

Case Law Digest: Expert Testimony on Victim Behavior

Current as of October 2011



1100 H STREET NW, SUITE 310 | WASHINGTON, DC 20005
P: (202) 558-0040 | F: (202) 393-1918
WWW.AEQUITASRESOURCE.ORG

Expert Testimony on Victim Behavior

ALABAMA	6
SEXUAL ASSAULT.....	6
<i>Child Cases</i>	6
USE OF EXPERTS IN DEFENSE.....	6
ALASKA	6
SEXUAL ASSAULT.....	6
<i>Child Cases</i>	7
DOMESTIC VIOLENCE.....	7
ARIZONA	7
SEXUAL ASSAULT.....	7
<i>Child Cases</i>	7
ARKANSAS	7
DOMESTIC VIOLENCE.....	7
CALIFORNIA	8
SEXUAL ASSAULT.....	8
<i>Child Cases</i>	8
DOMESTIC VIOLENCE.....	8
COLORADO	9
SEXUAL ASSAULT.....	9
DOMESTIC VIOLENCE.....	9
CONNECTICUT	9
SEXUAL ASSAULT.....	9
DOMESTIC VIOLENCE.....	10
DISTRICT OF COLUMBIA	10
SEXUAL ASSAULT.....	10
<i>Child Cases</i>	10
DOMESTIC VIOLENCE.....	10
DELAWARE	11
SEXUAL ASSAULT.....	11
<i>Child Cases</i>	11
FLORIDA	11
SEXUAL ASSAULT.....	11
USE OF EXPERTS IN DEFENSE.....	11
GEORGIA	11
SEXUAL ASSAULT.....	11
DOMESTIC VIOLENCE.....	12
USE OF EXPERT IN DEFENSE.....	12
HAWAII	12
SEXUAL ASSAULT.....	12
<i>Child Cases</i>	12
DOMESTIC VIOLENCE.....	12
IDAHO	13
SEXUAL ASSAULT.....	13
USE OF EXPERTS.....	13
ILLINOIS	13

SEXUAL ASSAULT	13
INDIANA.....	14
SEXUAL ASSAULT	14
DOMESTIC VIOLENCE.....	14
IOWA.....	14
SEXUAL ASSAULT	14
DOMESTIC VIOLENCE.....	14
KANSAS	15
SEXUAL ASSAULT	15
USE OF EXPERTS IN DEFENSE	15
KENTUCKY	15
SEXUAL ASSAULT	15
<i>Child Cases</i>	15
LOUISIANA.....	16
<i>Child Cases</i>	16
DOMESTIC VIOLENCE.....	16
USE OF EXPERTS IN DEFENSE	16
MAINE.....	17
SEXUAL ASSAULT	17
MARYLAND	17
SEXUAL ASSAULT	17
DOMESTIC VIOLENCE.....	17
USE OF EXPERTS	17
MASSACHUSETTS	18
SEXUAL ASSAULT	18
<i>Child Cases</i>	18
DOMESTIC VIOLENCE.....	18
MICHIGAN	18
SEXUAL ASSAULT	18
DOMESTIC VIOLENCE.....	18
USE OF EXPERT	19
MINNESOTA.....	19
SEXUAL ASSAULT	19
DOMESTIC VIOLENCE.....	19
USE OF EXPERTS IN DEFENSE	20
MISSISSIPPI	20
SEXUAL ASSAULT	20
<i>Child Cases</i>	20
USE OF EXPERTS IN DEFENSE	20
MISSOURI	21
SEXUAL ASSAULT	21
<i>Child Cases</i>	21
USE OF EXPERTS IN DEFENSE	21
MONTANA	21
SEXUAL ASSAULT	21
DOMESTIC VIOLENCE.....	21
NEBRASKA	22
SEXUAL ASSAULT	22

<i>Child Cases</i>	22
NEVADA	22
SEXUAL ASSAULT	22
DOMESTIC VIOLENCE	22
USE OF EXPERTS IN DEFENSE	22
NEW HAMPSHIRE	22
SEXUAL ASSAULT	22
<i>Child Cases</i>	22
DOMESTIC VIOLENCE	23
NEW JERSEY	23
SEXUAL ASSAULT	23
<i>Child Cases</i>	23
DOMESTIC VIOLENCE	23
NEW MEXICO	23
SEXUAL ASSAULT	23
USE OF DEFENSE EXPERTS	24
NEW YORK	24
SEXUAL ASSAULT	24
DOMESTIC VIOLENCE	24
NORTH CAROLINA	25
SEXUAL ASSAULT	25
<i>Child Cases</i>	25
DOMESTIC VIOLENCE	25
USE OF EXPERTS IN DEFENSE	25
NORTH DAKOTA	26
SEXUAL ASSAULT	26
<i>Child Cases</i>	26
USE OF EXPERTS IN DEFENSE	26
OHIO	26
SEXUAL ASSAULT	26
DOMESTIC VIOLENCE	26
OKLAHOMA	27
SEXUAL ASSAULT	27
<i>Child Cases</i>	27
DOMESTIC VIOLENCE	27
USE OF EXPERT IN DEFENSE	27
OREGON	28
SEXUAL ASSAULT	28
<i>Child Cases</i>	28
DOMESTIC VIOLENCE	28
USE OF EXPERTS IN DEFENSE	28
PENNSYLVANIA	28
SEXUAL ASSAULT	28
USE OF EXPERTS IN DEFENSE	29
RHODE ISLAND	29
SEXUAL ASSAULT	29
USE OF EXPERTS IN DEFENSE	29
NORTH CAROLINA	29

SEXUAL ASSAULT	29
USE OF EXPERTS IN DEFENSE	29
SOUTH CAROLINA	30
SEXUAL ASSAULT	30
USE OF EXPERTS IN DEFENSE	30
SOUTH DAKOTA.....	30
SEXUAL ASSAULT CASES.....	30
<i>Child Cases</i>	30
DOMESTIC VIOLENCE.....	30
TENNESSEE.....	30
SEXUAL ASSAULT	30
<i>Child Cases</i>	31
USE OF EXPERTS IN DEFENSE	31
TEXAS	31
SEXUAL ASSAULT	31
<i>Child Cases</i>	31
DOMESTIC VIOLENCE.....	31
UTAH	32
SEXUAL ASSAULT	32
<i>Child Cases</i>	32
OTHER PROSECUTION USE	32
VERMONT.....	32
SEXUAL ASSAULT	32
<i>Child Cases</i>	32
DOMESTIC VIOLENCE.....	33
VIRGINIA	33
SEXUAL ASSAULT	33
USE OF EXPERTS IN DEFENSE	33
WASHINGTON.....	34
SEXUAL ASSAULT	34
DOMESTIC VIOLENCE.....	34
WEST VIRGINIA.....	34
SEXUAL ASSAULT	34
USE OF EXPERTS IN DEFENSE	34
WISCONSIN	35
SEXUAL ASSAULT	35
DOMESTIC VIOLENCE.....	35
WYOMING	36
SEXUAL ASSAULT	36
DOMESTIC VIOLENCE.....	36
MILITARY	37
SEXUAL ASSAULT	37
<i>Child Cases</i>	37
FEDERAL.....	37
DOMESTIC VIOLENCE.....	37

Compilation created by AEquitas and supported by Grant No. 2009-TA-AX-K024 awarded by the U.S. Department of Justice, Office on Violence Against Women (OVW). The opinions, findings, conclusions, and recommendations expressed in this document are those of the author(s) and do not necessarily reflect the views of OVW.

Alabama

Sexual Assault

CHILD CASES

Sanders v. States, 986 So. 2d 1230 (Ala. Crim. App. 2007) (affirmed trial court's admission of expert testimony in which the expert, a forensic interviewer with the Bessemer Child Advocacy Center, testified that, based on her interview with the victim, the victim had been sexually abused) (citing *Harrington*).

W.R.C. v. State, 2010 Ala. Crim. App. LEXIS 90 (Ala. Crim. App. 2010) (expert testimony admissible where clinical director of a child advocacy center testified on Child Sexual Abuse Accommodation System and delayed disclosure by child abuse victims; victim had waited ten years to report abuse).

Use of Experts in Defense

Bonner v. State, 740 So. 2d 439, 444 (Alab. Ct. App. 1998) (In self-defense case, admitted to show coping mechanisms and reasons why women stay in abusive relationships. BWS would have given jury and trial court information beyond understanding of average layperson).

Harrington v. State, 858 So. 2d 278 (2002)

- **Facts:** Defendant murdered her abusive spouse.
- **Holding:** It was error for the trial court to preclude defendant's experts from stating opinions that defendant was an abused woman and that the victim was a batterer. However, it was considered a harmless error because defense counsel elicited substantial testimony that defendant suffered from BWS, as victim testified at length about victim's threats and acts of physical violence, battered women's counselor testified about the characteristics of both a batterer and of a victim of domestic violence, and psychologist testified repeatedly about victim's physical and verbal abuse of defendant and that he had diagnosed defendant as suffering from post-traumatic stress disorder.

Alaska

Sexual Assault

Russell v. State, 934 P.2d 1335, 1343 (Alaska Ct. App. 1997) (D charged with raping his wife from whom he was separated. Evidence of DV in marriage. Psychological "profile" testimony--in this case BWS-- admissible in response to defense claim that victim's conduct was inconsistent with sexual assault victim).

- **Facts:** Defendant convicted of first-degree sexual assault on his estranged wife unsuccessfully challenged the admission of a doctor's diagnosis of the wife as suffering from BWS.
- **Holding:** Testimony from the victim's doctor regarding his diagnosis of the victim's battered woman syndrome was proper under Alaska R. Evid. 702. In response to the defendant's assertion that the doctor improperly vouched for his wife's credibility and gave impermissible psychological "profile" evidence, the court ruled that the doctor's testimony about the times he had treated the wife for physical injuries, his description of battered-woman syndrome, and his diagnosis of the defendant's wife as suffering from that syndrome were relevant and admissible to counter the defense claim that the wife's failure to resist sexual intercourse was inconsistent with a claim of sexual assault. Although the state cannot use psychological profile evidence as an offensive weapon, the court explained, it is entitled to introduce profile testimony in response to such a defense claim.

CHILD CASES

L.C.H. v. T.S., 28 P.3d 915 (Alaska 2001) (affirming trial court's admission of expert testimony, in which a clinical psychologist testified about the behavior commonly exhibited by sexual abuse victims; also affirmed the admission of the clinical psychologist's testimony that the child victim fit the profile of a sexual abuse victim, since the expert testimony was presented to rebut the defense's claim that the victim's behavior was inconsistent with abuse) (citing *Broderick v. King's Way Assembly of God Church*, 808 P.2d 1211 (Alaska 1991) (affirming the admission of expert testimony concerning post-traumatic stress disorder patterns among child sexual abuse victims).

Domestic Violence

Vickers v. State, 2008 Alas. App. LEXIS 156 (Alaska Ct. App. 2008) (admitting expert testimony in which a sociology professor testified on behavior patterns in violent domestic relationships, and particularly why a victim might recant on an earlier report of abuse; the prosecution presented the expert testimony to rebut the defendant's claim that the victim's initial report of abuse, which was later recanted, was false).

Arizona

Sexual Assault

State v. Huey, 699 P.2d 1290, 1294 (Ariz. 1985) (expert testimony admitted on victim's reactions consistent with rape victim. Did not call behavior RTS; Court states "We might have some difficulty in upholding the admissibility of RTS to prove the existence of rape, we believe, if properly presented by a person qualified by training and experience such as a psychiatrist or psychologist, that such evidence is admissible to show lack of consent."

CHILD CASES

Logerquist v. McVey, 196 Ariz. 470 (Ariz. 2000)

- **Facts:** Petitioner alleged that defendant pediatrician sexually abused her on several occasions between 1971 and 1973, when she was eight to 10 years old. Plaintiff further alleged that she had amnesia about those events until 1991. She sought to introduce evidence, through expert testimony, that severe childhood trauma, including sexual abuse, can cause a repression of memory, and that in later years this memory can be recalled with accuracy.
- **Holding:** Expert testimony allowed. Opinion testimony on human behavior is admissible when relevant to an issue in the case, when such testimony will aid in understanding evidence outside the experience or knowledge of the average juror, and when the witness is qualified, as Ariz. R. Evidence 702 requires, by knowledge, skill, experience, training, or education. To put it simply, Frye is inapplicable when a qualified witness offers relevant testimony or conclusions based on experience and observation about human behavior for the purpose of explaining that behavior.

Arkansas

Domestic Violence

Brunson v. State, 349 Ark. 300 (Ark. 2002)

- **Facts:** Defendant convicted of first-degree murder. At defendant's trial, the State's last witness was the State's proposed expert on domestic abuse. Over defendant's objection, the trial court certified the proposed witness as an expert. The witness then testified to 10 risk factors that indicated that a domestic batterer may kill. She testified that defendant possessed 8 of the 10 factors, and therefore, he posed a serious threat to his wife's safety. Defendant appealed.

- **Holding:** Judgment reversed and remanded. Witness exceeded her expertise by profiling batterers who would kill and by conveying to the jury that defendant fell within that profile. Because the witness's testimony was a clear indication to the jury that defendant was the culprit, the witness's testimony should have been excluded as unduly prejudicial to defendant.

California

Sexual Assault

People v. Housley, 6 Cal.App 4th 947 (1992) (expert permitted to testify to behavior common to victims of sexual assault to rebut defense attacks on victim's credibility).

McElvain v. Lewis, 283 F.Supp.2d 1104 (2003)

- **Facts:** Petitioner sought a writ of habeas corpus challenging his convictions for forcible rape.
- **Holding:** Expert's testimony about BWS was relevant and admissible under California law in rape prosecution in which there was evidence regarding defendant's behavior towards victim, his former live-in girlfriend, tending to show that syndrome applied to victim, particularly where victim's credibility was crucial to case against defendant.

People v. Johnson, 2008 Cal. App. Unpub. LEXIS 8913 (**Unpublished, but upheld trial admission) Upheld trial court's admission of expert testimony on RTS. The expert, an executive director of a rape crisis center, testified on common "myths" and "misconceptions" about rape—particularly, that it was not uncommon for acquaintance rape to occur, that it was not uncommon for a victim to call a close friend before calling the police, that victims often stop resisting force during the assault, and that victims often do not remember details of the attack. The court noted that the expert did not know the victim and did not give an opinion on the victim's truthfulness. The court further noted that the timing of the evidence did not suggest that the expert testimony was meant to opine on the victim's truthfulness (e.g. the expert's testimony about common symptoms did not immediately follow a victim's psychologist's testimony about the victim's actual symptoms). Differentiated the case from *People v. Blesdoe*, 36 Cal. 3d 236 (Cal. 1984), in which the expert was a counselor who had worked with the victim and testified on the victim's exhibiting symptoms of RTS, rather than on common misconceptions.

CHILD CASES

In re S.C., 138 Cal. App. 4th 396 (2006).

- **Facts:** Allegations that a minor had been sexually molested by her stepfather and that the mother knew of the molestations but did not take any appropriate action to protect the minor.
- **Holding:** Expert testimony on child sexual abuse accommodation syndrome is permissible. In a judicial proceeding presenting the question whether a child has been sexually molested, child sexual abuse accommodation syndrome [CSAAS] is admissible evidence for the limited purpose of disabusing the fact finder of common misconceptions it might have about how child victims react to sexual abuse.

Domestic Violence

People v. Brown, 94 P.3d 574, 583 (Cal. 2004) (expert testimony on dv victim's tendency to recant or minimize previous allegations of abuse admissible to dispel jurors common misconceptions about dv victims and to assist them in objectively evaluating victim's credibility).

People v. Williams, 78 Cal. App. 4th 1118 (2000) (Expert testimony on BWS admissible upheld under Cal. Evid. Code § 1107 even though there was no evidence of prior incidents of abuse) [unclear whether this is commonly permitted].

Colorado

Sexual Assault

People v. Hampton, 746 P.2d 947, 951-52 (Colo. 1987) (expert testimony that it is common for victims of nonstranger rape to delay reporting. "The lay notion of what behavior logically follows the experience of being raped may not be consistent with the actual behavior which social scientists have observed from studying rape victims.").

People v. Baenziger, 97 P.3d 271 (Colo. App. 2004) (upholding the admissibility of expert testimony on rape trauma syndrome to help the jury understand why the victim did not report the assault).

People v. Glasser, 2011 Colo. App. LEXIS 490 (Colo. App. Mar. 31, 2011) (upholding the admissibility of expert testimony on "victim trauma issues and dynamics"—the general reactions of sexual assault victims, "explaining the science behind victims' delayed reporting or faulty memories.") (Note: does not specifically call it testimony on RTS).

Domestic Violence

People v. Lafferty, 9 P.3d 1132, 1135 (Colo. Ct. App. 1999) (In dv cases, expert testimony regarding the reasons for victims' recantations is admissible).

People v. Johnson, 74 P.3d 349, 353 (Colo. Ct. App. 2002) (expert testimony regarding reasons for recantation involving victims of dv admissible).

People v. Wallin, 167 P.3d 183, 188 (Colo. Ct. App. 2007)

- **Facts:** Defendant, on appeal, argued that trial court abused its discretion by admitting the expert testimony on the reasons why domestic violence victims recant.
- **Holding:** No abuse of discretion in admitting the testimony of the expert witness. In cases involving domestic violence, expert testimony concerning the reasons for victims' recantations is admissible. Applied the four-prong *Shreck* analysis. The court found that the accepted principles underlying this type of testimony were reasonably reliable, that the testimony would be useful to the jury, and that the probative value of a general psychological profile of a domestic violence victim would not be substantially outweighed by the danger of unfair prejudice.

Connecticut

Sexual Assault

State v. Watson, 26 Conn. App. 151 (1991) (upholding admissibility of expert, a counselor at a women's center for domestic violence victims, to testify that it is common for victims of sexual abuse to delay reporting an assault).

State v. Ali, 233 Conn. 403, 432 (Conn. 1995)

- **Facts:** Criminal defendant appealed his convictions by the Superior Court (Connecticut) for sexual assault. Argued that expert testimony failed to assist the trier of fact in determining his guilt or innocence because "her experience . . . was not applicable to a case in which the complainant testified that her delay arose not from shock or psychological distress but rather because of an alleged straightforward death threat."
- **Holding:** admission of the expert testimony was within the trial court's discretion. The expert testimony that a victim of sexual or physical abuse might not necessarily attempt to escape, and might recount the circumstances of the abuse in a disjointed fashion, could have assisted the jury substantially in determining

the central issue in the case: whether the defendant had restrained and assaulted the victim against her will.

State v. Crespo, 114 Conn. App. 346 (2009) (upholding admissibility of expert testimony where a psychologist, also a director of a post traumatic stress center, testified about the behavior of typical sexual assault victims (including staying in an abusive relationship and delaying reporting the abuse); the prosecution had questioned the expert using hypothetical situations that closely tracked the facts of the case, but the expert had never met or treated the victim).

Domestic Violence

State v. Borrelli, 629 A.2d 1105, 1114-1115 (Conn. 1993) (Expert testimony on general behavior of dv victims to explain recantations 'in all likelihood beyond the jury's experience.")

State v. Niemeyer, 740 A.2d 416,422 (1999) rev'd in part on other grounds by 258 Conn 510 2000) (expert testified base on hypotheticals which tracked the facts of the instant case, testimony characterized as 'general behavior' but also as 'conduct consistent with the profile and pattern of a battered woman').

State v. Yusuf, 70 Conn. App. 594, 800 A.2d 590 (2002)

- **Facts:** Defendant appealed conviction of kidnapping, assault, and related offenses, arguing that certain evidentiary rulings at trial were incorrect.
- **Holding:** Expert's testimony regarding BWS did not improperly bolster victim's credibility or invade the province of the jury at trial for kidnapping and assault. The expert did not give his opinion as to whether victim testified truthfully or whether she in fact suffered from battered woman syndrome, but rather provided the jury with a framework within which it could place and possibly explain the victim's behavior in failing to escape from defendant.

District of Columbia

Sexual Assault

CHILD CASES

Jones v. United States, 990 A.2d 970 (D.C. 2010)

- **Facts:** Appellant claimed that the trial judge committed reversible error in admitting expert testimony explaining the methods of child sex offenders and the reactions of their immature victims.
- **Holding:** Court held that the testimony helped to explain not only how a child molester could accomplish his crimes without violence, but also why a child victim would be reluctant to turn against her abuser.

Domestic Violence

Nixon v. US, 728 A.2d 582, 590-91 (D.C. 1999) Expert testimony admitted on common myths, common patterns of battering and common behaviors of victims of battering; found to be relevant and beyond the ken of the average juror.

Earl v. United States, 932 A.2d 1122 (D.C. 2007) (upholding admissibility of expert testimony on BWS, where jury is instructed that testimony about BWS is not itself evidence that the defendant committed an act of violence but is "presented to provide [the jury] with information about ranges of behavior exhibited by victims of domestic violence and, therefore, to help [the jurors] in explaining certain kinds of conduct by victims of domestic violence.")

Delaware

Sexual Assault

CHILD CASES

Cobb v. State, 765 A2d 1252, 1255 (Del 2001) citing *Wheat v. State*, 527 A.2d 269 (Del. 1987) (not extended to adults) (expert testimony available in child intrafamily child sexual abuse cases where there has been a delay in reporting the incident and/or recantation, which seeks to explain the significance of such a delay or recantation).

Florida

Sexual Assault

Williams v. State, 779 So.2d 314 (1999) (inadmissible: rape case, defense is consent; conviction reversed where State offered expert testimony that at time of alleged rape, victim was suffering from PTSD and BWS "which causes victim to adjust her behavior to avoid abuse"; appellate court noted that complainant testified that she told defendant NO but the eventually engaged in sex out of fear because she believed defendant would beat her; Appellate court stated: "This is not a factual scenario for which State needed expert testimony to explain otherwise puzzling behavior.")

Clark v. Florida, 654 So. 2d 984 (1995) (inadmissible: PTSD suffered by adult rape victims does not assist a jury in determining whether there was consent. . . This is especially true considering the lack of evidence in the case concerning whether PTSD or RTS is generally accepted in the scientific community to determine whether, in legal terms, a rape occurred. IMPORTANT: FN 3 "There may be issues other than consent, such as myths and misconceptions dealing with rape, upon which PTSD in rape victims may be properly admitted, as discussed in *Bledsoe* (California), 654 So.2d 984, 988").

Note: Allows for cases with children, but doesn't extend to adults. *See, e.g., Calloway v. State*, 520 So.2d 665 (Fla. 1988) (admitting psychologist's testimony on symptoms of "child sexual abuse syndrome").

Use of Experts in Defense

State v. Hickson, 630 So.2d 172 (1993) (BWS offered in support of self-defense)

Weiland v. State, 732 So.2d 1044 (1999): While admission of expert testimony on BWS can be used to aid the jury in understanding the characteristics of victims of domestic violence and to help dispel common myths and stereotypes associated with them, the expert testimony does not replace importance of eyewitness testimony to corroborate the defense, even when the expert testimony contains details of alleged incidents of abuse that have been related by the defendant to the expert.

Georgia

Sexual Assault

Stevenson v. State, 612 S.E.2d 521 (Ga. Ct. App. 2005) (Victim advocate permitted to discuss that victims of sexual assault may delay reporting--found not to be syndrome evidence).

Parrish v State, 237514 SE2d 458,463 (1999) (Expert did not examine victim, testified to BWS, specifically the "learned helplessness" of women in abusive relationships, to explain victim behavior after defense cross-examined victim on her failure to seek help when she had "ample opportunity"; court found that this was an attempt to

undermine the victim's credibility through illustrating her failure to seek help; Expert, however, also testified to profile of abuser which went too far).

Domestic Violence

Thompson v. State, 416 S.E.2d 755, 757 (Ga. Ct. App. 1992) (Affirmed trial court admission of expert testimony describing battered woman syndrome as a theory to explain victim's behavior over defense objection that testimony exceeded limited scope when expert discussed d's other bad acts).

Moorer v. State, 290 Ga.App. 216, 659 S.E.2d 422 (2008)

- **Facts:** Defendant was convicted in a jury trial of aggravated assault and false imprisonment.
- **Holding:** Expert testimony was admissible in prosecution for aggravated assault and false imprisonment for offenses committed against defendant's girlfriend, where reasons that victim would not immediately leave partner after violent event or report abuse were beyond ken of average layperson.

Use of Expert in Defense

Pickle v. State, 280 Ga.App. 821 (2007).

- **Facts:** Defendant was convicted of cruelty to children in the first degree, aggravated battery, and aggravated assault for crimes committed against her nine-year-old daughter.
- **Holding:** Expert testimony that defendant suffered from BWS was admissible to rebut mental state necessary to establish intent trial for child abuse, battery, and aggravated assault but expert testimony that defendant suffered from battered person syndrome was not admissible to support justification defense of coercion.

Hawaii

Sexual Assault

CHILD CASES

State v. Batangan, 71 Haw. 552 (1990) (in child sexual abuse cases, expert testimony may be used to help the jury understand general behaviors of abuse victims where they are not commonly known, but an expert may not simply opine on the victim's credibility; overruled *State v. Kim*, 645 P.2d 1330, which had created an exception whereby experts could testify on whether a child abuse victim's testimony was credible).

Domestic Violence

State v. Cababag, 850 P.2d 716 (Haw. Ct. App. 1993) (testimony on "Battered Spouse/housemate" syndrome admitted --under analogized to unique personal dynamics involved in prosecution of intrafamily child sex abuse cases--to explain one reason for a recantation.

State v. Clark, 926 P.2d 194, 203 (Haw. 1996) (Exec Dir of Crises Shelter did not examine victim nor was she familiar with facts of case; offered NO OPINION AS TO WHETHER VICTIM WAS DV VICTIM OR WHETHER HER TESTIMONY WAS CREDIBLE; she testified about dv generally, and specifically, that it is not uncommon for victims of dv to recant allegations of abuse after they have been victimized in order to protect the abuser; expert testimony offered as possible explanation of victim's behavior. "Expert testimony regarding the effects of domestic violence and how it may explain a victim's recantation of abuse is not evidence that the victim suffers from a specific medical or psychological condition--or even that the victim's behavior as observed by the experts was consistent with the behavior of women suffering from such a condition. It is simply testimony based on the witnesses' experience in cases of domestic violence, that women with a history of domestic abuse often exhibit

common traits, among them denial and a tendency to recant accusations of abuse." 204 (citing *State v. Schaller*, 544 NW2d 247, 253 (Wis Ct App 1995)).

State v. Maelega, 80 Haw. 172 (1995) (in case where defendant was charged with murdering his wife, the trial court did not err in admitting the testimony of the prosecution's expert, a domestic abuse expert whose testimony was used to rebut the defendant's "extreme mental and emotional disturbance" defense).

Idaho

Sexual Assault

State v. Roles, 832 P.2d 311 (Idaho App. Ct. 1992) (PTSD) (facts are of a particularly violent nonstranger rape and victims' s counterintuitive behavior was attributed to PTSD; experts examined victim).

Use of Experts

State v. Varie, 135 Idaho 848, 26 P.3d 31 (2001)

- **Facts:** Defendant was convicted of second-degree murder.
- **Holding:** Limiting defense psychologist's expert testimony to the characteristics of domestic violence and the reaction of victims to such violence, while excluding evidence of BWS, on ground that fear based on prior acts was not beyond the common experience of most jurors, was not an abuse of discretion in a murder prosecution.

Illinois

Sexual Assault

State v. Wheeler, 602 NE2d 826 (1992)((1) State may introduce rape trauma evidence through the opinions of nonexamining experts; Case involved Pros offering expert testimony by expert who examined victim and stated she suffered from RTS (to show sexual assault occurred) and refused to allow defense expert to examine her based on a stat.: (2) Case reversed as a result of this).

An expert who personally examined a victim was in a better position to render an opinion than was an expert who had not done so. Thus, it was unfair that the state was able to present the testimony of an examining expert but the defendant was limited to the testimony of a nonexamining expert. Unless the victim consented to an examination by an expert chosen by the defendant, the state could not introduce testimony from an examining expert that the victim of an alleged sexual assault suffered from rape trauma syndrome.

People v. Long Nhu Le, 346 Ill. App. 3d 41 (Ill. App. Ct. 1st Dist. 2004)

- **Facts:** Defendant appealed the judgment that convicted him of criminal sexual assault, arguing that his due process rights were violated when the trial court failed to allow an expert of his own choosing to examine the victim to determine whether she suffered PTSD.
- **Holding:** Affirmed trial court decision. The record on appeal contains no indication that the defendant actually requested a specific expert of his own choosing to examine expert with respect to PTSD. The transcript revealed that when the trial court decided to appoint a county-employed psychiatrist to evaluate the victim, defense counsel agreed.

Indiana

Sexual Assault

Goodwin v. State, 573 NE2d 895 (1991) 898 (Stating it is permissible to introduce expert testimony that a victim's behavior is consistent with PTSD or RTS as bearing upon whether or not a rape occurred. Important it distinguished this testimony from one where expert testified that the victim was reliable and credible).

See also, *Simmons v. State*, 504 NE2d 575, 579 (1987)

Domestic Violence

Carnahan v. State, 681 N.E.2d 1164 (Ind. Ct. App. 1997) (BWS admissible to attack victim's credibility after she recanted her story of abuse on the stand; Exec Dir of women's shelter testified about the cycle of violence and reasons why victims stay with their abusers; Court opined that this evidence was relevant and if accepted by the jury could show that victim was in the reconciliation phase at the time of her testimony; Court found state laid foundation that victim was a battered woman).

Odom v. State, 711 N.E.2d 71 (Ind. Ct. App. 1999) (Expert testimony offered based upon a hypothetical question embracing facts of the case placed into evidence pursuant to Indiana law; Expert provided reasons for victim's recantation, in the present case "learned forgiveness" portion not supported by the facts in evidence, but reasons e.g. financial, emotional attachment, belief that abuse would not recur, all supported by facts).

Iqbal v. State, 805 N.E.2d 401 (2004)

- Facts: Defendant convicted of murder, criminal confinement with a deadly weapon, neglect of a dependent, carrying a handgun without a license, and invasion of privacy.
- Holding: Trial court did not abuse its discretion in allowing expert testimony concerning BWS in murder prosecution, where such testimony was relevant to explain why victim allowed defendant to enter her home on day of murder despite fact that he had previously assaulted her and that protective order was in place.

Iowa

Sexual Assault

State v. Gettier, 438 N.W.2d 1 (Iowa 1989) (PTSD) (Expert discusses typical symptoms of someone who has been traumatized as well as PTSD).

But *State v. Pansegrau*, 524 N.W.2d 207 (excluded expert testimony where the state's questions were framed around a hypothetical that mirrored facts of the case; went beyond the testimony about "typical symptoms exhibited by a person after being traumatized and no more" in *Gettier*; court noted that it did not help that the state referred to "sexual abuse trauma" rather than RTS; also, the defendant had not challenged whether the victim had acted atypically of a sexual abuse victim, but argued that the intercourse was consensual).

Domestic Violence

State v. Griffen, 564 N.W.2d 370 (Iowa 1997) (testified as to BWS not specifically to victim but to medical and psychological syndrome present in battered women generally).

State v. Rodriguez, 636 N.W.2d 234 (Iowa 2001) (admitted testimony of expert, a supervisor at a domestic abuse center who testified as to BWS and the “cycle of violence”; expert testified that she had met the victim but had no personal information about the case; court found that testimony helped the jury understand defendant’s conduct and victim’s reactions).

State v. Newell, 710 N.W.2d 6 (2006)

- **Facts:** Defendant convicted of first-degree murder.
- **Holding:** expert testimony on domestic violence was relevant. Police lieutenant was sufficiently qualified to give expert testimony on domestic violence in first-degree murder prosecution.

Kansas

Sexual Assault

State v. Marks, 647 P.2d 1292 (Kan. 1982) (Expert examined the victim and testified that she suffered from PTSD known as RTS = admissible).

State v. McIntosh, 58 P.3d 716 (Kan. 2002) (involves Child abuse case; Expert allowed to testify that child victim exhibited symptoms consistent with a child who had been sexually abused; (citing *Bressman*, 689 P.2d 901 (1984) for pro that RTS is admissible).

State v. Willis, 256 Kan. 837 (Kan. 1995) (expert testifying about PTSD and RTS must possess special training in the field of psychiatry; excluded testimony of social worker who testified that she diagnosed the victim with PTSD) (distinguished from *State v. Reser*, 244 Kan. 306 (Kan. 1989), which admitted expert testimony of a social worker who did not use the term PTSD and only testified as to common symptoms and behaviors of children who have been sexually abused).

Use of Experts in Defense

State v. Cramer, 2008 Kan. App. LEXIS 215 (Kan. Ct. App. 2008).

- **Facts:** Defendant was convicted of involuntary manslaughter. Defense provided expert on BWS. The State also put on experts to rebut the diagnosis of BWS. The trial court determined that the probative value of the state’s expert testimony evidence outweighed the prejudicial effect of that evidence and it was admissible.
- **Holding:** Trial court decision affirmed.

Kentucky

Sexual Assault

Stringer v. Commonwealth, 956 S.W.2d 883 (Ky. 1997)

- **Facts:** Defendant appealed from convictions of sodomy and sexual abuse. The trial court allowed a gynecologist to testify that his findings in an examination of the victim were consistent with her related history of sexual abuse. Defendant appealed, claiming that allowing this expert to testify was an error.
- **Holding:** The statements to the treating psychologist were admissible under Ky. R. Evid. 803(4). The court resolved a line of conflicting decisions as to whether opinions by experts could touch upon ultimate issues by judicially adopting the equivalent of Fed. R. Evid. 704.

CHILD CASES

R.C. v. Commonwealth, 101 W.3d 897 (Ky. Ct. App. 2002) (a clinical social worker is not qualified to testify that a child exhibits signs of a sexual abuse victim).

Martin v. Commonwealth, 170 S.W.2d 374 (Ky. 2005) (upheld admissibility of police detective's testimony that child sexual abuse victims often reveal the abuse in pieces).

Louisiana

CHILD CASES

State v. Chauvin, 846 So.2d 697 (La. 2003) (in child sexual abuse case, court said that "PTSD is sufficiently recognized in the medical, and particularly the psychiatric, community to be considered as the proper subject of expert testimony" but was concerned about the use of PTSD testimony as evidence that the abuse occurred, rather than just to explain "superficially bizarre" reactions of the victim (e.g. delayed reporting); while expert testimony may be admissible for this limited purpose, a Daubert hearing is required) (citing *State v. Foret*, 628 So.2d 1116 (La. 1993) (similarly limiting expert testimony about Child Sexual Abuse Accommodation Syndrome to explaining "superficially bizarre" reactions of victims)).

State v. Vidrine, 9 So.3d 1095 (La. Ct. App. 2009) (parts of expert's testimony were impermissibly prejudicial in child sexual abuse case where the expert—Judy Benitez, Executive Director of the Louisiana Foundation Against Sexual Assault—testified not only as to general reactions of sexual abuse victims, which had been permitted in similar cases, but also as to the statistical probability of false reporting and, upon cross-examination on the case at hand, expressed opinions on whether the victim fit these patterns; expert had not met the victim but had reviewed statements; also, expert testified that the facts fit with "grooming" behavior, which the court found was prejudicial as profiling the defendant as a sex offender; court also found that trial court erred in denying the defendant a Daubert hearing).

Domestic Violence

State v. Vidaurri, 919 So.2d 803 (La. Ct. App. 2005) (it was not improper for trial court to admit testimony of a consultant for the Louisiana Coalition Against Domestic Violence, where the expert only testified as to "circumstances which may typically arise in domestic violence situations").

Use of Experts in Defense

State v. Necaise, 466 So. 2d 660 (La. App. 5th Cir. 1985) (Expert Testimony inadmissible where offered by defendant in support of self-defense; Expert examined the defendant and sought to testify that she shared characteristics with other battered women whom he treated). (Issue is expert testimony to show lack of specific intent sue to the BWS) (Holding was that allowing proof of BWS disallowed because based on plea it would condone partial responsibility).

State v. Carter, 762 So. 2d 662, 678 (La.App. 4 Cir. May 10, 2000)

- **Facts:** Defendant was charged with second-degree murder of her husband.
- **Holding:** the trial court was correct in allowing defense counsel to ask Dr. Jenkins, as an expert in the field of domestic violence, her opinion as to the effects of the history of "assaulted violence" on the defendant's state of mind on the night of the shooting.

Maine

Sexual Assault

State v. Whitmore, 591 A.2d 244, 245 (Me. 1991) (Citing to *State v Black*, 537 A2d 1154 Me 1988) (prosecution may introduce expert testimony to assist the trier of fact in understanding not only inconsistencies in the victim's testimony but inconsistencies in the victim's conduct to rebut an express or implied defense assertion that such inconsistencies make it improbable that a crime was committed; cross-exam was found to try to show that the victim's behavior was consistent with a consensual encounter, therefore, expert testimony admissible to offer a possible explanation for the seemingly inconsistent conduct of the alleged victim)

Whitmore v. State, 670 A.2d 394, 1996 Me. LEXIS 24, 80 A.L.R.5th 691 (Me. 1996)

- **Facts:** Petitioner was charged and convicted of rape. Petitioner contended the victim consented. At trial, the State presented a medical expert who testified that the victim was unable to resist petitioner's request for sexual intercourse because she suffered from a disassociative disorder. There were certain medical records of the victim that defense counsel did not obtain that contradicted the testimony of the State's expert and showed the victim was diagnosed with a different disorder and demonstrated the ability to fight back against abuse.
- **Holding:** Defense counsel's failure to obtain the records precluded counsel from effectively impeaching the credibility of the expert and that failure denied petitioner a substantial ground of defense. Additionally, the expert may have held firm to her diagnosis even if she had been subjected to a vigorous cross-examination. Defense counsel's performance fell below that of an ordinary fallible attorney.

Maryland

Sexual Assault

State v. Allewalt, 517 A.2d 741 (Md. 1986) (Expert testimony on PTSD admissible by prosecutor and found relevant and material to the use of consent or lack of consent; admissibility is a matter of discretion by trial court).

Hutton v. State, 339 Md. 480 (Md. 1995) (expert testimony on PTSD was inadmissible because it went beyond describing PTSD or RTS to explain seemingly inconsistent behaviors; expert testified as that the victim's PTSD was likely caused by the sexual abuse)

State v. Baby, 404 Md. 220 (expert testimony on PTSD or RTS could be admissible, but requires a *Fryre-Reed* hearing on the credibility of the scientific theory).

Domestic Violence

Addison v. State, 188 Md. App. 165 (Md. Ct. Spec. App. 2009).

- **Facts:** Defendant appealed his convictions for first-degree assault, arguing that trial court erred in permitting expert testimony on BWS that was allegedly not reliable and not based on generally accepted scientific principles.
- **Holding:** Judgment of trial court affirmed. If no request for a *Frye* analysis is made in pre-trial motion, the issue is waived and is not subject to appellate review.

Use of Experts

State v. Peterson, 158 Md.App. 558, 857 A.2d 1132 (2004).

- **Facts:** Defendant convicted of first degree murder.

- **Holding:** Factual evidence was legally sufficient to allow expert testimony that defendant was suffering from battered spouse syndrome at time of victim's murder. There was evidence that defendant suffered physical and psychological abuse by victim, who was defendant's husband, that victim physically attacked defendant three months before murder occurred and made threats to kill and rape defendant.

State v. Smullen, 380 Md. 233, 844 A.2d 429 (2004).

- **Facts:** Defendant convicted of first-degree murder.
- **Holding:** battered spouse syndrome applies to battered children as well, but evidence did not support conclusion that defendant was suffering from battered child syndrome, such that he perceived threat of imminent death of serious bodily harm from victim, who was his adoptive father.

Massachusetts

Sexual Assault

Commonwealth v. Mamay, 553 N.E.2d 945 (Mass. 1990) (Ann Burgess testified to rape trauma syndrome generally. Specifically, she noted that not all victims of rape would report the rape immediately. She also testified that if a rape happened in the context of a trust relationship, the victim might return to have contact with the perpetrator; Court determined that it was beyond the jury's common knowledge to understand why a victim would return to have contact with her rapist).

CHILD CASES

Commonwealth v. Federico, 425 Mass. 844 (in child sexual abuse case, expert testimony was excluded where the state proposed hypotheticals based on the facts, asked the expert to "assume" that the child was abused, and opine on whether the victim's behavior was "consistent" with the general patterns of children who have been sexually abused; the court reasoned that the jury could be confused into understanding the expert's answers as opinions that the abuse had in fact occurred).

Domestic Violence

State v. Goetzendanner, 679 N.E.2d 240, 243- 244 (Mass. App. Ct. 1997) (Common behaviors and emotional characteristics common to victims of battering is beyond juror's knowledge. "To the average juror untutored in the psychological dynamics of domestic violence, the victim's vacillating behavior towards the defendant--in particular her back and forth attempts to end the relationship might have seemed counter-intuitive and might even have suggested her version of events was inherently unreliable and unworthy of belief; Decision discusses evidence as BWS generally and typical BWS victims).

Michigan

Sexual Assault

People v. Pullins, 378 NW2d 502, 504 (Mich. Ct. App. 1995) (where victim's therapist testified that victim's symptoms were consistent with a person who had been raped, that testimony was inadmissible; recognizes RTS as generally accepted in community, but is not admissible in the manner in which the prosecution sought to introduce it).

Domestic Violence

People v. Christel, 537 N.W.2d 194, 204 (Mich. 1995) (BWS is relevant and helpful when needed to explain a c/ws actions, such as prolonged endurance of abuse, coupled by attempts to hide or minimize it, delays in reporting, or recanting...limits on expert, can't say victim was battered, etc. In instant case, however, expert testimony held to be inadmissible because no foundation laid. (but error harmless))

Use of Expert

People v Daoust, 228 Mich App 1 (1998).

- **Facts:** A jury convicted defendant of second-degree child abuse based on the injury to the child's hand. Defendant challenged the trial court's decision to admit expert testimony regarding the battered woman syndrome, asserting that the testimony was not relevant and helpful to the trier of fact. The testimony, given by the executive director of a domestic violence, sexual assault, and child abuse center, described the dynamics of relationships involving women who live under threat of physical or sexual violence.
- **Holding:** The Court of Appeals upheld the trial court's decision to admit the expert testimony, finding that the circumstances described by the expert corresponded to circumstances described by the child's mother.

People v Wilson, 194 Mich App 599, 605 (1992).

- **Facts:** The prosecution appealed from a trial court's interlocutory order permitting admission of expert testimony concerning battered spouse syndrome in the trial of defendant for shooting her husband.
- **Holding:** The court affirmed the lower court's judgment as to testimony regarding BWS and to whether behavior already in evidence was characteristic of the syndrome, but reversed as to testimony regarding whether defendant suffered from the syndrome and whether defendant's act was the result of the syndrome.
- **Reasoning:** Expert testifying about BWS may render an opinion only about the syndrome and its symptoms, not whether an individual suffers from the syndrome or acted pursuant to it.

Minnesota

Sexual Assault

State v. Saldana, 324 N.W.2d 227 (Minn. 1982) (held RTS not reached level of scientific acceptance AND the testifying that because a victim exhibits some of symptoms of RTS they were raped is prejudicial).

State v. Obeta, 2011 Minn. LEXIS 154 (Minn. Mar. 24, 2011) (experts could testify on "rape myths and typical rape victim behaviors," including delayed reporting and lack of resistance to the attack; "the mental and physical reactions of an adult sexual-assault victim may lie outside the common understanding of an average juror"; held that *Saldana* does not impose a "blanket prohibition against the admission of expert testimony on typical rape-victim behaviors"—it only prohibits testimony about rape trauma syndrome, the credibility of the victim, or the ultimate question of whether the abuse occurred).

Domestic Violence

State v. Grecinger, 569 N.W.2d 189 (Minn. 1997) (where defense attacked victim's credibility in opening statement, the prosecution was permitted to introduce expert testimony on bws to explain why the victim had waited nearly three years after the assault to pursue a prosecution, returned to the relationship after the assault, told contradictory stories of how the injuries were inflicted upon her and recanted).

State v. Vance, 685 N.W.2d 713,720 (Minn. 2004) (BWS testimony introduced after victim recanted her initial reports of abuse while on the stand. Court found that victim's credibility was in issue once she recanted).

State v. White, 2009 Minn. App. Unpub. LEXIS 36 (Minn. Ct. App. Jan. 13, 2009)

- **Facts:** Victim told the police and medical personnel that defendant intentionally struck her with a bottle. At trial, the victim testified that defendant threw the bottle at a wall and unintentionally struck her.
- **Holding:** the trial court did not abuse its discretion in permitting the State to introduce expert testimony that victims of domestic abuse sometimes engage in counterintuitive behavior, including changing their stories to deny that the abuse occurred, because the testimony was relevant under Minn R. Evid. 702 to explain why the victim told the police and emergency room that defendant hit her in the head with a bottle but testified at trial that defendant threw the bottle at a wall and struck her accidentally.

Use of Experts in Defense

State v. Ritt, 599 N.W.2d 802, 811 (Minn. 1999).

- **Facts:** Appellant challenged a conviction of first-degree murder.
- **Holding:** We conclude that the trial court was within its discretion in excluding the expert testimony.
- **Reasoning:** A trial court is within its discretion to exclude testimony about the personality characteristics of a defendant which were "nothing more than a composite of personal characteristics that might render an individual more susceptible to wanting to please an authority figure" and the jury "was fully capable of observing and understanding" the defendant's behavior.

Mississippi

Sexual Assault

CHILD CASES

Hosford v. State, 560 So.2d 163 (Miss. 1990) (in child sexual abuse case, finding that the trial court erred in admitting testimony by the victim's therapist as to whether the victim's behaviors were common to abuse victims generally; discussing testimony on "child sexual abuse syndrome or profile," the court said: "At present, it is doubtful that any such profile or syndrome is generally accepted by the scientific community... Until such time as a profile has been scientifically established, courts should be reluctant to allow expert testimony that a child displays the so-called typical characteristics of other victims.")

Barnes v. State, 906 So.2d 16 (Miss. Ct. App. 2004) (upholding the *Hosford* prohibition on syndrome evidence in a child sexual abuse case; the court did not need to decide whether the expert crossed the line into syndrome testimony because the defendant had not objected to the testimony at trial).

Use of Experts in Defense

Lentz v. State, 604 So. 2d 243 (Miss. 1992)

- **Facts:** Defendant was convicted of manslaughter for shooting and killing her boyfriend.
- **Holding:** The court found that expert testimony going to the BWS was properly NOT allowed because it would not have made the evidence clearer nor would it have clarified the issue of whether defendant reacted as a reasonable person would have in similar circumstances.

Missouri

Sexual Assault

State v. Taylor, 663 S.W.2d 235 (Mo. 1984) (prosecution sought to introduce expert testimony that victim suffered from RTS to show that the intercourse was nonconsensual. NOT PERMITTED. Using the term “rape trauma syndrome” is problematic because it “suggests that the syndrome may only be caused by ‘rape’”; on the other hand, an expert “may testify that the patient, client or victim does possess and exhibit the characteristics consistent with those resulting from a traumatic stress reaction, such as rape” (but such testimony would not have been relevant in the proceeding here, the court said, since the symptoms could also have been caused by something else).

CHILD CASES

State v. Matthews, 37 S.W.3d 847 (Mo. Ct. App. 2001) (treating psychologist could testify that child exhibited behaviors consistent with those of sexual abuse victims, noting that the behaviors could also be caused by other factors).

Use of Experts in Defense

Francis v. Miller, 557 F.3d 894 (8th Cir. Mo. 2009)(applying MO law)

- Facts: Defendant claimed that trial counsel was ineffective in failing to investigate whether she suffered from BWS by obtaining an opinion from a psychiatrist, and in failing to have the psychiatrist testify that she suffered from BWS and post-traumatic stress disorder in support of a claim of self-defense.
- Holding: Decision by trial counsel to not present testimony of psychiatrist that defendant suffered from battered spouse system was reasonable trial strategy.

Lannert v. Jones, 321 F.3d 747 (8th Cir. Mo. 2003) (applying MO law)

- Facts: Court denied petitioner's motion for habeas relief and defendant argues that the trial court violated her Fifth, Sixth and Fourteenth rights to due process and a fair trial by excluding evidence of BWS and in refusing to instruct the jury on self-defense.
- Holding: Defendant could not establish that the right to have a jury consider BWS evidence in connection with a self-defense claim was a fundamental principle of justice. Defendant was not entitled to a self-defense instruction under Missouri law.

Montana

Sexual Assault

State v. Liddell, 685 P.2d 918 (Mont. 1984) (RTS admissible through Psychiatric expert testimony to aid a jury in determining whether there was consent to engage in sexual act which all parties agree occurred).

Domestic Violence

State v. Stringer, 897 P.2d 1063, 1070 (Mont. 1995) (BWS offered by prosecution to explain victim's recantation; to provide an explanation for victim's inconsistencies).

State v. Bonamarte, 2009 MT 243 (Mont. 2009)

- Facts: Defendant was convicted of misdemeanor partner or family member assault.
- Holding: trial court acted within its discretion in allowing an expert to testify about the general nature and behavior of battered women.

Nebraska

Sexual Assault

CHILD CASES

State v. Bruna, 12 Neb. Ct. App. 798 (2004) (held admissible psychologist's testimony about typical behaviors of sexually abused children as well as the profile of a sexual offender—because few jurors have sufficient familiarity with child sexual abuse to understand the dynamics of a sexually abusive relationship” and “the behavior exhibited by sexually abused children is often contrary to what most adults would expect”) (citing *State v. Roenfeldt*, 241 Neb. 30 (1992)).

Nevada

Sexual Assault

Townsend v. State, 103 Nev. 113 (Nev. 1987) (expert could testify about PTSD in child sexual abuse victims and opine that the child suffered PTSD).

Domestic Violence

Nev. Rev. Stat. § 48.061 admits effects of domestic violence. Can't use to prove occurrence of act, but can use it for "any relevant purpose."

Use of Experts in Defense

Boykins v. State, 116 Nev. 171 (Nev. 2000)

- **Facts:** Defendant was convicted in the trial court for involuntary manslaughter with the use of a deadly weapon. At the trial, defendant had requested that the trial court give the jury an instruction regarding evidence of battered woman syndrome, which was refused. Defendant appealed, claiming that the trial court's failure to give the jury the instruction concerning evidence of battered woman syndrome deprived her of a fair trial.
- **Holding:** The court reversed and remanded, holding that the trial court failed to properly instruct the jury on the theory that battered woman syndrome should be considered for evidence of defendant's state of mind at the time of the shooting.

New Hampshire

Sexual Assault

CHILD CASES

State v. Sargent, 148 N.H. 571, 576 (N.H. 2002)

- **Facts:** For the second time, defendant appealed his three convictions for aggravated felonious sexual assault and six convictions for felonious sexual assault.

- **Holding:** expert testimony on the general characteristics or tendencies of abused children or other abuse victims to be admissible, while testimony about specific details based upon the individual facts or psychological analysis of any victim is not.

See also *State v. DeCosta*, 146 N.H. 405 (2001) (allowing testimony on behaviors of sexually abused children).

Domestic Violence

State v. Searles, 680 A.2d 612, 615 (N.H. 1996) (Expert evidence on effects of family violence and particularly victims' common attempts to minimize abuse or recant. Court stated: "victims had minimized their injuries and that this minimization would have appeared counterintuitive to jurors.")

New Jersey

Sexual Assault

CHILD CASES

State v. J.Q., 130 N.J. 554 (1993) (stating that expert testimony on Child Sexual Abuse Accommodation Syndrome is permissible to explain victims' behavior, e.g. recanting or delayed reporting; the testimony heard went too far because it attempted to show that the abuse did occur).

Domestic Violence

State v. Townsend, 897 A.2d 316 (NJ 2006) (Expert testimony concerning common behaviors between women with battered woman's syndrome and battered women who do not have the syndrome).

State v. J.I.F., 2010 N.J. Super. Unpub. LEXIS 442 (App.Div. Mar. 4, 2010)

- **Facts:** defendant was indicted on charges of third-degree aggravated assault. The State filed a pretrial motion to admit the expert testimony of Cynthia Lischick, Ph.D., a psychologist and a Domestic Violence Specialist certified by the New Jersey Association of Domestic Violence Professionals, on the subject of BWS
- **Holding:** The opinions offered by Dr. Lischick in this case were simply not sufficient to be relevant to the facts of this case. "Relevant evidence" means evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action." The testimony of Dr. Lischick merely established that battered spouses may falsely recant their accusations. It did not prove that this victim's recantations were false because Dr. Lischick did not testify that the victim was a battered spouse. Even if the victim's statement that she feared defendant's physical reactions to not getting his way may have been relevant to an expert opinion that she was a battered spouse, and we do not doubt that it might be, Dr. Lischick never stated that the victim was a battered spouse.

New Mexico

Sexual Assault

People v. Bowman, 715 P.2d 467,469 (N.M. App. Ct. 1986) (Child victim; Court assumes, but does not decide that RTS is admissible. In its decision, court recognized admissibility of RTS in other jurisdictions to explain recantation (OK) or is relevant on the issue of consent (not okay).

State v. Alberico & Marquez, 861 P.2d 192 (N.M. 1993) (An expert may opine that a victim suffers from PTSD and that the victim's symptoms are consistent with someone who has been sexually abused; court upheld one conviction but reversed the other because the expert went too far, stating her opinion that the victim was telling the truth).

Use of Defense Experts

State v. Swavola, 114 N.M. 472, 475 (N.M. Ct. App. 1992)

- **Facts:** Defendant appealed the judgment of conviction for the second degree murder of her husband. Defense counsel at trial made a strategic decision to present a defense based on the battered woman syndrome. The prosecutor mentioned the victim's "born again" Christian religious beliefs. Defendant claims on appeal that such evidence is not admissible to bolster the victim's credibility in making out-of-court declaration.
- **Holding:** Defense counsel made a strategic decision to present the defense of BWS. Based upon the testimony of two trial experts on the syndrome, a professional conclusion as to whether the defendant suffered from the syndrome required an examination into the lives of both the defendant and her victim – "an examination that encompassed matters that would otherwise ordinarily be improper subjects of inquiry in a criminal trial." Thus, inquiry into the religious beliefs of the victim was proper.

New York

Sexual Assault

People v. Taylor, 552 N.E.2d 131, 136 (N.Y. 1990) (In present case RTS should not have been admitted, but court states under certain circumstances and subject to certain limitations evidence of RTS is relevant and admissible; "Because cultural myths still affect common understanding of rape and rape victims and because experts have been studying the effects of rape upon its victims only since 70's, we believe that patterns of response among rape victims are not within the ordinary understanding of the lay juror.")

People v. Smith, 9 A.D.3d 745 (N.Y. App. Div. 3d Dep't 2004)

- **Facts:** Defendant was convicted of rape, sodomy, burglary, criminal contempt, aggravated criminal contempt, assault, and menacing. Defendant appealed.
- **Holding:** expert testimony concerning learned helplessness syndrome, rape trauma syndrome, and battered woman syndrome, was admissible to provide jury with an explanation of the victim's behaviors surrounding the underlying incidents, which may otherwise have appeared unusual to a jury.

People v. Rich, 78 A.D.3d 1200 (N.Y. App. Div. 2010) (upheld admissibility of expert testimony on general behaviors of child sexual abuse victims) N.Y. courts have upheld admissibility of expert testimony on RTS (citing *Taylor*) in several recent decisions. *See, e.g., People v. MacDonald*, 63 A.D.3d 1520 (N.Y. App. Div. 2009); *People v. Buccina*, 62 A.D.3d 1252 (N.Y. App. Div. 2009); *People v. Nelson*, 40 A.D.3d 1126 (N.Y. App. Div. 2007).

Domestic Violence

People v. Ellis, 650 N.Y.S.2d 503 (N.Y. Sup. Ct. 1996) (BWS is admissible as long as foundation laid that v is battered woman AND that victim has behaved in a way that the jury would be aided by an expert providing an explanation of the behavior).

People v. White, 4 Misc. 3d 797 (N.Y. Dist. Ct. 2004)

- **Facts:** Defendant charged with assault. Government moved in limine for ruling allowing it to call expert witness on domestic violence to testify on its direct case regarding "battered woman syndrome" (BWS).
- **Holding:** Motion was denied. The government was precluded from introducing expert testimony on its direct case on subject of BWS; expert testimony on BWS is inadmissible as a matter of law where it is used

as an affirmative weapon against a defendant; and expert testimony on BWS should be admissible only to address an issue that is inherently confusing to the jury and when there is no other evidence to address it.

People v. Milczakowskyj, 2010 NY Slip Op 3998 (N.Y. App. Div. 4th Dep't 2010)

- **Facts:** Defendant was convicted of assault and harassment in the second degree. Defendant appealed.
- **Holding:** Defendant failed to preserve for review his contention that County Court erred in allowing an expert to testify concerning the effects of PTSD on battered women. In any event, "[t]hat testimony was relevant to explain behavior on the part of the [victim] that might seem unusual to a lay jury unfamiliar with the patterns of response exhibited by a person who has been physically . . . abused over a period of time."

North Carolina

Sexual Assault

State v. Strickland, 376 S.E.2d 62 (N.C. 1990) (treating psychologist could testify that victim had PTSD and that victim's behavior was consistent with behaviors of other sexual assault victims).

CHILD CASES

People v. Hall, 412 S.E.2d 883,890 (N.C. 1992) (Case involves intrafamily rape, victim is 15 y/o stepdaughter of def; adopts reasoning that RTS can explain victim behavior, but should not be introduced to prove rape occurred).

State v. Bowman, 352 S.E.2d 437 (N.C. 1987) (expert could testify that delayed reporting was common of abuse victims where defense had attacked the victim's credibility based on the delayed reporting).

State v. Kennedy, 357 S.E.2d 359 (N.C. 1987) (psychologist could testify that victim's behavior was consistent with sexual abuse).

Domestic Violence

State v. Elliott, 344 N.C. 242, 272 (N.C. 1996).

- **Facts:** defendant was convicted of first-degree murder and felony child abuse.
- **Holding:** Court admitted expert testimony of battered child syndrome. The expert testimony was relevant to show that victim was killed by intentional means and that nature and extent of victim's injuries showed premeditation and deliberation on behalf of the defendant.

Use of Experts in Defense

State v. Owen, 133 N.C. App. 543, 550 (N.C. Ct. App. 1999).

- **Facts:** Criminal defendant was convicted of statutory rape after she helped her husband rape her stepsister. Jennifer Herman, the Executive Director of a non-profit domestic violence corporation, was called by the defense to offer expert testimony concerning the profile evidence or the characteristics of domestic violence victims and predators. The trial court excluded this evidence, ruling that under Rule 403 the evidence's probative value was outweighed by the possibility of undue prejudice and confusion of the issues.
- **Holding:** The facts indicate that the trial court properly excluded this evidence since the testimony would have been prejudicial and done little to help the jury. Ms. Herman did not know defendant and had no knowledge of the events that occurred on the day of the rape.

North Dakota

Sexual Assault

CHILD CASES

State v. Paul, 769 N.W.2d 416 (N.D. 2009) (upholding admissibility of rape crisis center counselor's testimony on child sexual assault victims' delayed reporting).

State v. Tibor, 738 N.W.2d 492 (N.D. 2007) (expert could testify about child sexual abuse accommodation syndrome).

Use of Experts in Defense

State v. Leidholm, 334 N.W.2d 811 (N.D. 1983).

- **Facts:** Defendant was convicted of manslaughter for killing her husband.
- **Holding:** Conviction was reversed and the case was remanded for a new trial. The trial court should have directed the jury to assume the physical and psychological properties peculiar to defendant and then decide whether or not the particular circumstances surrounding her at the time she used force were sufficient to create in her mind a reasonable belief that the use of force was necessary to protect herself from imminent and unlawful harm.

Ohio

Sexual Assault

State v. Martens, 629 N.E.2d 462 (Ohio Ct. App. 1993) (treating psychologist was permitted to testify that the victim had PTSD and that the PTSD was likely caused by the sexual assault; in response to the defendant's argument that the expert was really referring to RTS, the court said that testimony on RTS would have been acceptable if used to explain the victim's behavior, such as delayed reporting, but not to prove that the assault occurred).

Domestic Violence

State v. Pargeon, 582 N.E.2d 665 (Ohio Ct. App. 1991) (Prosecution offered expert testimony that V suffered from BWS to explain why she returned to husband if he had really beaten her. Court said that this was an improper admission of prior bad acts and conviction reversed).

State v. Fry, 125 Ohio St. 3d 163, 177 (Ohio 2010).

- **Facts:** Defendant convicted of felony murder, appeals. Defendant argues that expert improperly testified about the "cycle of violence" in victim's relationship with Defendant.
- **Holding:** Testimony was proper. Testimony about the "cycle of violence" was relevant in explaining victim's actions, such as talking to Defendant twice on the phone on the day of his arrest, obtaining money to post bail, and asking the judge to drop the case. In addition, the defense was allowed to cross-examine expert on these incidents to suggest that victim had not felt abused.

State v. Haines, 112 Ohio St. 3d 393 (Ohio 2006) (an expert may testify on BWS generally but may not opine on whether the alleged victim has been abused or whether the victim's statements are truthful)

- **Facts:** Defendant convicted of multiple counts of kidnapping, abduction, and domestic violence. At trial, a forensic psychologist for the State testified generally about BWS and stated that the case involved such a scenario.

- **Holding:** the court held that such testimony regarding BWS was proper in the State's case-in-chief to help a jury understand a victim's reaction to abuse in relation to her credibility. However, where the expert provided his opinion as to the presence of BWS in the situation, such was not harmless error as to convictions almost wholly based on the girlfriend's testimony, as his testimony impinged on the jury's credibility determination.

Oklahoma

Sexual Assault

CHILD CASES

Davenport v. State, 806 P.2d 655 (Okla. Crim. App. 1991) (expert may testify about Child Sexual Abuse Accommodation Syndrome, but only in rebuttal to explain the child's behavior, e.g. recanting).

Domestic Violence

Harris v. State, 84 P.3d 731 (Okla. Crim. App. 2004)

- **Facts:** Defendant seriously injured his wife. Appealed, claiming evidence that defendant had physically and verbally abused his wife was irrelevant to the issues in the case and should not have been admitted. Also challenged the State's use of an expert on domestic abuse.
- **Holding:** Testimony on prior abuse was properly admitted. The expert testimony was also properly admitted. In marital homicide cases, prior acts of abuse committed by the accused against the victim may be relevant to the issue of intent. With regards to expert testimony, it was necessary to help the jury understand possible causes for seemingly unreasonable behavior, including enduring 20 years of abuse and never filing for divorce until a few weeks prior to the shooting.

Use of Expert in Defense

Bechtel v. State, 840 P.2d 1 (1992) (self defense) Self-defense case; BWS should be admitted to show reasonableness of defendant's belief in the imminence of her danger; Court notes that "expert testimony in Oklahoma is admissible if it will assist the trier of fact in search for the truth and augment the normal experience of the juror by helping him or her draw the proper conclusions concerning particular behavior of the victim in a particular circumstance or circumstances (16) . . . Misconceptions regarding battered women abound, making it more likely than not that the average juror will draw from his or her own experience or common myths, which may lead to a wholly incorrect conclusion. Thus, we believe that expert testimony on the syndrome is necessary."

Paine v. Massie, 339 F.3d 1194 (10th Cir. Okla. 2003)(applying Oklahoma law)

- **Facts:** Wife shot and killed her husband. She appealed on the basis of ineffective counsel.
- **Holding:** Judgment was remanded with instructions that if petitioner was able to meet her burden of showing prejudice, the district court was ordered to grant a limited petition for habeas corpus.
- **Reasoning:** appellate court found that counsel failed to do what was necessary to mount an effective self-defense claim given the jury's likely misconceptions about BWS. Although an expert could not testify to the ultimate fact, testimony about battered woman syndrome from an expert was necessary to equip the jury to properly assess the reasonableness of petitioner's fear.

Oregon

Sexual Assault

CHILD CASES

State v. Middleton, 657 P.2d 1215 (Or. 1983) Victim 14 yo raped by her father; Qualified expert able to give testimony that the reaction of one child is similar to the reactions of most victims of familial child abuse, if it is believe that it would assist the jury in determining whether a rape occurred. Expert testified as to “typical” response of child victims and the fact that victim’s behavior was typical of sexual assault victims. Also distinguishes Hawaii case in which expert was asked if he believed the child.

Domestic Violence

State v. Ogden, 168 Ore. App. 249 (Or. Ct. App. 2000) (State offered expert testimony regarding the behavior of women in abusive relationships to rebut defendant’s challenge to complainant’s credibility. At trial defendant contended that complainant’s testimony was belied by her own behavior. Specifically, complainant continued to have sexual relations with defendant and to meet with him socially throughout the period encompassing the conduct for which he is charged. (6 p3d 1110, 1113) Experts testimony offered to provide an alternative explanation for her behavior. Court held that in expert must testify to BWS AND that victim must be diagnosed with it. Expert cannot testify about BWS generally unless v is shown to suffer from it...a problem with using BWS expert testimony. 1114 WE hold that : BWS is scientific evidence that requires expert testimony; (2) the victim’s diagnosis of BWS is a predicate to the admissibility of evidence about BWS and behavior attributable to BWS.

State v. Stevens, 328 Ore. 116, 118 (Or. 1998)

- **Facts:** Defendant was charged with murdering an 18-month-old child. On appeal, Defendant challenged the admission of testimony on BWS.
- **Holding:** (1) defendant failed to preserve challenges to evidence on BWS (2) the evidence on BWS was admissible to explain reaction by defendant's girlfriend to murder of her child; (3) evidence of specific instances of defendant's physical abuse of his girlfriend was admissible; (4) other wrongs evidence of girlfriend's abuse of her children was inadmissible.

Use of Experts in Defense

State v. Gherasim, 956 P.2d 1054 (Or. Ct. App. 1998) (in a sexual assault case where it was not disputed that the victim was assaulted but the defendant claimed that he was not the attacker, the defense sought to present expert testimony that the victim suffered dissociative amnesia; the trial court erred in excluding this testimony, since it would have addressed not whether the victim was telling the truth but whether she had the capacity to recall the events).

Pennsylvania

Sexual Assault

NOT ADMISSIBLE The Pennsylvania Supreme Court has definitively ruled that syndrome testimony, e.g., rape trauma, incest trauma, child sexual abuse accommodation, is inadmissible. This is so because such expert testimony comments on the credibility of a witness, which is exclusively within the province of the jury. *Commonwealth v. Gallagher*, 547 A.2d 355 (Pa. 1988); *Commonwealth v. Dunkle*, 529 Pa. 168, 602 A.2d 830 (1992). See also *Commonwealth v. Brezan*, 614 A.2d 252 (Pa.Super. 1992); *Commonwealth v. Sees*, 529 Pa. 450, 605 A.2d 307 (1992); *Commonwealth v. Balodis*, 747 A.2d 341 (Pa. 2000).

Use of Experts in Defense

Commonwealth v. Robinson, 5 A.3d 339 (Pa. Super. Ct. 2010) (extending the *Gallagher* exclusion of testimony on an assault victim's ability to identify an attacker to testimony of a human memory/perception expert who would have testified for the defendant on the reliability of eyewitness identifications).

Commonwealth v. Pitts, 740 A.2d 726 (Pa. Super. Ct. 1999)

- **Facts:** State appealed to preclude defendant from offering psychiatric evidence to support a claim of self-defense to a charge of attempted murder.
- **Holding:** The admissibility of expert testimony was within the trial court's discretion, and psychiatric evidence is admissible to prove a defendant's belief regarding imminent death.

Rhode Island

Sexual Assault

State v. Quattrocchi, 1991 R.I. Super. LEXIS 129 (Apr. 26, 1999) (where the adult complainant had flashbacks of childhood sexual abuse, expert testimony was inadmissible where the treating psychiatrist was to testify that he diagnosed the complainant with PTSD and bipolar disorder and that the repressed memories were a symptom; there was not sufficient agreement about the scientific reliability of repressed and recovered memories).

Use of Experts in Defense

State v. Urena, 899 A.2d 1281 (R.I. 2006).

- **Facts:** Defendant was convicted of manslaughter. Presented evidence of BWS at trial. Defendant Appealed and made a motion for a new trial.
- **Holding:** Court denied motion for new trial. Court acknowledged that defendant was a battered woman but this did not shield her from criminal liability under the totality of the circumstances.

North Carolina

Sexual Assault

State v. White, 604 S.E.2d 540 (S.C. 2004) (expert testimony on "rape trauma" is admissible in adult cases as well; treating psychiatrist testified that victim's symptoms were consistent with someone who had suffered trauma and had been sexually assaulted; this testimony was "consistent with the probative purpose of admitting rape trauma evidence, i.e., to refute the defendant's contention that the sex was consensual and to prove that the sexual offense occurred").

Use of Experts in Defense

State v. Grubbs, 353 S.C. 374 (S.C. Ct. App. 2003)

- **Facts:** Defendant convicted of murder. At trial Defendant wanted to introduce expert witness to show that that defendant fit the profile of one suffering from battered spouse syndrome. Appeals.
- **Holding:** Trial court erred in excluding the expert testimony because it was necessary to assist the jury in understanding the issues involved in the case.

South Carolina

Sexual Assault

State v. White, 604 S.E.2d 540 (S.C. 2004) (expert testimony on “rape trauma” is admissible in adult cases as well; treating psychiatrist testified that victim’s symptoms were consistent with someone who had suffered trauma and had been sexually assaulted; this testimony was “consistent with the probative purpose of admitting rape trauma evidence, i.e., to refute the defendant’s contention that the sex was consensual and to prove that the sexual offense occurred”).

Use of Experts in Defense

State v. Grubbs, 353 S.C. 374 (S.C. Ct. App. 2003)

- **Facts:** Defendant convicted of murder. At trial Defendant wanted to introduce expert witness to show that that defendant fit the profile of one suffering from battered spouse syndrome. Appeals.
- **Holding:** Trial court erred in excluding the expert testimony because it was necessary to assist the jury in understanding the issues involved in the case.

South Dakota

Sexual Assault Cases

CHILD CASES

State v. Bachman, 446 N.W.2d 271 (S.D. 1989) (held that trial court did not commit error when allowing experts to testify concerning RTS as it only assisted the jury by stating behavior displayed by child victims of sexual assault); *see also State v. Edelman*, 593 N.W.2d 419 (S.D. 1999) (allowing expert testimony on CSAAS).

Domestic Violence

State v. Weaver, 2002 SD 76, (S.D. 2002).

- **Facts:** Defendant appealed a conviction of simple assault, arguing that the trial court erred in allowing the State's expert witness to testify on domestic abuse.
- **Holding:** The trial court did not abuse its discretion in allowing the State's expert to testify as an expert witness. Expert explained the concepts of BWS and "cycle of violence." Both concepts have been subjected to peer review, are not new concepts in the field of domestic abuse counseling and are accepted in the field.

Tennessee

Sexual Assault

State v. Ashburn, 914 S.W.2d 108 (Tenn. Crim. App. 1995) (held that RTS inadmissible to prove that rape had actually occurred; testimony was that person suffered PTSD “triggered by” the rape; note that it was the defendant proffering the testimony here, as the defendant claimed the victim was the one who committed the assault; the court noted that the expert “had difficulty in explaining why being arrested, jailed and tried for a serious felony would not also result in symptoms of stress disorder”).

CHILD CASES

State v. Ballard, 855 S.W.2d 557 (Tenn. 1993) (expert testimony that victim had symptoms consistent with PTSD and that the “stressor” was sexual abuse was inadmissible; goes to whether the abuse occurred and court concluded that “no one symptom or group of symptoms are readily agreed upon in the medical field that would provide a reliable indication of the presence of sexual abuse”).

Use of Experts in Defense

State v. Hagerty, 2002 Tenn. Crim. App. LEXIS 364 (Tenn. Crim. App. 2002)

- **Facts:** Defendant's motion to the trial court for expert services sought funding to retain a medical and psychiatric physician who specialized in dealing with victims who had posttraumatic stress disorder (PTSD) and suffered from BWS. Trial court denied motion.
- **Holding:** On appeal, the judgment was reversed. Defendant provided evidence beyond mere general assertions of domestic violence and provided a factual foundation with which a requested expert could work. The information provided in the expert's and attorney's affidavits demonstrated that defendant had a particularized need for expert assistance in the field of PTSD that covered domestic-type abuse or battering. The need for further investigation was persuasive.

Texas

Sexual Assault

Perez v. State, 653 S.W.2d 878 (Tex. App. 1983) (director of a rape crisis center could testify on behaviors of victims during the assaults; complainant testified that she had attended rape seminars and, during the attack, had employed the “passive resistance” reactions because she believed she would otherwise endanger her life; the rape counselor was a lecturer and testified that these reactions were taught in the seminars).

CHILD CASES

Cottrell v. State, 2010 Tex. App. LEXIS 5890 (Tex App. July 22, 2010) (therapist with a children’s rape crisis center could testify on the general effects that sexual abuse could have on child victims; expert had not treated the victim here and did not opine on the particular victim’s symptoms).

Domestic Violence

Scugoza v. State, 949 S.W.2d 360 (Tex. App. 1997) (trial court did not abuse discretion in permitting expert to testify that behavior of a hypothetical woman denying abuse was consistent with behavior of typical battered woman).

Dixon v. State, 244 S.W.3d 472 (Tex. App. Houston 14th Dist. 2007)

- **Facts:** Defendant appealed conviction of aggravated assault.
- **Holding:** The trial court did not err in admitting a police officer's expert testimony concerning the propensity of family violence victims to return to the family members who abused them because he was qualified as an expert under Tex. R. Evid. 702 based on his knowledge, training, and experience. His

testimony was an appropriate subject for expert testimony as it assisted the jury by helping it to understand the evidence regarding the complainant's post-assault behavior.

Parson v. State, 193 S.W.3d 116, 124 (Tex. App. Texarkana 2006)

- **Facts:** Defendant was convicted of aggravated assault with a deadly weapon. Defendant appealed, challenging admission of expert on BWS.
- **Holding:** Trial court properly admitted testimony of expert witness on BWS. The State had the right to place the material portions of expert's written statement before the jury so that the State could show why victim had changed her story during trial.

Utah

Sexual Assault

CHILD CASES

State v. Rimmasch, 775 P.2d 388 (Utah 1989) (the trial court erred in admitting expert testimony on the psychological profile of sexually abused children, and testimony that the victim's behaviors were consistent with this profile; the court found that there was not sufficient scientific reliability in psychological profile evidence of sexual abuse victims at this time, though profile testimony was not unreliable as a matter of law).

State v. Rugebregt, 965 P.2d 518 (Utah Ct. App. 1998) (permissible for medical examiners to testify that victims exhibited "anger, hate, tearfulness, [and] other emotional display[s]" consistent with other child sexual abuse victims; this was testimony on physical reactions that were consistent in their experience, not profile testimony as in *Rimmasch*).

Other Prosecution Use

State v. Valdez, 2007 UT App 112 (Utah Ct. App. 2007).

- **Facts:** Defendant convicted of aggravated burglary. Girlfriend had recanted testimony that defendant was involved in burglary. State put on expert witness on BWS to explain why victims of domestic violence may recant statements. Defendant claimed that the trial court abused its discretion by admitting expert testimony regarding BWS and that the error was harmful.
- **Holding:** Defendant's convictions were affirmed and the error that defendant alleged was harmless.

Vermont

Sexual Assault

State v. Kinney, 762 A.2d 833 (Vt. 2000) (RTS) (evidence of RTS and the associated typical behaviors of adult rape victims is admissible to assist the jury in evaluating the evidence and to respond to defense claims that the victim's behavior after the alleged rape was inconsistent with the claim that the rape occurred; expert cannot testify to the rarity of false reporting of rape).

CHILD CASES

State v. Catsam, 534 A.2d 184 (Vt. 1987) (trial court erred when it allowed expert testimony on the truthfulness of child victims of sexual abuse because the expert's testimony was tantamount to a direct comment that complainant was telling the truth about the alleged sexual assault) (note: the expert also testified that it is common with

children who have been sexually abused to delay reporting the abuse; defendant did not challenge the admission of the expert's testimony relating to the emotional and physical symptoms of PTSD or her opinion that the complainant suffered from the disorder; PTSD evidence involving child victims of sexual abuse is admissible in Vermont trial courts).

State v. Hazelton, 987 A.2d 915 (Vt. 2009) (expert could testify that victim's behaviors, including delayed disclosure, were consistent with the profile of sexual assault victims; expert did not directly comment on the truthfulness of the victim's statements or the truthfulness of victims generally).

Domestic Violence

State v. Charbonneau, 2009 VT 86, (Vt. 2009)

- **Facts:** Defendant was convicted of simple assault. Appeals, arguing that the trial court erred in denying his motion for a new trial and that it made multiple errors with respect to an investigator's testimony.
- **Holding:** Trial court erred in allowing testimony of investigator that over 90% of victims of domestic violence are telling the truth when they first report an incident. Testimony of this nature is inadmissible because it is tantamount to an expert opinion that the victim is telling the truth.

State v. Laprade, 2008 VT 83 (Vt. 2008)

- **Facts:** Defendant convicted of aggravated domestic assault. Appealed.
- **Holding:** Expert testimony about battered woman's syndrome was properly admitted under Vt. R. Evid. 702. Expert testimony was probative of the victim's credibility, which jurors might otherwise have thought was undermined by her decision to remain in the relationship for as long as she did and by her failure to call the police herself after the charged incident.

Virginia

Sexual Assault

Taylor v. Commonwealth, 466 S.E.2d 118 (Va. Ct. App. 1996) (PTSD) (evidence of an emotional or psychological injury such as PTSD, like medical evidence of a physical injury, was relevant as circumstantial evidence of the occurrence of a traumatizing event. The social worker expert's testimony corroborated the fact that the victim had suffered a traumatizing event and was not an opinion of the victim's credibility or of which version of events the jury should have accepted).

Ward v. Commonwealth (it was permissible for a psychologist to testify that the victim suffered PTSD; the expert did not opine that the alleged sexual assault was the cause of the PTSD, but only ruled out the possibility that the victim's earlier stroke had caused the PTSD when asked about it in cross-examination).

Use of Experts in Defense

Commonwealth v. Hackett, 32 Va. Cir. 338 (Va. Cir. Ct. 1994)

- **Facts:** Defendant, charged with killing her victim, filed a motion to introduce expert testimony on BWS.
- **Holding:** denied motion to introduce BWS expert testimony, but allowed, testimony by lay witnesses of the defendant's circumstances predating her act. The court stated that it was unable to find any Virginia case where evidence regarding BWS had been allowed. Also reasoned that admitting testimony of lay witnesses would allow the jury to "evaluate the defendant's act in light of all facts and circumstances known to her before the shooting".

Washington

Sexual Assault

State v. Black, 745 P.2d 12 (Wash. 1987) (expert testimony on RTS is inadmissible because it lacks scientific reliability and unfairly prejudices a defendant accused of rape; expert testimony that a person suffers from RTS, whether or not the phrase "RTS" is actually used, invades the exclusive province of the finder of fact by expressing an opinion about an ultimate issue of the case - that a rape occurred).

Note *Ciskie* (below) was a sexual assault case, where the expert was permitted to testify that the victim suffered PTSD (without opining that it was the result of sexual assault) and to testify on BWS; could not use the phrase RTS since it would amount to testimony that the rape in fact occurred.

Carlton v. Vancouver Care, LLC, 155 Wn. App. 151 (Wash. Ct. App. 2010)

- Facts: The decedent was an elderly woman who suffered from severe dementia. She was living in a nursing home when a male patient sexually assaulted her. The estate sued, but the trial court excluded the proposed expert testimony on rape trauma syndrome and implicit memory. Estate appealed.
- Holding: Trial court decision was reversed. Proposed testimony on rape trauma syndrome was aimed at explaining that a person with dementia was not incapable of experiencing trauma following a rape. This testimony was beyond the experience and knowledge of the average layperson and was admissible.

Domestic Violence

State v. Ciskie, 751 P.2d 1165 (Wash. 1988) (after defense attacked victim's credibility in its opening statement and on cross examination, expert testimony regarding BWS evidence properly admitted; expert testimony regarding RTS not permitted, as trial judge stated RTS testimony had a potentially inflammatory effect on the jury; also available for self-defense).

State v. Cooke, 1997 Wash. App. LEXIS 1212 (1997) (expert testimony as to BWS is admissible in State's case-in-chief if it will assist the jury in understanding the behavior and mental state of a crime victim by explaining why the victim failed to break off a violence-filled relationship or report acts of violence to the police. The testimony described BWS as a subgrouping of the broader diagnosis of PTSD. Trial court did not allow the use of the phrase "RTS." The trial court must limit such testimony to eliminate "unfair prejudice" and to prevent the expert from invading the province of the trier of fact).

West Virginia

Sexual Assault

State v. McCoy, 366 S.E.2d 731 (W.Va. 1988) (expert testimony regarding the existence of symptoms consistent with RTS was relevant and admissible (expert may testify that the alleged victim exhibits behavior consistent with RTS, but may not give an opinion as to whether the victim was raped), but the expert's opinion that the victim had been raped encroached too much upon the exclusive province of the jury).

State v. Jackson, 383 S.E.2d 79 (W.Va. 1989) (expert testimony on RTS was permissible to explain the state's direct evidence even where the defense of consent is not presented, so long as the jury is properly instructed that the testimony is not grounds for finding that the rape occurred).

Use of Experts in Defense

State v. Dennis, 216 W. Va. 331, 335 (W. Va. 2004)

- **Facts:** Defendant appealed conviction of kidnapping and sexual assault. Defendant claims the trial court committed error by not allowing testimony to rebut the state's evidence about characteristics of BWS. (The court had held that if the state did not call an expert to testify about BWS, neither party could. The state did not call an expert but the defendant argued its witnesses discussed characteristics of BWS).
- **Holding:** The trial court exercised discretion by excluding such testimony, which more likely would have confused rather than enlightened the jury.

Wisconsin

Sexual Assault

State v. Jensen, 432 N.W.2d 913 (Wis. 1988) (parameters for expert testimony: the expert may describe the behavior of victims of the same type of crime; the expert may also be asked to describe the behavior of the complainant; then the expert may be asked if the complainant's behavior is consistent with the behavior of other victims. here, a school guidance counselor who was qualified as an expert about behavior exhibited by sexually abused children was permitted to give his opinion as to whether the child victim's behavior was consistent with the behavior of child sexual abuse victims) [Evidence of common post-assault behavior is often called "Jensen evidence" in Wis.; see, e.g., *State v. Harris*, 680 N.W.2d 737 (Wis. 2004); *State v. Rizzo*, 640 N.W.2d 93 (Wis. 2002)].

State v. Robinson, 431 N.W.2d 165 (Wis. 1988)(rape crisis center worker was properly qualified as an expert and allowed to testify to rebut common misconceptions about the presumed behavior of sexual assault victims)

Domestic Violence

Counterintuitive: *State v. Slade*, 485 N.W.2d 839 (Wis. Ct. App. 1992)(an expert witness may be asked to describe the behavior of the complainant and then to describe the behavior of victims of the same type of crime, if the testimony helps the jury understand a victim's reactive behavior. An expert witness may give an opinion about the consistency of a complainant's behavior with the behavior of victims of the same type of crime if the testimony will assist the trier of fact in understanding the evidence and determining a fact in issue. Here, the expert testified in general terms regarding the characteristics of the typical batterer and the reaction of the typical victim in an abusive relationship. The expert also offered reasons as to why a battered woman would not flee or cry out for help); *State v. Pittman*, 496 N.W.2d 74 (Wis. 1993).

State v. Bednarz, 507 N.W.2d 168 (Wis. Ct. App. 1993)(expert testimony regarding BWS permitted to provide one possible explanation for the victim's recantation of her original complaint; here, the expert was permitted to testify on the "cycle of violence" and on reactive behavior. Parameters for expert testimony: the expert may describe the behavior of victims of the same type of crime; the expert may also be asked to describe the behavior of the complainant; then the expert may be asked if the complainant's behavior is consistent with the behavior of other victims).

State v. Marshall, 204 Wis. 2d 279 (Wis. Ct. App. 1996)

- **Facts:** Defendant appealed a conviction of misdemeanor battery and disorderly conduct. The complainant, defendant's wife, recanted her accusations before trial. After the deadline for naming witnesses expired, the State sought permission to call an expert witness to testify as to the tendency for victims of domestic abuse to recant initial accusations against their husbands or companions. The trial court denied the request as untimely. In her closing argument to the jury the prosecutor argued, without supporting evidence in the record, that the victim recanted her accusations because she was a victim of domestic violence. Defendant appealed his conviction and the denial of his new trial motion.
- **Holding:** Reversed trial court

- **Reasoning:** (1) the State failed to point out any testimony in the record on the subject of domestic violence; (2) it appeared that the prosecutor simply sought to provide the jury with reasons why the victim changed her story; and (3) it was error to allow the prosecutor to argue domestic violence to the jury without supporting evidence in the record.

Wyoming

Sexual Assault

Rivera v. State, 840 P.2d 933 (Wyo. 1992) (an expert is permitted to state an opinion that someone is a victim of sexual assault but that expert cannot vouch for the credibility of the victim. Expert testimony that discusses the behavior and characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible; so long as there is no comment on the credibility or truthfulness of the victim, it does not invade the province of the jury. Here, expert testimony from a clinical psychologist, a social worker, and a school counselor regarding PTSD was permitted).

Griego v. State, 761 P.2d 973 (Wyo. 1988)(here, the testimony of a psychologist who was qualified as an expert was permitted; the expert testified that the behavior of the victim in this case was consistent with the typical pattern of adolescent victim behavior; the testimony was relevant because it showed how others would react under the same or similar circumstances and it helped to explain why the victim did not immediately flee the scene and report the incident to her parents or the authorities).

This type of testimony has generally been upheld since *Rivera*. See, e.g., *Budig v. State*, 222 P.3d 148 (Wyo. 2010); *Chapman v. State*, 18 P.3d 1164 (Wyo. 2001) (admitting testimony on CSAAS but emphasizing that such testimony cannot be used to show that the abuse actually occurred).

Domestic Violence

Trujillo v. State, 953 P.2d 1182 (Wyo. 1998)(expert testimony to explain a victim's behavior is admissible so long as it is based on either the expert's own experience or on a syndrome which has reached a sufficient level of development to warrant its admission. Here, state was permitted to introduce BWS expert testimony to corroborate the victim's testimony in light of attacks on her credibility. The court asserted that the jury could have misconstrued the victim's returning to an abusive environment as indicating that no abuse occurred, establishing defendant's defense that the incident was imagined, so the expert's explanation was helpful to the jury's understanding and was based on recognized syndromes).

Dean v. State, 2008 WY 124 (Wyo. 2008)

- **Facts:** Defendant was convicted for battering his wife during a fight. A few days after the fight, the wife recanted her story. During defendant's trial, an expert testified for the State concerning domestic violence and that victims were often motivated to shift blame from the abuser to themselves and to recant when the batterer was facing criminal charges. Defendant challenged this testimony on appeal.
- **Holding:** Allowing BWS testimony was proper. Because the expert's testimony did not purport to vouch for the credibility of defendant's wife, and it did not impugn the character of defendant, there was no error in admitting the evidence under Wyo. R. Evid. 702.

Thomas v. State, 131 P.3d 348 (Wyo. 2006)

- **Facts:** Defendant appeals conviction of aggravated assault and battery, challenging testimony on BWS.
- **Holding:** testimony of psychiatrist concerning BWS introduced by state in its case-in-chief was admissible.
- **Reasoning:** Expert testimony concerned the behavior of victims of abuse and did not address the characteristics or behaviors of perpetrators of abuse. The State used the testimony in closing argument to

explain why someone who had been abused would stay in the abusive relationship. This is a permissible use of battered woman's syndrome evidence.

Military

Sexual Assault

US v. Peel, 29 M.J. 235 (C.M.A 1989 (expert on the subject of crisis interventional and rape counseling permitted to testify that it was not inconsistent behavior for a rape victim not to immediately report the offense; here, expert was permitted to testify on the alleged victim's behavior in striving for a "return to normalcy" and in acting as if the rape had never happened).

US v. Halford, 50 M.J. 402 (C.A.A.F. 1999)(expert may offer evidence that the characteristics demonstrated by the victim lead to a diagnosis of RTS which is probative on the issue of consent by the victim. Here, the government was allowed to explain that these behavioral characteristics occur in many cases of non-consensual sexual encounters).

US v. Wright, 53 M.J. 476 (C.A.A.F. 1999) (expert testimony in sexual abuse cases may take many forms. The expert may offer evidence that the characteristics demonstrated by the victim lead to a diagnosis of RTS, which is probative on the issue of consent by the victim. Or, the expert may testify that certain behavioral characteristics are consistent with a rape trauma model. The plain rule of law is that an expert's testimony concerning RTS is admissible. Here, expert was allowed to testify that the child victim's reactions were consistent with other victims of child abuse).

State v. Houser, 36 M.J. 393 (C.M.A. 1993)(rape-trauma-syndrome testimony by a properly qualified expert may be admissible to assist the trier of fact to understand the evidence; here, after defense attacked the victim's credibility in both the opening statement and on cross examination, the government was permitted to introduce expert testimony on rape trauma syndrome).

CHILD CASES

US v. Rynnings, 47 M.J. 420 (C.A.A.F. 1998)(after defense attacked victim's credibility on the basis of her delayed reporting of the allegations, expert in the area of child sexual abuse was permitted to testify about common behavioral characteristics of child sexual abuse victims; the rationale for allowing such testimony is that "the victim's behavior will not necessarily undermine his or her credibility if an expert can explain that such patterns of counterintuitive behavior often occur in sexual abuse cases).

United States v. Wright, 53 M.J. 476 (C.A.A.F. 2000) (expert was permitted to testify on the consistency between the victim's behavior and the common behavior of sexual abuse victims; the court noted that, in cross-examination, the expert was asked whether her responses were "consistent with the possibility that rape occurred" and answered that she could not respond without usurping the responsibility of the jury).

Federal

Domestic Violence

Arcoren v. US, 929 F.2d 1235 (8th C. 1991) (trial court did not abuse discretion in allowing testimony about BWS, expert only gave general testimony and did not express an opinion about whether the victim displayed the symptoms).