Land & Water Law Review

Volume 31 | Issue 1 Article 10

1996

Criminal Law - Wyoming's Battered Woman Syndrome Statute - How Far Can an Expert Go to Support a Battered Woman's Self-Defense Claim - Witt v. State

Amy M. Taheri

CRIMINAL LAW—Wyoming's Battered Woman Syndrome Statute—How Far Can an Expert go to Support a Battered Woman's Self-Defense Claim? *Witt v. State*, 892 P.2d 132 (Wyo. 1995).

INTRODUCTION

In May 1993, Dawn Witt, 19 years old, shot and killed her live-in boyfriend, Mark Ayers, 29 years old, at their trailer in Chugwater, Wyoming.[1] Dawn and Mark had been arguing for several days prior to the shooting.[2] The special investigator who questioned Dawn noted that she claimed that Mark had physically and emotionally abused her throughout their two-year relationship.[3] Dawn claimed that she shot her boyfriend because she "couldn't stand the abuse any longer."[4] She was subsequently arrested and charged with second degree murder.[5]

At her trial, Witt presented evidence that she suffered from battered woman syndrome to substantiate her claim of self-defense.[6] This evidence included the opinions of three psychological experts who testified generally about battered woman syndrome and gave their diagnoses of Dawn as suffering from the syndrome at the time she shot Ayers.[7] The defense experts were not, however, permitted to testify as to Witt's state of mind at the time of the shooting.[8]

In December 1993, a Goshen County jury found Dawn Witt guilty of voluntary manslaughter.[9] She appealed her conviction to the

---

1. Brief of Appellee at 3, Witt v. State, 892 P.2d 132 (Wyo. 1995) (No. 94-69) [hereinafter Brief of Appellee]; Brief of Appellant at 5, Witt v. State, [hereinafter Brief of Appellant].

2. Brief of Appellee at 3.

3. *Id.* at 5. Dawn related to the special investigator that on numerous occasions she was "pinched, punched, slapped, 'back-handed,' and otherwise physically abused, as well as verbally chastised and degraded" by Mark Ayers. *Id.*

4. *Id.*

5. *Id.* at 2.

6. *Id.* at 10.

7. *Id.*

8. Brief of Appellant at 10. In response to the state's motion in limine to prevent defense's experts from testifying as to Witt's state of mind at the time of the shooting, the court ruled that defense's psychological experts could not present such evidence. *Id.*

9. *Id.* at 13. The court sentenced Witt to serve "not less than ten nor more than twelve years with credit off both the minimum and maximum for time served between May 28, 1993 and February 4, 1994." *Id.* at 2.

Wyoming Supreme Court, challenging among other things the district court's refusal to allow experts to testify as to her state of mind at the time she shot Ayers.[10] Witt's claim was partially predicated on Wyoming Statute § 6-1-203, enacted in 1993, which allows a defendant to introduce expert testimony that she suffered from battered woman syndrome to support a self-defense claim.[11] *Witt v. State* is the first case to apply Wyoming Statute section 6-1-203.[12] The Wyoming Supreme Court upheld the district court's decision not to allow expert testimony on Witt's state of mind at the time of the shooting and affirmed Witt's voluntary manslaughter conviction.[13]

This casenote gives general background on battered woman syndrome and the admissibility of expert testimony about it. This casenote also examines the Wyoming Supreme Court's interpretation of Wyoming's battered woman syndrome statute[14] and that court's decision in *Witt v. State* to uphold the district court's exclusion of state of mind testimony by expert witnesses.

---

10. Witt v. State, 892 P.2d 132, 135 (Wyo. 1995).

11. *Id.* at 137; *See also* WYO. STAT. § 6-1-203 (Supp. 1995), which provides:

> (a) The "battered woman syndrome" is defined as a subset under the diagnosis of Post Traumatic Stress Disorder established in the Diagnostic and Statistical Manual of Mental Disorders III—Revised of the American Psychiatric Association.
>
> (b) If a person is charged with a crime involving the use of force against another, and the person raises the affirmative defense of self-defense, the person may introduce expert testimony that the person suffered from the syndrome, to establish the necessary requisite belief of an imminent danger of death or great bodily harm as an element of the affirmative defense, to justify the person's use of force.

In the Brief of Appellee at 8, the State observes:

> It is the similarity, especially as noted by experts in the field, of the symptoms of PTSD [Post-traumatic Stress Disorder] to those found in victims of battered woman syndrome that lead [sic] the Wyoming Legislature to define battered woman syndrome by labeling it as a "subset under the diagnosis of Post-Traumatic Stress Disorder established in the Diagnostic and Statistical Manual of Mental Disorders III - Revised of the American Psychiatric Association." Battered Woman Syndrome is not found within the named manual, but is considered by experts to be a diagnosis within PTSD. The legislature's recognition of battered woman syndrome as being a subset of PTSD, which is found in the manual, was most likely done to avoid any need to litigate the admissibility of the evidence as being commonly accepted within the scientific community. (citations omitted).

See infra note 65 and accompanying text.

12. Brief of Appellee at 6.

13. Witt, 892 P.2d at 138, 143.

14. WYO. STAT. § 6-1-203 (Supp. 1995).

BACKGROUND

Battered Woman Syndrome

Dr. Lenore Walker, a psychologist who has done considerable research and writing on battered woman syndrome, defines a battered woman as one 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 without any concern for her rights."[15] Battered woman syndrome refers to a set of traits that women who have been subject to prolonged physical and/or psychological abuse by their mates commonly display.[16] Battered woman syndrome has also been defined as "a constellation of emotional and cognitive effects derived from repeated physical abuse."[17] It has been argued that the effects of battering are "similar or identical to those for post-traumatic stress disorder: learned helplessness, re-experiencing of the trauma, intrusive recollections, generalized anxiety, lowered self-esteem, and social withdrawal."[18]

One theory psychologists employ to explain battered woman syndrome is learned helplessness. Learned helplessness describes a psychological condition first tested in laboratory experiments in which dogs learned that their behavior had no effect on whether or not they received electric shocks.[19] The dogs became submissive and ceased all voluntary activity, rather than trying to escape.[20] As psychologists have applied it to battered women, the theory of learned helplessness helps explain why they do not simply leave their batterers.[21] Battered women begin to believe that they have no control over what happens to them and become helpless and passive.[22]

---

15. LENORE E. WALKER, THE BATTERED WOMAN xv (1979).

16. The following characteristics are common in battered women: they have low self-esteem; they believe all the myths about battering relationships; they strongly believe in family unity and the prescribed feminine sex-role stereotype; they accept responsibility for the batterer's actions; they suffer from guilt, yet deny the terror and anger they feel; they present a passive face to the world but have the strength to manipulate their environment enough to prevent further violence and being killed; they have severe stress reactions, with psychophysiological complaints; they use sex to establish intimacy; and they believe that no one will be able to help them resolve their predicaments except themselves. *Id.* at 31.

17. DONALD G. DUTTON, THE DOMESTIC ASSAULT OF WOMEN: PSYCHOLOGICAL AND CRIMINAL JUSTICE PERSPECTIVES 200 (1995).

18. *Id.* at 208 (citations omitted). *See infra* note 65.

19. *See* WALKER *supra* note 15, at 45-46.

20. *Id.* at 46.

21. *Id.* at 47.

22. *Id.* Experts testified about the theory of learned helplessness and the cycle theory of violence at Dawn Witt's trial. *Witt*, 892 P.2d at 137. However, not all psychologists agree with the theory of learned helplessness. Dutton comments:

> The concept of learned helplessness has been criticized in recent years. Many battered women show resilience and initiative and perhaps should be thought of as having survival

Battered women's development of learned helplessness is related to the cycle theory of violence.[23] This is a three phase cycle that has been identified in battering relationships.[24] During the first phase, the tension-building stage, episodes of minor battering occur.[25] The second phase of the cycle, the acute battering incident, involves serious battering and often a severe beating, which is usually followed by shock, denial, and disbelief.[26] The final phase of the battering cycle, kindness and contrite behavior, is characterized by the batterer's gentle, loving behavior.[27] Although batterers frequently promise that the violence will never happen again,[28] often the cycle quickly begins anew with the reappearance of the tension-building stage.[29]

Some battered women eventually kill their batterers. Predicting which women are most likely to do this is difficult, but several factors seem to be present more often in the lives of battered women who kill: They tend to have been battered more often and to have suffered more severe injuries as a result of battering; they are more likely to have been threatened with weapons and with death, and to live in homes where a gun is kept; they are more likely to have been sexually abused; their batterers are more likely to be alcohol and/or drug abusers; and their children are more likely to have been abused as well.[30]

Battered Woman Syndrome and Expert Testimony

In recent years, many courts have been faced with the issue of whether or not to admit expert testimony about battered woman syndrome

---

skills rather than as being helpless (Gondolf 1988). Bowker (1983), for example, found that battered women had persistently sought a wide range of help. The more prolonged the abuse, the more varied were the victims' help-seeking activities. In his sample of battered women, Gondolf (1988) found that, on average, they had contacted five potential sources of help; over half had contacted the police and 20% had sought legal advice. This, of course, is the opposite of what one would predict from a learned helplessness model.

See DUTTON *supra* note 17 at 177.

23. *See supra* note 15, at 55.

24. *Id.*

25. *Id.* at 56. During this phase, women often try to pacify the batterer or stay out of his way in order to prevent the violence from escalating. They may also try to rationalize or deny the abusive behavior. *Id.* at 56-57.

26. *Id.* at 59-63. Following an acute battering incident, both battered women and their abusers find ways of rationalizing the seriousness of the assaults. *Id.* at 62-63.

27. *Id.* at 65.

28. *Id.*

29. *Id.* at 69. After a woman and her batterer go through the battering cycle at least twice, she may be classified as a battered woman. *Id.* at xv.

30. CHARLES P. EWING, BATTERED WOMEN WHO KILL: PSYCHOLOGICAL SELF-DEFENSE AS LEGAL JUSTIFICATION 40 (1987).

in cases involving women who claim to have killed or assaulted their partners in self-defense.[31] This testimony is important because if the psychological theories of battered woman syndrome are not properly explained, myths about battered women may abound in the courtroom.[32] Courts in a majority of states now hold that expert testimony on battered woman syndrome is admissible in some cases.[33]

With the exception of Utah, whose courts have not yet addressed the issue, all of the states in the Tenth Circuit have allowed experts to testify about battered woman syndrome.[34] The Colorado Court of Appeals said, "In situations where the uninformed juror would not see any threat or impending danger, expert witnesses help elucidate how a battering relationship generates different perspectives of danger, imminence, and necessary force."[35] According to the Kansas Supreme Court, "In cases involving battered spouses, expert evidence of the battered woman syndrome is relevant to a determination of the reasonableness of the defendant's per-

---

31. Ibn-Tamas v. United States, 407 A.2d 626 (D.C. 1979), *appeal on remand*, 455 A.2d 893 (D.C. 1983), was one of the first decisions to consider the admissibility of expert testimony about battered woman syndrome. *See also infra* note 33.

32. Such myths perpetuate the idea that women are responsible for the battering and include the following: Battered women are masochistic; battered women are crazy; battered women are uneducated and have few job skills; battered women deserve to get beaten; and battered women can always leave home. *See* WALKER *supra* note 15, at 18-31.

33. Decisions allowing expert testimony about battered woman syndrome include the following: People v. Aris, 264 Cal. Rptr. 167 (1989); People v. Yaklich, 833 P.2d 758 (Colo. Ct. App. 1991); Ibn-Tamas v. United States, 407 A.2d 626 (D.C. 1979), *appeal on remand*, 455 A.2d 893 (D.C. 1983); Rogers v. State, 616 So. 2d 1098 (Fla. Dist. Ct. App. 1993); Motes v. State, 384 S.E.2d 463 (Ga. Ct. App. 1989); People v. Minnis, 455 N.E.2d 209 (Ill. App. Ct. 1983); State v. Nunn, 356 N.W.2d 601 (Iowa Ct. App. 1984); State v. Stewart, 763 P.2d 572 (Kan. 1988); Commonwealth v. Craig, 783 S.W.2d 387 (Ky. 1990); State v. Burton, 464 So. 2d 421 (La. Ct. App. 1985); State v. Anaya, 438 A.2d 892 (Me. 1981) *appeal on remand*, 456 A.2d 1255 (Me. 1983); People v. Wilson, 487 N.W.2d 822 (Mich. Ct. App. 1992); State v. Hennum, 441 N.W.2d 793 (Minn. 1989); State v. Williams, 787 S.W.2d 308 (Mo. Ct. App. 1990); State v. Hess, 828 P.2d 382 (Mont. 1992); State v. Baker, 424 A.2d 171 (N.H. 1980); State v. Kelly, 478 A.2d 364 (N.J. 1984); State v. Gallegos, 719 P.2d 1268 (N.M. 1986); People v. Torres, 488 N.Y.S.2d 358 (N.Y. Sup. Ct. 1985); State v. Norman, 378 S.E.2d 8 (N.C. 1989); State v. Leidholm, 334 N.W.2d 811 (N.D. 1983); State v. Koss, 551 N.E.2d 970 (Ohio 1990); Betchel v. State, 840 P.2d 1 (Okla. Crim. App. 1992); Commonwealth v. Miller, 634 A.2d 614 (Pa. Super. Ct. 1993); McMaugh v. State, 612 A.2d 725 (R.I. 1992); State v. Wilkins, 407 S.E.2d 670 (S.C. Ct. App. 1991); State v. Burtzlaff, 493 N.W.2d 1 (S.D. 1992); State v. Furlough, 797 S.W.2d 631 (Tenn. Crim. App. 1990); Fielder v. State, 756 S.W.2d 309 (Tex. Crim. App. 1988); State v. Walker, 700 P.2d 1168 (Wash. Ct. App. 1985); State v. Steele, 359 S.E.2d 558 (W. Va. 1987); State v. Richardson, 525 N.W.2d 378 (Wis. Ct. App. 1994); Witt v. State, 892 P.2d 132 (Wyo. 1995).

34. See People v. Yaklich, 833 P.2d 758 (Colo. Ct. App. 1991); State v. Stewart, 763 P.2d 572 (Kan. 1988); State v. Swavola, 840 P.2d 1238 (N.M. Ct. App. 1992); Betchel v. State, 840 P.2d 1 (Okla. Crim. App. 1992); Witt v. State, 892 P.2d 132 (Wyo. 1995).

35. *Yaklich*, 833 P.2d at 761. The court ruled in this case that even though the defendant presented credible evidence that she suffered from battered woman syndrome, she was not entitled to a self-defense instruction because she had contracted with two men to kill her husband. *Id.* at 760.

ception of danger."[36] The Oklahoma Court of Criminal Appeals stated, "We believe that the Battered Woman Syndrome has gained substantial scientific acceptance and will aid the trier of fact in determining facts in issue, i.e. reasonableness and imminence, when testimony on the same is offered in cases of self defense."[37] Although the issue of the admissibility of expert testimony about the accused's state of mind was not directly before the Court of Criminal Appeals of Oklahoma, it noted that, "[t]he expert may not give an opinion on whether the defendant acted reasonably in perceiving herself as being in imminent danger and whether the defendant acted in self defense."[38]

Several states besides Wyoming have adopted legislation recognizing the validity of battered woman syndrome and providing that expert testimony about it is admissible in certain types of cases. These states include California, Maryland, Missouri, Ohio, and South Carolina.[39]

Among courts that allow expert testimony about battered woman syndrome, there are wide variations in the testimony experts may give. For example, some courts allow experts to testify about the defendant's state of mind at the time of the violent act,[40] while other courts do not.[41]

Battered Woman Syndrome and Expert Testimony in Wyoming

Prior to the enactment of Wyoming Statute section 6-1-203 in 1993, Wyoming courts did not allow expert testimony about battered woman syndrome. The courts maintained that it had not been adequately demonstrated that the state of the art would permit a reason-

36. *Stewart*, 763 P.2d at 577 (citing State v. Hodges, 716 P.2d 563 (Kan. 1986)). The State of Kansas, the appellant in this case, contended that the trial court erred in giving a self-defense instruction since the accused was not in imminent danger when she shot her sleeping husband. The court stated:

> We agree that under the facts of this case the giving of the self-defense instruction was erroneous. We further hold that the trial judge's self-defense instruction improperly allowed the jury to determine the reasonableness of the defendant's belief that she was in imminent danger from her individual subjective viewpoint rather than the viewpoint of a reasonable person in her circumstances.

Id. at 574.

37. *Betchel*, 840 P.2d at 9.

38. *Id.*

39. *See* CAL. [EVID.] CODE § 1107 (Deering 1995); MD. CODE ANN., [CTS. & JUD. PROC.] § 10-916 (1994); MO. REV. STAT. § 563.033 (1994); OHIO REV. CODE ANN. § 2945.392 (Anderson 1994); 1995 S.C. Acts 7 § 15 (amending S.C. CODE REGS. § 17-23-170 (1976)).

40. *See, e.g.*, State v. Wilkins, 407 S.E.2d 670, 672-73 (S.C. Ct. App. 1991); State v. Furlough, 797 S.W.2d 631, 651 (Tenn. Crim. App. 1990).

41. *See, e.g.*, State v. Richardson, 525 N.W.2d 378, 383 (Wis. Ct. App. 1994); Witt v. State, 892 P.2d 132, 138 (Wyo. 1995).

able expert opinion.[42] Relying on the criteria for determining the admissibility of expert testimony set forth in *Dyas v. United States*,[43] the Wyoming Supreme Court found in *Buhrle v. State* that research on the battered woman syndrome was in its early stages and that recognition of the syndrome was largely limited to people actively engaged in research and people making research grants.[44] The court also determined that expert testimony about battered woman syndrome would not be helpful to the jury.[45]

The defendant and the victim in the *Buhrle* case were married for eighteen years.[46] According to the defendant, Mrs. Buhrle, she had suffered many episodes of physical and psychological abuse during the marriage.[47] At the time Mrs. Buhrle shot her husband, one week had passed since he had last beaten her.[48] Mr. and Mrs. Buhrle were in the process of getting a divorce, and Mr. Buhrle had moved into a motel.[49] At Mr. Buhrle's request, Mrs. Buhrle went to the motel to talk to her husband.[50] After arguing with him for almost two hours, she shot Mr. Buhrle through a partially closed door.[51]

At her trial, Mrs. Buhrle testified that when she shot Mr. Buhrle, she had thought he was reaching for the gun he usually kept under his bed so he could kill her.[52] The trial judge refused to allow defense's expert witness, Dr. Lenore Walker, to testify about battered woman syndrome.[53]

---

42. Buhrle v. State, 627 P.2d 1374, 1377 (Wyo. 1981).

43. 376 A.2d 827, 832 (D.C. 1977), *cert. denied*, 434 U.S. 973 (1977). The criteria the Wyoming Supreme Court relied upon were: "(1) . . . the subject matter 'must be so distinctively related to some science, profession, business, or occupation *as to be beyond the ken of the average layman* [emphasis added]'; (2) 'the witness must have sufficient skill, knowledge, or experience in that field or calling as to make it appear that his opinion or inference *will probably aid the trier in his search for truth* [emphasis added]'; (3) expert testimony is inadmissible if 'the state of the pertinent art or scientific knowledge does not permit a reasonable opinion to be asserted even by an expert.'" Buhrle v. State, 627 P.2d at 1376 (quoting *Dyas*, 376 A.2d at 832.) (quoting MCCORMICK ON EVIDENCE § 13 (2d ed. 1972)).

44. *Buhrle*, 627 P.2d at 1377.

45. *Id.* at 1378.

46. *Id.* at 1375.

47. *Id.* For example, Mr. Buhrle beat Mrs. Buhrle about her head, neck, and shoulders with a pair of work boots during one argument. *Id.*

48. *Id.* at 1377.

49. *Id.* at 1375.

50. *Id.* at 1376.

51. *Id.*

52. *Id.*

53. *Id.* at 1376. Dr. Walker intended to testify to the following: That Mrs. Buhrle was a battered woman and battered women behave differently than other women; that Mrs. Buhrle was in a state of learned helplessness; that Mrs. Buhrle's ability to walk away from a situation was impaired because of learned helplessness; and that Mrs. Buhrle perceived herself to be acting in self-defense. *Id.*

The jury convicted Mrs. Buhrle of murder in the second degree.[54] The Wyoming Supreme Court affirmed her conviction.[55]

The Wyoming Supreme Court did not, however, hold in *Buhrle v. State* that expert testimony about battered woman syndrome was always inadmissible.[56] The court only maintained that the appellant did not satisfactorily demonstrate a scientific foundation for the expert's opinion in this case.[57]

In *Jahnke v. State*, a case involving a 16-year-old boy who gunned down his abusive father as he got out of the car and started toward the garage, the Wyoming Supreme Court affirmed the trial court's decision not to allow expert testimony that the defendant was a battered child.[58] An important factor in the Wyoming Supreme Court's decision was the absence of "evidence that the appellant was under either actual or threatened assault by his father at the time of the shooting" because "[r]eliance upon the justification of self-defense requires a showing of an actual or threatened imminent attack by the deceased."[59] The court also noted that "there was no offer to prove that the state of the pertinent art or scientific knowledge permitted a reasonable opinion to be asserted by the expert."[60] Although the trial court gave the appellant the opportunity to show "evidence or testimony with regard to the state of scientific knowledge as it pertained to the effect of the battered-child syndrome," the appellant did not pursue this opportunity.[61] According to the court, "Under these circumstances the record does not support any claim of error with respect to the alleged refusal of the trial court to permit expert testimony designed to justify the reasonableness of the actions of the appellant assuming that a self-defense context were developed."[62]

Justices Rose and Cardine dissented from the majority opinion. In his dissenting opinion, Justice Rose wrote:

> Lastly, with respect to the state-of-the-art issue, I would hold that the testimony in question is being recognized and admitted in a

---

54. *Id.* at 1375.
55. *Id.* at 1381.
56. *Id.* at 1378.
57. *Id.*
58. 682 P.2d 991, 1008 (Wyo. 1984).
59. *Id.* at 1006 (citing Garcia v. State, 667 P.2d 1148 (Wyo. 1983) and State v. Velsir, 61 Wyo. 476, 159 P.2d 371 (1945)).
60. *Id.* at 1008.
61. *Id.* at 1007-08.
62. *Id.* at 1008.

> majority of jurisdictions in this country because it is central to the defense of the battered person who pleads self-defense - as is shown by the numerous citations of authority in this opinion - and therefore it was error as a matter of law to have excluded the testimony for the reason that there was inadequate foundation proof on this subject.[63]

The Wyoming Legislature has subsequently passed Wyoming Statute section 6-1-203, removing the court's objection to expert testimony about battered woman syndrome on the grounds that it is not state of the art.[64] Notably, battered children and men can also be diagnosed as having Post-Traumatic Stress Disorder, the psychological condition of which battered woman syndrome is considered to be a subcategory.[65] In *Jahnke*, the Wyoming Supreme Court said, "The cases . . . lead into a series of cases involving homicides committed by women who were perceived as being victims of the 'battered-wife syndrome.'" While those cases deal with wives as victims of abuse, conceptually there is no reason to distinguish a child who is a victim of abuse."[66] However, the Wyoming Legislature benefitted only battered women by enacting Wyoming Statute section 6-1-203.

PRINCIPAL CASE

The Wyoming Supreme Court identified six issues that Dawn Witt raised on appeal.[67] This casenote will focus on the issue of whether the "Battered Woman Syndrome defense" provides a defendant with the right to have expert testimony as to her state of mind.[68]

---

63. *Id.* at 1043 (Rose, J. dissenting).

64. *See supra* note 11.

65. According to the Diagnostic and Statistical Manual of Mental Disorders III-Revised of the American Psychiatric Association:

> The essential feature of [Post-traumatic Stress] disorder is the development of characteristic symptoms following a psychologically distressing event that is outside the range of usual human experience . . . . The stressor producing this syndrome would be markedly distressing to almost anyone, and is usually experienced with intense fear, terror, and helplessness. The characteristic symptoms involve re-experiencing the traumatic event, avoidance of stimuli associated with the event or numbing of general responsiveness, and increased arousal . . . . The most common traumata involve either a serious threat to one's life or physical integrity . . . . The disorder can occur at any age, including during childhood.

AMERICAN PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 247-49 (3d ed. revised 1987).

66. *Jahnke*, 682 P.2d at 996.

67. *Witt*, 892 P.2d at 135.

68. *Id.* Other issues raised were: (1) whether the trial court violated her right to cross-examine a D.C.I. agent by forbidding specific reference to the agent's interrogation manual; (2) whether the

After recounting the relevant facts of the case, the court briefly reviewed the testimony the three defense experts gave at Witt's trial.[69] The experts were allowed to explain battered woman syndrome and to describe the specific symptoms of the syndrome Witt displayed.[70] Each expert also testified to the diagnosis that Dawn Witt suffered from battered woman syndrome at the time of the killing.[71]

The issue of whether the district court should have allowed defense experts to testify about Witt's state of mind at the time of the shooting was resolved to be a question of law, and accordingly the proper standard of review was de novo.[72] The court then came to three conclusions. First, it must affirm the district court's conclusion if it found that conclusion to be correct.[73] Second, the district court's decision whether or not to admit expert testimony was a discretionary evidentiary ruling unless statutory authority directed the admission of such testimony.[74] Third, a trial court's evidentiary rulings would not be disturbed on appeal unless the trial court had clearly abused its discretion.[75]

The first question addressed in *Witt* was whether Wyoming Statute section 6-1-203 mandated the admission of expert testimony about the defendant's state of mind at the time she committed the crime.[76] If a statute's language is clear and unambiguous, the plain meaning of the statute is applied.[77] Utilizing this test, the court determined that "the plain language of WYO. STAT. § 6-1-203 does not permit expert testimony on the ultimate issue of the accused's state of mind at the time

---

court violated her right to remain silent by submitting her statements to the jury and (3) by not instructing the jury to disregard her statements if they found them involuntary; (4) whether the court violated her right to due process by refusing to give jury instructions the defense requested; and (5) whether her right to a neutral and impartial tribunal would be violated if Justice Thomas failed to recuse himself for partiality. *Id.*

69. *Id.* at 136-37.

70. *Id.* at 137.

71. *Id.*

72. *Id.*

73. *Id.* (citing Parker Land & Cattle Co. v. Wyoming Game & Fish Comm'n, 845 P.2d 1040, 1042 (Wyo. 1993) (stating that whether the damage Appellant suffered was compensable under WYO. STAT. § 23-1-901 was a question of law, and a conclusion of law which was in accordance with the law would be affirmed)).

74. *Id.* (citing Price v. State, 807 P.2d 909, 913 (Wyo. 1991) (stating that the decision to allow expert testimony is within the sound discretion of the trial court)).

75. *Id.* (citing Trujillo v. State, 880 P.2d 575, 580 (Wyo. 1994) (stating that a trial court's evidentiary rulings will not be disturbed on appeal absent a clear abuse of discretion)).

76. *Id.*

77. *Id.* at 137-38 (citing Houghton v. Franscell, 870 P.2d 1050, 1054 (Wyo. 1994) (stating that if the statute's language is plain and unambiguous, the court applies its plain meaning and will not consult the rules of statutory construction); *Parker Land & Cattle Co.*, 845 P.2d at 1043.

the crime was committed."[78] Due to the positioning of the words in the statute, it was interpreted to merely permit a defendant to present expert testimony that she suffered from battered woman syndrome to support her claim that she was in imminent danger of death or great bodily harm. According to the court, "The statute does not permit the expert to testify that the accused did indeed believe she was in imminent danger of death or great bodily harm."[79]

After finding that the district court's interpretation of Wyoming Statute section 6-1-203 was correct, the next issue considered was "whether the district court abused its discretion in excluding the expert testimony based upon its determination that the testimony would not aid the trier of fact."[80] The Wyoming Rules of Evidence provided guidance on this issue: "W.R.E. 704 permits the admission of expert testimony even if it 'embraces an ultimate issue to be decided by the trier of fact.' However, to be admissible, expert testimony must be helpful to the trier of fact."[81] The court acknowledged that "expert testimony explaining the battered woman syndrome and establishing that the accused suffered from the syndrome would be helpful to a jury in evaluating the accused's perception of imminent danger of death or great bodily harm and in determining whether that belief was reasonable."[82] Nevertheless, its conclusion was that expert testimony on the accused's state of mind at the time she committed the crime would not aid the jury. Reasons for this conclusion were:

> An expert has no basis for evaluating the accused's state of mind when she committed the crime, and such testimony would usurp the function of the jury. Testimony on the accused's state of mind at the time of the crime would constitute an opinion on the accused's credibility and guilt because it would be a comment upon what the accused actually believed.[83]

The court agreed with the analysis of the Wisconsin Court of Appeals in *State v. Richardson*:

> Here, the expert's area of special knowledge is the battered woman's syndrome and whether [the accused's] personal characteristics are comparable; the expert is in no position, how-

78. *Id.* at 138.
79. *Id.*
80. *Id.*
81. *Id.* (citing WYO. R. EVID. 703).
82. *Id.*
83. *Id.*

> ever, to comment upon [the accused's] state of mind during the [violent act]. The expert was not there and science has not yet produced the technology which allows experts to put themselves inside the person's head at the time an event took place. Thus, the expert's conclusions about the reasonableness of [the accused's] beliefs would usurp the jury's function rather than assist it.[84]

After analyzing Witt's claim under Wyoming Statute § 6-1-203 and the applicable rules of evidence, the court held that "WYO. STAT. § 6-1-203 does not permit expert testimony on the accused's state of mind at the time of the violent act, and the district court did not abuse its discretion in excluding such testimony as unhelpful to the trier of fact."[85] Since no reversible error was found, the district court's judgment and sentence were affirmed.[86]

ANALYSIS

In adopting Wyoming Statute § 6-1-203, the Wyoming Legislature recognized a serious problem in society and in our nation's courtrooms. Once the legislature formally acknowledged the validity of battered woman syndrome, the Wyoming Supreme Court had only to decide how far experts could go in *Witt v. State*. The court correctly concluded that while a battered woman has a right to have experts testify that she suffers from battered woman syndrome to substantiate her self-defense claim, she does not have a right to have experts testify as to her state of mind at the time she committed the crime.

A line needed to be drawn on the admissibility of expert testimony on battered woman syndrome somewhere, and the exclusion of state of mind testimony was a logical place. Wyoming Rule of Evidence 703[87] creates an obstacle to the admissibility of state of mind testimony, because the court would likely question whether an expert can have a reasonable basis for forming an opinion on the accused's state of mind at the time

---

84. *Id.* at 138-39, (quoting State v. Richardson, 525 N.W.2d 378, 383 (Wis. Ct. App. 1994)).
85. *Id.* at 139.
86. *Id.* at 143.
87. W.R.E. 703 provides:

> The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

WYO. R. EVID. 703.

she committed the crime. The *Dyas* criteria, which the court relied on in *Buhrle v. State*, also present a substantial hurdle to the admissibility of such testimony.[88] The third prong of the *Dyas* test for admissibility of expert testimony is that "the state of the pertinent art or scientific knowledge" must enable the expert to maintain a reasonable opinion.[89] As the Wisconsin Court of Appeals stated and the Wyoming Supreme Court agreed, "[t]he expert was not there and science has not yet produced the technology which allows experts to put themselves inside the person's head at the time an event took place."[90]

However, the court's "plain language" analysis scratches only at the surface of the legislature's intent, and Wyoming Statute § 6-1-203 could be interpreted differently. The court concluded that "the plain language of WYO. STAT. § 6-1-203 does not permit expert testimony on the ultimate issue of the accused's state of mind at the time the crime was committed."[91] The statute may not mandate the admission of state of mind testimony, but neither does it expressly prohibit it. Also, the statute does not specifically direct courts to admit testimony explaining battered woman syndrome or describing the symptoms of the syndrome the accused exhibits. Yet, the court had no problem with such testimony being admissible.[92] However, the court properly decided that the statute's plain language does not explicitly direct the admission of testimony about the accused's state of mind at the time she committed the crime.

In 1978, Wyoming Rule of Evidence (W.R.E.) 704, which was adopted directly from rule 704 of the Federal Rules of Evidence, went into effect.[93] W.R.E. 704 reads, "Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact."[94]

Rule 704 of the Federal Rules of Evidence was amended in 1984 to read:

> (a) Except as provided in subdivision (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

88. *See supra* note 43.
89. *See supra* note 43.
90. State v. Richardson, 525 N.W.2d 378, 383 (Wis. Ct. App. 1994).
91. *Witt*, 892 P.2d at 138.
92. *Id.*
93. Brief of Appellant at 18.
94. WYO. R. EVID. 704.

(b) No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.[95]

Wyoming has never adopted the equivalent of provision 704(b) of the Federal Rules of Evidence. However, Wyoming case law suggests that Wyoming courts have not allowed the type of testimony F.R.E. 704(b) prohibits.

In *Kruchek v. State*, the appellant had tried to introduce at trial expert testimony by a psychiatrist "regarding whether or not Mr. Kruchek intended to fire the revolver shot, which killed John Welsh."[96] The trial court did not allow the testimony, and the Wyoming Supreme Court agreed with the lower court's decision:

> It is not claimed that either doctor was present or had first-hand knowledge of the defendant's state of mind, and in this circumstance we have held:
>
> "A doctor who was not a witness to the crime and does not have first-hand knowledge of a defendant's state of mind at the time of the offense, may not give his opinion as to what such mental state—intention—was."[97]

Furthermore, Wyoming courts have held that Wyoming Rule of Evidence 702[98] does not embrace expert testimony which vouches for

---

95. FED. R. EVID. 704. The Report of the House Committee on the Judiciary, H.R. Report 98-1030, 98th Cong., 2d Sess., p. 230; 1984 U.S. Code Cong. & Ad.News 232 (Legislative History), gave the following reason for the amendment:

> The purpose of the amendment is to eliminate the confusing spectacle of competing expert witnesses testifying to directly contradictory conclusions as to the ultimate legal issue to be found by the trier of fact. Under this proposal, expert psychiatric testimony would be limited to presenting and explaining their diagnoses, such as whether the defendant had a severe mental disease or defect and what the characteristics of such a disease or defect, if any, may have been."

Brief of Appellant, *supra* note 1, at 18.

96. 702 P.2d 1267, 1271 (Wyo. 1985).

97. *Id.* (quoting Smith v. State, 564 P.2d 1194, 1200 (Wyo. 1977)).

98. W.R.E. 702 provides:

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

Id.

The *Frye* test, a threshold test for determining the admissibility of scientific evidence, re-

the credibility of a witness. In *Zabel v. State*, the Wyoming Supreme Court said:

> It is well established in Wyoming that an expert witness cannot vouch for the truthfulness or credibility of an alleged victim. In *Lessard*, we explained that the question of credibility is for the jury, who are themselves expert in that area. Consequently, the testimony of a psychologist or other expert on the issue of credibility does not assist them and therefore does not satisfy the requirements of Rule 702, W.R.E.[99]

The court also held in *Stephens v. State* that "permitting a witness, lay or expert, to articulate an opinion as to the guilt of the accused constitutes plain error and demands reversal."[100]

In light of this case precedent, it is not surprising that the court did not allow expert testimony about Witt's state of mind at the time of the shooting. Allowing such testimony would be tantamount to permitting an expert to vouch for the credibility of a witness or to state an opinion as to the guilt (or innocence) of a defendant. The holding in *Witt* is therefore

---

quired that such evidence be based on techniques or methods that were generally accepted in the appropriate scientific community. Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923). Prior to 1993, when the United States Supreme Court decided the case of Daubert v. Merrell Dow Pharmaceuticals, Inc., the *Frye* test had become the dominant standard for determining the admissibility of scientific evidence in federal courts. 113 S. Ct. 2786, 2792 (1993). In *Daubert*, a case in which the plaintiffs alleged that their mothers' ingestion of the drug Benedictin during pregnancy caused limb-reduction birth defects, the Court held that the *Frye* test no longer applies in federal courts. *Id.* at 2794. In place of the *Frye* test, the Supreme Court directed federal trial court judges to determine whether proposed scientific evidence or testimony is reliable and relevant. *Id.* at 2795. The Court derived this relevancy approach from the Federal Rules of Evidence, relying primarily on F.R.E. 702. *Id.* The Court cited F.R.E. 702 as the focal point of the relevance and reliability requirement and determined that Rule 702 established a flexible inquiry as to those requirements. *Id.* at 2797. According to the Court, nothing in the text of Rule 702 made general acceptance by the scientific community an absolute prerequisite to admissibility. *Id.* at 2794.

Notably, the Wyoming Supreme Court took the approach that the Wyoming Rules of Evidence provide the standard for admissibility of scientific evidence before the United States Supreme Court handed down its decision in *Daubert*. In Rivera v. State, the Wyoming Supreme Court said:

> While the parties have not couched their arguments within the Wyoming Rules of Evidence, we are satisfied a correct approach, rather than invoking *Cullin* or *Frye*, would be to analyze the admissibility of scientific evidence in accordance with those rules. Essentially, both the relevance of the evidence and the expertise of the witness are addressed in WYO. R. EVID. 702.

840 P.2d 933, 941 (Wyo. 1992). After *Daubert*, the court said in Springfield v. State, "We stated that the correct approach in determining the propriety of the admissibility of scientific evidence was through analysis under the Wyoming Rules of Evidence, rather than the *Frye* test of general acceptance in the scientific community." 860 P.2d 435, 442 (Wyo. 1993).

99. 765 P.2d 357, 360 (Wyo. 1988) (citation and footnote omitted).

100. 774 P.2d 60, 67 (Wyo. 1989).

consistent with the Wyoming Supreme Court's prior interpretation of the Wyoming Rules of Evidence.

The court did not attempt to determine why the legislature has never adopted the equivalent of Federal Rule of Evidence 704(b). Since the court has made no attempt to ascertain the legislature's intent, the legislature should explicitly provide for the admissibility of state of mind testimony in future statutes and amendments if it wants to overcome the court's reluctance to accept such testimony. If the legislature does not want state of mind testimony to be admissible, it could simply adopt the equivalent of F.R.E. 704(b) in order to endorse the court's traditional approach and clear up any confusion about its intent.

The Wyoming Supreme Court's interpretation of Rule 704 is sound as long as experts do not show a scientifically accepted method of establishing the accused's state of mind at the time she committed the crime. State of mind testimony which is without an adequate foundation does not belong in the courtroom. As one source comments, "While social science might equip an expert to give framework and syndrome evidence, it does not equip her to say what happened in this case or whether a witness is truthful, ..."[101] However, courts should evaluate the expert's basis for his opinion instead of simply dismissing it because the expert was not present when the accused committed the crime.

Not all courts take the same view of the admissibility of expert testimony about an accused's state of mind that the Wyoming Supreme Court did. South Carolina, for instance, has adopted the equivalent of F.R.E. 704, and has not adopted the equivalent of F.R.E. 704(b). In a 1991 case, the South Carolina Court of Appeals reversed a decision because the trial court did not allow a defense expert to testify about the defendant's state of mind at the time she shot her abusive lover.[102] According to that court, "Questions going to an expert's knowledge of state of mind of the accused at the time of the crime are proper, and the expert's opinion as to state of mind is admissible."[103] The South Carolina court reversed and remanded the case without considering the expert's basis for his opinion "to a reasonable degree of medical certainty" that the defendant believed she was in danger of death or serious bodily harm at the time she shot the victim.[104]

In a Tennessee case involving a battered wife who shot her husband and buried his body, the trial court did not allow defense's expert

101. CHRISTOPHER B. MUELLER & LAIRD C. KIRKPATRICK, EVIDENCE 734 (1995).
102. State v. Wilkins, 407 S.E.2d 670, 673 (S.C. Ct. App. 1991).
103. *Id.* at 672.
104. *Id.* at 672-73.

to answer the question of "whether she had an opinion, based on her medical knowledge and experience, as to the defendant's perception of fear and imminence of danger at the time defendant killed her husband."[105] On appeal, the Tennessee Court of Criminal Appeals said, "Because [the witness] qualified as an expert, it was error to prevent her from answering merely because it embraced the ultimate issue."[106] Determining that this was harmless error, the court stated:

> The expert's testimony was exhaustive, was in support of the theory of self-defense, and provided the jury with a factual basis upon which to consider a not guilty verdict. Other than the statement of the witness' obvious professional opinion, little more would have been gained by the proposed question and answer.[107]

As in the South Carolina case, the Tennessee court did not examine the expert's basis for her opinion about the defendant's state of mind at the time of the killing. In addition, while both states have adopted the equivalent of F.R.E. 702,[108] neither court addressed the issue of whether state of mind testimony would assist the jury as required by this rule.[109] If the South Carolina and Tennessee courts had considered these issues, perhaps they would have agreed with the Wyoming Supreme Court's view of the admissibility of expert testimony about an accused's state of mind.

The holding in *Witt v. State* is quite different from the holding in *Buhrle v. State*.[110] Nevertheless, the policy underlying both decisions remains constant. As the Wyoming Supreme Court stated in *Buhrle*, "The 'aura of special reliability and trustworthiness' surrounding scientific or expert testimony, particularly calls for trial court discretion."[111]

---

105. State v. Furlough, 797 S.W.2d 631, 651 (Tenn. Crim. App. 1990).

106. *Id.*

107. *Id.*

108. Tennessee Rule of Evidence 702 reads, "If scientific, technical or other specialized knowledge will *substantially* assist the trier of fact . . . ." TENN. R. EVID. 702 (emphasis added). The Federal, Wyoming, and South Carolina rules do not include the word "substantially."

109. *See supra* note 95.

110. *See supra* notes 42-57 and accompanying text.

111. 627 P.2d at 1377 (citing United States v. Amaral, 488 F.2d 1148, 1152 (9th Cir. 1973) (explaining that scientific or expert testimony may create a substantial danger of undue prejudice, confusing the issues, or misleading the jury because of its aura of special reliability and trustworthiness)).

CONCLUSION

Battered women and battered woman syndrome are widespread problems in the United States,[112] and the Wyoming Legislature recognized it as such by adopting Wyoming Statute § 6-1-203. The Wyoming Supreme Court acted responsibly in holding that experts should only be allowed to give testimony which is based on reliable information and is helpful to the jury. The court's decision in *Witt v. State* emphasized that while a defendant has a statutory right to have experts testify that she suffers from battered woman syndrome, she does not have a right to have experts declare her innocence or vouch for her credibility by giving opinions as to her state of mind at the time she committed the crime.

AMY M. TAHERI

112. According to the Journal of the American Medical Association:

> Approximately 4 million women are believed to be battered every year by their partners. At least one fifth of all women will be physically assaulted by a partner or ex-partner during their lifetime. Domestic violence is believed to be the most common cause of serious injury to women and accounts for more than 40% of female homicide cases.

Ariella Hyman et al., *Laws Mandating Reporting of Domestic Violence: Do They Promote Patient Well-being?*, 273 JAMA 1781 (1995) (footnotes omitted).