Expert witness testimony in jury verdicts when battered women kill

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ABSTRACT

Asma Sheikh
EXPERT WITNESS TESTIMONY IN JURY VERDICTS WHEN BATTERED WOMEN KILL
2007/08
Dr. Eleanor Gaer
Master of Arts in Mental Health Counseling and Applied Psychology

The purposes of this investigation were to (a) explore the relationship between jury verdicts when traumatic brain injury expert testimony is provided and (b) examine the relationship between the verdicts when battered women syndrome expert witness testimony is provided, in Rowan University undergraduate students (N = 100). Students were provided with experimental packets, read a mock legal case, answered four questionnaires, and conducted a mock jury deliberation. Students indicated their verdicts were of lesser severity when there was traumatic brain injury expert witness testimony when compared to battered women syndrome expert witness testimony. Analysis of variance statistics indicated that expert witness testimony of traumatic brain injury was more likely to result in not guilty verdicts, whereas expert witness testimony of battered women syndrome was more likely to result in not guilty, by reason of insanity verdicts. Implications of the types of expert witness testimonies provided when battered women kill their abusers are discussed.
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CHAPTER I
Literature Review

Issues regarding battered women have become more important over the years, as domestic violence has become a more pressing matter in society. Domestic violence is a pattern of abusive behaviors such as physical, sexual, and psychological maltreatment used by one intimate partner over another. The maltreatment is used to unfairly gain power, or to maintain the misuse of power, control, and authority (Walker, 1999). In our society, it is not uncommon to see men exert this power by battering women. Battering is known to be a pattern of control that one person exerts over another. The battering occurs when one partner dominates over the other in order to gain control or get their way by using physical and sexual violence, verbal and physical threats, emotional insults, property damage, and economic deprivation (Paul, 2004). These various forms of battering occur within our society.

It has been estimated that 85 percent of victims of partner violence are women (Jacobson, Mizga, & D’Orio, 2007). Approximately 1.8 million women are beaten by their husbands, every year in the United States (Snyder & Fruchtman, 1981). One-third of all murdered females are killed by their male partner each year (Jacobson, Mizga, & D’Orio, 2007). About three percent of all murdered males are killed by their partner each year (National Crime Victimization Survey, 2007). It is apparent that many women are battered, and as a result, some do take action after the prolonged suffering.

Women who are physically abused by their intimate partners suffer from physical, psychological, cognitive problems, and neurological damage. Women who are abused are
found to have high rates of psychological problems such as depression, anxiety, and posttraumatic stress disorder. They are also found to have cognitive deficits such as difficulty remembering, concentrating, and paying attention. Women who are severely beaten can sustain head injury (Valera & Berenbaum, 2003).

The battering of women can lead to Battered Women Syndrome. This concept was formulated by Lenore Walker. According to her theory, a woman is repeatedly subjected to forced physical or psychological behavior by a man. The male counterpart is able to coerce the female to do something for him, without any regard to her own rights. Affected women have physical and psychological characteristics of abuse (Jacobsen, Mizga, & D’Orio, 2007). Women who are abused are transformed by the terror and suffering that is inflicted upon them (Dolan, 2003). This transformation occurs in the form of two constructs.

Walker posits that the first construct is the cycle theory of violence, which consists of three recurrent phases. The first phase is the tension building stage. This is characterized by minor abuse. It usually begins with emotional abuse and escalates to sexual and physical abuse (Potoczniak, Mourot, Crosbie-Burnett, & Potoczniak, 2003). The woman tends to placate the abuser and remain as passive as possible to ward off more serious violence (Cusseaux v. Pickett Jr., 1994). The second phase is the acute battering stage. This is characterized by explosions of violence which are uncontrollable. The tension during this stage becomes intolerable (Cusseaux v. Pickett Jr., 1994). The third phase is the loving, respite state. This is characterized by the batterer’s ability to be calm and loving, while pleading for forgiveness. This is when the male attempts to amend for his assaultive behavior (Dutton, 1986). The cyclical nature of the abuse leads a woman to
develop a sense of when the tension building stage is ending and when the acute battering stage is beginning (Shaffer, 1997). The battering episodes usually involve a repetitive combination of physical assaults, threats, verbal abuse, and destruction of property, which leave a victim feeling trapped and completely out of control, so the only outlet left is to endure the remnants of the cycle (Walker & Browne, 1985). The abuse becomes consistent and well-reinforced, so the woman begins to feel like there is nothing she can do to change what is happening to her (Huston, 1984). Battered women begin to feel demoralized and degraded at their inability to predict the violence and become psychologically paralyzed (Cusseaux v. Pickett Jr., 1994). These continued brutal actions are believed to result to a state of learned helplessness, which is experienced by the battered woman (Jacobsen, Mizga, & D'Orio, 2007).

This leads to Walker’s second posit. This is a factor called learned helplessness in which a woman develops a sense that she can not control what happens to her nor can she do anything to proactively intervene in what is going on with her (Dolan, 2003). It is believed that the women who are repeatedly abused eventually begin to realize their inability to control the abuse which is inflicted upon them. As a result, their motivation to escape or any attempt to prevent or avoid future abuse becomes nonexistent. The woman feels entrapped (State v. Tierney, 2003). The battered woman naturally begins to live in a constant state of fear truly believing she has no option to escape. The battered woman believes she is helpless, and that perception becomes a reality in which she becomes passive, submissive, and in turn, helpless (Shaffer, 1997). The only options seen are to endure the abuse or death (Terrance & Matheson, 2003). Battered women often feel like they have no ability to escape from the violence of their aggressor. The only option a
battered woman perceives is to minimize injury and cope with the pain and fear because it is her only chance of survival (Walker & Browne, 1985).

It is often mentioned or asked why battered women do not fight back. The answer is quite simple, many battered women do not fight back because they know their efforts will only result in greater violence directed towards them (Jacobson, Mizga, & D’Orio, 2007). A battered woman will evaluate whether her method of coping will further endanger her and to what extent before she decides on a choice of action towards her aggressor (Walker & Browne, 1985). Usually her choice of action is submission, because any other act would result in more volatility towards her.

It is also mentioned or asked why battered women do not leave. The answer is also logical. Most battered women are paralyzed by fear of the repercussions from the batterer for leaving (Cusseaux v. Pickett Jr., 1994). It is a fact that many batterers continue to harass, stalk and harm their victim even after she has left him. Sometimes this goes too far and results in someone’s death (Walker, 1999). The six months after a separation or divorce are the most dangerous times for a woman, because she is more likely to be killed during this time period (Paul, 2004). In a United States study, 70% of domestic violence injuries were reported after the couple separated (Walker, 1999).

Battered women may not fight back or leave a batterer in a direct way; however, battered women do have their own strategies for survival or placating their abusers (Jacobsen, Mizga, & D’Orio, 2007). There has been prior research that indicates victims of violent crimes are reduced to infantile obedience and cooperate with their attackers (Huston, 1984). This explains how battered women learn to control their breathing during violent attacks or learn to not cry or display signs of pain while being physically abused.
by the aggressor (Walker & Browne, 1985). Over time, the woman becomes sensitized to the signaling cues prior to abusive incidents. She begins to know what will set her partner off or suspects when he will go off (Terrance & Matheson, 2003). A battered woman is able to predict when the next episode will occur and how severe it could potentially be. The woman is often able to detect changes or signs of novelty in her partner’s normal violent behavior, and can discern when an increasingly violent life-threatening attack is forthcoming (Shaffer, 1997). It is said that battered women would rather live with the batterer and possess some control over his behavior as opposed to not living with him and not knowing when he will subsequently attack her (Huston, 1984). Battered women know how to protect themselves because they can detect when their aggressor’s anger will escalate due to their vigilance in perceiving cues of forthcoming abuse (Walker, 1984).

Battered women live in a state of cumulative terror. Their perception of danger is reasonable, because of their ability to detect an episode of abuse. It therefore becomes reasonable to assume that a woman, who perceives and very well knows when an attack is forthcoming, would be appropriate in using self-defense. Self-defense is based on the premise that a person who is unlawfully attacked by another should be able to take reasonable steps to defend the self. In most jurisdictions within the United States it is required that the individual being attacked must believe that they were in imminent danger of death or serious bodily harm, and the force used to repel the attack was reasonable and not excessive (Terrance & Matheson, 2003). In common law, a woman who believes she is subject to an imminent unlawful attack can use as much force as she reasonably believes is needed to protect herself (Skinazi, 1997). The law requires that
there be a reasonable belief, however, it does not necessarily have to be a correct belief
(State v. Tierney, 2003).

Psychological self-defense is premised on the notion that the defendant truly believed
she was in imminent danger of extremely serious psychological or physical injury or
death, and the only way to prevent it would be to kill the person imposing that danger
(Greenwald, Tomkins, Kenning, & Zavodny, 1990). During murder trials, expert
witnesses have the ability to link the experiences and reactions of battered women to their
perceptions of reasonable threat and fear of lethal harm from their aggressor and their
justifiable acts of killing. The expert witnesses attempt to reframe the defendant’s actions
into laws of self-defense (Terrance & Matheson, 2003).

Usually, female victims of domestic violence tend to sustain greater injury and threats
to their lives than their male counterparts. This is especially true of women who sustain
physical injuries, 38%, as opposed to men who sustain physical injuries, 25%. The
National Violence Against Women Survey data indicated that 39% of women fear serious
injury or death during one of their victimization experiences whereas only 24% of men
do (Cortina & Pimlott-Kubiak, 2006). It has been suggested that a woman who kills her
batterer does so as a result of a psychologically justified response (Greenwald, Tomkins,
Kenning, & Zavodny, 1990). “A homicide by a battered woman is simply a terrified
human being’s response to an abnormal and dangerous situation” (Caplan, 1991, p. 40).
Upon consideration it makes logical sense that given the physical difference between men
and women, action taken during a lull in the violence would be seen as reasonable
(Terrance & Matheson, 2003). It makes further sense that a woman would use a weapon
such as a gun, knife, or any other product that can be used to protect her. A woman’s use
of an available weapon can be attributed to the size difference between a man and a
woman. A female’s mere size difference would require a weapon to compensate for the
disadvantage of the size of her male counterpart. In most heterosexual relationships, the
male is typically taller and stronger than the female, so when a female uses a weapon, she
is equalizing her relative strength in relation to her male partner. This act has been
referred to as an equalizer principle, not excessive force. The weapon, whatever it may
be, should not be considered as an excessive force, instead, an equalizer (Jacobson,
Mizga, & D’Orio, 2007).

In order for a jury to find a battered woman not guilty, it would be necessary to
determine if the woman believed she was in imminent danger of death or serious bodily
harm (Follingstad, Brondino, & Kleinfelter, 1996). It is important that the jury be
presented with the history of abuse by the man, so that reasonableness of the woman’s
belief that she was in danger of death or serious bodily injury can be determined
(Follingstad, Brondino, & Kleinfelter, 1996). If that is the case, it would show that the
force used by the woman to kill her male partner was justifiable (Follingstad, Brondino,
& Kleinfelter, 1996). It is apparent that battered women tend to kill when they are not
under any imminent threat or injury, but there is a constant underlying threat throughout
the entire relationship (State v. McClain, 1991). Due to the battered woman’s
hyperarousal of constant threat and terror, it would appear reasonable that her use of
lethal force, even when nonconfrontational, would be justifiable (Terrance & Matheson,
2003).

There are many psychological remnants of being a battered woman. It is important to
understand that limited competence is when a person is unable to make a rational
judgment in a specific situation because of physical or mental impairment (Huston, 1984). Battered woman syndrome is used to describe a woman’s state of mind while under the impact of abuse. Battered woman syndrome helps to explain the results of psychological trauma and damage of the physical abuse. Research has indicated that prior trauma history or posttrauma increases the likelihood of a trauma-related disorder (Cortina & Pimlott-Kubiak, 2006). Battered women may experience and exhibit extreme anger, anxiety, eating and sleeping problems, agitation, and hypervigilance (Paul, 2004). The woman becomes hypervigilant toward the possibility of future attacks (Walker & Browne, 1985). The hypervigilance tends to increase depressive and anxious symptoms (Potoczniak, Mourot, Crosbie-Burnett, & Potoczniak, 2003). The battered woman may also experience and exhibit a feeling of shock, feeling frozen and helpless, having a flat affect, avoiding the mention of abuse, experiencing numbness, forgetting, denying, or minimizing the abuse. She may also suffer cognitive deficits such as confusion, memory difficulties, flashbacks, rumination, and her perception of the world (Paul, 2004).

Counter to all this information on battered women syndrome, there are several critiques of this theory made by some researchers. First, society tends to blame the battered woman for staying in the abusive relationship. It is believed that her failure to leave is a result of her enjoying the abuse; she is indeed a masochist. Second, the term syndrome associates pathology to the battered woman. The word syndrome is portrayed as a disease or disorder (Shaffer, 2001). This can be problematic if a woman is trying to regain custody of her children. The labeling will deem her to be unfit as a caregiver and she could potentially lose custody of her children (Grigsby & Hartman, 1997). Third, there are external barriers that prevent a woman from leaving her abuser, and not BWS.
Often, women lack personal income. The abuser usually prevents the woman from working and he has sole control of the money. Since these women have not been in the work force, their likelihood of securing an occupational position decreases. This creates problems because a job is needed for money, which would provide for the battered woman and her children if she were to leave (Gordon, Burton, & Porter, 2004). If a woman leaves, she may live in a poor neighborhood, possibly imposing more threats upon her and the children. Fourth, there are socialization barriers. Women are manipulated into believing they are getting what they deserve from their abusers because they are incapable of being good wives. Society also puts norms on boys and men who are violent (Grigsby & Hartman, 1997). All these issues point to flaws with battered women syndrome. There may be better reasons as to why women react and kill their batterers after repeated attacks.

Most battered women who are seen in emergency rooms have injuries located on the head or face. This suggests the notion that battered women can sustain traumatic brain injuries (Jackson, Philp, Nutall, & Diller, 2002). The World Health Organization’s International Classification of Diseases recognizes frontal lobe dysfunction or frontal lobe syndrome as sustained damage to the frontal lobe which produces changes in personality, mood, and behavior. There can be two forms of frontal lobe damage, dependent upon its location of damage. Damage to the ventromedial prefrontal cortex produces impulsivity and impulsive aggression. Damage to the dorsolateral prefrontal cortex produces impaired judgment and moral reasoning. Despite these localizations, most brain injuries to the frontal lobes have widespread effects, often resulting in both types of damage; however, one may be predominant (Redding, 2006).
There are several symptoms of frontal lobe damage (FLD). They include: emotional lability, deficits in self-awareness, an inability to adjust to changing circumstances, and decreased responsiveness to punishment. The most distinguishable symptoms of FLD are deficits in planning and foresight, impaired social judgment, impulsivity, and behavioral disinhibition. Research has indicated that even minimal FLD can cause impulsive aggression (Redding, 2006).

Frontal lobe damage results in impaired impulse control. Individuals with FLD are cognitively intact but are unable to control their impulses. Individuals are led to commit impulsive or violent acts that would normally be against their nature. Rules of civilized behavior, such as right versus wrong can be differentiated; however this knowledge cannot be applied to control behavior. Individuals with FLD have a discord of judgment and self-control, which produces disinhibition (Redding, 2006). A battered woman who knows killing her abuser would be wrong may be unable to control her behavior. FLD results in an inability to perceive social situations correctly and act appropriately. It results in an inability to control behaviors and an inability to act rationally during stressful situations (Redding, 2006). High states of arousal can selectively promote the retrieval of traumatic memories or sensory and behavioral information associated with traumatic experiences (Reeves, Beltzman, & Killu, 2000). A battered woman who is continuously battered could feel stressed and have the inability to act rationally during an episode, and could quite easily take action against her abuser.

The loss of control of impulses an individual experiences can exacerbate into rage attacks. Individuals can develop episodic dyscontrol characterized by rage attacks due to minimal provocation. These rage attacks can result in unplanned homicides or assaults.
(Redding, 2006). A battered woman could easily perceive a battering situation as an immediate threat and spew into a rage attack. This can best be explained because the frontal lobe works to stunt actions; it serves as a braking mechanism for behaviors, but if damaged it is unable to function in this manner (Redding, 2006). These are extreme cases of intense brain trauma, but it need not be this severe.

An individual can sustain mild traumatic brain injury (MTBI). MTBI can be sustained from blows to the head, being violently shaken, or being choked. MTBI is a subset of minor head injury which damages the brain and results in symptoms which may or may not be transient. Research had indicated that noncontact intracranial brain movements can cause diffuse brain injuries which can result in cognitive and functional deficits. These noncontact intracranial brain movements can occur from severe shaking (Jackson, Philp, Nutall, & Diller, 2002).

Due to the MTBI, battered women may be less likely than others to remove themselves from abusive relationships. Battered women have a difficult time thinking through or coping with complex situations. They lack the ability to stop the violence, disengage from their violent partner, or establish independent lives because they lack the organizational skills needed due to the impairment of the brain injury (Jackson, Philp, Nutall, & Diller, 2002).

The National Institute of Health Consensus Panel has found cognitive consequences for MTBI. These include memory impairment, attention and concentration limitations, language deficits, and difficulties in problem solving, abstract thinking, insight, judgment, planning, information processing, and organization. There are also behavioral difficulties. These include verbal and physical aggression, lack of insight, sexual
dysfunction, depression, and anxiety. There are also social implications. These include increased risks of suicide, divorce, chronic unemployment, financial stress, and substance abuse (Jackson, Philp, Nutall, & Diller, 2002). Brain injuries have also been associated with psychopathology. Some facets are general distress, anhedonic depression, worry, anxious arousal, and post traumatic stress disorder symptoms (Valera & Berenbaum, 2003).

There are other ways to acquire brain injuries. Brain injuries can occur even if there is no loss of consciousness. A battered woman can sustain brain injury due to anoxia or hypoxia, while being choked. A battered woman can also sustain brain injury from rapid acceleration and declaration, while being violently shaken. This can result in diffuse axonal injury in which neuronal fibers which connect various parts of the brain are torn. Brain injury can occur at the point of impact of the brain or opposite the point of impact, contre coup injury (Valera & Berenbaum, 2003). It has been found that sequelae of brain injuries, even mild traumatic brain injuries tend to resolve over a time. However, having multiple brain injuries results in a longer time to recover and also results in more severe deficits (Valera & Berenbaum, 2003).

The implications of being a battered woman could be to develop battered women syndrome, traumatic brain injury, or a combination of both. No matter what the result is, a battered woman can have one or several resulting effects. Any of these effects can lead her to take actions that would normally not be taken. One such action may be killing her abuser as a result of all the prior battering she has incurred. It is being proposed that expert witness testimony on battered women syndrome, traumatic brain injury, or a combination of both would influence a jury verdict for a woman who has killed her
abuser. It seems reasonable to hypothesize that a woman who has an expert witness testimony and opinion indicating that her actions were justified whether due to psychological defense or a physical defense would be more likely to receive a lesser degree or not guilty verdict.

It is being hypothesized that women who are victims of domestic violence are more likely to receive a verdict of not guilty for murdering their spouse when there is expert testimony and opinion indicating that the woman has sustained a traumatic brain injury from being battered by her husband, which led her to kill her husband in self-defense. An expert witness testimony and opinion indicating that the woman has battered women’s syndrome from being battered by her husband, which led her to kill her husband in self-defense is less likely to result in a not guilty verdict than traumatic brain injury testimony, but still more likely to result in a lesser degree charge of manslaughter passion/provocation versus murder. An expert witness testimony and opinion indicating that a woman has a traumatic brain injury versus battered woman syndrome is more likely to result in a verdict of not guilty by reason of insanity because traumatic brain injury is more likely to be associated with a physical impairment whereas battered woman syndrome is more likely to be associated with a psychological impairment. A physical impairment may be a better reason as to why a woman loses control and kills her batterer whereas a psychological impairment may seem less substantial and more abstract. It is believed that the physical trauma sustained from being battered would be more justifiable as a response used for killing a spouse than psychological trauma would be.
CHAPTER II

Method

Participants

Participants were recruited from Rowan University’s Introduction to Psychology class and Research Methods class (N = 100). Students were required to participate for course credit or to attain extra credit. They were assigned to participate in this study by signing up for participation through a computer software program at http://rowan.sona-systems.com/ and by answering to an email for an offer to attain extra credit. Demographic characteristics were as follows: 35 males and 65 females, age ranges from 18-29. Years of education were 25 freshmen, 30 sophomores, 30 juniors, and 15 seniors. Majors were accounting, advertising, art, art education, biology, business, communication studies, economics, education, English, health and exercise science, history, journalism, law and justice, political science, public relations, psychology, radio, television, and film, secondary education, sociology, Spanish, theater, undeclared and writing arts. Relationship statuses were 67 single, 30 not married but in a committed relationship, and 3 married.

Procedure

Participants were invited to participate in a study investigating the relationship between a defendant’s defenses (e.g., battered women syndrome, traumatic brain injury, and a combination of battered women syndrome and traumatic brain injury) and jury verdicts. All participants were required to participate for course credit or extra credit.
The study was conducted over a period of two months. Testing was completed in one hour and thirty minutes. The experiment was composed of a packet which was given to participants. Participants began the study by reading the informed consent form, which they signed. Participants then read over a list of general instructions which detailed the steps of the experiment. Participants then read a passage of the prosecutor’s statement. There were four versions of the prosecutor’s statement: control condition, battered women syndrome condition, traumatic brain injury condition, and a combination of battered women syndrome and traumatic brain injury condition. The control condition of the prosecutor’s statement made no references to counter any expert witness testimony; instead, it stated facts about what had happened when the defendant killed her husband. Each of the remaining conditions of the prosecutor’s statements stated facts about what had happened when the defendant killed her husband. In addition, each condition stated facts which made counter refutes to the battered women syndrome, traumatic brain injury, and a combination of battered women syndrome and traumatic brain injury expert witness testimonies (see Appendices C, D, E, and F). Upon completion, participants read a passage of the defendant’s testimony. This was a detailed personal recount of what had happened to the defendant prior to her actions (see Appendix G).

The study had four conditions (e.g., control, expert testimony of battered women syndrome, expert testimony of traumatic brain injury, and expert testimony of a combination of battered women syndrome and traumatic brain injury). Participants were randomly assigned to one of four conditions, either the control or one of the expert witness testimonies and read (if applicable) the next portion of the packet. Each expert witness testimony provided rationales for the actions which were taken by the defendant
Then the participants read a summary of the judge’s instructions. This explained that one of four verdicts which could be returned, e.g., not guilty; not guilty by reason of insanity; guilty of first degree murder; or guilty of manslaughter passion/provocation (see Appendix K). Participants then read a version of all of the following condensed jury instructions: Insanity (N.J.S.A. 2C:4-1), Murder (N.J.S.A. 2C:11-3a (1) and 3a (2)), and Manslaughter, Passion/Provocation (N.J.S.A. 2C:11-3a (1) and (2); 2C:11-4a, b (1) and b (2)). Each jury instruction was taken and condensed (for brevity) from actual New Jersey jury instructions (see Appendices L, M, and N). Upon completion of this, participants answered a pre-jury deliberation questionnaire (see Appendices O and P). The participants were then grouped to form a mock jury. The compositional range of the juries was a minimum of two, to a maximum of seven individuals. The duration of each deliberation varied amongst each group, lasting from as little as five to thirty minutes. The participants convened for a mock jury deliberation and determined a unanimous verdict, which was indicated on the jury deliberation questionnaire (see Appendix Q). The participants then separated and answered a post-jury deliberation questionnaire (see Appendices R and S). Then the participants answered a demographic questionnaire (see Appendix T). Participants then read a debriefing statement explaining the nature of the experimental design. Lastly, participants detached the informed consent form from the experimental packet and placed the consent form into one sealed envelope and the remaining packet into another sealed envelope.

Assessors were the principal investigator (Asma Sheikh).

Measures
Pre-jury deliberation questionnaire. Pre-jury deliberation was assessed by specifying the number of times an individual served on a jury. Individuals were first assessed by asking what their individual verdict would be (e.g., not guilty; not guilty, by reason of insanity; guilty of first degree murder; guilty of manslaughter passion/provocation). Individuals were assessed by rating their corresponding verdict certainty on a one to five likert scale (very sure - very unsure). Individuals were assessed by reading a summary of insanity, manslaughter passion/provocation, and first degree murder jury instructions and rating their certainty of comprehension on a one to five likert scale (strongly agree - strongly disagree). Individuals were assessed by asking if the expert testimony (if applicable) impacted the verdict (e.g., yes; no). Individuals were assessed by rating if the expert testimony (if applicable) was helpful in understanding the mental health of the defendant on a one to five likert scale (very helpful - very unhelpful).

Jury-deliberation questionnaire. Jury deliberation was assessed by asking for the unanimous decision made by the mock jury group (e.g., not guilty; not guilty, by reason of insanity; guilty of first degree murder; guilty of manslaughter passion/provocation). The number of total individuals serving on each jury deliberation was also recorded.

Post-jury deliberation questionnaire. Post-jury deliberation was assessed by asking individuals the same questions as the pre-jury deliberation questionnaire, plus, if their verdict changed at any point in time (e.g., yes; no). Individuals were assessed by rating their certainty of a changed verdict (if applicable) on a one to five likert scale (very sure - very unsure). Individuals were asked a series of question pertaining to their perceptions of the defendant. On a one to five likert scale (strongly agree - strongly disagree), individuals rated what they thought in regards to the defendant trying to avoid
confrontation with her husband, how they felt in regards to the defendant making an attempt to avoid fighting with her husband, how they felt in regards to the defendant provoking the fight with her husband, how they felt in regards to the defendant having a reason to fear that she would be killed by her husband, how they felt in regards to the defendant protecting herself in self-defense when she killed her husband, how they felt in regards to the defendant being provoked to kill her husband, how they felt in regards to the defendant intending to kill her husband, and how they felt in regards to the defendant having malicious intent to kill her husband.

Demographic questionnaire. Demographic questionnaire was used to assess the participant’s gender, age, academic rank, major, and marital status.
CHAPTER III

Results

Analyses for the current study consisted first of nonparametric Chi-Square Tests. The relationship between the condition type and the pre-jury deliberation verdict was significant: $\chi^2 (9, N = 100) = 31.95, p < .0005$. The association was of moderate strength: $\varphi = .57$ and thus the pre-jury deliberation verdict accounted for 32% of the variance in the score for type of condition (see Table 1). The relationship between the condition type and the post-jury deliberation verdict was significant: $\chi^2 (9, N = 100) = 50.99, p < .0005$. The association was of strong strength: $\varphi = .71$ and thus the post-jury deliberation verdict accounted for 51% of the variance in the score for type of condition (see Table 2). The relationship between the expert witness testimony impacting the verdict for the pre-jury deliberation and the expert witness testimony impacting the verdict for the post-jury deliberation was significant: $\chi^2 (1, N = 100) = 36.38, p < .0005$. The association was of moderate strength: $\varphi = .69$ and thus the expert witness testimony impacting the rendered verdict for the pre-jury deliberation accounted for 48% of the variance in the score for the expert witness testimony impacting the rendered verdict for the post-jury deliberation. The relationship between the gender of the participant and the pre-jury deliberation verdict was significant: $\chi^2 (3, N = 100) = 7.54, p = .05$. The association was of weak strength: $\varphi = .28$ and thus the gender of the participant accounted for 8% of the variance in the score for the pre-jury deliberation verdict (see Figure 1). The relationship between the gender of the participant and the post-jury deliberation verdict was significant: $\chi^2 (3, N = 100) = 8.54, p = .04$. The association was of weak strength: $\varphi = .29$ and thus the
gender of the participant accounted for 9% of the variance in the score for the post-jury deliberation verdict (see Figure 2).

Further analyses consisted of parametric One-Way Between-Subjects Analysis of Variance Tests. There was a statistically significant effect in the perception that the defendant was protecting herself in self-defense when she killed her husband: \( F(3, 96) = 2.87, p = .04 \). Mean scores (on a one to five likert scale, 1 = strongly agree, 5 = strongly disagree) indicated that participants strongly agreed that the defendant was protecting herself in self-defense when she killed her husband when there was TBI expert witness testimony \( (M = 1.92) \). Participants agreed that the defendant was protecting herself in self-defense when she killed her husband when there was no expert witness testimony, BWS expert witness testimony, and BWS and TBI expert witness testimony \( (M = 2.71, 2.88, 2.56) \). Utilizing the Tukey HSD post-hoc test, significant differences were found between the BWS and TBI expert witness conditions \( (p = .04) \) when it was perceived that the defendant was protecting herself in self-defense when she killed her husband. There were no other significant differences between the control or BWS, TBI, and BWS and TBI expert witness testimony conditions; BWS and BWS and TBI expert witness condition; and TBI and BWS and TBI expert witness condition \( (p > .05) \) (see Figure 3).

There was a statistically significant effect in the perception that the defendant intended to kill her husband: \( F(3, 96) = 5.61, p < .0005 \). Mean scores (on a one to five likert scale, 1 = strongly agree, 5 = strongly disagree) indicated that participants agreed that the defendant intended to kill her husband when there was no expert witness testimony and when there was BWS expert witness testimony \( (M = 2.63, 2.46) \). The participants were undecided that the defendant intended to kill her husband when there was TBI expert testimony.
witness testimony and BWS and TBI expert witness testimony ($M = 3.72, 3.11$). Utilizing the Tukey HSD post-hoc test, significant differences were found between the control and BWS expert witness testimony conditions ($p = .01$) and BWS and TBI expert witness testimony conditions ($p < .0005$) when it was perceived that the defendant intended to kill her husband. There were no other significant differences between the control and BWS and BWS and TBI expert witness testimony conditions; BWS and BWS and TBI expert witness testimony condition; and TBI and BWS and TBI expert witness testimony condition ($p > .05$) (see Figure 4).

There was a statistically significant effect in the perception that the defendant had malicious intent to kill her husband: $F(3,96) = 5.17$, $p < .0005$. Mean scores (on a one to five likert scale, 1 = strongly agree, 5 = strongly disagree) indicated that participants were undecided about the defendant having malicious intent to kill her husband when there was no expert witness testimony and when there was BWS expert witness testimony ($M = 3.29, 3.25$). Participants disagreed that the defendant intended to kill her husband when there was TBI expert witness testimony and BWS and TBI expert witness testimony ($M = 4.20, 4.04$). Utilizing the Tukey HSD post-hoc test, significant differences were found between the control and TBI expert witness testimony condition ($p = .02$), BWS and BWS and TBI expert witness testimony condition ($p = .05$), and TBI and BWS expert witness testimony condition ($p = .01$) when it was perceived that the defendant had malicious intent to kill her husband. There were no other significant differences between the control or BWS and BWS and TBI expert witness testimony condition, and TBI and BWS and TBI expert witness testimony conditions ($p > .05$) (see Figure 5).
There was a statistically significant effect in the pre-jury verdict: $F(3, 96) = 3.34$, $p = .02$. Mean scores (on a one to five likert scale, 1 = strongly agree, 5 = strongly disagree) indicated that participants who read the TBI condition were more likely to render a verdict of not-guilty ($M = 1.96$), whereas participants who read the control, BWS, and BWS and TBI conditions were more likely to render a verdict of not guilty, by reason of insanity ($M = 2.92, 2.54, 2.44$). Utilizing the Tukey HSD post-hoc test, significant differences were found between the control and TBI expert witness testimony condition ($p = .01$). There were no other significant differences between the control or BWS and BWS and TBI expert witness testimony condition, BWS and control, TBI, and BWS and TBI expert witness testimony conditions, and TBI and BWS and TBI expert witness testimony conditions ($p > .05$) (see Figure 6).

There was a statistically significant effect in the post-jury verdict: $F(3, 96) = 11.67$, $p < .0005$. Mean scores (on a one to five likert scale, 1 = strongly agree, 5 = strongly disagree) indicated that participants who read the TBI condition were more likely to render a verdict of not-guilty ($M = 1.72$). Participants who read the BWS and BWS and TBI conditions were more likely to render a verdict of not guilty, by reason of insanity ($M = 2.96, 2.63$). Participants who read the control condition were more likely to render a verdict of guilty of first degree murder ($M = 3.42$). Utilizing the Tukey HSD post-hoc test, significant differences were found between the control and BWS and TBI expert witness testimony condition ($p = .04$). Significant differences were found between the TBI and control and BWS expert witness testimony conditions ($p < .0005$). Significant differences were found between BWS and TBI and TBI expert witness testimony condition ($p = .01$). There were no other significant differences between the control and
BWS expert witness testimony condition, and BWS and BWS and TBI expert witness testimony condition (p > .05) (see Figure 7).

Further analyses consisted of One-Way Within-Subjects Analysis of Variance. There was a statistically significant effect of the summary of insanity instructions: $F(1,96) = 3.89$, $p = .05$, partial $\eta^2 = .04$. There is a significant linear trend, $F(1,96) = 3.89$, $p = .05$, partial $\eta^2 = .04$. Summary of the insanity instructions were useful in comprehending the New Jersey insanity jury instructions.

More analyses consisted of Two-Way Within-Subjects Analysis of Variance. There was a statistically significant main effect of pre and post-jury verdicts: $F(1,92) = 7.09$, $p = .01$, partial $\eta^2 = .07$. Mean scores (on a one to four likert scale, 1 = not guilty, 2 = not guilty, by reason of insanity, 3 = guilty of first degree murder, and 4 = guilty of manslaughter passion/provocation) indicated that pre and post-jury verdicts were reported as not guilty, by reason of insanity ($M = 2.56$ - pre, 2.79 - post).

There was a statistically significant interaction between pre and post-jury verdicts and type of condition: $F(3,92) = 4.23$, $p = .01$, partial $\eta^2 = .12$. Mean scores (on a one to four likert scale, 1 = not guilty, 2 = not guilty, by reason of insanity, 3 = guilty of manslaughter first degree murder, and 4 = guilty of manslaughter passion/provocation) indicated that pre and post-jury verdicts were reported as not guilty, by reason of insanity and guilty of first degree murder for the control condition ($M = 2.86$ - pre, 3.44 - post). Mean scores indicated that pre and post-jury verdicts were reported as not guilty for the BWS condition ($M = 2.59$ - pre, 2.97 - post). Mean scores indicated that pre and post-jury verdicts were reported as not guilty for the TBI condition ($M = 1.96$ - pre, 1.75 - post).
reported as not guilty, by reason of insanity and guilty of first degree murder for the BWS and TBI condition \((M = 2.81 - \text{pre}, 3.01 - \text{post})\) (see Figure 8).

The verdict by gender interaction was not significant: \(F(1,92) = 2.72, p = .10\), partial \(\eta^2 = .03\).

There was a statistically significant three-way interaction between pre and post-jury verdicts, condition type, and gender: \(F(3,96) = 2.84, p = .04\), partial \(\eta^2 = .09\). Mean scores (on a one to four likert scale, 1 = not guilty, 2 = not guilty, by reason of insanity, 3 = guilty of first degree murder, and 4 = guilty of manslaughter passion/provocation) indicated that pre and post-jury verdicts were reported as not guilty, by reason of insanity and guilty of first degree murder for the control condition for males \((M = 2.50 - \text{pre}, 3.60 - \text{post})\). Mean scores indicated that pre and post-jury verdicts were reported as guilty of first degree murder for the control condition for females \((M = 3.21 - \text{pre}, 3.29 - \text{post})\). Mean scores indicated that pre and post-jury verdicts were reported as not guilty, by reason of insanity and guilty of first degree murder for the BWS condition for males \((M = 2.78 - \text{pre}, 3.00 - \text{post})\). Mean scores indicated that pre and post-jury verdicts were reported as not guilty, by reason of insanity for the BWS condition for females \((M = 2.40 - \text{pre}, 2.93 - \text{post})\). Mean scores indicated that pre and post-jury verdicts were reported as not guilty, by reason of insanity for the TBI condition for males \((M = 2.00 - \text{pre}, 2.00 - \text{post})\). Mean scores indicated that pre and post-jury verdicts were reported as not guilty for the TBI condition for females \((M = 1.93 - \text{pre}, 1.50 - \text{post})\). Mean scores indicated that pre and post-jury verdicts were reported as guilty of first degree murder for the BWS and TBI condition for males \((M = 3.40 - \text{pre}, 3.60 - \text{post})\). Mean scores indicated that pre and
post-jury verdicts were reported as not guilty, by reason of insanity for the BWS and TBI condition for females ($M = 2.23$ - pre, 2.41 - post) (See Figure 9).
CHAPTER IV

Discussion

The results of this study indicate that when traumatic brain injury expert witness testimony is presented, that mock jurors are more likely to strongly agree that the battered woman was killing her abusive husband in self-defense. Mock jurors are also more likely to agree that the battered woman was killing her husband in self-defense when there was a combination of battered women syndrome and traumatic brain injury expert witness testimony. They are still likely, but to a lesser extent, to agree that the battered woman was killing her husband in self-defense when battered women syndrome expert witness testimony or no testimony is given at all. It seems apparent that having traumatic brain injury testimony leads to the perception that actions taken were out of self-defense.

The results of this study indicate that when traumatic brain injury testimony is presented, mock jurors are more likely to be undecided about the battered women having an intention to kill her abusive husband. Mock jurors are still likely, but to a lesser extent, to be undecided that the battered woman intentionally killed her husband when a combination of battered women syndrome and traumatic brain injury testimony was provided. Mock jurors are more likely to agree that the battered woman had an intention to kill her batterer when battered women syndrome expert witness testimony or no testimony was given. It actually appears that battered women syndrome expert witness testimony results in mock jurors being the most likely to agree that battered women are intentional in their act of killing their abuser.
The results of this study indicate that when traumatic brain injury testimony is
presented, mock jurors are more likely to disagree about battered women having
malicious intent to kill her abusive husband. Mock jurors are still likely, but to a lesser
extent, to disagree that the battered woman killed her husband when a combination of
battered women syndrome and traumatic brain injury testimony was provided. Mock
jurors are more likely to be undecided about the battered woman having malicious intent
to kill her batterer when battered women syndrome expert witness testimony or no
testimony was given. It actually appears that battered women syndrome expert witness
testimony results in mock jurors being most undecided about the battered woman’s
malicious intent to kill her abuser.

The results of this study indicate that pre-jury verdicts were rendered as not guilty
when traumatic brain injury expert witness testimony is provided. Post-jury verdicts were
rendered as not guilty more frequently when traumatic brain injury expert witness
testimony was provided. For all other conditions aside from the traumatic brain injury
expert witness testimony, jury deliberation resulted in verdicts becoming more severe.

The results of this study indicate that females rendered pre and post-jury verdicts as
not guilty when traumatic brain injury expert witness testimony was provided. Males
rendered pre and post-jury verdicts as guilty of first degree murder when both battered
women syndrome and traumatic brain injury expert witness testimony was provided.
Males and females rendered pre and post-jury verdicts of not guilty by reason of insanity
and guilty of first degree murder when battered women syndrome expert witness
testimony was provided. Females rendered pre and post-jury verdicts of guilty of first
degree murder when no expert witness testimony was given. Males rendered not guilty by
reason of insanity pre-jury verdicts and guilty of first degree murder when no expert witness testimony was provided.

The results of this study indicate the summary of New Jersey insanity instructions was comprehended by the mock jurors. Verdicts were rendered as not guilty, by reason of insanity for the battered women syndrome and the combination of battered women syndrome and traumatic brain injury expert witness testimonies. Mock jurors understood what New Jersey identified as being insane, and were able to apply the terminology to the defendant when both of those expert witness testimonies were provided.

Although the interaction of pre and post-jury verdicts by gender were not significant, it is noteworthy to mention that females did render more lenient verdicts than males. For post-jury deliberations verdicts, males were actually harsher in their verdicts than for the pre-jury deliberation verdicts. This leads to the generalization that females are more sympathetic towards battered women victim cases than males.

In summary, the results of this study indicate that traumatic brain injury expert witness testimony is more likely to result in verdicts of not guilty. This supports the proposed hypothesis that women who are victims of domestic violence are more likely to receive a verdict of not guilty for murdering their spouse when there is expert testimony and opinion indicating that the woman has sustained a traumatic brain injury from being battered by her husband, which led her to kill her husband. Further, the results of this study indicate that battered women syndrome expert witness testimony is more likely to result in verdicts of not guilty by reason of insanity. This does not support the proposed hypothesis that women who are battered by their husbands, and have expert witness testimony and opinion indicating that the woman has battered women syndrome, are
more likely to result in a lesser degree charge of manslaughter passion/provocation. However the results are still more lenient. The results indicate that when there is a combination of both battered women syndrome and traumatic brain injury expert witness testimony verdicts of not guilty by reason of insanity are rendered, and more so than when just battered women syndrome expert witness testimony is given. The most lenient verdict was rendered when traumatic brain injury expert witness testimony was provided.

It seems apparent that having expert witness testimony on traumatic brain injury is more likely to be associated with a physical impairment whereas battered women syndrome expert witness testimony is more likely to be associated with a psychological impairment. A physical impairment may be a perceived more concretely as to why a woman loses control and kills her batterer, whereas a psychological impairment may be perceived more abstractly. Sustaining a physical trauma from being battered seems to lead to a more justifiable response for killing the abuser than a psychological trauma.

These results suggest that expert witnesses should consider using a more physical trauma defense, such as traumatic brain injury when presenting evidence in a court case when a battered woman kills her abuser, if the facts of the case support this, as opposed to using a psychological trauma defense of battered women syndrome. More women might benefit from this expert witness testimony, if given the chance to be presented in court. More innocent women might go free after being charged with a crime that they were unable to control themselves from committing. More women might receive the justice they are entitled to deserve.

Before considering this as an option, future studies will need to increase the sample size \((n = 100)\). There were only 21 mock jury deliberation groups, which were comprised
within the sample size. Furthermore, the study examined the verdicts of college-aged jurors. A more representative sample would provide a basis for practical usefulness in the legal system. In addition, future studies might want to include a presentation of the defendant’s defense. During the course of the mock jury deliberation, many students mentioned a need for having self-defense as a defendant’s defense. Would this have provided a more justifiable rationale for the defendant’s actions? Would the provision of self-defense, battered women syndrome defense, possibly even a duress defense, impact the verdicts which would have been rendered? Can expert witness testimony alter a juror’s verdict? Is an expert witness testimony that is concrete as opposed to being theoretical better at reducing the charges being brought against the defendant? Would actual testimony make a difference as opposed to reading a written legal case? The results of this experiment provided much insight, however there are still many questions open for future exploration and investigation.
REFERENCES


N.J.S.A. 2C:4-1. New Jersey insanity jury instructions.
N.J.S.A. 2C:11-3a (1) and 3a (2). New Jersey murder jury instructions.

N.J.S.A. 2C:11-3a (1) and (2); 2C: 11-4a, b (1) and b (2). New Jersey manslaughter passion/provocation jury instructions.


APPENDICIES
APPENDIX A

Figure 1
Gender and Pre-Jury Verdicts

Note. Females rendered not guilty by reason of insanity pre-jury verdicts more

$p = .05$
APPENDIX B

Figure 2
Gender and Post-Jury Verdicts

Note. Females rendered guilty of manslaughter passion/provocation post-jury verdicts more

\[ p = .04 \]
Note. On a 1-5 likert scale: 1 = strongly agree, 2 = agree, 3 = undecided, 4 = disagree, 5 = strongly disagree

There was a strong agreement of perception of self-defense with TBI expert witness testimony

\[ p = .04 \]
APPENDIX D

Figure 4

Condition Type and Perception of Intention to Kill

Note. On a 1-5 likert scale: 1 = strongly agree, 2 = agree, 3 = undecided, 4 = disagree, 5 = strongly disagree

There was an agreed perception of intention to kill with BWS expert witness testimony

p < .0005
APPENDIX E

Figure 5
Condition Type and Perception of Malicious Intent to Kill

Note. On a 1-5 likert scale: 1 = strongly agree, 2 = agree, 3 = undecided, 4 = disagree, 5 = strongly disagree

There was disagreement of perception of malicious intent to kill with TBI expert witness testimony

p < .0005
Note. On a 1-4 likert scale: 1 = not guilty, 2 = not guilty by reason of insanity, 3 = guilty of first degree murder, 4 = guilty of manslaughter, passion/provocation

Not guilty verdicts were rendered with TBI expert witness testimony

$p = .02$
Figure 7
Condition Type and Post-Jury Verdict

Note. On a 1-4 likert scale: 1 = not guilty, 2 = not guilty by reason of insanity, 3 = guilty of first degree murder, 4 = guilty of manslaughter passion/provocation

Not guilty verdicts were rendered with TBI expert witness testimony

p < .0005
APPENDIX H

Figure 8
Interaction of Condition Type and Pre and Post-Jury Verdict

Note. On a 1-4 likert scale: 1 = not guilty, 2 = not guilty by reason of insanity, 3 = guilty of first degree murder, 4 = guilty of manslaughter passion/provocation

Not guilty verdicts were rendered with TBI expert witness testimonies

p = .01
APPENDIX I

Figure 9

Interaction of Condition Type, Gender, and Pre and Post-Jury Verdicts

Note. On a 1-4 likert scale: 1 = not guilty, 2 = not guilty by reason of insanity, 3 = guilty of first degree murder, 4 = guilty of manslaughter passion/provocation

Least severe verdicts were rendered with TBI expert witness testimony

p = .04
**APPENDIX J**

Table 1
*Condition Type and Pre-Jury Verdicts*

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<th>Condition type</th>
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<th>Guilty of manslaughter passion/provocation</th>
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<tr>
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<td>25</td>
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<td>BWS and TBI condition</td>
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<td>2</td>
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*Note.* Not guilty verdicts were rendered more when TBI expert witness testimony was provided

\[ p < .0005 \]
## APPENDIX K

**Table 2**

*Condition Type and Post-Jury Verdicts*

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<th>Condition type</th>
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<th>Guilty of manslaughter, passion/provocation</th>
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<td>BWS and TBI condition</td>
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</table>

*Note.* Not guilty by reason of insanity post-jury verdicts were rendered more when TBI expert witness testimony was provided.

\[ p < .0005 \]
APPENDIX L

General Control Instructions

You will be acting as a jury to decide a homicide criminal case. A homicide is the killing of one person by another individual. In a criminal case, the prosecution is the state who brings the case, and the defendant is the person who the case is against. In a criminal case, the defendant can either be found as not guilty or guilty for what the prosecution claims. If the defendant is found guilty for what the prosecution claims, the defendant will be mandated a sentence to serve. Following is what you are to do, in this order:

1. Read the summary of the prosecutor’s statement carefully.
2. Read the summary of the defendant’s testimony carefully.
3. Read the judge’s instructions carefully.
4. Read the jury instructions carefully.
5. Answer the pre-jury deliberation questionnaire individually.
6. Discuss the case with the other 4-6 jurors (other students), in a mock deliberation, for up to 20 minutes. The jury must reach a unanimous decision. Indicate the jury’s decision on the jury deliberation questionnaire.
7. Answer the questions about your view of the case after the discussion and jury verdict on the post-jury deliberation questionnaire individually.
8. Answer questions about yourself on the demographic questionnaire.
APPENDIX M

General Instructions

You will be acting as a jury to decide a homicide criminal case. A homicide is the killing of one person by another individual. In a criminal case, the prosecution is the state who brings the case, and the defendant is the person who the case is against. In a criminal case, the defendant can either be found as not guilty or guilty for what the prosecution claims. If the defendant is found guilty for what the prosecution claims, the defendant will be mandated a sentence to serve. Following is what you are to do, in this order:

9. Read the summary of the prosecutor’s statement carefully.
10. Read the summary of the defendant’s testimony carefully.
11. Read the expert witness testimony carefully.
12. Read the judge’s instructions carefully.
13. Read the jury instructions carefully.
14. Answer the pre-jury deliberation questionnaire individually.
15. Discuss the case with the other 4-6 jurors (other students), in a mock deliberation, for up to 20 minutes. The jury must reach a unanimous decision. Indicate the jury’s decision on the jury deliberation questionnaire.
16. Answer the questions about your view of the case after the discussion and jury verdict on the post-jury deliberation questionnaire individually.
17. Answer questions about yourself on the demographic questionnaire.
APPENDIX N

Prosecutor’s Statement

Charges of homicide are being brought against Emma Jones. Emma Jones had stabbed her husband Ted Jones with a knife, repeated times. Seven times to be exact. Her husband fell to the ground and lay there bleeding in a puddle of blood. Emma walked to the phone, dialed 9-1-1, and called the police. The dispatcher’s recording is as follows:

(D) Hello what is your emergency?
(E) I think I have just killed my husband.
(D) Where are you?
(E) I am on 1492 Bluebear Street.
(D) Have you checked for a pulse?
(E) Yes, there is none, I have just killed him. I thought he was going to kill me.
(D) Ok, I need you to stay where you are, police are on their way.
(E) I just killed my husband. He was going to kill me. He threatened to kill me, and I did not want him to. I was trying to save my life (crying).

Upon arrival to the scene, officer’s found Mrs. Jones sitting on the floor next to her husband’s body. The knife was on the floor, by her side. Analyses have indicated her fingerprints were on the weapon. Mrs. Jones killed her husband, she confessed to the crime. This woman stabbed her husband seven times. She had a duty to retreat, to call the police, to ask for help, but not to take matters into her own hands, not to kill her husband. Mrs. Jones should have left Mr. Jones that night, if she truly feared for her life. When he was sleeping, she should have walked out that door and found somewhere else to go. She should have reported the crime of that night’s beating to the police. What she should not have done, was kill Mr. Jones, by stabbing him seven times. Mrs. Jones acted knowingly with the knife in her hand. She knew what action she was going to carry out. This woman, Emma Jones, should be convicted to the fullest extent for stabbing her husband seven times, for murdering Mr. Jones.
APPENDIX O

Battered Women’s Syndrome Prosecutor’s Statement

Charges of homicide are being brought against Emma Jones. Emma Jones had stabbed her husband Ted Jones with a knife, repeated times. Seven times to be exact. Her husband fell to the ground and lay there bleeding in a puddle of blood. Emma walked to the phone, dialed 9-1-1, and called the police. The dispatcher’s recording is as follows:

(D) Hello what is your emergency?
(E) I think I have just killed my husband.
(D) Where are you?
(E) I am on 1492 Bluebear Street.
(D) Have you checked for a pulse?
(E) Yes, there is none, I have just killed him. I thought he was going to kill me.
(D) Ok, I need you to stay where you are, police are on their way.
(E) I just killed my husband. He was going to kill me. He threatened to kill me, and I did not want him to. I was trying to save my life (crying).

Upon arrival to the scene, officer’s found Mrs. Jones sitting on the floor next to her husband’s body. The knife was on the floor, by her side. Analyses have indicated her fingerprints were on the weapon. Mrs. Jones killed her husband, she confessed to the crime. This woman may have been abused by her husband, but she did not have to kill him, stab him seven times. She had a duty to retreat, to call the police, to ask for help, but not to take matters into her own hands, not to kill her husband. Mrs. Jones may have been a battered woman, but she knew what she was doing when she had that knife in her hand. If there was a cycle of violence and she knew what set Mr. Jones off or when an expected attack was coming, she should have left that night. If she truly feared for her life, when he was sleeping, she should have walked out that door and found somewhere else to go. She should have reported the crime of that night’s beating, or any of the prior ones for that matter, to the police. What she should not have done, was kill Mr. Jones, by stabbing him seven times. Mrs. Jones acted knowingly with the knife in her hand. She knew what action she was going to carry out. This woman, Emma Jones, should be convicted to the fullest extent for stabbing her husband seven times, for murdering Mr. Jones.
APPENDIX P

Traumatic Brain Injury Prosecutor’s Statement

Charges of homicide are being brought against Emma Jones. Emma Jones had stabbed her husband Ted Jones with a knife, repeated times. Seven times to be exact. Her husband fell to the ground and lay there bleeding in a puddle of blood. Emma walked to the phone, dialed 9-1-1, and called the police. The dispatcher’s recording is as follows:

(D) Hello what is your emergency?
(E) I think I have just killed my husband.
(D) Where are you?
(E) I am on 1492 Bluebear Street.
(D) Have you checked for a pulse?
(E) Yes, there is none, I have just killed him. I thought he was going to kill me.
(D) Ok, I need you to stay where you are, police are on their way.
(E) I just killed my husband. He was going to kill me. He threatened to kill me, and I did not want him to. I was trying to save my life (crying).

Upon arrival to the scene, officer’s found Mrs. Jones sitting on the floor next to her husband’s body. The knife was on the floor, by her side. Analyses have indicated her fingerprints were on the weapon. Mrs. Jones killed her husband, she confessed to the crime. This woman did not have to kill him, stab him seven times. She had a duty to retreat, to call the police, to ask for help, but not to take matters into her own hands, not to kill her husband. If she truly feared for her life, when he was sleeping, she should have walked out that door and found somewhere else to go. What she should not have done, was kill Mr. Jones. Mrs. Jones may have had a brain injury, but again, she never lacked complete control of her actions, considering that her actions consisted of seven stab wounds. This woman did not have impaired judgment. She obviously had enough judgment to grab a knife and use it. Those are not actions of impaired impulses. She acted knowingly with that knife in her hand. She knew she was going to kill Mr. Jones. This woman, Emma Jones, should be convicted to the fullest extent for stabbing her husband seven times, for murdering Mr. Jones.
APPENDIX Q

Battered Women’s Syndrome and Traumatic Brain Injury Prosecutor’s Statement

Charges of homicide are being brought against Emma Jones. Emma Jones had stabbed her husband Ted Jones with a knife, repeated times. Seven times to be exact. Her husband fell to the ground and lay there bleeding in a puddle of blood. Emma walked to the phone, dialed 9-1-1, and called the police. The dispatcher’s recording is as follows:

(D) Hello what is your emergency?
(E) I think I have just killed my husband.
(D) Where are you?
(E) I am on 1492 Bluebear Street.
(D) Have you checked for a pulse?
(E) Yes, there is none, I have just killed him. I thought he was going to kill me.
(D) Ok, I need you to stay where you are, police are on their way.
(E) I just killed my husband. He was going to kill me. He threatened to kill me, and I did not want him to. I was trying to save my life (crying).

Upon arrival to the scene, officer’s found Mrs. Jones sitting on the floor next to her husband’s body. The knife was on the floor, by her side. Analyses have indicated her fingerprints were on the weapon. Mrs. Jones killed her husband, she confessed to the crime. This woman may have been abused by her husband, but she did not have to kill him, stab him seven times. She had a duty to retreat, to call the police, to ask for help, but not to take matters into her own hands, not to kill her husband. Mrs. Jones may have been a battered woman, but she knew what she was doing when she had that knife in her hand. If there was a cycle of violence and she knew what set Mr. Jones off or when an expected attack was coming, she should have left that night. If she truly feared for her life, when he was sleeping, she should have walked out that door and found somewhere else to go. She should have reported the crime of that night’s beating, or any of the prior ones for that matter, to the police. What she should not have done, was kill Mr. Jones. Mrs. Jones may have had a brain injury, but again, she never lacked complete control of her actions, considering that her actions consisted of seven stab wounds. This woman did not have impaired judgment. She obviously had enough judgment to believe her husband was going to attack her, so she was able to react and get a knife. Those are not actions of impaired impulses. She acted knowingly with that knife in her hand. She knew she was going to kill Mr. Jones. This woman, Emma Jones, should be convicted to the fullest extent for stabbing her husband seven times, for murdering Mr. Jones.
APPENDIX R

Defendant’s Testimony

Emma heard the front door open and saw Ted walk in. The moment he entered the house he began to yell “where’s my dinner at?” Emma looked up from pouring the spaghetti onto Ted’s plate as he stormed into the kitchen, spilling some onto the floor. Ted glared at her angrily and yelled “are you blind, did you miss the table?” He proceeded to the refrigerator and grabbed a bottle of beer. “Answer me,” yelled Ted. Emma replied “no.” Ted yelled “are you talking back now?” He rushed over to the table, where Emma stood, and slapped her. The blow was strong and knocked the pot from her arms, spilling hot spaghetti over her and the floor. Ted got angrier and slapped her harder. After the slap, Ted started to throw punches, which slammed into the side of her face. The fifth punch sent Emma falling to the ground. Ted leaned down and grabbed the back of Emma’s head. He slammed her face into the hot spaghetti on the floor, smothering her face into it. He yelled “lick it up off the floor like a dog.” Emma’s face was bloodied and she struggled to get up off the floor but could not. Everything was blurry and spinning to her. Ted began to kick her left side. Emma felt kick after kick, and tried to curl up to protect her ribs. She was struggling to take in breaths, but each kick knocked the wind from her. Emma was lying there, curled up with her arms around her knees on the ground, trying to protect her. Ted stopped for a moment and yelled, “I am going to kill you, you stupid bitch.” She peered up to see Ted back away as he was looking around the kitchen. He saw the spaghetti pot lying nearby on the floor and grabbed it. Ted raised his hand with the pot in it above his head and brought it down on the front of Emma’s head as she was looking up at him. Emma crumpled to the ground, as she blacked out. Ted looked down at her, gave her one last kick, spat on her, and walked away. Ted went to the table and grabbed his beer, taking it with him as he left the kitchen, and entered the family room. He sat on the couch, turned on the television, and began to drink his beer. Emma regained consciousness shortly after. She quietly grabbed the side of the refrigerator, which she used to help herself off the floor. She looked around the kitchen, but Ted was not there. She heard sounds coming from the family room. She glanced into the room and saw Ted lying on the couch, with several empty beer bottles on the coffee table. Emma quietly proceeded to the sink where she turned the water on very low. She splashed water on her face, in an attempt to wash the dried up blood and sauce from her. Emma managed to wash it all off, but still felt weak. She quietly walked through the family room so she would not wake Ted, as she made her way to their bedroom. She changed into her pajamas and went to lie in her bed. Her mind was racing with past attacks from her husband. Emma recalled the numerous times her neighbors had witnessed Ted getting angry because the trash was not taken out, as he would slap her or verbally abuse her by calling her derogatory terms (trash, lazy, incompetent, bitch, etc.). She recalled all the punches and kicks she had received over the
years, and the numerous times she had been choked and strangled until she passed out. But that was not even the worst of it. She remembered all the hospital records which indicated she had fractured ribs, a broken nose, a broken arm, a dislocated shoulder, and stitches on her head on six different occasions from ‘falling down.’ Emma did not truthfully report how these incidents happened or those of her being raped by her husband to the police, because she feared what would happen to her if he were arrested. She also remembered all her neighbors witnessing Ted apologizing for his behaviors to her, however, this always appeared short-lived, because his violent outbursts always began over time. Eventually Emma dozed off, into a deep sleep. She woke up the next morning to an empty bed. She got out of bed and peered out the doorway. She did not see Ted. She quietly walked towards the family room and saw Ted was still lying on the couch. She walked through the family room and into the kitchen. Emma heard some movements, and watched as Ted got up off the couch and staggered in through the kitchen doorway towards her. She reached over the sink to the knives and grabbed one. Emma feared this would have been it for her, if Ted started to beat her again. He had beaten her countless times, knocked her unconscious many times, raped her on several occasions, verbally abused her relentlessly, and had threatened her last night, but not anymore. As he entered the kitchen, Emma ran at him with the knife. She stabbed him in the chest. She pulled out the knife and stabbed him repeatedly until he fell to the ground. Emma looked down at Ted, laying there on the floor in a pool of blood. Emma had killed Ted. She dropped the knife and got up on her feet. She walked over to the counter and grabbed the telephone. Emma dialed 9-1-1, and called the police.
APPENDIX S

Battered Woman’s Syndrome Expert Witness Testimony

Dr. Rick Shay presented psychological expert testimony on battered woman’s syndrome, testifying for the defendant, Emma Jones. Dr. Shay defined the syndrome from Lenore Walker’s formulation.

“According to Walker, a battered woman is ‘a woman who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do with out any concern for her rights.’ The battered woman’s syndrome refers to characteristics that purportedly appear in women who have been physically and psychologically abused by their partners” (Jacobsen, Mizga, and D’Orio, 2007).

The battered woman’s syndrome has two major constructs, the cycle theory of violence and the theory of learned helplessness.

The cycle theory of violence consists of three phases. “Walker described a pattern of cyclical abuse consisting of three recurrent phases: (1) a tension building stage, characterized by minor abuse; (2) an acute battering state, characterized by uncontrollable explosions of brutal violence; and (3) a loving, respite stage, characterized by the batterer’s calm and loving behavior and pleas for forgiveness” (Jacobsen, Mizga, and D’Orio, 2007). Mr. Jones has been known to cycle through these phases. These continued brutal actions against Mrs. Jones “is said to result in a state of learned helplessness by the battered woman” (Jacobsen, Mizga, and D’Orio, 2007).

According to Walker’s theory of learned helplessness, “through repeated incidents of physical abuse, battered women come to recognize their inability to control the abuse. Consequently, their motivation to escape or to attempt to prevent future abuse is reduced. An abused woman eventually comes to believe that her only options are enduring the abuse or death” (Terrance and Matheson, 2003). “In fact, battered women use many strategies for their own survival, from placating their abusers to fighting back…” (Jacobsen, Mizga, and D’Orio, 2007). “As the cycle of abuse continues to establish itself within the relationship, the victim becomes sensitized to cues signaling abusive incidents. Living in a state of cumulative terror yet unable to leave, the battered woman’s apprehension of danger is submitted as reasonable. Given the physical difference between men and women, action taken during a lull in the violence is also submitted as reasonable” (Terrance and Matheson, 2003).
It is in my opinion that Mrs. Jones believed that Mr. Jones’ night of sleep was a temporary respite, but another attack was forthcoming. Mrs. Jones believed Mr. Jones was going to kill her as he approached her that morning, so she acted in self-defense. Dr. Shay defined self defense.

“Self-defense is premised on the principle that one who was unlawfully attacked by another should be able to take reasonable steps to defend herself. Most jurisdictions within the U.S. require that defendants show that a reasonable person in their situation would believe that they were in imminent danger of death or serious bodily harm, and that the force used to repel the attack was reasonable rather than excessive” (Terrance and Matheson, 2003).

Women who use weapons are not using excessive force.

“One reason for women’s use of available weapon is that the size difference requires the woman protecting herself to compensate. Elizabeth Leonard and others argue that since men in heterosexual relationships are typically taller and stronger than their female partners, women are merely equalizing the relative strength of men by using a weapon. Therefore, appropriately applied, a woman’s use of a weapon should not constitute ‘excessive force’ and the law should include an ‘equalizer principle’” (Jacobson, Mizga, and D’Orio, 2007).

“A battered woman who has tried to defend herself with only her own strength may well know that her efforts trigger greater violence against her. As a result, many women use guns, knives, or other household items to protect themselves” (Jacobson, Mizga, and D’Orio, 2007).

It is therefore necessary to understand that Mrs. Jones had become sensitized to the cues preceding bursts of physical, psychological, and sexual abuse that she had endured over the course of her six-year marriage to Mr. Jones. It is highly likely that Mrs. Jones had become accustomed to the violent patterns exhibited by Mr. Jones, in so much that she was able to predict when his next violent attack would occur towards her. Even though Mrs. Jones was able to predict her next attack, she was unable to avoid them. As much as she wanted to leave her husband, she felt like she could not. She feared if she did, he would find her and kill her.

“Many batterers continue to harass, stalk, and harm the woman long after she has left him, sometimes even resulting in someone’s death” (Walker, 1999).

So instead of leaving, Mrs. Jones tried her best to placate her husband and avoid any confrontations, but that did not stop Mr. Jones from repeatedly attacking her. Again, it is highly likely that Mrs. Jones knew the signs preceding Mr. Jones’ outbursts, and during the morning of his death, she truly feared for her life. Just the night before, Mr. Jones had threatened to kill her, to take her life. So the next morning when he came walking towards her, Mrs. Jones could only assume that Mr. Jones was going to carry out that
threat; he was going to kill her. It is in my opinion, that Mrs. Jones killed Mr. Jones in an attempt to save herself from being killed by him; it was self-defense.

Reference:


APPENDIX T

Traumatic Brain Injury Expert Witness Testimony

Dr. Rick Shay presented neuropsychological expert testimony on traumatic brain injury, testifying for the defendant, Emma Jones. Dr. Shay refers to traumatic brain injury, more specifically in Mrs. Jones’ case, frontal lobe damage (FLD).

“Frontal lobe brain damage often produces changes in personality, mood, and behavior, resulting in ‘frontal lobe dysfunction’ or ‘frontal lobe syndrome,’ a brain disorder recognized in the World Health Organization’s International Classification of Diseases” (Redding, 2006).

“Frontal lobe dysfunction comes in at least two different forms, depending upon the location of the frontal lobe damage. One form (involving damage to the ventromedial prefrontal cortex) produces impulsivity and impulsive aggression, while the other from (involving damage to the dorsolateral prefrontal cortex) impairs judgment and moral reasoning. However, since most brain injuries and illnesses causing substantial injury to the frontal lobes have widespread effect, it is not uncommon to find both forms present, though one form may predominate” (Redding, 2006).

There are several noted symptoms of frontal lobe brain damage, some of which are applicable to Mrs. Jones.

“Common symptoms of FLD include: emotional lability (irritability, euphoria), deficits in self-awareness, the inability to adjust behavior to changing circumstances, and decreased responsiveness to punishment. But deficits in planning and foresight, impaired social judgment, impulsivity, and behavioral disinhibition are the hallmark of the disorder” (Redding, 2006).

Frontal lobe damage can result in impaired impulse control.

“A person suffering from frontal lobe dysfunction could have an impairment in judgment, and could commit impulsive or violent acts even though such acts normally would be against that person’s nature. Even minimal frontal lobe dysfunction may cause impulsive aggression” (Redding, 2006).

“As we have seen, many defendants suffering from substantial FLD are cognitively intact yet have substantial impairments in impulse control. They
understand the difference between right and wrong, but are unable to apply this knowledge to control their behavior” (Redding, 2006).

“Individuals with frontal lobe disorder (FLD) ‘become disinhibited’…Their capacity to say to themselves, ‘Stop! Don’t say or do that. It is not wise, is damaged’” (Redding, 2006).

These losses of impulse can erupt into rage attacks.

“Individuals with extensive frontal lobe damage may develop episodic dyscontrol characterized by rage attacks in response to minimal provocation…This dyscontrol may lead to unplanned homicide” (Redding, 2006).

As quoted from another case, “the circumstances of the crime were consistent with the expert’s diagnosis of frontal lobe brain damage…People with frontal lobe brain damage often lose control over their own behavior and are prone to certain types of ‘rage’ attacks as the frontal lobe works as a ‘braking mechanism for human behavior’” (Redding, 2006).

Even more so, despite this injury, Mrs. Jones might have sustained mild traumatic brain injuries (MTBI) as well. These brain injuries can be sustained from blows to the head, from being violently shaken, or from being choked.

“MTBI has been defined as a subset of a minor head injury in which damage to the head includes damage to the brain that can result in symptoms that may or may not be transient” (Jackson, Philp, Nutall, and Diller, 2002).

It has been found that “noncontact intracranial brain movement, such as whiplash or severe shaking, can cause diffuse brain injuries that may result in cognitive and functional deficits” (Jackson, Philp, Nutall, and Diller, 2002).

“Research has shown that the sequelae of brain injuries (including repetitive mild brain injuries) tend to resolve over time and that having more than one brain injury results in both longer time to recover and more severe deficits than having only one brain injury” (Valera and Berenbaum, 2003).

“The forms of abuse to which battered woman are subjected have the potential to produce brain injuries at either the point of impact or the part of the brain opposite the point of impact (contre coup injury). They could also cause diffuse axonal injury (tearing of the neuronal fibers connecting various parts of the brain) in incidents in which there are rapid acceleration and deceleration forces. Additionally, battered woman who are choked could sustain brain injuries through the effects of anoxia or hypoxia. There does not need to be a loss of consciousness for any of these types of brain injuries to occur” (Valera and Berenbaum, 2003).
"The frequency and severity of symptoms reported here, would make it difficult to think through or cope with the complex, often formidable organizational tasks required for battered women to stop the violence, disengage from violent partners, and/or establish independent lives...women who have sustained MTBI may be even less able than others to extricate themselves from abusive relationships" (Jackson, Philp, Nuttall, and Diller, 2002)

With consideration of all this information, as you recall, Mrs. Jones sustained a head trauma the night before the death of her husband. Not to mention that she has had stitches on her head on six different occasions, has a history of beatings, being choked, and being shaken, all or some of which may have also resulted in head traumas as well. All these other traumas would have impacted Mrs. Jones ability to think or cope with the violence from her husband. So, it would seem understandable that she was unable to devise a way to leave Mr. Jones or ask for help, because all those traumas interfere with the abilities needed to make decisions or make and carry through rational, logical plans. To make matters worse, Mr. Jones had knocked Mrs. Jones unconscious with the cooking pot when he had hit the top of her head. That blow, due to its force, was severe enough to cause frontal lobe damage, and subsequently, impaired impulse control, leading to Mrs. Jones’ rage attack. As quoted from another case, “defendant’s frontal lobe damage led to her inability to perceive social situations correctly and act accordingly, an inability to control her behavior, and an inability to act rationally during stressful situations” (Redding, 2006). However, still applicable, Mrs. Jones believed that her husband was going to kill her based upon the threat he had made to her the night before. So, when in the stressful situation of her husband walking towards her the next morning after a night of severe beatings and a threat to her life, Mrs. Jones lacked the ability to control her impulses, went into a rage attack, and killed Mr. Jones. She knew it was not right to kill her husband, but her inability to control her actions and think rationally and logically, especially after a volatile night (not to mention previous incidents) which damaged part of her brain, left her unable to render control of her actions. It is in my opinion that the frontal lobe damage sustained by Mrs. Jones, left her unable to control her impulses, which led her to pick up the knife and stab her husband repeatedly, until he died. If Mrs. Jones had not sustained the frontal lobe damage or any of the other mild traumatic brain injuries, I believe she would have been able to control her impulses and not react the way she did because she would have been able to make rational and logical decisions. But the fact of the matter is that she did sustain frontal lobe damage and mild traumatic brain injuries over the course of her marriage to Mr. Jones, and was unable to control her impulses and actions which led her to kill Mr. Jones.

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“Frontal lobe dysfunction comes in at least two different forms, depending upon the location of the frontal lobe damage. One form (involving damage to the ventromedial prefrontal cortex) produces impulsivity and impulsive aggression, while the other from (involving damage to the dorsolateral prefrontal cortex) impairs judgment and moral reasoning. However, since most brain injuries and illnesses causing substantial injury to the frontal lobes have widespread effect, it is not uncommon to find both forms present, though one form may predominate” (Redding, 2006).

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“A person suffering from frontal lobe dysfunction could have an impairment in judgment, and could commit impulsive or violent acts even though such acts normally would be against that person’s nature. Even minimal frontal lobe dysfunction may cause impulsive aggression” (Redding, 2006).

“As we have seen, many defendants suffering from substantial FLD are cognitively intact yet have substantial impairments in impulse control. They understand the difference between right and wrong, but are unable to apply this knowledge to control their behavior” (Redding, 2006).

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“MTBI has been defined as a subset of a minor head injury in which damage to the head includes damage to the brain that can result in symptoms that may or may not be transient” (Jackson, Philp, Nutall, and Diller, 2002).

It has been found that “noncontact intracranial brain movement, such as whiplash or severe shaking, can cause diffuse brain injuries that may result in cognitive and functional deficits” (Jackson, Philp, Nutall, and Diller, 2002).

“Research has shown that the sequelae of brain injuries (including repetitive mild brain injuries) tend to resolve overtime and that having more than one brain injury results in both longer time to recover and more severe deficits than having only one brain injury” (Valera and Berenbaum, 2003).

“The forms of abuse to which battered woman are subjected have the potential to produce brain injuries at either the point of impact or the part of the brain opposite
the point of impact (contre coup injury). They could also cause diffuse axonal injury (tearing of the neuronal fibers connecting various parts of the brain) in incidents in which there are rapid acceleration and deceleration forces. Additionally, battered women who are choked could sustain brain injuries through the effects of anoxia or hypoxia. There does not need to be a loss of consciousness for any of these types of brain injuries to occur” (Valera and Berenbaum, 2003).

“The frequency and severity of symptoms reported here, would make it difficult to think through or cope with the complex, often formidable organizational tasks required for battered women to stop the violence, disengage from violent partners, and/or establish independent lives...women who have sustained MTBI may be even less able than others to extricate themselves from abusive relationships” (Jackson, Philp, Nutall, and Diller, 2002

With consideration of all this information, as you recall, Mrs. Jones sustained a head trauma the night before the death of her husband. Not to mention that she has had stitches on her head on six different occasions, has a history of beatings, being choked, and being shaken, all or some of which may have also resulted in head traumas as well. All these other traumas would have impacted Mrs. Jones ability to think or cope with the violence from her husband. So, it would seem understandable that she was unable to devise a way to leave Mr. Jones or ask for help, because all those traumas interfere with the abilities needed to make decisions or make and carry through rational, logical plans. To make matters worse, Mr. Jones had knocked Mrs. Jones unconscious with the cooking pot when he had hit the top of her head. That blow, due to its force, was severe enough to cause frontal lobe damage, and subsequently, impaired impulse control, leading to Mrs. Jones’ rage attack. As quoted from another case, “defendant’s frontal lobe damage led to her inability to perceive social situations correctly and act accordingly, an inability to control her behavior, and an inability to act rationally during stressful situations” (Redding, 2006). However, still applicable, Mrs. Jones believed that her husband was going to kill her based upon the threat he had made to her the night before. So, when in the stressful situation of her husband walking towards her the next morning after a night of severe beatings and a threat to her life, Mrs. Jones lacked the ability to control her impulses, went into a rage attack, and killed Mr. Jones. She knew it was not right to kill her husband, but her inability to control her actions and think rationally and logically, especially after a volatile night (not to mention previous incidents) which damaged part of her brain, left her unable to render control of her actions. It is in my opinion that the frontal lobe damage sustained by Mrs. Jones, left her unable to control her impulses, which led her to pick up the knife and stab her husband repeatedly, until he died. If Mrs. Jones had not sustained the frontal lobe damage or any of the other mild traumatic brain injuries, I believe she would have been able to control her impulses and not react the way she did because she would have been able to make rational and logical decisions. But the fact of the matter is that she did sustain frontal lobe damage and mild traumatic brain injuries over the course of her marriage to Mr. Jones, and was unable to control her impulses and actions which led her to kill Mr. Jones.
Reference:


APPENDIX V

Judge’s Instructions

There are four possible verdicts that can be rendered for this case. You may choose to find the defendant Emma Jones: not guilty; not guilty, by reason of insanity; guilty of first degree murder; or guilty of manslaughter passion/provocation. Enclosed are the following jury instructions for the verdicts. I ask that you read them over thoroughly, before coming to a decision, and rendering a verdict for Mrs. Jones.
APPENDIX W

Insanity (N.J.S.A. 2C:4-1) Jury Instructions

Apart from her general denial of guilt, the defendant maintains that she is not guilty of the crime by reason of insanity.

If you find that the State has failed to prove beyond a reasonable doubt any essential element of the offense, or the defendant’s participation in the offense, you must find the defendant not guilty and you need not consider the evidence as to the defendant’s insanity.

If you find that the State has proved beyond a reasonable doubt each essential element of the offense, and the defendant’s participation in the offense, you must then consider the evidence as to the defendant’s insanity.

All persons are assumed capable of committing crimes. Insane persons, however, are not capable of committing crimes.

If the defense of insanity is sufficiently established, the law allows the defendant the benefit of it by an acquittal of all criminal responsibility.

The law requires that the proof of such a defense of insanity be established consistent with a standard recognized by the law. Under our law all persons are assumed to be sane and, therefore responsible for their conduct until the contrary is established.

If at the time of committing the act the defendant was laboring under such a defect of reason from disease of the mind as not to know the nature and quality of the act she was doing or if defendant did know it, that she did not know what she was doing was wrong, the defendant was then legally insane and therefore, not criminally responsible for her conduct.

As you can see, the law regards insanity as a disease of the mind. It may be temporary or permanent in its nature, but the condition must be a mental disease.

An accused may have the most absurd and irrational notions on some subject: she may be unsound in mind and be a fit subject for confinement and treatment in a mental hospital; but if at the time of the offense defendant had the mental capacity to distinguish right from wrong and to understand the nature and quality of the act done by her, she is subject to the criminal law.

The question is not whether the defendant, when she engaged in the deed, in fact actually thought or considered whether the act was right or wrong, but whether defendant had sufficient mind and understanding to have enabled her to comprehend that it was wrong if defendant had used her faculties for that purpose.

You should consider all of the relevant and material evidence having a bearing on her mental condition, including her conduct at the times of the alleged act, her conduct since, any mental history, any lay and medical testimony which you have heard from witnesses who have testified for the defense and for the State, and such other evidence by the
testimony of witnesses or exhibits in this case that may have a bearing upon, and assist you in your determination of the issue of her mental condition.

You may return one of three verdicts: not guilty, guilty, or not guilty by reason of insanity.

If you find that the State has failed to prove beyond a reasonable doubt all or any one of the essential elements of the offense, or the defendant’s participation in the offense, you must find the defendant not guilty.

If you find that the State has proved beyond a reasonable doubt all the essential elements of the offense and the defendant’s participations therein, and if you also find that the defendant has not established the defense of insanity to a preponderance of the credible evidence, then you must find the defendant guilty of the offense.

If you find that the State has proved all the elements of the crime and the defendant’s participation therein beyond a reasonable doubt, and if you also find that the defendant has established the defense of insanity by a preponderance of the credible evidence, your verdict must be “not guilty by reason of insanity” and you shall so report and declare your verdict.
APPENDIX X

Murder (N.J.S.A. 2C:11-3a(1) and 3a(2)) Jury Instructions

The defendant is charged by indictment with the murder of Ted Jones.

In order for you to find the defendant guilty of murder, the State is required to prove each of the following elements beyond a reasonable doubt: (1) that the defendant caused Ted Jones’ death or serious bodily injury that then resulted in Ted Jones’ death, and (2) that the defendant did so purposely or knowingly.

One element that the State must prove beyond a reasonable doubt is that the defendant acted purposely or knowingly.

A person acts purposely when it is the person's conscious object to cause death or serious bodily injury resulting in death. A person acts knowingly when the person is aware that it is practically certain that her conduct will cause death or serious bodily injury resulting in death.

The nature of the purpose or knowledge with which the defendant acted toward Ted Jones is a question of fact for you the jury to decide. Purpose and knowledge are conditions of the mind which cannot be seen and can only be determined by inferences from conduct, words or acts. It is within your power to evaluate the surrounding circumstances. Such things as the place where the acts occurred, the weapon used, the location, number and nature of wounds inflicted, and all that was done or said by the defendant preceding, connected with, and immediately succeeding the events leading to the death of Ted Jones are among the circumstances to be considered.

The State is not required to prove a motive. If the State has proved the essential elements of the offense beyond a reasonable doubt, the defendant must be found guilty of that offense regardless of the defendant’s motive or lack of a motive. If the State, however, has proved a motive, you may consider that insofar as it gives meaning to other circumstances. On the other hand, you may consider the absence of motive in weighing whether or not the defendant is guilty of the crime charged.

A homicide or a killing with a deadly weapon, would permit you to draw an inference that the defendant’s purpose was to take life or cause serious bodily injury resulting in death. A deadly weapon is any object, which in the manner it is used or is intended to be used, is known to be capable of producing death or serious bodily injury. In your deliberations you may consider the weapon used and the manner and circumstances of the killing, and if you are satisfied beyond a reasonable doubt that the defendant stabbed and killed Ted Jones with a knife you may draw an inference from the weapon used, that is the knife, and from the manner and circumstances of the killing, as to the defendant’s purpose or knowledge.

The other element that the State must prove beyond a reasonable doubt is that the defendant caused Ted Jones’ death or serious bodily injury resulting in death. In that regard, "serious bodily injury" means bodily injury that creates a substantial risk of death.
A substantial risk of death exists where it is highly probable that the injury will result in death.

In order for you to find the defendant guilty of purposeful serious bodily injury murder, the State must prove beyond a reasonable doubt that it was the defendant’s conscious object to cause serious bodily injury that then resulted in the victim’s death; that the defendant knew that the injury created a substantial risk of death; and that it was highly probable that death would result. In order for you to find the defendant guilty of knowing serious bodily injury murder, the State must prove beyond a reasonable doubt that the defendant was aware that it was practically certain that her conduct would cause serious bodily injury that then resulted in the victim’s death; that the defendant knew that the injury created a substantial risk of death; and that it was highly probable that death would result.

Causation has a special meaning under the law. To establish causation, the State must prove two elements, each beyond a reasonable doubt:

First, that but for the defendant's conduct, the victim would not have died.

Second, Ted Jones’ death must have been within the design or contemplation of the defendant. If not, it must involve the same kind of injury or harm as that designed or contemplated, and must also not be too remote, too accidental in its occurrence or too dependent on another's volitional act to have a just bearing on the defendant's liability or on the gravity of her offense. In other words, the State must prove beyond a reasonable doubt that Ted Jones’ death was not so unexpected or unusual that it would be unjust to find the defendant guilty of murder.

If after a consideration of all the evidence you are convinced beyond a reasonable doubt that the defendant either purposely or knowingly caused Ted Jones’ death or serious bodily injury resulting in death, then your verdict must be guilty.

If, however, after a consideration of all the evidence you find that the State has failed to prove any element of the offense beyond a reasonable doubt, your verdict must be not guilty.
APPENDIX Y

Manslaughter, Passion/Provocation (N.J.S.A. 2C:11-3a(1) and (2); 2C:11-4a, b(1) and b(2)) Jury Instructions

The element that the State must prove beyond a reasonable doubt to find defendant guilty of murder is that defendant did not act in the heat of passion resulting from a reasonable provocation.

Passion/provocation manslaughter is a death caused purposely or knowingly that is committed in the heat of passion resulting from a reasonable provocation.

Passion/provocation manslaughter has four factors which distinguish it from murder. In order for you to find defendant guilty of murder, the State need only prove the absence of any one of them beyond a reasonable doubt. The four factors are: (1) There was adequate provocation; (2) The provocation actually impassioned defendant; (3) Defendant did not have a reasonable time to cool off between the provocation and the act which caused death; and (4) Defendant did not actually cool off before committing the act which caused death.

The first factor you must consider is whether the State has proven beyond a reasonable doubt that the provocation was not adequate. Whether the provocation is inadequate essentially amounts to whether loss of self-control is a reasonable reaction to the circumstances. In order for the State to carry its burden it must prove beyond a reasonable doubt that the provocation was not sufficient to arouse the passions of an ordinary person beyond the power of her control. For example, words alone do not constitute adequate provocation. On the other hand, a threat with a gun or knife or a significant physical confrontation might be considered adequate provocation. Again, the State must prove that the provocation was not adequate.

The second factor you must consider is whether the State has proven beyond a reasonable doubt that defendant was not actually impassioned, that is, that she did not actually lose her self-control.

The third factor you must consider is whether the State has proven beyond a reasonable doubt that defendant had a reasonable time to cool off. In other words, you must determine whether the State has proven that the time between the provoking event and the act which caused death was inadequate for the return of a reasonable person's self-control.

The fourth factor you must consider is whether the State has proven beyond a reasonable doubt that defendant actually did cool off before committing the act which caused death, that is, that she was no longer actually impassioned.

If you determine that the State has proven beyond a reasonable doubt that there was not adequate provocation or that the provocation did not actually impassion the defendant or that defendant had a reasonable time to cool off or that defendant actually cooled off, and, in addition to proving one of those four factors, you determine that the State has
proven beyond a reasonable doubt that defendant purposely or knowingly caused death or serious bodily injury resulting in death, you must find defendant guilty of murder.

If, on the other hand, you determine that the State has not disproved at least one of the factors of passion/provocation manslaughter beyond a reasonable doubt, but that the State has proven beyond a reasonable doubt that defendant purposely or knowingly caused death or serious bodily injury resulting in death, then you must find her guilty of passion/provocation manslaughter.

If, however, the State has failed to prove beyond a reasonable doubt that defendant acted purposely or knowingly or that defendant's conduct actually caused death or serious bodily injury resulting in death, you must acquit defendant of murder and passion/provocation manslaughter.
APPENDIX Z

Control Pre-Jury Deliberation Questionnaire

1. Have you ever served on a jury before?
   a. Yes (If so, please specify number of times) _____________
   b. No

2. What would your verdict be?
   a. Not guilty
   b. Not guilty, by reason of insanity
   c. Guilty of first degree murder
   d. Guilty of manslaughter passion/provocation

3. How would you rate your certainty of this verdict?
   a. Very sure
   b. Sure
   c. Undecided
   d. Unsure
   e. Very unsure

4. Insanity is defined as when the defendant was not able to comprehend and understand the nature of her actions and did not know they were wrong.
   a. Strongly agree
   b. Agree
   c. Undecided
   d. Disagree
   e. Strongly disagree

5. Manslaughter is defined as when the defendant did not have sufficient time to cool off from the time she was provoked to when she killed.
   a. Strongly agree
   b. Agree
   c. Undecided
   d. Disagree
   e. Strongly disagree
6. Murder is defined as when the defendant purposely and knowingly killed.
   a. Strongly agree
   b. Agree
   c. Undecided
   d. Disagree
   e. Strongly disagree
APPENDIX AA

Pre-Jury Deliberation Questionnaire

1. Have you ever served on a jury before?
   a. Yes (If so, please specify number of times) ____________
   b. No

2. What would your verdict be?
   a. Not guilty
   b. Not guilty, by reason of insanity
   c. Guilty of first degree murder
   d. Guilty of manslaughter passion/provocation

3. How would you rate your certainty of this verdict?
   a. Very sure
   b. Sure
   c. Undecided
   d. Unsure
   e. Very unsure

4. Insanity is defined as when the defendant was not able to comprehend and understand the nature of her actions and did not know they were wrong.
   a. Strongly agree
   b. Agree
   c. Undecided
   d. Disagree
   e. Strongly disagree

5. Manslaughter is defined as when the defendant did not have sufficient time to cool off from the time she was provoked to when she killed.
   a. Strongly agree
   b. Agree
   c. Undecided
   d. Disagree
   e. Strongly disagree
6. Murder is defined as when the defendant purposely and knowingly killed.
   a. Strongly agree
   b. Agree
   c. Undecided
   d. Disagree
   e. Strongly disagree

7. Did the expert witness testimony impact your verdict?
   a. Yes
   b. No

8. Was the expert witness testimony helpful in understanding the mental health of
   the defendant?
   a. Very helpful
   b. Somewhat helpful
   c. Undecided
   d. Somewhat unhelpful
   e. Very unhelpful
APPENDIX AB

Jury Deliberation Questionnaire

1. What is the jury’s unanimous verdict?
   a. Not guilty
   b. Not guilty, by reason of insanity
   c. Guilty of first degree murder
   d. Guilty of manslaughter passion/provocation

2. How many individuals were in the mock jury group, including you?
   ____________
APPENDIX AC

Control Post-Jury Deliberation Questionnaire

1. What would your verdict be?
   a. Not guilty
   b. Not guilty, by reason of insanity
   c. Guilty of first degree murder
   d. Guilty of manslaughter passion/provocation

2. How would you rate your certainty of this verdict?
   a. Very sure
   b. Sure
   c. Undecided
   d. Unsure
   e. Very unsure

3. Insanity is defined as when the defendant was not able to comprehend and
   understand the nature of her actions and did not know they were wrong.
   a. Strongly agree
   b. Agree
   c. Undecided
   d. Disagree
   e. Strongly disagree

4. Manslaughter is defined as when the defendant did not have sufficient time to
   cool off from the time she was provoked to when she killed.
   a. Strongly agree
   b. Agree
   c. Undecided
   d. Disagree
   e. Strongly disagree

5. Murder is defined as when the defendant purposely and knowingly killed.
   a. Strongly agree
   b. Agree
   c. Undecided
   d. Disagree
   e. Strongly disagree
6. Have you changed your verdict at any point in time?
   a. Yes (If so, please specify when) ____________________________
   b. No

7. If you have changed your verdict at any point in time, how would you rate your certainty with that decision? (Skip if answer to question number six, is No)
   a. Very sure
   b. Sure
   c. Undecided
   d. Unsure
   e. Very unsure

8. The defendant made an attempt to avoid confrontation with her husband.
   a. Strongly agree
   b. Agree
   c. Undecided
   d. Disagree
   e. Strongly disagree

9. The defendant made an attempt to avoid the fight with her husband.
   a. Strongly agree
   b. Agree
   c. Undecided
   d. Disagree
   e. Strongly disagree

10. The defendant provoked the fight with her husband.
    a. Strongly agree
    b. Agree
    c. Undecided
    d. Disagree
    e. Strongly disagree

11. The defendant had a reason to fear she would be killed by her husband.
    a. Strongly agree
    b. Agree
    c. Undecided
    d. Disagree
    e. Strongly disagree

12. The defendant was protecting herself in self-defense when she killed her husband.
    a. Strongly agree
    b. Agree
    c. Undecided
    d. Disagree
    e. Strongly disagree
13. The defendant was provoked to kill her husband.
   a. Strongly agree
   b. Agree
   c. Undecided
   d. Disagree
   e. Strongly disagree

14. The defendant intended to kill her husband.
   a. Strongly agree
   b. Agree
   c. Undecided
   d. Disagree
   e. Strongly disagree

15. The defendant had malicious intent to kill her husband.
   a. Strongly agree
   b. Agree
   c. Undecided
   d. Disagree
   e. Strongly disagree
APPENDIX AD

Post-Jury Deliberation Questionnaire

1. What would your verdict be?
   a. Not guilty
   b. Not guilty, by reason of insanity
   c. Guilty of first degree murder
   d. Guilty of manslaughter passion/provocation

2. How would you rate your certainty of this verdict?
   a. Very sure
   b. Sure
   c. Undecided
   d. Unsure
   e. Very unsure

3. Insanity is defined as when the defendant was not able to comprehend and understand the nature of her actions and did not know they were wrong.
   a. Strongly agree
   b. Agree
   c. Undecided
   d. Disagree
   e. Strongly disagree

4. Manslaughter is defined as when the defendant did not have sufficient time to cool off from the time she was provoked to when she killed.
   a. Strongly agree
   b. Agree
   c. Undecided
   d. Disagree
   e. Strongly disagree

5. Murder is defined as when the defendant purposely and knowingly killed.
   a. Strongly agree
   b. Agree
   c. Undecided
   d. Disagree
   e. Strongly disagree
6. Did the expert witness testimony impact your verdict?
   a. Yes
   b. No

7. Was the expert witness testimony helpful in understanding the mental health of the defendant?
   a. Very helpful
   b. Somewhat helpful
   c. Undecided
   d. Somewhat unhelpful
   e. Very unhelpful

8. Have you changed your verdict at any point in time?
   a. Yes (If so, please specify when) __________________________
   b. No

9. If you have changed your verdict at any point in time, how would you rate your certainty with that decision? (Skip if answer to question number eight, is No)
   a. Very sure
   b. Sure
   c. Undecided
   d. Unsure
   e. Very unsure

10. The defendant made an attempt to avoid confrontation with her husband.
    a. Strongly agree
    b. Agree
    c. Undecided
    d. Disagree
    e. Strongly disagree

11. The defendant made an attempt to avoid the fight with her husband.
    a. Strongly agree
    b. Agree
    c. Undecided
    d. Disagree
    e. Strongly disagree

12. The defendant provoked the fight with her husband.
    a. Strongly agree
    b. Agree
    c. Undecided
    d. Disagree
    e. Strongly disagree
13. The defendant had a reason to fear she would be killed by her husband.
   a. Strongly agree
   b. Agree
   c. Undecided
   d. Disagree
   e. Strongly disagree

14. The defendant was protecting herself in self-defense when she killed her husband.
   a. Strongly agree
   b. Agree
   c. Undecided
   d. Disagree
   e. Strongly disagree

15. The defendant was provoked to kill her husband.
   a. Strongly agree
   b. Agree
   c. Undecided
   d. Disagree
   e. Strongly disagree

16. The defendant intended to kill her husband.
   a. Strongly agree
   b. Agree
   c. Undecided
   d. Disagree
   e. Strongly disagree

17. The defendant had malicious intent to kill her husband.
   a. Strongly agree
   b. Agree
   c. Undecided
   d. Disagree
   e. Strongly disagree
APPENDIX AE

Demographic Questionnaire

1. Gender
   a. Male
   b. Female

2. What is your age? __________

3. Academic rank
   a. Freshman
   b. Sophomore
   c. Junior
   d. Senior
   e. Graduate Student

4. What is your major? _____________________________

5. Marital Status
   a. Single
   b. Not married, but in a committed relationship
   c. Engaged
   d. Married
   e. Separated
   f. Divorced
   g. Widowed
   h. Other (please specify) ________________________