

Battered Woman's Syndrome and Extreme Emotional Disturbance in DV Cases

Kings County Criminal Bar Association

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Judge Matthew J. D'Emic

PROBLEM-SOLVING COURTS

- Generally operate under the theory of “therapeutic justice”, i.e., use the court to foster emotional well-being. Not so in Domestic Violence Court where the emphasis is on victim safety and offender accountability.
- Expansion of traditional role of the criminal courts as arbiter and punisher. A collaborative effort with the court in a leading role.
- Re-action to society recognizing there is a better way to handle certain societal problems.

TYPES OF PROBLEM- SOLVING COURT

- Drug courts - lock them away vs. treatment
- Mental Health courts – recognition that society has failed in dealing with people suffering with mental illness
- Domestic Violence courts – private problem vs. societal problem
- IDV and Youth DV courts – expansion of court role

DOMESTIC VIOLENCE COURTS: HISTORY

- Started in Brooklyn in 1996 in response to DV murders
- Experiment in consistency
- Domestic Violence is the leading cause of injury to American women
- In 2008, 18% of homicides in New York State involved intimate partner violence

MUST ARREST/NO DROP POLICIES

- NYPD-big change in policy
- DA's-evidence-based prosecution
- Judicial Monitoring-pre-disposition/post-disposition
- Bail issues – clear and convincing proof of a violation of the order of protection can result in remand (CPL 530.12[11], 530.13[8])

ORDERS OF PROTECTION

- Full order of protection
- Limited order of protection
- Penalty if o/p is violated (again CPL 530.12[11]; 530.13[8])

Criminal Form 1 1892

NY 0230153

At the terms of the _____ Court, County of _____ State of New York
 at the Courthouse at _____
 ORDER OF PROTECTION
 Family Offense - C.P.L. § 50.12
 Other Domestic Violence Crimes - C.P.L. § 50.13¹
 Youthful Offender (check if applicable)

PRESENT: Her: _____
 PEOPLE OF THE STATE OF NEW YORK
 Defendant: _____
 Charge: _____
 Ex Parte
 Present in Court (check one)

NOTICE: YOUR FAILURE TO OBEY THIS ORDER MAY SUBJECT YOU TO MANDATORY ARREST AND CONFINEMENT IN A JAIL OR YOUR INCARCERATION FOR UP TO SEVEN YEARS FOR CONTINUING TO OBEY IT. THIS ORDER MAY BE EXTENDED IN YOUR ABSENCE AND CONTINUE IN EFFECT UNTIL YOU REAPPEAR IN COURT.
 TEMPORARY ORDER OF PROTECTION - Whereas good cause has been shown for the issuance of a temporary order of protection in a condition of: recognition; release on bail; adjournment in contemplation of dismissal;
 ORDER OF PROTECTION - Whereas defendant has been convicted of [specify crime or violation]: _____

And the Court having made a determination in accordance with section 50.12 or 530.13 of the Criminal Procedure Law, it is hereby ORDERED that the above-named defendant observe the following conditions of behavior:
 (Check applicable boxes.)
 (01) Stay away from (A) (names of protected persons) or witness(es); _____ and/or from the
 (B) home of _____; (C) school of _____
 (D) business of _____; (E) place of employment of _____
 (F) other _____
 (02) Refrain from communication or any other contact by mail, telephone, e-mail, voice-mail or other means with [specify protected person(s)]; _____
 Refrain from assault, talking, harassment, menacing, reckless endangerment, disorderly conduct, intimidation, threats, or any other act prohibited by section 50.12(5) or 530.13(5) of the Criminal Procedure Law; _____
 (03) Refrain from entering (A) (names of protected persons); _____ members of protected person's family or household, or _____
 (B) (names of protected persons) or witness(es); _____
 (04) Refrain from entering _____ with [specify law enforcement agency, if any]; _____ to remove personal belongings not in issue in litigation [specify item]; _____
 (05) Refrain from [indicate act]; _____ that create an unreasonable risk to the health, safety, or welfare of [specify child(ren), family or household member]; _____
 (06) Permit [specify individual(s)]; _____
 (07) Permit [specify individual(s)]; _____ to visit with [specify child(ren)]; _____
 established by a court order or separation or other written agreement, to visit with [specify child(ren)]; _____
 during the following periods of time [specify]; _____
 under the following terms and conditions [specify]; _____
 (08) Surrender any and all handguns, pistols, revolvers, rifles, shotguns and other firearms owned or possessed, including, but not limited to, the following _____ at _____
 (09) Surrender any and all handguns, pistols, revolvers, rifles, shotguns and other firearms owned or possessed, including, but not limited to, the following _____ at _____
 immediately, but in no event later than [specify date/time]; _____
 (10) Specify other conditions defendant must observe: _____

IT IS FURTHER ORDERED that the above-named Defendant's license to carry, possess, repair, sell or otherwise dispose of a firearm or firearms, if any, pursuant to Penal Law § 400.00, is hereby (13A) suspended or (13B) revoked (note: final order only), and/or (13C) the Defendant shall remain ineligible to receive a firearm license during the period of this order. (Check all applicable boxes.)

IT IS FURTHER ORDERED that this order of protection shall remain in effect until _____ (specify date)

DATE: _____
 Defendant advised in Court of issuance of Order.
 Received by Defendant: _____ JUDGE/JUSTICE
 Court (Court Seat)

Service Executed Date: _____
 Time: _____
 Warrant issued for Defendant.
 The Criminal Procedure Law provides that presentation of a copy of this order of protection to any police officer or peace officer acting pursuant to his or her special duties shall authorize and in some situations may require, such officer to arrest a defendant who is alleged to have violated the order of protection. The order of protection shall be enforceable in any court of competent jurisdiction in the State of New York. Federal law provides that this order must be honored and enforced by state and tribal courts, including courts of a state, the District of Columbia, a commonwealth, territory or possession of the United States, if it is established that the person against whom the order is sought has been or will be afforded reasonable notice and opportunity to be heard in accordance with state law sufficient to protect that person's rights. It is a federal offense to cross state lines to violate an order of protection; cross state lines to engage in stalking, harassment or domestic violence against an intimate partner or family member; possess, purchase, ship, transfer or receive a handgun, rifle, shotgun or other firearm or ammunition following a conviction of a domestic violence misdemeanor involving the use or attempted use of physical force or a deadly weapon; or (except for military or law enforcement officers while on duty) possess, purchase, ship, transfer or receive a handgun, rifle, shotgun, or other firearm or ammunition following a conviction of a domestic violence misdemeanor involving the use or attempted use of physical force or a deadly weapon against an intimate partner, harassment, threatening and/or stalking, remains in effect (18 USC §§ 2261(a)(8), 2261(a), 2262).

¹ Use this form for orders of protection, issued to protect victims of domestic violence as defined in Sec. Serv. Law § 459-a, that must be entered on the statewide registry of orders of protection [Excl. § 521-a].



EVIDENCE BASED PROSECUTION

- A. Recanting complaining witnesses
- B. 911 calls (excited utterances/present sense impressions)
- C. Witness observations
- D. Photographs
- E. Medical records/medical examiner
- F. Admissions
- G. Prior uncharged crimes (People v. Molineaux, 168 NY 264)

Battered Women's Syndrome

- Not a psychiatric diagnosis but an explanation of behavior – “a pattern of abusive or coercive behavior used to control or exert power over another.”
- Prosecutor uses an expert to explain why a woman may not leave her torturer (People v. Taylor, 75 NY2d 277; People v. Ellis, 170 Misc.2d 945).
- Defenses use an expert to present a defense of justification, i.e., self-defense (People v. Seeley, 186 Misc.2d 715; People v. Ciervo, 123 AD2d 393).

BATTERED WOMAN'S SYNDROME - DEFENSE

- People v. Seeley, 118 Misc.2d 715 (Justice Leventhal): "Battered Woman's Syndrome is not a defense to a criminal act (citing authorities). It is evidence of a defendant's state of mind or evidence relevant to a defense of justification."
- People v. Ciero, 123 AD2d 393: trial court upheld in charging justification and extreme emotional disturbance where expert explained that defendant was victim of battered woman's syndrome and perceived decedent's actions to be life-threatening to her son.
- People v. Torres, 128 Misc.2d 129: proof at trial was that the defendant was the "victim of prolonged physical and psychological maltreatment who, as a result of her intimate and long-term familiarity with the deceased, was convinced at the time of the shooting that she was in serious danger."
- For both DA and defense, expert testimony is often critical to dispel misconceptions about battered women. Jurors may well conclude, without this testimony, that self-defense is not proven, because if the extent of prior violence were true, she would have just left.

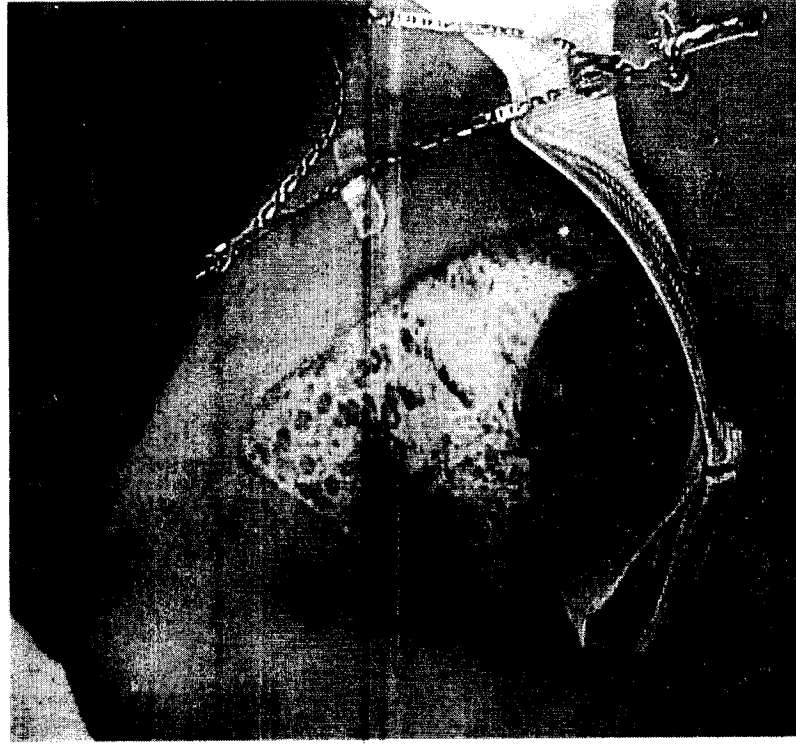
WHIPPED AND BURNED-
CALLING DISTRICT ATTORNEY
FROM HOSPITAL TO DROP THE
CHARGES



DISFIGURED-Testified for her abuser



Burned with a hot iron-”I want him
home”



EXTREME EMOTIONAL DISTURBANCE

- An Affirmative Defense provable by defense by a preponderance of the evidence – PL 125.25(1)(a).
- It is not a complete defense but a mitigating one, reducing a murder to manslaughter in the first degree as “an understandable human response deserving of mercy.” People v. Mejia, 166 AD2d 675.
- CJI – three elements: (1) defendant must have an extreme emotional disturbance; (2) in killing, the defendant must have been acting under the influence of the extreme emotional disturbance; (3) there must be a reasonable explanation for the extreme emotional disturbance from the subjective viewpoint of the defendant (not an explanation for the killing but for the disturbance).
- Subjective element of (3) above – what did defendant perceive.
- Objective element – reasonableness.
- Essential element of EED is ***loss of self-control***.

EXTREME EMOTIONAL DISTURBANCE

- In general, the defense of extreme emotional disturbance requires a “triggering event”, that is responsible for causing the emotional disturbance, i.e, a dramatic event, creating a temporary emotional disturbance that overwhelms the defendant’s judgment. This is not synonymous with the common law “heat of passion” concept because it may extend over a period of time (brooding). However, its onset must be sudden and its effects must be uninterrupted.
- It is an extreme emotional reaction to extremely unusual and overwhelming stress.
- The defendant’s reason must be overborne by intense feelings.
- No expert testimony need be introduced. If sufficient, the defendant’s testimony alone may allow a charge of EED be submitted to the jury.
- **WARNING:** A claim of EED triggers notice requirements to D.A. under CPL 250.10(3) and allows the D.A. to have the defendant examined by his own expert whether or not a defense expert is going to be called. In addition, if an expert did testing, the results with all notes, etc. must be turned over to the D.A. under CPL 240.30(1). (People v. Cruickshank, 105 AD2d 325; People v. Berk, 88 NY2d 257; People v. Kruglik, 256 AD2d 592; People v. Diaz, 3 Misc.3d 686).

EXTREME EMOTIONAL DISTURBANCE

- LOSS OF SELF CONTROL:
- A history of abuse militates against EED (People v. Maher, 89 NY2d 456; People v. Rivera, 123 AD2d 749).
- Rage, anger, malevolence is not EED (People v. Walker, 64 NY2d 741; People v. Fisher, 177 AD2d 704, People v. McDonald, 199 AD2d 420).
- Jealousy is not EED (People v. Tulloch, 179 AD2d 794; People v. Rivera, 12 AD2d 794; People v. Schicchi, 13 AD3d 470).
- Humiliation is not EED (People v. White, 79 NY2d 900), but see also People v. Harris, 95 NY2d 316 where crude taunting about sexual control of defendant's girlfriend was sufficient to get EED to jury.
- Description of EED by a defendant: "I snapped" (People v. Moye, 66 NY2d 887), "I couldn't stop", "it was like a movie" (People v. Harris, supra), "slow-motion", etc.

“Thank you for your time
and attention”