

**UNITED STATES OF AMERICA v. MICHELLE T. MARENGHI, Defendant**

Criminal No. 94-68-P-C

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE

893 F. Supp. 85; 1995 U.S. Dist. LEXIS 9798

June 26, 1995, Decided

June 26, 1995, RECEIVED AND FILED

COUNSEL: [\*\*1] For the Government: Helene Kazanjian, AUSA, Portland, Maine.

For Defendant: Daniel J. Perry, Esq., Warren M. Silver, P.A., Bangor, Maine.

JUDGES: GENE CARTER, Chief Judge

OPINION BY: GENE CARTER

OPINION: MEMORANDUM AND ORDER DENYING ON AN IN LIMINE BASIS'  
GOVERNMENT'S MOTION IN LIMINE OR FOR DISCOVERY

Defendant Michelle T. Marenghi faces charges for conspiring to possess and distribute a controlled substance containing cocaine base and for the underlying substantive offense in violation of 21 U.S.C. §§ 841, 841(a)(1) and (b)(1)(B). Now before the Court is the Government's Motion In Limine to Exclude Expert Witnesses and in the Alternative for Discovery (Docket No. 23). The Government argues here that Defendant has indicted her intent to present expert testimony regarding her mental capacity and the role of "battered woman syndrome" in the alleged commission of the above charges. The Government asks this Court to exclude such expert testimony as irrelevant to any issue or defense or, in the alternative, to require Defendant to produce the results of certain physical or mental examinations and tests pursuant to Criminal Rule 16(b)(1)(B) and to submit to a psychological, examination pursuant to Rule 12.2(c).

**I. BACKGROUND**

Defendant provided to the Government, and filed with the Court, a notice pursuant to Criminal Rule 12.2(b) indicating that she will present, through expert testimony, evidence relating to "a mental disease and/or defect and/or other mental condition of hers that bears upon the issue of guilt." Specifically, Defendant states that she will elicit testimony from the following expert witnesses:

1. Mark Vanelli, M.D., is expected to testify regarding Ms. Marenghi's psychological characteristics, social situation, and abusive relationship. Dr. Vanelli will testify how these elements prevented the Defendant from possessing sufficient capacity to commit the

crimes charged. He will also testify that the Defendant lacks the ability to enter into the conspiracy as alleged, did not commit any of the acts charged voluntarily and that her actions were the product of coercion.

2. Mary Campbell is expected to testify that the Defendant was a victim of battered women syndrome that prohibited her from forming the requisite capacity to commit the crimes as charged, prohibiting the Defendant from entering into the conspiracy as alleged, and prohibited the Defendant from acting voluntarily in relation to all the actions charged in the indictment. Ms. Campbell also will testify that the Defendant's actions were the product of coercion. [Defendant's List of Expert Witnesses]

It is anticipated by the Government that Defendant will argue at trial that she was physically, mentally, and emotionally abused by her boyfriend, Freddie "Pit Bull" Long, who was arrested with Defendant and with whom it is alleged that she conspired to possess and to sell crack cocaine.

[The Government argued that the expert testimony was inadmissible on two bases: (1) under the Insanity Defense Reform Act ("IDRA"), codified at 18 U.S.C. § 17, evidence of a mental disease or defect is admissible only to demonstrate the elements of the insanity defense, an argument which is omitted here, and (2) expert testimony on "battered woman syndrome" is not relevant to establishing the defense of duress.

## II. DISCUSSION

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The only indication this Court has regarding the scope of the experts' testimony is the brief summary contained in Defendant's Rule 12.2 notice . . . . By using language such as "preventing Defendant from possessing sufficient capacity to commit the crimes alleged," Defendant appears to indicate in a general sense that the experts will present testimony negating mens rea. Prior to permitting the presentation of such testimony to the jury, however, this Court must consider a proffer of such evidence outside the jurors' hearing.

While Defendant characterizes the proposed testimony as evidence offered to negate intent, this Court must ensure that the expert testimony is offered to address substantively the presence or absence of mens rea. The courts that have addressed this issue acknowledge that, while evidence negating mens rea is properly admitted, it is also quite rare. To be admissible, such evidence must directly negate intent. Most often, courts have noted, evidence purporting to prove that a defendant lacked the "capacity" to form the requisite intent, in actuality merely suggests that a defendant did not have the ability to properly reflect on her or his behavior. In fact, it has been suggested, that a complete lack of an ability to form intent is so rare that even most legally "insane" defendants could not demonstrate such an impairment. Nonetheless, courts have admitted evidence under these requirements and this Court may do the same provided that Defendant demonstrates specifically that her evidence will be relevant on the issue of mens rea and will not mislead or otherwise confuse the jury on matters of her mental capacity.

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## **B. Duress and Battered Woman Syndrome**

Defendant's Rule 12.2 notice also indicates that she intends to provide evidence that she committed the crimes charged as a result of coercion and seeks to provide expert testimony on "battered woman syndrome" to assist the jury in reviewing the evidence.<sup>1</sup> The Government argues in this motion that Defendant has indicated her intent to assert a defense of "duress" or coercion and that such expert testimony would merely demonstrate Defendant's special vulnerability to coercion and, therefore, would be irrelevant to the issue of whether Defendant acted as a "reasonable person" in complying with the purported coercion.

Duress is an affirmative defense which is recognized in federal courts and which has developed through the common law. *United States v. Bailey*, 444 U.S. 394, 409-410, 62 L. Ed. 2d 575, 100 S. Ct. 624 (1980). There is no unanimity among courts regarding the precise elements of the defense. However, as the Supreme Court has observed, "Under any definition of [the defenses of duress and necessity] one principle remains constant: if there was a reasonable, legal alternative to violating the law, 'a chance both to refuse to do the criminal act and also to avoid the threatened harm,' the defenses will fail." *Id.* at 410 (1980). The Court of Appeals for the First Circuit recently adopted the formulation of the elements of a duress defense established by the Court of Appeals for the Ninth Circuit:

To maintain the defense of duress, a defendant must offer evidence sufficient to show three things: (1) that she acted under an immediate threat of serious bodily injury or death, (2) that she had a well grounded belief that the threat would be carried out, and (3) that she had no reasonable opportunity to escape or otherwise to frustrate the threat.

*United States v. Amparo*, 961 F.2d 288, 291 (1st Cir.) (citing *United States v. Johnson*, 956 F.2d 894, 897 (9th Cir. 1992)), cert. denied, 113 S. Ct. 224, 121 L. Ed. 2d 161 (1992). The defendant's only burden under such a defense is to produce sufficient evidence to support a finding of duress. Once a defendant has produced such evidence, the Government must demonstrate beyond a

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<sup>1</sup> By making this statement in the context of a Rule 12.2 notice, Defendant suggests that battered woman syndrome is a "mental disease or defect." There is no consensus among courts regarding whether the syndrome is properly characterized as a mental defect. Compare *United States v. Johnson*, 956 F.2d 894, 899 (9th Cir. 1992) ("Battered woman syndrome is not a mental disease or defect; rather, battered woman syndrome is a post-traumatic stress disorder.") and *United States v. Bell*, 855 F. Supp. 239, 240 (N.D. Ill. 1994) (stating that battered woman syndrome is a defense unrelated to a defendant's mental capacity) with *United States v. Willis*, 38 F.3d 170, 175 (5th Cir. 1994) (referring to battered woman syndrome as a "psychological condition"), cert. denied, No. 94-8566 (June 16, 1995). The Court, however, need not determine on this motion the proper characterization of battered woman syndrome.

reasonable doubt that the defendant's actions were not the product of coercion or duress. *Id.* The Court of Appeals for this circuit has stated that the Government may satisfy its burden by showing that, for example, "no threat occurred, or that the defendant's fear was unreasonable, or that the defendant had an opportunity to escape but did not exercise it." *Id.* The defense is not employed to demonstrate that a defendant lacked the requisite mens rea to be found guilty of the crime. Rather, "the defense assumes that the defendant has voluntarily performed the criminal act." *Johnson*, 956 F.2d at 897.

Two federal appeals courts have addressed the applicability of evidence of battered woman syndrome in the case where a duress defense is raised. The Court of Appeals for the Ninth Circuit provided an extensive discussion of battered woman syndrome in *United States v. Johnson*, 956 F.2d 894 (9th Cir. 1992). In that decision, the panel permitted consideration of expert testimony on battered woman syndrome and the defendant's "subjective vulnerability" to coercion when her sentence is determined under the Federal Sentencing Guidelines. U.S.S.G. § 5K2.12. The Government suggests that the case is inapposite to the matter pending before this Court since the focus of *Johnson* was the applicability, of battered woman syndrome expert testimony to sentencing. As discussed below, however, the panel also, discussed the applicability of a battered woman syndrome theory to a duress defense and appears to conclude that the two are not incongruous.

The Fifth Circuit in *United States v. Willis*, 38 F.3d 170 (5th Cir. 1994), cert. denied, (June 19, 1995), upheld the trial judge's exclusion of expert testimony offered as a part of a duress defense to establish that the defendant there was a victim of battered woman syndrome. The Fifth Circuit standard for duress differs in some ways from that used by the Ninth and First Circuits but is essentially similar in its objective formulation of duress. The *Willis* court concluded that an objective approach provides no occasion for consideration of "subjective" factors such as the fact that defendant suffers from battered woman syndrome.

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This Court is reluctant to join the Fifth Circuit in establishing a per se rule of excluding expert testimony that may be characterized as addressing battered woman syndrome. Part of the complexity of the issue is that the distinction between subjective and objective evidence is not as clear as the Government asserts here. This can be demonstrated by changing the "snapshot" of circumstances that is shown to a jury in any particular, case. If the jury sees the defendant's circumstances immediately prior to commission of the crime and there is no gun held to her head or other markedly extreme duress, the jury may conclude that any fear of imminent death or violence was unreasonable.<sup>2</sup> However, if the defendant is permitted to pull the camera back to

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<sup>2</sup> This is clearly the approach suggested in *Willis*. The court there characterized battered woman syndrome expert testimony as "explaining why this particular defendant succumbed when a reasonable person without a background of being battered might not have." *Willis*, 38 F.3d at 175. The Court concludes that, in the context of a duress defense in which a defendant claims to have been coerced by her abuser to commit the crime, the exclusion of the history and effect of such abuse is wholly unfair and unjustified. The presentation of expert testimony need

provide the broader picture, so to speak, of her circumstances, the jury could learn of a pattern of violence, control, and coercion leading up to the criminal act.<sup>3</sup> Expert testimony could be helpful to explain to the jury how a reasonable person reacts to repeated beatings and emotional abuse. Providing the jury with information of specific incidents of abuse while providing no information about how such treatment can, over time, establish a dynamic where the threat of abuse hovers over every interaction between the individuals, even if such threat is not always articulated, would give the jury only half of the story. In effect, this expert testimony may be characterized as explaining how a reasonable person can nonetheless be, trapped and controlled by another at all times even if there is no overt threat of violence at any given moment.

This Court has also found it helpful to examine the treatment by other courts of battered woman syndrome expert testimony as part of a self-defense theory, rather than a duress defense. The two defenses are similar in that they require a defendant to demonstrate that she acted reasonably in response to a reasonable fear of death or bodily injury. Self-defense, therefore, also requires an essentially objective analysis without consideration of factors such as mistake or good faith. See, e.g., *United States v. Hall*, 46 F.3d 855, 857 (8th Cir. 1995) (A person is entitled to use "such force that, she reasonably believed was necessary to protect herself from unlawful physical harm about to be inflicted upon [her] by another."); *United States v. Jackson*, 569 F.2d 1003, 1008 (7th Cir.), cert. denied, 437 U.S. 907, 98 S. Ct. 3096, 57 L. Ed. 2d 1137 (1978) ("[A] person is justified in the use of force when and to the extent that she reasonably believes that such conduct

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not state that this particular defendant suffered from the syndrome. Rather, the expert may simply explain the long-term effects of being battered in general.

<sup>3</sup> The Willis panel appears to hold a similar view on this point:

In determining whether the elements of duress are met, the fact-finder may take into account the objective situation in which the defendant was allegedly subjected to duress. In addition to the immediate circumstances of the crime, this would include evidence concerning the defendant's past history with the person making the unlawful threat. In order to successfully make out this defense, a defendant must show, among other things, that her fear is well-grounded. A fear that seems irrational when viewed only in light of the immediate circumstances may be well-grounded if the defendant's experience with the person applying the threat is such that she can reasonably anticipate being harmed for her failure to comply.

*Willis*, 38 F.3d at 177-78 n.8 Presumably, the panel would permit evidence regarding a defendant's history of abuse but nonetheless exclude expert testimony to assist jurors in understanding the dynamics created by such abuse.

is necessary to defend herself against the imminent use of unlawful force.").

In state courts, where the law of self-defense is essentially the same as in federal courts in terms of requiring a showing of reasonable conduct by the defendant, there is almost unanimous agreement that defendants may present expert testimony regarding battered woman syndrome as part of their defense. None of the courts surveyed by this Court engaged in a "subjective versus objective evidence" analysis in deciding on the admissibility of such evidence. Rather, many of these courts consider the evidence to be offered for the purpose of expanding jurors' general knowledge and understanding of precisely what circumstances the defendant was operating under at the time of the offense.

For example, one court reasoned that "we do not believe the average juror is familiar with the complex behavior of a victim of [battered woman syndrome]" and that expert testimony in this field "has been used in other jurisdictions to explain how a battered woman reacts to the batterer, to explain the reasonableness of the battered woman's perception that danger or great bodily harm is imminent, and also to rebut the prosecution's inference that the defendant could have left rather than kill the spouse." *People v. Wilson*, 194 Mich. App. 599, 487 N.W.2d 822, 824 (Mich. 1992). Another court suggested an objective test of the "reasonably prudent battered [woman]," and concluded that evidence of the effects of domestic violence are admissible "just as it is admissible to prove the standard mental state of hostages, prisoners of war, and others under long-term life-threatening conditions." *State v. Hundley*, 236 Kan. 461, 693 P.2d 475, 479 (Kan. 1985).

Courts have also noted that battered woman syndrome evidence is significant since it operates to dispel many commonly held myths regarding domestic violence. See, e.g., *Commonwealth v. Stonehouse*, 521 Pa. 41, 555 A.2d 772, [\*32] 783 (Pa. 1989) ("It is widely acknowledged that commonly held beliefs about battered women are subject to myths that ultimately place the blame for battering on the battered victim."); *State v. Kelly*, 97 N.J. 178, 478 A.2d 364, 377 (N.J. 1984) ("The experts point out that one of the common myths, apparently believed by most people, is that battered [women] are free to leave."). Courts permit such evidence to be admitted to expand the common sense and general knowledge that all jurors are presumed to bring with them into the jury room. When considering self-defense in other contexts, such as "barroom brawls" or protecting one's family from an intruder, jurors are expected to readily apply their understanding of the dynamics of a given situation to the evidence under their consideration. Without an understanding of how battered woman syndrome instills in an abused person a continuing sense of being trapped and of constant fear, the jurors' review of a defendant's allegations that she was in fear of, immediate bodily injury will be incomplete and irrelevant to the reality of the situation.

In effect, bringing the discussion and understanding of intra-family violence out into the open places a scenario long considered a closely-guarded "private family matter" on the same footing as other forms of violence leading to criminal acts in self-defense or resulting from duress. See, e.g., *Hawthorne v. State*, 408 So. 2d 801, 806 (Fla. App. 1982) ("The expert testimony would have been offered in order to aid the jury in interpreting the surrounding circumstances as they affected the reasonableness of her belief. . . . It is precisely because a jury would not understand

why appellant would remain in the environment that the expert testimony would have aided them in evaluating the case."); *State v. Allery*, 101 Wash. 2d 591, 682 P.2d 312, 316 (Wash. 1984) ("We find that expert testimony explaining why a person suffering from the battered woman syndrome would not leave her mate, would not inform police or friends, and would fear increased aggression against herself would be helpful to the jury in understanding a phenomenon not within the competence of an ordinary lay person.").

This Court cannot envision that such evidence should be excluded in a duress defense when it is admitted in an overwhelming majority of state courts in self-defense cases. Indeed, one court noted specifically in a duress case that it was extending the rule from self-defense cases permitting such evidence. *People v. Romero*, 10 Cal. App. 4th 1150, 13 Cal. Rptr. 2d 332, 338 (Cal. Ct. App. 1992) ("As relevant to this case, the defense of duress is the same as self-defense -- in both, the key issue is whether the defendant reasonably and honestly believed she was in imminent danger of great bodily harm."), rev'd on other grounds, 8 Cal. 4th 728, 35 Cal. Rptr. 2d 270, 883 P.2d 388 (1994).<sup>4</sup>

However, in the record provided to the Court on this motion, the Court has no way to determine what will be the specific focus of Ms. Campbell's testimony. The Government attempts to label it as purely "subjective" testimony, as was done in *Willis*, while Defendant states that the evidence will assist the jury in determining whether Defendant's fear was well-grounded and will not address Defendant's "subjective condition." Defendant represents that the expert testimony will "provide the jury with psychological information, scientific evidence, and sociological data to show how reasonable persons react in similar circumstances." Defendant's Memorandum in Opposition to Government's Motion In Limine (Docket No. 27) at 12. Defendant also asserts in her memorandum to the Court that the expert will explain the process by which Defendant was rendered entirely submissive to her boyfriend through physical and emotional abuse.

In order to properly rule on the admissibility of this evidence, however, and determine the relevance of, as well as any unreasonable prejudice from, the proposed testimony, the Court must know precisely what testimony will be offered. Accordingly, the Court orders Defendant to submit a proffer of evidence of the anticipated content of the expert testimony regarding the defense of duress at least ten (10) days in advance of trial. As discussed in the previous section regarding evidence of a mental disease or defect, this motion is denied with prejudice to the arguments asserted by the Government here (i.e., that expert testimony battered woman syndrome is irrelevant to and inadmissible in a duress defense per se). However, the Government is not precluded from objecting to the admissibility of such evidence on other bases.

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### III. CONCLUSION

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<sup>4</sup> Although the *Romero* opinion suggests that California's tests for self-defense and duress have both an objective and subjective component, the reasoning of the court is just as applicable to the federal criminal law where the essential elements of the defenses are identical. \* \* \* \*

Accordingly, the Court DENIES the Government's Motion In Limine . . . .

So ORDERED.

GENE CARTER

Chief Judge

Dated at Portland, Maine this 26th day of June, 1995.