *People v. Romero*, 13 Cal. Rptr. 2d 332, 338 (Cal. Ct. App. 1992) (quoting *State v. Hodges*, 716 P.2d 563, 567 (Kan. 1986)) (“The expert evidence would counter any ‘common sense’ conclusions by the jury that if the beatings were really that bad the woman would have left her [batterer] much earlier.”); *State v. Ritt*, 599 N.W.2d 802, 811 (Minn. 1999) (“Expert testimony is helpful and admissible if it explains a behavioral phenomenon not within the understanding of an ordinary lay jury.”).

³⁶ See Burke, *supra* note 31, at 268–73; Paradis et al., *supra* note 30, at 368–69; Deborah Tuerkheimer, *Recognizing and Remediating the Harm of Battering: A Call to Criminalize Domestic Violence*, 94 J. CRIM. L. & CRIMINOLOGY 959, 985–86 (2004).

³⁷ See Burke, *supra* note 31, at 241–42, 258–61.

³⁸ See *infra* Part II.B.2 for a discussion of overcoming evidentiary obstacles of BWS.

³⁹ See Dutton, *supra* note 21, at 1216–17; Elizabeth M. Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering*, 9 WOMEN'S RTS. L. REP. 195, 201–02 (1986).

⁴⁰ See *United States v. Dingwall*, 6 F.4th 744, 746 (7th Cir. 2021).

Although expert testimony is one of the most important legal tools available to battered defendants in criminal proceedings, the admissibility of expert testimony remains controversial in the context of the duress defense.⁴¹ Currently, circuits courts are split on whether a battered defendant may introduce expert testimony on BWS to support a duress defense.⁴² Courts that do not admit expert testimony typically do so because they label such evidence as subjective, and therefore irrelevant to the objective, reasonable person inquiry of duress.⁴³ On the other hand, courts that do admit expert evidence on BWS, properly recognize that BWS testimony is directly relevant to the elements of duress and may inform the jury how an objectively reasonable person under the defendant's circumstances might act.⁴⁴ This Note argues that expert testimony is crucial to the jury's assessment of the objective reasonableness of a defendant's actions and urges Iowa courts to admit expert testimony on BWS in the context of a duress defense.

The Iowa Supreme Court has not yet addressed the issue on admissibility of expert BWS testimony in the context of Iowa's compulsion⁴⁵ defense. However, given the prevalence of domestic violence, it is only a matter of time before Iowa courts confront this issue in the coming years. This Note proposes that, when faced with a battered defendant who asserts a defense of compulsion, Iowa courts should admit expert testimony on BWS, regardless of the factual context in which the compulsion occurred. To effectively present a compulsion claim, the jury must understand how

⁴¹ See Burke, *supra* note 31, at 261; Long & Wilsey, *supra* note 31, at 38; see also Linn v. State, 929 N.W.2d 717, 748 (Iowa 2019) (“Every jurisdiction accepts expert BWS testimony to support claims of self-defense.”).

⁴² See *Dingwall*, 6 F.4th at 746 (joining the Sixth, Ninth, and D.C. Circuits in a split with the Fifth and Tenth); *Dando v. Yukins*, 461 F.3d 791, 801 (6th Cir. 2006); *United States v. Lopez*, 913 F.3d 807, 811 (9th Cir. 2019); *United States v. Nwoye*, 824 F.3d 1129, 1138 (D.C. Cir. 2016). *But see* *United States v. Willis*, 38 F.3d 170, 175–76 (5th Cir. 1994); *United States v. Dixon*, 901 F.3d 1170, 1173 (10th Cir. 2018). The Eleventh Circuit has suggested that it agrees with the Fifth and Tenth Circuits, but it may not have categorically rejected evidence of battering in this context. See *United States v. Sixty Acres in Etowah Cnty.*, 930 F.2d 857, 860 (11th Cir. 1991).

⁴³ See *Willis*, 38 F.3d at 175 (holding that evidence of BWS cannot support a defense of duress because evidence would show defendant suffered from a psychological condition which caused her to commit the crime—a subjective test); *Dixon*, 901 F.3d at 1173 (affirming exclusion of evidence of battered woman syndrome); see also *State v. B.H.*, 870 A.2d 273, 278 (N.J. 2005) (expert evidence on battering not relevant to “reasonable firmness” prong of duress defense but could be relevant to defendant's credibility and to explain why she would remain with abuser and ought not be perceived as acting recklessly).

⁴⁴ See *Dingwall*, 6 F.4th at 746 (holding that expert testimony may be admitted to support a duress defense, and that the physical presence of a threat is not essential to that defense); *Yukins*, 461 F.3d at 801; *Nwoye*, 824 F.3d at 1138; *Lopez*, 913 F.3d at 811; see also *United States v. Ceballos*, 593 F. Supp. 2d 1054, 1060–63 (S.D. Iowa 2009) (allowing expert testimony on battering and its effects to support duress defense).

⁴⁵ In this Note, the terms “duress” and “compulsion” are synonymous. The defense of duress is equivalent to Iowa's defense of compulsion under Iowa Code Section 704.10. Outside the context of Iowa law, the defense will be referred to generally as duress.

domestic violence operates—the kinds of coercive, manipulating, and violent tactics that a batterer employs and the impact that those tactics may have upon a victim. Expert testimony would aid the jury in their assessment of the requisite elements the defense.⁴⁶ Without such evidence, jurors cannot accurately assess the reasonableness of the victim’s decision to commit a particular crime.

This note explores the use of BWS in the duress context. Part II of this Note provides the legal and historical context for understanding why battered defendants admit expert testimony on BWS in support of a duress defense. Part III argues that Iowa courts should admit expert BWS testimony to support the defense of compulsion and proposes a model statute allowing Iowans to admit expert testimony on BWS for claims of compulsion in criminal trials. Part IV concludes with a call for uniform statutory adoption among states that will eliminate the evidentiary hurdles that prevent battered victims from successfully asserting a compulsion defense.

II. BACKGROUND

Part II provides the legal and historical context for understanding why battered defendants admit expert testimony on BWS in support of a duress defense. Section A discusses the history of the BWS, including its psychological and behavioral effects on victims and the role of expert testimony. Section B details the affirmative defense of duress, setting forth both the elements a defendant must prove, and the evidentiary obstacles posed by the elements of the duress defense. Section C addresses the ongoing circuit split between Federal Courts of Appeals and reviews how several jurisdictions outside of Iowa address the admissibility of BWS expert testimony. Lastly, Section D provides background on the current law in Iowa, discussing the emergence of the BWS in Iowa courts and examining the defense of duress.

A. Overview of Battered Woman Syndrome

BWS is a term that describes the psychological and behavioral effects commonly exhibited by victims who suffer repeated abuse in an intimate relationship.⁴⁷ BWS first emerged in the late 1970s by psychologist Dr. Lenore Walker to describe the psychological changes that occur in victims in abusive relationships.⁴⁸ Walker defined BWS as:

⁴⁶ See *infra* Part II.C for discussion on admitting expert testimony in support of duress defense.

⁴⁷ Lenore E. A. Walker, *Battered Woman Syndrome and Self-Defense*, 6 NOTRE DAME J.L. ETHICS & PUB. POL’Y 321, 326–27 (1992).

⁴⁸ See *id.* at 326–27 (1992) (“[T]he name given to the measurable psychological changes that occur after exposure to repeated abuse.”). Walker identified the following psychological symptoms that are associated with BWS: reexperiencing the trauma events intrusively; high

[T]he pattern of the signs and symptoms that have been found to occur after a woman has been physically, sexually, and/or psychologically abused in an intimate relationship, when the partner (usually, but not always, a man) exerted power and control over the woman to coerce her into doing whatever he wanted, without regard for her rights or feelings.⁴⁹

BWS is designed to explain the complexity of battered relationships and why, in spite of repeated occurrences of violence, battered victims remain in abusive relationships.

To explain the dynamics of BWS, Walker offered two theories: the “cycle of violence” and “learned helplessness.”⁵⁰ The first theory, the “cycle of violence,” describes a pattern of cyclical abuse that consists of three phases: (1) a “tension-building” phase, in which there is a gradual escalation of tension between the batterer and victim, accompanied with hostility and anger by the abuser but not extreme aggression; (2) an “acute battering incident”, in which the batterer releases uncontrollable rage and violence as a result of the tension building between the batterer and victim; and (3) the “loving-contrition” phase, marked by the abuser’s remorse and the battered victim’s hope that the cycle of abuse will finally end and revert back to loving behavior.⁵¹ When tension inevitably rebuilds, this cycle repeats itself and according to Walker, the repeated cycle of violence is significant because of its psychological impact on the victim.⁵²

The cyclical pattern of abuse described above leads to Walker’s second theory, termed “learned helplessness,” in which the battered victim believes there is no escape from the abusive relationship, no matter what she does.⁵³ As Walker explains, “[b]attered women don’t attempt to leave the battering situation even when it may seem to outsiders that escape is possible, because they cannot predict their own safety; they believe that nothing they or anyone else does will alter their terrible circumstances.”⁵⁴ The combination of the cycle of violence and the condition of learned helplessness often leads to a form of “psychological paralysis” where the victim is “reduced to a state of ‘perpetual’ fear, perceiving that there is little she can do to alter the

levels of arousal and anxiety; high levels of avoidance and numbing of emotions; cognitive difficulties; disruption in interpersonal relationships; and physical health and body image problems. *See* LENORE E.A. WALKER, *THE BATTERED WOMAN SYNDROME* 3, 49–50 (4th ed. 2016).

⁴⁹ WALKER, *supra* note 48, at 42.

⁵⁰ Walker, *supra* note 47, at 330–33.

⁵¹ WALKER, *supra* note 48, at 91, 97–98.

⁵² *Id.*

⁵³ *Id.* at 51–52, 88.

⁵⁴ *See* LENORE E. WALKER, *TERRIFYING LOVE* 49–51 (1989).

situation.”⁵⁵ In this situation, a battered victim often feels imprisoned and permanently trapped in a world of violence.⁵⁶ The impossibility of escape also decreases the victim’s motivation to avoid violence.⁵⁷

However, the cycle of violence is only one of several theories regarding the dynamics of domestic violence.⁵⁸ There are a wide range of psychological, emotional, and behavioral responses that victims experience in battering

⁵⁵ See Regina A. Schuller & Sara Rzepa, *Expert Testimony Pertaining to Battered Woman Syndrome: Its Impact on Jurors’ Decisions*, 26 L. & HUM. BEHAV. 655, 657 (2002); see also Cara Cookson, *Confronting our Fear: Legislating Beyond Battered Woman Syndrome and the Law of Self-Defense in Vermont*, 34 VT. L. REV. 415, 421 (2009) (“[T]he threat of violence [by the abuser] is a permanent and ongoing part of the battered woman’s life. The question is not whether he will beat her up again but when, and not whether he will injure her again but when, and not whether he will injure her but how badly or whether he will kill her this time.”); Fennell v. Goolsby, 630 F. Supp. 451, 456 (E.D. Pa. 1985) (“The continued cycle of violence and contrition [sic] results in the battered woman living in a state of learned helplessness. Because she is financially dependent on the batterer, she may feel partly responsible for the batterer’s violence, she may believe that her children need a father, or fear reprisal if she leaves. The battered woman lives with constant fear, coupled with a perceived inability to escape. Eventually she comes to believe that her only options are enduring the abuse, striking back, or committing suicide.”).

⁵⁶ Experts have compared the psychological effects of abuse with that of the trauma of a hostage situation or prisoners of war. See, e.g., *United States v. Johnson*, 956 F.3d 894, 899 (9th Cir. 1992) (“Once battered women believe themselves to be helpless victims of abusive men, they behave like hostages and link themselves to their captors out of fear that it is the only way to survive. Battered women are unable to respond effectively to violence because they are psychologically trapped in the violent relationship.”); Michael Dowd, *Dispelling the Myths about the “Battered Woman’s Defense:” Towards a New Understanding*, 19 FORDHAM URBAN L.J. 567, 580 (1992) (providing a hostage analogy to understand a battered victim’s perception of imminence by “view[ing] the battered woman as a hostage who is told she would be killed the next day and then strangles a sleeping guard in an effort to escape. The perception of the reality of this threat gained over time is thus accepted as sufficiently imminent to justify the use of whatever force is necessary to achieve freedom.”).

⁵⁷ WALKER, *supra* note 48, at 52 (Victims “psychologically escape using a variety of methods, including minimization or denial of the danger from the particular incident, depression, dissociation, or even repression and forgetting. The psychological escape, then, can include minimization or denial of the danger, reducing fear, repression, depression, dissociation, or a combination of these automatic psychological processes . . . [T]hese are avoidance responses that protect the woman from experiencing the full-blown trauma response.”).

⁵⁸ See Gentile & Long, *supra* note 31, at 37 (describing alternative theories such as the theory of “power and control” which “describes the physical, psychological, emotional and financial ways in which a batterer controls his partner in a domestic violence relationship” and the theory of “a continuum of violence” which “describes intimate partner violence that is constant and is expressed as verbal abuse to low level violence through serious assaults or possibly homicide, throughout the course of the relationship.”). While Walker’s model is widely perceived as the leading standard for understanding BWS, Walker’s theories are not without its critics. See Jane K. Stoeber, *Transforming Domestic Violence Representation*, 101 KY. L.J. 483, 508 (2012) (criticizing that Walker’s theories “suggests there is one set of effects of battering; promotes an image of battered women as ‘helpless, meek, and unreliable agents’; and discounts the experiences of those who do not fit into the model.”); Burke, *supra* note 31, at 218 (describing women as “autonomous, competent decision makers” and make the rational choice to stay in abusive relationship because of the danger in leaving or economic or social costs of leaving).

relationships.⁵⁹ For example, BWS victims may react with “fear, anger, and sadness; attitudinal changes like self-blame and distrust; symptoms of psychological distress such as depression and sleep problems; and actions like fighting back, initiating violence, escaping, avoiding the batterer, and protecting themselves and others from violence.”⁶⁰ In short, the effects of abuse that battered victims endure are innumerable and cannot be neatly characterized as one single experience.⁶¹ Thus, expert testimony can show the context of a battered victim’s actions and help a jury understand the experiences, beliefs, and perceptions of victims who endure abuse—information that the common lay person usually does not possess.⁶²

1. The Use of Expert Testimony on BWS

Within the U.S. legal system, expert testimony on BWS has become an evidentiary mechanism to aid battered defendants in advancing criminal defenses.⁶³ BWS is not, however, a separate criminal defense.⁶⁴ Rather, courts permit experts to testify to BWS and offer foundation for the court’s understanding of BWS.⁶⁵ When applied to the duress defense, expert testimony on BWS may achieve one of three results. First, expert testimony may prove the requisite elements of the duress defense.⁶⁶ Specifically, BWS evidence is relevant in assessing the imminence of the threat and the absence of reasonable alternatives.⁶⁷ Second, expert testimony may rehabilitate a BWS defendant’s credibility.⁶⁸ Third, expert testimony may rebut any commonly held misconceptions or stereotypes surrounding BWS and explain battering

⁵⁹ See *Linn v. Iowa*, 929 N.W.2d 717, 740 (Iowa 2019) (discussing psychological effects of abuse). Often times, there are also other significant obstacles, in addition to BWS, that help explain why an abuse victim does not leave her abuser. See Burke, *supra* note 31, at 266; Dutton, *supra* note 21, at 1233–34; Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009, 1020–21 (2000) (arguing that “inadequate material resources render women more vulnerable to battering [and] increase the batterers’ access,” and “are a primary reason why women do not attempt to separate.”).

⁶⁰ *Linn*, 929 N.W.2d at 740.

⁶¹ *Id.* at 735–36.

⁶² Long & Wilsey, *supra* note 31, at 36–37.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ See *infra* Part II.C for a discussion of federal court decisions that admit evidence of BWS to support a defense of duress.

⁶⁷ See *United States v. Dingwall*, 6 F.4th 744, 753–54 (7th Cir. 2021) (listing cases that find expert testimony relevant in assessing the elements of the duress defense).

⁶⁸ *Id.* at 760–61.

relationships.⁶⁹ Often times jurors are unfamiliar with the dynamics of an abusive relationship and find it difficult to understand the victim's behavior in certain situations.⁷⁰ In such cases, expert testimony can show the context of a battered victim's actions and help a jury understand the experiences, beliefs, and perceptions of victims who endure abuse—information that the common lay person usually does not possess.⁷¹

B. BWS and its Application to Claims of Duress

While BWS has historically been used as evidence in self-defense cases when battered offenders were charged with killing their abuser, BWS evidence is increasingly admitted to support claims of duress.⁷² Many battered victims are criminally charged or incarcerated because they committed crimes against third parties.⁷³ For these offenders, the defense of duress is often

⁶⁹ See *State v. Kelly*, 478 A.2d 364, 377 (N.J. 1984) (“[T]he experts point out that one of the common myths, apparently believed by most people is that battered victims are free to leave.”); *Linn v. State*, 929 N.W.2d 717, 742 (Iowa 2019) (“Myths and misconceptions affecting jurors include ‘(1) a belief that battered women can and should leave their abusers; [and] (2) a belief that if the woman on trial does not fit the stereotype of a battered woman, she is not a ‘real battered woman.’”); *Commonwealth v. Stonehouse*, 555 A.2d 772, 783 (Pa. 1989) (“It is widely acknowledged that commonly held beliefs about battered women are subject to myths that ultimately place the blame for battering on the battered victim.”).

⁷⁰ See, e.g., *People v. Romero*, 13 Cal. Rptr. 2d 332, 338 (Cal. Ct. App. 1992) (“The expert evidence would counter any ‘common sense’ conclusions by the jury that if the beatings were really that bad the woman would have left her [batterer] much earlier.”); *State v. Ritt*, 599 N.W.2d 802, 811 (Minn. 1999) (“Expert testimony is helpful and admissible if it explains a behavioral phenomenon not within the understanding of an ordinary lay jury . . .”).

⁷¹ See, e.g., *Ibn-Tamas v. United States*, 407 A.2d 626, 634–35 (D.C. 1979) (stating expert testimony would interpret facts in way which differs from ordinary lay person’s perception); *People v. Wilson*, 487 N.W.2d 822, 824 (Mich. Ct. App. 1992) (admitting expert testimony to aid jury because “the average juror is [not] familiar with the complex behavior of a victim of [BWS]”); *State v. Kelly*, 478 A.2d 364, 369–78 (N.J. 1984) (emphasizing the importance of BWS to explain the effects of abuse, outside the experience of most jurors).

⁷² Today, courts uniformly hold that BWS testimony is admissible to support a claim of self-defense. See *Linn v. State*, 929 N.W.2d 717, 748 (Iowa 2019) (noting every jurisdiction admits expert BWS testimony on BWS to support claims of self-defense); *Romero*, 13 Cal. Rptr. 2d at 337 n.8 (listing cases admitting evidence of BWS to support claims of self-defense). The original reception to the use of BWS testimony in the context of self-defense was, in part, a response by courts to remedy unequal treatment of women in the criminal justice system. See Michael Dowd, *Dispelling the Myths About the “Battered Woman’s Defense:” Towards a New Understanding*, 19 *FORDHAM URB. L.J.* 567, 575 (1992) (“The initial reception given to the use of self-defense by a battered woman was colored by the social upheaval which accompanied its advent on the legal scene. At that time, women were challenging their place in the existing societal order by attempting to occupy roles traditionally reserved for men.”); Hope Keating, *Battered Women in Florida: Will Justice Be Served?*, 20 *FLA. ST. U. L. REV.* 679, 685 (1993) (“Expert testimony on battered woman syndrome is especially critical given the inherent sex bias in the law of self-defense. Historically, standards of justifiable force have been based on male behavior and expectations.”).

⁷³ See *Romero*, 13 Cal. Rptr. 2d at 333 (robbery, attempted robbery); *State v. Riker*, 869 P.2d 43, 45 (Wash. 1994) (possession of cocaine with intent to distribute); *United States v. Willis*, 38

raised. Many courts, however, are reluctant to extend the admissibility of BWS evidence outside the context of self-defense to support claims of duress to excuse crimes against third parties.⁷⁴ To understand why battered victims commit criminal acts, one must first understand the basic contours of the duress defense. The following is a discussion of the defense of duress and as well as the role expert testimony plays in overcoming evidentiary obstacles in the context of the duress defense.

1. The Affirmative Defense of Duress

Duress is an affirmative defense that excuses criminal conduct if the defendant satisfies the requisite elements of a duress defense, even when the defendant committed it with the requisite *mens rea*.⁷⁵ Criminal conduct is negated “because the defendant nevertheless acted under a threat of greater immediate harm that could only be avoided by committing the crime charged.”⁷⁶ The law of duress tends to vary from jurisdiction to jurisdiction and a jurisdiction’s definition of duress impacts the viability of a battered defendant’s claim of duress.⁷⁷

F.3d 170, 173 (5th Cir. 1994) (carrying a firearm during commission of drug trafficking crime); *State v. Richter*, 424 P.3d 402 (Ariz. 2018) (kidnapping and child abuse); *United States v. Marengi*, 893 F. Supp. 85, 86 (D. Me. 1995) (drug trafficking).

⁷⁴ See *infra* Part II.D for discussion of the admissibility of expert testimony in the context of duress. The reader should note that differences between self-defense and duress may explain why BWS has been controversial in duress cases, yet widely accepted in the self-defense context. See Meredith Blake, *Coerced into Crime: The Application of Battered Woman Syndrome to the Defense of Duress*, 9 WIS. WOMEN’S L.J. 67, 79 n.79 (1994) (“The primary difference between the two defenses is the victim of the resulting harm. In self-defense, the harm befalls a victim who is not wholly blameless, having necessitated the defendant’s use of force by his own aggressive acts. In other words, the victim is the very person who brought about his own demise. In the context of duress, the harm befalls a victim who is generally an innocent third party. For instance, the criminal act committed under duress may be a robbery or a kidnapping where the victim is generally faultless, bearing no responsibility for the criminal action.”); Burke, *supra* note 31, at 249 (“[T]he syndrome theory may enjoy its reverence as a result of either sympathy for battered women who kill, a lack of sympathy for the batterers who are killed, or both The reluctance to expand the syndrome theory to other legal contexts further suggests that the criminal justice system has relied upon the syndrome solely within the self-defense context to achieve the desired result of assisting domestic violence victims who use force against their batterers.”); Doré, *supra* note 32, at 749 (suggesting that in claims of duress, the objective standard of reasonableness should not take into account BWS evidence because “[i]n self-defense, the woman avoids the imminent danger by responding in kind against its source—her batterer. In duress, however, the woman avoids her abuser’s threat by misconduct directed against an innocent third party.”).

⁷⁵ See *United States v. Sawyer*, 558 F.3d 705, 710–11 (7th Cir. 2009); *Dixon v. United States*, 548 U.S. 1, 6 (2006) (noting that the defense of duress “may excuse conduct that would otherwise be punishable.”).

⁷⁶ *Sawyer*, 558 F.3d at 711.

⁷⁷ See Long & Wilsey, *supra* note 31, at 37–38. Federal courts applying federal law require a “well-grounded” apprehension of deadly imminent harm, as well as the lack of any “reasonable” legal alternative to violating the law. See *United States v. Jankowski*, 194 F.3d

Most state statutes mirror the traditional common-law defense of duress and require “a present, immediate and impending threat of such a nature as to induce a well-founded fear of death or serious bodily injury if the criminal act is not done; the actor must have been so positioned as to have had no reasonable chance of escape.”⁷⁸ Some states, on the other hand, follow the Model Penal Code (MPC).⁷⁹ Under MPC Section 2.09(1), duress is defined by reference to what “a person of reasonable firmness in [the defendant’s] situation would have been unable to resist.”⁸⁰ The code requires an objective standard for the defense of duress, whereby courts gauge the actions of the defendant by a person of reasonable firmness.⁸¹ Significant to the MPC’s duress framework are the phrases “reasonable firmness” and “in his situation” which permits a jury to consider the defendant’s particular and unique circumstances.⁸²

Iowa’s defense of compulsion is the same as the federal defense of duress.⁸³ Turning to the compulsion defense, Iowa Code Section 704.10 states:

No act, other than an act by which one intentionally or recklessly causes physical injury to another, is a public offense if the person so acting is compelled to do so by another’s threat or menace of serious injury, provided that the person reasonably believes that such injury is imminent and can be averted only by the person doing such act.⁸⁴

In order to establish a prima facie defense of compulsion, a defendant must offer sufficient evidence to prove:

878, 883 (8th Cir. 1999). Some states require that a defendant “reasonably believe” that the threatened harm is imminent and can be averted only by committing the criminal act. *See* IOWA CODE § 704.10 (2023). Others inquire whether a “person of reasonable firmness” in the defendant’s “situation” would have been able to resist a particular threat. *See* TEX. CODE ANN. § 8.05(c); MODEL PENAL CODE § 2.09(1) (1985).

⁷⁸ *See* United States v. Johnson, 956 F.2d 894, 897 (9th Cir. 1992).

⁷⁹ *See* MODEL PENAL CODE § 2.09; *see also* Doré, *supra* note 32, at 698 n.130 (listing state duress penal codes).

⁸⁰ MODEL PENAL CODE § 2.09.

⁸¹ *See* Joshua Dressler, *Exegesis of the Law of Duress: Justifying the Excuse and Searching for Its Proper Limits*, 62 S. CAL. L. REV. 1331, 1344–45, 1377 (1989) (listing ways in which MPC differs from common law defense of duress).

⁸² *See* MODEL PENAL CODE § 2.09; United States v. Dixon, 901 F.3d 1170, 1181–82 (10th Cir. 2018).

⁸³ *See* State v. Walker, 671 N.W.2d 30, 35 n.3 (Iowa Ct. App. 2003); IOWA CODE § 704.10 (2023).

⁸⁴ IOWA CODE § 704.10 (setting forth duress defense); *see also id.* § 704.3 (setting forth defense of self and others, “[a] person is justified in the use of reasonable force when the person reasonably believes that such force is necessary to defend oneself or another from any actual or imminent use of unlawful force.”).

- (1) that defendant was under an unlawful and present, imminent, and impending threat of such a nature as to induce a well-grounded apprehension of death or serious bodily injury;
- (2) that defendant had not recklessly or negligently placed himself in a situation in which it was probable that he would be forced to commit a criminal act;
- (3) that the defendant had no reasonable, legal alternative to violating the law; and
- (4) that a direct causal relationship could be reasonably anticipated between the commission of the criminal act and the avoidance of the threatened harm.⁸⁵

The defense of compulsion is an objective standard in Iowa.⁸⁶ By requiring that the fear be well-grounded, Iowa's compulsion defense sets forth an objective test that excuses the battered offender's otherwise criminal conduct if the defendant acts under the reasonable belief that the act is necessary to avoid imminent personal injury.⁸⁷ However, a battered defendant may lose a claim of compulsion if the defendant fails to take advantage of a reasonable opportunity to escape or fails to terminate her conduct "as soon as the claimed [compulsion] . . . had lost its coercive force."⁸⁸ In addition, to satisfy a threshold showing of a duress defense, "a defendant must introduce sufficient evidence as to *all* the elements of the defense."⁸⁹ The elements of duress are significant because if not met, then psychological expert witness testimony may not be admissible and a judge will not instruct the jury on the possibility of duress as a defense.⁹⁰

2. Applying Expert Testimony to the Duress Defense: Overcoming Evidentiary Obstacles

The evidentiary requirements of imminence, necessity, and objective reasonableness of the duress defense raise several obstacles that may prevent

⁸⁵ *Walker*, 671 N.W.2d at 35 (adopting the framework set forth by the Eighth Circuit in *United States v. Jankowski*, 194 F.3d 878, 883 (8th Cir. 1999)).

⁸⁶ *Walker*, 671 N.W.2d at 35.

⁸⁷ *Id.* at 36.

⁸⁸ *United States v. Bailey*, 444 U.S. 394, 413 (1980); *see also Walker*, 671 N.W.2d at 36 (holding from the Iowa Court of Appeals that the threatened harm against the defendant was neither imminent nor inescapable where there was a ten-day interim period between the threats against the defendant and the robbery with which he was charged).

⁸⁹ *United States v. Tanner*, 941 F.2d 574, 588 (7th Cir. 1991) (citations omitted) (emphasis added).

⁹⁰ *See United States v. Dingwall*, 6 F.4th 744, 751–52 (7th Cir. 2021).

BWS defendants from getting their claims of duress to the jury.⁹¹ BWS defendants' duress claim may fail for any one of three reasons. First, at the time of the crime, the precipitating threat may not have been outwardly imminent.⁹² For example, many victims commit crimes when the abuser is not physically present during the commission of the crime.⁹³ Second, defendants may struggle to establish that their fear was reasonable and well-grounded.⁹⁴ Finally, defendants may fail to establish inescapability immediately before or during the commission of the crime.⁹⁵

In cases where battered defendants lack complete evidentiary support to make out a *prima facie* claim of duress, defendants introduce expert testimony on the BWS to explain the elements of duress.⁹⁶ The relevancy of expert testimony on BWS turns on whether such testimony can help the jury assess the reasonableness of the defendant's actions.⁹⁷ At a basic level, expert testimony on BWS functions to help jurors understand general patterns of abuse and explain behaviors and thought processes that may appear irrational and unreasonable to the average person.⁹⁸ Below examines the obstacles that battered defendants face when they do not meet the traditional elements of duress and how expert testimony can establish the defendant's actions were reasonable in light of the effects of violent physical and psychological abuse.⁹⁹

a. Imminence Requirement: Temporal Proximity of Threat

Under the imminence requirement of Iowa's compulsion defense, the defendant must show that there was a direct causal relationship between the criminal action taken and the avoidance of the threatened harm.¹⁰⁰ The

⁹¹ Long & Wilsey, *supra* note 31, at 38–39.

⁹² *Id.*

⁹³ See *Dingwall*, 6 F.4th at 751–53 (analyzing cases where the person posing the threat was not always physically present during the commission of the crime). *But see* *United States v. Willis*, 38 F.3d 170, 175, 177 (5th Cir. 1994) (“Evidence that the defendant is suffering from the battered woman’s syndrome is inherently subjective” and therefore not relevant to a duress defense).

⁹⁴ Long & Wilsey, *supra* note 31, at 38.

⁹⁵ *Id.* at 38–39.

⁹⁶ See *infra* Part II.C for discussion on the admissibility of expert testimony in support of a duress defense.

⁹⁷ See, e.g., *Dingwall*, 6 F.4th at 753.

⁹⁸ *Id.* at 754.

⁹⁹ *Id.* (“[T]he questions of reasonableness posed by the duress defense are not asked and answered in the abstract. The judge or jury must consider the defendant’s situation, and the reasonableness of her actions and choices may be considered in light of what is known about the objective effects of such violent and psychological abuse, not on the particular defendant but more generally.”).

¹⁰⁰ See *State v. Walker*, 671 N.W.2d 30, 35 (Iowa Ct. App. 2003).

threatened harm must be present, imminent, and impending.¹⁰¹ A “generalized fear” of future threats is insufficient to establish a reasonable fear of imminent violence.¹⁰² Instead, a defendant who suffers from BWS must have a well-grounded fear that the threat will be carried out against her.¹⁰³

In battering relationships, an intimate partner “may strike at any time; it is not always an isolated or explicit threat.”¹⁰⁴ In fact, “[t]he cyclical nature of an intimate battering relationship enables a [victim] to become expert at recognizing the warning signs of an impending assault from her partner—*signs frequently imperceptible to outsiders.*”¹⁰⁵ BWS victims are often “hypervigilant to cues of impending danger and accurately perceive the seriousness of the situation before another person who had not been repeatedly abused might recognize the danger.”¹⁰⁶ In other words, the effects of ongoing abuse can affect the defendant’s perception of the imminent nature of the threat by her abuser.¹⁰⁷

The imminency element of Iowa’s compulsion defense also requires temporal proximity between the threatened harm and the commission of the crime.¹⁰⁸ In other words, there must be a closeness in time of the threatened harm to the defendant’s act.¹⁰⁹ When a lapse in time exists between the last incident of abuse and the actual commission of the crime, expert testimony can help the jury understand why abuse victims might reasonably perceive a

¹⁰¹ *Id.* at 34.

¹⁰² *Id.* (“Fears of future injuries do not excuse an offense . . . The necessity which will excuse a [defendant] for breach of law must be instant and imminent.”); *United States v. Sixty Acres in Etowah Cnty.*, 930 F.2d 857, 861 (11th Cir. 1991) (“[G]eneralized fear provokes our sympathy, but it cannot provoke the application of a legal standard whose essential elements are absent.”).

¹⁰³ *Walker*, 671 N.W.2d at 35.

¹⁰⁴ *United States v. Dingwall*, 6 F.4th 744, 757 (7th Cir. 2021) (finding that an ongoing threat can constitute an imminent or immediate threat for purposes of a duress defense); *see also United States v. Marengi*, 893 F. Supp. 85, 95 (D. Me. 1995) (indicating that courts should be wary to impose *per se* bars against BWS evidence in the context of duress).

¹⁰⁵ *People v. Humphrey*, 921 P.2d 1, 17 (Cal. 1996) (Brown, J., concurring) (emphasis added) (quotation marks omitted).

¹⁰⁶ *Walker*, *supra* note 47, at 324; *see also United States v. Nwoye*, 824 F.3d 1129, 1137 (D.C. Cir. 2016) (“Remarks or gestures that may seem harmless to the average observer might be reasonably understood to presage imminent and severe violence when viewed against the backdrop of the batterer’s particular pattern of violence.”).

¹⁰⁷ *See Linn v. State*, 929 N.W.2d 717, 731–49 (Iowa 2019).

¹⁰⁸ *Walker*, 671 N.W.2d at 35–36 (holding the threatened harm was not imminent where a period of ten days elapsed between the general threat and commission of the criminal act).

¹⁰⁹ *Id.*; *see also Smith v. State*, 97 So. 3d 860, 861 (Fla. Dist. Ct. App. 2012) (finding BWS inadmissible because defendant’s partner was not in the vehicle at the time, he allegedly that forced her to commit carjackings by duress). *But see United States v. Dingwall*, 6 F.4th 744, 758 (7th Cir. 2021) (“[P]hysical proximity is relevant but not necessarily determinative.”).

threat as imminent.¹¹⁰ Absent evidence of the objective reasonableness of the defendant's fear, a BWS defendant's claim of compulsion is likely to fail.

Without the aid of expert testimony, a jury may characterize the defendant's actions as unreasonable because the batter's conduct that would not appear imminently threatening to someone outside of the relationship.¹¹¹ However, when viewed with the overall context and dynamics of fear and the effects of BWS, expert testimony can help jurors evaluate how a reasonable person can nonetheless be fearful of threatened harm.¹¹² Expert testimony can:

Chang[e] the "snapshot" of circumstances that is shown to a jury in any particular case. If the jury sees the defendant's circumstances immediately prior to commission of the crime and there is no gun held to her head or other markedly extreme duress, the jury may conclude that any fear of imminent death or violence was unreasonable. However, if the defendant is permitted to pull the camera back to provide the broader picture, so to speak, of her circumstances, the jury could learn of a pattern of violence, control, and coercion leading up to the criminal act. Expert testimony could be helpful to explain to the jury how a reasonable person reacts to repeated beatings and emotional abuse. Providing the jury with information of specific incidents of abuse while providing no information about how such treatment can, over time, establish a dynamic *where the threat of abuse hovers over every interaction between the individuals, even if such threat is not always articulated*, would give the jury only half of the story. In effect, [BWS] expert testimony may be characterized as explaining 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.¹¹³

In short, expert testimony on BWS can help battered defendants meet their burden on the reasonable fear of imminent violence element of the compulsion defense.

¹¹⁰ See *Dingwall*, 6 F.4th at 753.

¹¹¹ See *Nwoye*, 824 F.3d 1129 at 1137–38.

¹¹² *Id.*

¹¹³ *United States v. Marengi*, 893 F. Supp. 85, 94–95 (D. Me. 1995) (emphasis added).

b. Lack of Reasonable Alternatives for BWS Victims

As a separate inquiry, BWS defendants must also demonstrate a lack of reasonable alternatives to committing the alleged crime.¹¹⁴ In other words, there must be no reasonable opportunity to escape both the criminal act and the avoidance of the threatened harm by the batterer.¹¹⁵ Battered women face significant impediments to leaving abusive relationships.¹¹⁶ “Most importantly, battered [victims] who leave their abusers risk a retaliatory escalation in violence against themselves or those close to them.”¹¹⁷ In fact, studies suggest that a battered victim is “in the most danger when she tries to leave an abusive relationship.”¹¹⁸ In addition, some victims are coerced into remaining within abusive relationships.¹¹⁹ Batterers often isolate their victims socially and exert financial control over them, leaving victims with limited, or no, options but to remain in the relationship.¹²⁰ Thus, in a case of duress, many battered victims feel there is no reasonable opportunity to both escape the threatened abuse and avoid the illegal conduct.¹²¹

Under the compulsion defense, expert testimony on BWS can explain why defendants ultimately become imprisoned by their batterer, leaving them with no reasonable opportunity to escape¹²² or avoid committing the criminal act.¹²³ Expert testimony on BWS can educate jurors on the limited options available to battered victims for purposes of evaluating the defendant’s

¹¹⁴ See *State v. Walker*, 671 N.W.2d 32, 36 (Iowa Ct. App. 2003).

¹¹⁵ See *United States v. Nwoye*, 824 F.3d 1129, 1143 (D.C. Cir. 2016).

¹¹⁶ See Dutton, *supra* note 21, at 1231–40 (listing a number of factors that influence a victim’s reaction to violence such as fear of retaliation, lack economic resources, concern for children, emotional attachment to her partner, and perception of social support); Burke, *supra* note 31, at 268–274; Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009, 1020–25 (2000) (arguing that “inadequate material resources render women more vulnerable to battering and increase batterers’ access,” and “are a primary reason why women do not attempt to separate.”).

¹¹⁷ *Nwoye*, 824 F.3d at 1137–38; see also Dutton, *supra* note 26, at 1232–33 (discussing retaliatory violence).

¹¹⁸ *State v. Rodriguez*, 636 N.W.2d 234, 245 (Iowa 2001); see also *Nwoye*, 824 F.3d at 1138 (“[S]tudies have suggested that women in battering relationships are more likely to be killed by their batterers after separating from them.”).

¹¹⁹ See Dutton, *supra* note 21, at 1231–40.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Some examples of reasonable, legal alternatives include calling the police to report abuse, calling friends or family, and seeking protective orders. See *United States v. Dixon*, 901 F.3d 1170, 1179–81 (10th Cir. 2018) (finding that the ability to contact law enforcement was an alternative to embezzlement); *State v. Hundley*, 693 P.2d 475, 479 (Kan. 1985) (concluding expert testimony admissible to testify that many abused victims are incapable of calling the police for fear of the consequences that they may face if the abuser finds out).

¹²³ See *Nwoye*, 824 F.3d at 1143.

reasonable opportunity for escape.¹²⁴ By explaining the social realities of battering, expert testimony provides jurors with an understanding that “[t]he battered [defendant]’s perception of viable options for stopping the violence and abuse by any means is not only shaped by her own prior experience with violence, but also influences her future actions in response to violence.”¹²⁵ Thus, expert testimony on BWS can explain why a BWS defendant did not take advantage of an otherwise reasonable opportunity to avoid committing an alleged crime.¹²⁶ Without an adequate understanding of a victim’s response to do abuse, jurors will likely find the battered defendant’s conduct “unreasonable” and dismiss the claim of compulsion.¹²⁷

C. Federal & State Reaction to Admissibility of BWS Testimony in the Context of Duress

Expert testimony on BWS assists battered defendants in overcoming the above-mentioned obstacles presented by traditional law of duress. However, when faced with the issue of whether to admit expert testimony on BWS to support a defense of duress, many courts are reluctant to extend the admissibility of BWS evidence outside the context of self-defense to support claims of duress.¹²⁸ The lack of consensus among courts turns on the distinction between subjective versus objective evidence.¹²⁹ The standard of reasonableness determines what evidence is admitted to the jury for purposes of assessing the reasonableness and necessity of a battered defendant’s actions.¹³⁰ With an objective standard, the jury must measure the defendant’s

¹²⁴ See Dutton, *supra* note 21, at 1197.

¹²⁵ *Id.* at 1219.

¹²⁶ *Id.* at 1216–18.

¹²⁷ See Long & Wilsey, *supra* note 31, at 38–39.

¹²⁸ See *United States v. Dingwall*, 6 F.4th 744, 752–53 (7th Cir. 2021) (listing federal and state court approaches to admitting expert testimony on BWS); see also *Nwoye*, 824 F.3d at 1136–37 (analyzing the parallels between using BWS in self-defense and duress cases and concluded that “if battered woman syndrome can be relevant to prove self-defense (as virtually all courts accept), it likewise should be relevant to prove duress.”).

¹²⁹ See *United States v. Marengi*, 893 F. Supp. 85, 94–95 (D. Me. 1995) (“Part of the complexity of the issue [of duress defense] is that the distinction between subjective and objective evidence is not . . . clear”); *Dingwall*, 6 F.4th at 755 (“Assessing the influence of mental conditions on objective reasonableness and subjective perceptions does not lend itself well to bright lines. But we believe courts are capable of distinguishing between expert evidence of battering and its effects to determine how a reasonable person who has been battered may have perceived a situation (objective and permissible), and expert evidence of how the defendant herself actually perceived the situation (subjective and not permissible).”).

¹³⁰ See *Burke*, *supra* note 31, at 254–61. In contrast to duress, courts assess evidence of self-defense with both a subjective and objective standard of reasonableness. *Id.* at 241–43. The defendant’s belief of the imminent threat must be subjectively reasonable, and the defendant’s belief in the necessity of deadly force must be objectively reasonable when considering all of the surrounding circumstances. *Id.*

actions from the perspective of a hypothetical reasonable person.¹³¹ By requiring jurors to use a subjective standard, the jury must determine how the defendant herself actually perceived the situation.¹³² In other words, the defendant's mental state is relevant in a subjective inquiry of reasonableness.¹³³ The affirmative defense of duress imposes an objective standard on the evaluation of a BWS defendant's conduct.¹³⁴ While purely subjective evidence such as a defendant's "clarity of judgment, suggestibility or moral insight" are not relevant to claims of duress, objective circumstances such as the defendant's knowledge of the batterer's history of abuse are.¹³⁵

A circuit split exists between Federal Courts of Appeals on the issue of whether expert testimony on BWS is admissible in the context of duress.¹³⁶ Again, the main point of contention between courts centers on whether expert testimony on BWS is subjective or objective evidence.¹³⁷ Both the Fifth and Tenth Circuits hold that expert testimony evidence is subjective, and therefore irrelevant to the objective, reasonable person inquiry of the duress defense.¹³⁸ On the other hand, the D.C., Sixth, Seventh, and Ninth Circuits all agree that BWS testimony is directly relevant to the objective elements of duress and may inform the jury how a reasonable person under the defendant's circumstances might act.¹³⁹

1. Federal Circuit Split: Jurisdictions where BWS Expert Testimony is Excluded

In *United States v. Willis*, the Fifth Circuit was the first court to unequivocally hold that expert testimony on BWS is *per se* excludable and

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ See *Dingwall*, 6 F.4th at 746.

¹³⁵ See *United States v. Nwoye*, 824 F.3d 1129, 1136–37 (D.C. Cir. 2016).

¹³⁶ See *Dingwall*, 6 F.4th at 754; *United States v. Lopez*, 913 F.3d 807, 815 (9th Cir. 2019); *Nwoye*, 824 F.3d at 1136; *Dando v. Yukins*, 461 F.3d 791, 801–02 (6th Cir. 2006). *But see* *United States v. Dixon*, 901 F.3d 1170, 1173 (10th Cir. 2018) (affirming exclusion of evidence of battered woman's syndrome); *United States v. Willis*, 38 F.3d 170, 173 (5th Cir. 1994) (same).

¹³⁷ See *Dingwall*, 6 F.4th at 752–53 (listing federal and state court approaches to admitting expert testimony on BWS).

¹³⁸ See *Willis*, 38 F.3d at 175 (holding that evidence of BWS cannot support a defense of duress because evidence would show defendant suffered from a psychological condition which caused her to commit the crime—a subjective test); *Dixon*, 901 F.3d at 1173 (affirming exclusion of evidence of battered woman syndrome); see also *State v. B.H.*, 870 A.2d 273, 290 (N.J. 2005) (expert evidence on battering not relevant to “reasonable firmness” prong of duress defense but could be relevant to defendant's credibility and to explain why she would remain with abuser and ought not be perceived as acting recklessly).

¹³⁹ See *Dingwall*, 6 F.4th at 754; *Lopez*, 913 F.3d at 815; *Nwoye*, 824 F.3d at 1136; *Yukins*, 461 F.3d at 801–02.

therefore inadmissible to support a duress defense.¹⁴⁰ The Fifth Circuit addressed BWS evidence in relation to Willis's duress defense against the charge of carrying a firearm during the commission of a drug trafficking crime.¹⁴¹ Willis was arrested after selling marijuana to an undercover police officer and was found to have a gun in her purse.¹⁴² She admitted to her involvement with the marijuana transactions but claimed that she did so only under duress because she feared her abusive boyfriend and believed that he would beat her if she did not put the gun in her purse.¹⁴³ At trial, Willis proffered expert testimony by a clinical psychologist who testified that "Willis' relationships fell into a very clear . . . classical pattern of a [BWS] and an abusive relationship."¹⁴⁴ The District Court excluded expert testimony concerning BWS and the jury ultimately convicted the defendant.¹⁴⁵ On appeal, the Fifth Circuit affirmed the conviction, holding that expert testimony on BWS is "inherently subjective" and thus not relevant in determining whether Willis acted under duress.¹⁴⁶

The Fifth Circuit engaged in a subjective versus objective evidence analysis in deciding the admissibility of BWS testimony in a claim of duress.¹⁴⁷ In holding that BWS evidence is incompatible with the objective reasonable-person standard required to establish a duress defense, the court reasoned that:

Such evidence is not addressed to whether a person of reasonable firmness would have succumbed to the level of coercion present in a given set of circumstances. Quite the contrary, such evidence is usually consulted to explain why this particular defendant succumbed when a reasonable person without a background of being battered might not have. Specifically, battered woman's syndrome evidence seeks to establish that, because of her psychological condition, the defendant is unusually susceptible to the coercion.¹⁴⁸

Ultimately, the Fifth Circuit feared that admitting BWS testimony would change the standard of duress from "whether a person of reasonable firmness could have resisted," to "whether this individual woman, in light of the

¹⁴⁰ *United States v. Willis*, 38 F.3d 170, 173 (5th Cir. 1994).

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.* at 174.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Willis*, 38 F.3d at 175.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

psychological condition from which she suffers, could have resisted.”¹⁴⁹ And as such, the court refused to change the duress’s objective inquiry into a subjective one.¹⁵⁰

In *United States v. Dixon*, the Tenth Circuit aligned with the Fifth Circuit, holding that expert testimony on BWS is not relevant to the objective reasonableness inquiry of a duress defense.¹⁵¹ Dixon was indicted for embezzlement and raised the defense of duress “on the theory that she faced an imminent threat of sexual assault from her stepfather and that her [PTSD] caused her to believe that no recourse to escape that assault was available except through theft.”¹⁵² In support of the defense, Dixon sought to admit expert testimony on the effects of suffering long-term sexual abuse to show that her perception of fear was reasonable.¹⁵³ The district court denied the duress defense altogether and excluded all BWS evidence and a jury convicted Dixon on the embezzlement charge. On appeal, the Tenth Circuit affirmed the lower court’s ruling exclusion of BWS evidence, holding that such evidence does not address the objective reasonableness of the defendant’s behavior.¹⁵⁴ The court held that the duress defense required a purely objective reasonableness standard in which the court may only consider evidence of “external, concrete factors” that are unique to the defendant, *not* whether the defendant “has been influenced by non-tangible psychological conditions.”¹⁵⁵ The court explained that under duress defense jury instruction, “the touchstone is still what is objectively reasonable—not what is reasonable only through the PTSD-distorted lens of Ms. Dixon.”¹⁵⁶

2. Federal Circuit Split: Jurisdictions where BWS Expert Testimony is Admissible

On the other hand, the Seventh, Sixth, Ninth, and D.C. Circuits addressed the issue of BWS evidence in the context of duress and concluded that expert testimony on BWS is admissible to support a defense of duress,

¹⁴⁹ *Id.* at 176.

¹⁵⁰ *Id.* at 176–77.

¹⁵¹ *United States v. Dixon*, 901 F.3d 1170, 1180–81 (10th Cir. 2018).

¹⁵² *Id.* at 1173.

¹⁵³ *Id.* at 1174–75 (providing Dr. Patricia Nation’s testimony that “Dixon was sexually abused for many years resulting in her mental health diagnoses, as a result she believed there to be no hope, no help coming, and that she had no power over her body or her life . . . Dixon saw no alternative to her actions[,] and by taking the money, she was able to secure some momentary peace and safety.”).

¹⁵⁴ *Id.* at 1183–84.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 1182. The court observed how the linguistic formulation of the jury instruction differed from and was more restrictive than the Model Penal Code’s “in his situation” language relied on by other courts admitting BWS evidence, and that distinction was meaningful to the court in excluding the duress defense. *Id.*

as it assists the jury in determining how a reasonable person under the defendant's circumstances would have acted in light of the abusive relationship.¹⁵⁷

In *Dando v. Yukins*, the Sixth Circuit reviewed a case regarding ineffective assistance of counsel, in which the defendant's counsel failed to investigate a duress defense and the Michigan state court denied her request for a mental health expert.¹⁵⁸ Dando committed a string of armed robberies with her boyfriend after he allegedly made repeated threats to beat and kill her immediately before she participated in the robberies.¹⁵⁹ At trial, Dando pled no contest after her counsel allegedly denied her request for an expert on BWS to assess her history of violent abuse.¹⁶⁰ The district court denied Dando's request to appeal, reasoning that evidence of BWS would not support a defense of duress.¹⁶¹ Despite a tenuous showing of the elements of duress, the Sixth Circuit rejected the district court's holding that BWS was irrelevant.¹⁶² In comparing the present case to previous cases of self-defense where such testimony was admitted, the court held that the use of expert testimony on BWS "is not at odds with a reasonableness requirement—if anything, evidence of [BWS] can potentially bolster an argument that a defendant's actions were in fact reasonable."¹⁶³ In so ruling, the Sixth Circuit reasoned:

Although those of us who are not so unfortunate to have to live with constant, imminent threats of violence might look at the actions of a defendant in Dando's situation from the relative comfort of a judge's chambers or a jury box and wonder what reasonable person would have facilitated Doyle's shocking crime spree, *evidence of Battered Woman's Syndrome can explain why a reasonable person might resort to such actions given a history of violent abuse and the imminent violent threats.*¹⁶⁴

¹⁵⁷ See *United States v. Dingwall*, 6 F.4th 744, 745 (7th Cir. 2021); *United States v. Nwoye*, 824 F.3d 1129, 1136 (D.C. Cir. 2016); *United States v. Lopez*, 913 F.3d 807, 819–20 (9th Cir. 2019); *Dando v. Yukins*, 461 F.3d 791, 801 (6th Cir. 2006).

¹⁵⁸ *Yukins*, 461 F.3d at 795.

¹⁵⁹ *Id.* at 794.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 800–01 ("The district court found that Dando would have been unable to establish a duress defense because she had several opportunities to escape during the crime spree, and because the requirement for a duress defense that the threat create a fear in the mind of a reasonable person precludes the use of evidence of [BWS], which is inherently subjective.").

¹⁶² *Id.* at 801.

¹⁶³ *Id.*

¹⁶⁴ *Dando v. Yukins*, 461 F.3d 791, 801 (6th Cir. 2006) (emphasis added).

Based on this reasoning, the court deemed evidence of BWS relevant in the context of duress.¹⁶⁵

Likewise, in *United States v. Nwoye*, the D.C. Circuit held that the trial court erred in not presenting expert testimony on BWS to support the defendant's claim of duress, and that error amounted to ineffective assistance of counsel.¹⁶⁶ In this case, Nwoye was charged with extortion, but claimed she participated in the act under duress.¹⁶⁷ Testifying in her own defense, Nwoye admitted to participating in the criminal act, but testified that her boyfriend coerced her by threatening to "strangle" and "kill" her and "bury her inside the house" if she did not cooperate.¹⁶⁸ Nwoye's counsel, however, never sought to introduce expert testimony on BWS and the district court denied the request for a duress instruction on the ground that Nwoye failed to demonstrate that she lacked a reasonable alternative to participating in the extortion scheme.¹⁶⁹ Nwoye was convicted of conspiracy to commit extortion.¹⁷⁰

In finding that Nwoye was prejudiced by her trial counsel, the D.C. Circuit held that expert testimony on BWS would have been relevant to the duress defense and entitled Nwoye to jury instruction on duress.¹⁷¹ "The reason, put simply, is that the duress defense requires a defendant to have acted reasonably under the circumstances, and expert testimony can help a jury assess whether a battered woman's actions were reasonable."¹⁷² Such testimony, according to the Court, can aid the jury in understanding the effects of abuse.¹⁷³ Specifically, the Court found expert testimony on the risk of retaliatory violence could have provided the jury with a plausible explanation for why Nwoye did not remove herself from the extortion scheme.¹⁷⁴ According to the Court, "[t]he concept of [BWS] fits this case to a T Some outsiders may question why she didn't just leave her boyfriend. But the expert testimony would help explain why."¹⁷⁵

In *United States v. Lopez*, the Ninth Circuit held that past facts of abuse were admissible to support a claim of duress.¹⁷⁶ Lopez was charged with

¹⁶⁵ *Id.*

¹⁶⁶ *United States v. Nwoye*, 824 F.3d 1129, 1130 (D.C. Cir. 2016).

¹⁶⁷ *Id.* at 1131.

¹⁶⁸ *Id.* at 1132.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 1136.

¹⁷² *United States v. Nwoye*, 824 F.3d 1129, 1136 (D.C. Cir. 2016).

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 1139.

¹⁷⁵ *Id.*

¹⁷⁶ *United States v. Lopez*, 913 F.3d 807, 811 (9th Cir. 2019).

purchasing a firearm using a false identification. At trial, Lopez admitted to the crime, but alleged that she acted under duress, claiming that her abusive boyfriend threatened to harm her and her family unless she purchased the gun for him.¹⁷⁷ In support of her defense, Lopez sought to introduce expert testimony on BWS and the effects of past abuse to provide context for her actions.¹⁷⁸ In other words, to establish that her fear of her boyfriend was “well grounded” and why she did not have a “reasonable opportunity to escape.”¹⁷⁹ The district court, however, rejected Lopez’s request on the grounds that BWS evidence was incompatible with the duress defense.¹⁸⁰

In reversing Lopez’s conviction, the Ninth Circuit held that the district court abused its discretion in categorically excluding expert testimony on BWS. The court held that “expert testimony on BWS is relevant to supporting a defendant’s argument that she had a well-grounded fear that she would be harmed if she failed to commit the illegal act demanded of her and that she had no reasonable opportunity to avoid committing the crime.”¹⁸¹ In so ruling, the Ninth Circuit found that BWS testimony “serves an important role in helping dispel many of the misconceptions regarding women in abusive relationships.”¹⁸² And part of the role is explaining to jurors how “a reasonable person can nonetheless be trapped and controlled by another at all times even if there is no overt threat.”¹⁸³ The expert testimony was thus vital to Lopez’s defense, which hinged on persuading the jury that she acted only out of an objectively reasonable fear, and its exclusion was prejudicial.

Finally, in a case of first impression, the Seventh Circuit joined the Sixth, Ninth, and D.C. Circuits definitively allowing the admissibility of expert testimony on BWS.¹⁸⁴ In *United States v. Dingwall*, the Seventh Circuit held that expert testimony “may help a jury understand the objective reasonableness of a defendant’s actions in the situation she faced.”¹⁸⁵ The Court rejected the opinions of the Fifth and Tenth Circuits, and firmly concluded that the experience of abuse survivors are objective realities.¹⁸⁶ The court

¹⁷⁷ *Id.* at 812–15 (testifying that her former boyfriend grabbed her, threatening to shoot up her house if she did not get him a gun and grabbed her on a second occasion warning, “you don’t want anything to happen to your mom or your sisters” for failure to comply with his demands).

¹⁷⁸ *Id.* at 811.

¹⁷⁹ *Id.* at 811, 813–14.

¹⁸⁰ *Id.* at 807.

¹⁸¹ *Id.* at 823.

¹⁸² *United States v. Lopez*, 913 F.3d 807, 825 (9th Cir. 2019).

¹⁸³ *Id.* at 820.

¹⁸⁴ *United States v. Dingwall*, 6 F.4th 744, 748–52 (7th Cir. 2021).

¹⁸⁵ *Id.* at 754–55.

¹⁸⁶ *Id.*

reasoned that “a mental condition is an ‘external, concrete factor’ that may be demonstrated with evidence.”¹⁸⁷ The court noted that it also considered “personal circumstances under objective standards” to assess the reasonableness of actions in other contexts such as human trafficking and sexual abuse cases, without transforming the objective analysis into a subjective one.¹⁸⁸

3. Issue of Admissibility of BWS Testimony at State Level

State courts have also come to varying conclusions about whether evidence of BWS is relevant to a defense of duress. Most courts that have considered the question recognize that expert testimony on BWS is relevant to prove duress.¹⁸⁹ For example, in *People v. Romero*, the California Court of Appeals admitted expert testimony on BWS to establish the reasonableness of the battered defendant’s decision to commit the alleged crime.¹⁹⁰ The defendant, Debra Romero, sought post-conviction relief, claiming she committed robberies under duress because she was afraid her abuser would kill her if she did not do as he demanded.¹⁹¹ In reversing the conviction, the court held that the use of expert testimony in cases of self-defense permitted an extension of such evidence to cases of duress.¹⁹² Such expert testimony, concluded the court, renders reasonable what would otherwise “appear unreasonable to the jurors,” by explaining “how a battered [defendant] might think, react, or behave”¹⁹³

Expert witness testimony on BWS was also found admissible in *United States v. Marengi*.¹⁹⁴ The defendant was charged with conspiring to possess

¹⁸⁷ *Id.* at 755.

¹⁸⁸ *Id.* at 755–56.

¹⁸⁹ See *United States v. Lopez*, 913 F.3d 807, 821 (9th Cir. 2019) (citing cases where such evidence is relevant and may be admitted). Other states codified statutes specifically addressed the admissibility of BWS evidence and allow expert testimony to support a duress defense. See, e.g., MASS. GEN. LAWS ANN. ch. 233, § 23F; see also *Wonnum v. State*, 942 A.2d 569, 573 (Del. 2007) (referencing DEL. CODE ANN. §§ 303–04). For example, Massachusetts does not require that the defendant first affirmatively prove her status as a battered victim. See *Commonwealth v. Asenjo*, 82 N.E.3d 966, 974 (Mass. 2017) (“Section 23F does not restrict expert witness testimony to facts in evidence, require the witness’s personal knowledge or observation, or require that the basis for the expert’s opinion be independently admissible. Instead, the statute merely requires that the defendant assert certain specified defenses to render admissible evidence of the defendant’s past or current abuse and expert witness testimony regarding abusive relationships and the impact such abuse had on the defendant.”).

¹⁹⁰ *People v. Romero*, 13 Cal. Rptr. 2d 332, 339 (Cal. Ct. App. 1992), *rev’d on other grounds*, 35 Cal. Rptr. 2d 270 (Cal. 1994).

¹⁹¹ *Id.* at 332–34.

¹⁹² *Id.*

¹⁹³ *Id.* at 341.

¹⁹⁴ *United States v. Marengi*, 893 F. Supp. 85, 87–88 (D. Me. 1995).

and distribute a controlled substance, but claimed duress and sought to introduce expert witness testimony regarding “the process by which Defendant was rendered entirely submissive to her boyfriend through physical and emotional abuse.”¹⁹⁵ The U.S. District Court of Maine held that the battered woman syndrome is admissible in duress cases to explain the general effects of being battered.¹⁹⁶ According to the court, expert testimony could provide the jury with “the broader picture . . . of a pattern of violence, control, and coercion leading up to the criminal act.”¹⁹⁷ Such information, the court noted, could help a jury understand a defendant acted reasonably in response to a history of abuse, patterns of violence, and psychological control prior to the commission of a crime.¹⁹⁸

Other courts, however, reject BWS testimony in the duress context.¹⁹⁹ For example, in *State v. B.H.*, the New Jersey Supreme Court held that expert testimony on BWS was admissible, but could not be used to prove the defendant’s objective reasonableness when the defense was duress.²⁰⁰ In concluding that the requirement of “reasonable firmness” should be treated differently than other issues, the court summarized its view as follows:

We hold that in light of the particular requirements of our statute, courts must apply the standard of a “person of reasonable firmness” in determining whether duress excuses criminal conduct, and battered woman syndrome expert testimony is not relevant to that analysis. The evidence is relevant, however, to a defendant’s subjective perception of a threat from her abuser and, in that respect, can be relevant to her credibility. It also helps in explaining why she would remain with her abuser and, therefore, why such a defendant ought not to be perceived as acting recklessly.²⁰¹

¹⁹⁵ *Id.* at 87–88, 97 (seeking to provide “psychological information, scientific evidence, and sociological data to show how reasonable persons react in similar circumstances.”).

¹⁹⁶ *Id.* at 96.

¹⁹⁷ *Id.* at 94–95.

¹⁹⁸ *Id.*

¹⁹⁹ *See, e.g.*, *State v. Richter*, 424 P.3d 402, 408–10 (Ariz. 2018) (excluding expert testimony on BWS under Arizona law because it was only relevant to the defendant’s subjective state of mind, not the objective standard that governs the defense of duress); *U.S. v. Sixty Acres in Etowah Cnty.*, 930 F.2d 857, 861 (11th Cir. 1991) (rejecting evidence in forfeiture case where wife had opportunity to notify authorities where drug operation was ongoing); *State v. B.H.*, 870 A.2d 273, 289–91 (N.J. 2005) (expert testimony irrelevant to reasonableness of duress defense).

²⁰⁰ *B.H.*, 870 A.2d at 290 (raising the defense of duress, the defendant admitted to engaging in sexual activity with her seven-year-old step-son, but claimed that her husband physically and sexually assaulted her and held his hand to her throat during her sexual activity, threatening that if she refused then she would never see her daughter again).

²⁰¹ *Id.* at 290.

State v. Riker offers another example where expert testimony on BWS evidence was excluded as part of a duress defense.²⁰² The Defendant Riker appealed her conviction on charges of delivery and possession of cocaine, arguing that she acted out of duress.²⁰³ In support of her defense, Riker sought to admit expert testimony on BWS generally and regarding her history as a battered woman, arguing that her history of abuse lead to symptoms of BWS and that she was thereby reasonable in perceiving a threat of harm from a man other than her batterer.²⁰⁴ Nonetheless, the trial court held, and the Washington Supreme Court later affirmed, that testimony on BWS was inadmissible when applied to a “non-battering, non-intimate relationship” because the testimony was not relevant and, thus, would not assist the trier of fact.²⁰⁵

According to the majority, the duress defense is viewed with skepticism. In the majority’s opinion, allowing BWS testimony in cases of duress would mean that “the evidentiary doors will be thrown open to every conceivable emotional trauma.”²⁰⁶ The majority was concerned that admitting BWS testimony in cases of duress would have a more socially harmful outcome than allowing the same testimony in cases of self-defense because duress involves harm to an innocent third party and “[t]he more stringent requirements for the duress defense . . . reflect society’s conclusion that . . . the defense should be limited.”²⁰⁷

D. Iowa Courts and Admissibility of BWS

The Supreme Court of Iowa has not yet ruled on the admissibility of expert testimony on BWS in the context of the compulsion defense. However, several Iowa Supreme Court opinions issued over the last twenty-five years reference BWS in ways that reveal a progression in how the court conceptualizes battered victims’ responses to abusive relationships. Section D provides background on the evidentiary uses of BWS in Iowa by setting forth the applicable rules of evidence in Iowa, and then discussing the emergence of BWS in Iowa courts.

²⁰² *State v. Riker*, 869 P.2d 43, 48 (Wash. 1994).

²⁰³ *Id.* at 45.

²⁰⁴ *Id.*

²⁰⁵ *Id.* at 50.

²⁰⁶ *Id.* at 51 n.5.

²⁰⁷ *Id.*

1. Admissibility of Expert Testimony under Iowa Rule 5.702

Before any expert witness is allowed to testify, his or her testimony must comply with the applicable evidentiary rules.²⁰⁸ Iowa Rule of Evidence 5.702 sets forth the following standard for the admission of expert testimony:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of opinion or otherwise.²⁰⁹

It follows, therefore, that expert opinion testimony in criminal cases is permissible in court if it is reliable and will aid the jury in evaluating the BWS evidence in question.²¹⁰ The Supreme Court of Iowa has upheld the admissibility of expert testimony for psychological evidence.²¹¹ Notably, the court held that Iowa is “committed to [a] liberal rule on the admission of psychological evidence.”²¹² Although Iowa has not yet ruled on the admissibility of BWS expert testimony in the context of duress, listed below are several other Iowa cases that speak to the admissibility of evidence on BWS as it relates to different legal questions.

2. Iowa Case Law on BWS

Expert testimony on BWS was first utilized by prosecutors in domestic violence cases to explain matters such as the battered victim’s recantation of an accusation or lack of cooperation with the prosecution.²¹³ In *State v. Griffin*, the Iowa Supreme Court held expert testimony on BWS was properly admitted in a prosecution case for kidnapping and willful injury.²¹⁴ The prosecution introduced expert testimony evidence regarding the general nature of BWS to show the victim’s psychological reason for refusing to testify against defendant.²¹⁵ The expert testified that BWS victims experience “psychological terrorism,” to explain the conduct and coping skills of victims, and the court held that such testimony was appropriate.²¹⁶

²⁰⁸ IOWA EVID. CODE § 5.702.

²⁰⁹ *Id.*

²¹⁰ *See State v. Rodriguez*, 636 N.W.2d 234, 245 (Iowa 2001).

²¹¹ *See Linn v. State*, 929 N.W.2d 717, 750 (Iowa 2019).

²¹² *Id.* (citing *State v. Dudley*, 856 N.W.2d 668, 676 (Iowa 2014)).

²¹³ *See State v. Griffin*, 564 N.W.2d 370, 371 (Iowa 1997).

²¹⁴ *Id.* at 375.

²¹⁵ *Id.* at 374.

²¹⁶ *Id.* at 374–75 (allowing expert testimony about BWS on the issue of a victim’s credibility where, prior to trial, she had recanted her accusation of defendant).

In *State v. Rodriguez*,²¹⁷ the defendant appealed his conviction of domestic assault and kidnapping in connection with an incident involving his girlfriend, alleging the trial court erred in allowing a domestic abuse expert to testify.²¹⁷ The prosecution introduced expert testimony on BWS for purposes of rehabilitating the victim's credibility.²¹⁸ The Supreme Court of Iowa held that the prosecution's expert testimony of BWS was properly admitted, including evidence on the "the cycle of violence" in abusive relationships.²¹⁹ In ruling so, the Court reasoned that expert testimony gave the jury "context of the nature of their relationship" and "information that it needed to understand the significance and meaning of the defendant's conduct and to understand the victim's reaction to that conduct."²²⁰

In *State v. Frei*, the Iowa Supreme Court more directly examined the admissibility of expert testimony on BWS in a case of self-defense.²²¹ The defendant in *Frei* asserted a claim of self-defense and proffered expert testimony on BWS to prove her beliefs were subjectively justified.²²² The court held that expert testimony could aid in cautioning jurors that the behavior of battered women and "should not be lightly dismissed as inherently unreasonable."²²³ In reaching its holding, the court noted that a claim of self-defense has an objective component that takes into account the circumstances faced by the BWS victim.²²⁴ And an important part of determining the objective reasonableness of a battered woman, the court explained, is the "objective facts about the batterer, any history of violence, any failed attempts to escape abuse, and any other facts relevant under the circumstances."²²⁵

In *Linn v. State*, the Iowa Supreme Court held that it was an abuse of discretion to deny the defense funds to investigate whether the defendant suffered from BWS at the time she killed her allegedly abusive ex-boyfriend.²²⁶ In reaching its holding, the Iowa Supreme Court extensively discussed the important role that expert witnesses play in trials involving domestic violence.²²⁷ The Court explained that many aspects of BWS are not

²¹⁷ *State v. Rodriguez*, 636 N.W.2d 234, 238–39 (Iowa 2001).

²¹⁸ *Id.* at 245–46.

²¹⁹ *Id.* at 246.

²²⁰ *Id.* at 245–46.

²²¹ *State v. Frei*, 831 N.W.2d 70 (Iowa 2013), *overruled on other grounds by* *Alcala v. Marriott Int'l, Inc.*, 880 N.W.2d 699, 708 n.3 (Iowa 2016).

²²² *Id.* at 73.

²²³ *Id.* at 75.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Linn v. State*, 929 N.W.2d 717, 752–53 (Iowa 2019).

²²⁷ *Id.* at 731–49.

common knowledge, and therefore the Court is willing to “permit introduction of expert BWS testimony to contextualize the circumstances faced by a BWS victim.”²²⁸ Such context, the court noted, “is important . . . to assist the fact finder in evaluating the reasonableness of a BWS victim’s actions and the credibility of associated testimony.”²²⁹

Taken together, Iowa case law acknowledges the relevance of evidence on BWS to assist jurors in understanding the reasonableness of the seemingly contrary behaviors in BWS cases.

III. ANALYSIS

Given the exceptionally high rates of domestic violence in Iowa, it is only a matter of time before Iowa courts must rule on the admissibility of expert testimony on BWS in cases of compulsion. This Note argues that Iowa Courts should admit evidence of BWS to support the defense of compulsion. The exclusion of expert BWS testimony unjustly denies battered victims the opportunity to fully present both the context and reasonableness of their actions to the jury.

Part A argues that expert testimony on BWS is directly relevant to the objective elements of compulsion. This section analyzes the arguments presented by courts that decline to admit expert testimony of BWS and argues that the holding and reasoning against admissibility is flawed. Part B analyzes Iowa’s self-defense and compulsion law, arguing that no material distinction exists between the two statutes and the rationale provided for the admission of this evidence in the self-defense context should apply equally to the compulsion defense. Finally, Part C proposes legislative reform and argues that Iowa should follow Massachusetts’ lead and explicitly mandate the admissibility of expert testimony concerning the BWS for defense of compulsion.

A. Expert Testimony on BWS is Relevant and Necessary to the Objective Standard that Governs Iowa’s Compulsion Defense

The main issue battered defendants confront in the courtroom when asserting a defense of compulsion is how to show their actions were reasonable. The circumstances surrounding a battered victim’s situation are typically at odds with the traditional duress paradigm.²³⁰ Ultimately, if the elements of duress are not met, then psychological expert witness testimony may be inadmissible.²³¹ Thus, the establishment of reasonableness,

²²⁸ *Id.* at 747.

²²⁹ *Id.*

²³⁰ See Skinazi, *supra* note 27, at 1003.

²³¹ See *supra* notes 133–212 and accompanying text for a discussion on admissibility of expert testimony in federal and state courts.

imminence, and the opportunity to escape are integral to the success of a compulsion defense, and, where the defendant is a battered victim, expert testimony on BWS is relevant and necessary to help the defendant establish these factors.

Some courts erroneously conclude that admitting BWS testimony will transform the reasonableness calculation in the duress defense from an objective inquiry into a subjective inquiry.²³² However, evidence of BWS is relevant to the duress claim because it links the on-going abuse victims' experience with the specific crime committed. When applied to the compulsion defense, BWS evidence is relevant to satisfy each of the required elements of the duress defense in the following ways by: (1) dispelling the myths surrounding battered victims; (2) explaining how a reasonable person is affected by continuous domestic abuse and therefore would possess reasonable fear of danger; and (3) the lack of reasonable alternatives.

1. Relevancy of Expert Testimony: Reasonable Fear of Imminent Violence

The narrow views on reasonableness and imminence by opponents of admitting BWS testimony ignores the tragic reality of abusive relationships. For example, in *State v. Riker*, the Court refused to admit expert testimony on BWS because the abuser was not physically present at the time the defendant committed the alleged crime.²³³ The underlying basis for the imminence requirement under the compulsion defense is to ensure that the action was necessary.²³⁴ Opponents of admitting BWS testimony in cases of duress fail to recognize that a victim's fear of death or bodily injury is not an isolated incident.²³⁵ Rather, abuse is ongoing, varying in its severity and unpredictability, and the nature of such abuse affects a victim's perception of the imminency of a threat.²³⁶

Jurors cannot fully appreciate acts of violence between intimate partners without understanding the broader context of abuse in which the act occurred.²³⁷ In fact, a jury may characterize the defendant's actions as unreasonable because the batterer's conduct may not appear imminently threatening to someone outside of the relationship. Therefore, when a lapse in time exists between the last incident of abuse and the actual commission of the crime, expert testimony can help the jury understand why abuse

²³² See *supra* notes 145–161 and accompanying text for a discussion on courts taking a subjective approach to conceptualizing duress defense.

²³³ *State v. Riker*, 869 P.2d 43, 45–46, 49 (Wash. 1994).

²³⁴ See *State v. Walker*, 671 N.W.2d 30, 35–36 (Iowa Ct. App. 2003).

²³⁵ See *id.* at 35; *United States v. Nwoye*, 824 F.3d 1129, 1137 (D.C. Cir. 2016).

²³⁶ See *Linn v. State*, 929 N.W.2d 717, 731–49 (Iowa 2019).

²³⁷ *Id.*

victims might reasonably perceive a threat as imminent.²³⁸ Such testimony might very well convince the jury that the defendant's perception of harm was also the objective reality. Thus, the compulsion defense should not be arbitrarily constrained to the objective/subjective dichotomy characterizing much of the legal discussion. Where a gap of time exists between the threat of harm and the battered defendant's criminal act, Iowa courts should allow expert testimony to help establish that the defendant faced "imminent" danger as a result of an ongoing pattern of abuse.

2. Relevancy of Expert Testimony: Lack of Reasonable Alternative

In order for jurors to understand the objective circumstances surrounding the defendant's actions, expert testimony is also necessary to show how battered victims may feel they have no reasonable opportunity to escape. Battered victims face significant impediments to leaving abusive relationships and such impediments may be misinterpreted by jurors without the aid of expert testimony.²³⁹ For example, if the batterer is not physically present at the time the defendant committed the crime, a jury might find that the defendant's actions were irrational with ample opportunity to escape and dismiss the claim of compulsion.

However, jurors often struggle to understand the "whys" of a battered relationship—why she stayed, why she went back, why she thought she was in danger, why she committed the crime, why she did not take advantage of a seemingly reasonable opportunity to avoid committing a crime.²⁴⁰ Without the aid of expert testimony, the rigid, objective elements of the compulsion defense fails to adequately capture the battered victim's circumstances without any consideration of the psychological impact of battering relationships.²⁴¹ The reasonableness of the defendant's opportunity to escape must be viewed in light of the social realities of abusive relationships.

Batters often use physical force, intimidation, threats, manipulation, or isolation to control all areas of a victim's life.²⁴² Without evidence explaining such effects of BWS, jurors are only given a "snapshot" of the defendant's circumstances and are left to draw from their own knowledge and

²³⁸ *United States v. Dingwall*, 6 F.4th 744, 753 (7th Cir. 2021).

²³⁹ *See Dutton*, *supra* note 21, at 1231–40.

²⁴⁰ *See Burke*, *supra* note 31, at 268–73.

²⁴¹ *Id.* at 241–42, 258–61.

²⁴² Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973, 986 (1995) (suggesting that battered women generally "have been subjected to an *ongoing* strategy of intimidation, isolation, and control that extends to all areas of a woman's life, including sexuality; material necessities; relations with family, children, and friends; and work."); *see also* Walker, *supra* note 47, at 87 ("[I]n the psychological domain the significant portion of battered women experienced being cursed at, humiliated, and having controlling partners.").

experience.²⁴³ Therefore, expert testimony is essential to the jury accurately understanding the reasonableness of the defendant's options under the defense of compulsion.

B. No Material Distinction Exists Between Self-Defense and Compulsion

There is no material distinction between the elements of self-defense and compulsion and such similarities should dictate Iowa's logical progression from admitting evidence of BWS in self-defense cases to admitting such evidence to support a defense of compulsion.²⁴⁴ Courts have found the defenses of self-defense and duress "analogous" and have "recognized that expert testimony on battered woman syndrome can be relevant to prove duress" for the same reasons that such evidence is relevant to self-defense.²⁴⁵ Courts opposed to admitting expert testimony on BWS in the context of duress maintain that evidence that a defendant is suffering from BWS is "inherently subjective," and therefore irrelevant to the defense of duress.²⁴⁶ However, contrary to what opponents contend, expert testimony on BWS helps a jury understand the objective reasonableness of a defendant's actions in the situation she faced, rather than subjective beliefs.²⁴⁷ The labels between subjective and objective standards fruitlessly ignore the similarities between the elements of self-defense and compulsion.

In Iowa, both compulsion and self-defense are statutorily defined.²⁴⁸ When comparing the two statutes, the similarities between these defenses are strikingly evident. The two defenses overlap in the elements of imminence, necessity, and reasonableness.²⁴⁹ In both defenses, the key issue is whether the battered defendant's fear was *reasonable* and whether the threat was *imminent*.²⁵⁰ Thus, both require courts to assess the objective reasonableness of the defendant's actions based on the defendant's point of view.²⁵¹ To properly assess the actions of a battered defendant, in both defenses, the factfinder must *correctly* understand BWS and how it relates to the defenses, a

²⁴³ See *United States v. Lopez*, 913 F.3d 807, 822 (9th Cir. 2019).

²⁴⁴ See *Burke*, *supra* note 31, at 253–61 (discussing the similarities between self-defense and duress).

²⁴⁵ *United States v. Nwoye*, 824 F.3d 1129, 1138 (D.C. Cir. 2016); see also *People v. Romero*, 13 Cal. Rptr. 2d 332, 338 (Cal. Ct. App. 1992) (stating that "the defense of duress is the same as self-defense."); *United States v. Marengi*, 893 F. Supp. 85, 94–97 (D. Me. 1995) (observing the similarities between the elements of self-defense and duress).

²⁴⁶ *United States v. Willis*, 38 F.3d 170, 175 (5th Cir. 1994).

²⁴⁷ See *Marengi*, 893 F. Supp. at 94–95; *United States v. Dingwall*, 6 F.4th 744, 748–52 (7th Cir. 2021).

²⁴⁸ See IOWA CODE §§ 704.10, .3 (2023).

²⁴⁹ *Id.* §§ 704.10, .3.

²⁵⁰ See *Romero*, 13 Cal. Rptr. 2d at 338; *Nwoye*, 824 F.3d at 1138.

²⁵¹ See *United States v. Lopez*, 913 F.3d 807, 821 (9th Cir. 2019); *Marengi*, 893 F. Supp. at 94.

task very difficult to do without the aid of an expert testifying on the physical and psychological effects of abuse.

In *Linn v. State*, the Iowa Supreme Court extensively discussed the important role that expert testimony plays in trials involving battered defendants who claim self-defense.²⁵² In fact, *Linn* acknowledged that an appropriate assessment of objective reasonableness of the defendant's actions in self-defense BWS cases, includes taking "into account the circumstances faced by the BWS victim," such as, "objective facts about the batterer, any history of violence, any failed attempts to escape abuse, and any other facts relevant under the circumstances."²⁵³ A similar analysis applies here in the context of compulsion. From the court's reasoning in *Linn* emerges a concept that readily transfers to the issue of compulsion: jurors cannot fully appreciate an isolated act of violence between intimate partners without understanding the broader context of abuse in which the act occurred.²⁵⁴ Thus, if such testimony is admissible and necessary for fairly assessing self-defense claims, the same rationale should apply equally to the compulsion defense.

Attempts to differentiate the admissibility of expert testimony in the context of duress and self-defense based on arbitrary labels of subjectivity and objectivity, ignores how such testimony is necessary to provide the jury with a complete picture about how the "threat of abuse hovers over every interaction between individuals."²⁵⁵ Instead, a complete view of the contextual influences through expert testimony is necessary for the jury to understand the complexities of a battered victim's life and the fears battered offenders endure every day. This means, Iowa courts should take into account the circumstances surrounding the situation of imminent danger and reasonableness in order to treat battered defendants who do not fit into the traditional elements of duress, fairly.

C. Legislative Solution: Iowa Legislative Reform of Defense of Compulsion

Legislative reform of Iowa's Evidence Code offers the best opportunity to have the broadest impact on future defendants who commit crimes under the compulsion of their abuser. To ensure that Iowa courts handle BWS cases competently and completely, this Section proposes that the Iowa Legislature amend legislation, explicitly mandating the admissibility of expert testimony concerning BWS where the defense of compulsion is asserted. A Model Code designed to complement existing Iowa law would read as follows:

²⁵² *Linn v. State*, 929 N.W.2d 717, 731–49 (Iowa 2019).

²⁵³ *Id.* at 747.

²⁵⁴ *Id.*

²⁵⁵ *Marenghi*, 893 F. Supp. at 94–95.

In any criminal action, including where self-defense or compulsion is asserted, the defense shall be permitted to introduce either or both of the following in establishing the reasonableness of the defendant's apprehension that death or serious bodily injury was imminent, the reasonableness of the defendant's belief that he had availed himself of all available means to avoid physical combat or the reasonableness of a defendant's perception of the amount of force necessary to deal with the perceived threat:

(a) evidence that the defendant is or has been the victim of acts of physical, sexual or psychological harm or abuse;

(b) evidence by expert testimony regarding the common pattern in abusive relationships; the nature and effects of physical, sexual, emotional, or psychological abuse and typical responses upon the beliefs, perceptions, or behavior of victims of battering, including how those effects relate to the perception of the imminent nature of the threat of death or serious bodily harm; the relevant facts and circumstances which form the basis for such opinion; and evidence whether the defendant displayed characteristics common to victims of abuse.²⁵⁶

By stating that expert testimony is admissible *in any criminal action*, the Model Code explicitly and inclusively provides for the use of expert testimony on BWS for the defense of compulsion. Subsection (b) model rule further advances a preference for the inclusion of expert testimony in cases of duress by broadening the language to include the full spectrum of emotional, behavioral, and physiological reactions that an abused victim might experience. The use of the term “battering” as the descriptive phrase, instead of BWS, intends to make clear that the statute is available to anyone.²⁵⁷

The new legislation also alleviates some of the obvious hurdles battered defendants might expect to encounter in their effort to introduce BWS testimony.²⁵⁸ For instance, if circumstances vary from the proverbial “gun to

²⁵⁶ The Model Code in this Note melds together some of the most important element of statutes that codify the admissibility of BWS in an effort to include language that accounts for the experience of victims of domestic violence who defend themselves from unavoidable, although not immediately impending, harm. *See* MASS. GEN. LAWS ANN. Ch. 233, § 23F (2022) (drawing on language from Massachusetts's code which explicitly mandates the admissibility of expert testimony concerning the BWS); CAL. EVID. CODE § 1107 (2022); MODEL PENAL CODE § 2.09(1) (1985).

²⁵⁷ *See* United States v. Dingwall, 6 F.4th 744, 747 n.2 (7th Cir. 2021) (“We use the phrase ‘battering and its effects’ because it is more inclusive and less prone to stereotyping of victims.”).

²⁵⁸ *See supra* Part II.B.2 for a discussion of overcoming evidentiary obstacles of BWS.

the head situation,”²⁵⁹ a battered defendant may be denied the opportunity to present relevant, critical evidence to support a defense of compulsion, even if their actions were reasonable and legitimate. By stating the “defense shall be permitted to introduce” certain BWS evidence, the Model Code effectively removes any preliminary showing as to the defendant’s compulsion claim.²⁶⁰ Thus, the new legislation will alleviate some of the significant hurdles battered defendants encounter in their effort to introduce BWS testimony and assist jurors in assessing the evidence presented.

Ultimately the goal of amending Iowa’s Rules of Evidence is to provide greater legal recognition and protection for battered victims who suffer abuse at the hands of their intimate partners. Such changes to the Evidence Code will, without creating a separate law of compulsion for battered defendants, provide victims a better opportunity to present claims of compulsion within the context of traditional compulsion law. By adopting the Model Code, Iowa removes any arbitrary distinction between objective and subjective evidence and provides battered defendants a genuine opportunity to present a viable defense of duress to the jury.

IV. CONCLUSION

In order to ensure justice for battered defendants, Iowa Courts should allow expert testimony on BWS in support of the compulsion defense, regardless of the factual context in which the compulsion occurred. BWS evidence is essential for the judicial system to understand how battering relationships affects a victim’s behavior and how jurors should utilize that evidence in assessing compulsion claims. Cases of compulsion, in which coercion is not readily apparent, pose the greatest obstacles to battered offenders. Iowa must provide a complete view of the context and effects of battering. Expert testimony is necessary to prevent a unidimensional and stereotypical understanding of a battered victim. The law’s emphasis must be on permitting juries to consider BWS evidence in their evaluation of reasonableness, not on arbitrary distinctions between objective and subjective evidence. Exclusion of expert testimony denies abuse victims the opportunity to fully present both the context and reasonableness of their actions. The criminal justice system should not let abused victims suffer further consequences for their crimes, without a fair opportunity to be heard.

²⁵⁹ See Skinazi, *supra* note 27, at 1003.

²⁶⁰ By including this language, defendants do not have to show an overt act indicating reasonable fear of imminent harm or lack of reasonable alternatives before admitting expert testimony.