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Evidence

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Evidence

Evidence; Battered Woman Syndrome--admissibility of expert testimony

Evidence Code § 1107 (new).

AB 785 (Eaves); 1991 STAT. Ch. 812

Under existing case law, expert testimony regarding battered woman syndrome (BWS)¹ is relevant to show how a particular defendant's circumstances may have lead to a genuine belief that serious bodily harm was imminent.² However, existing law forbids an expert to testify that a defendant did not have the requisite state of mind to commit a charged crime.³ Chapter 812 authorizes both the defense and the prosecution to use expert testimony⁴ regarding BWS in a criminal proceeding, including the physical, emotional, or mental effects upon the beliefs, perceptions, or behavior of victims of domestic violence.⁵

However, Chapter 812 precludes such testimony if offered against a defendant to prove an abusive act forming the basis of a criminal charge.⁶ Under Chapter 812, BWS testimony must be

1. See Comment, *The Admissibility of Expert Testimony on the Battered Woman Syndrome in Support of a Claim of Self Defense*, 15 CONN. L. REV. 121, 121 n.1 (1982) (definition of BWS). See also Hudsmith, *The Admissibility of Expert Testimony on Battered Woman Syndrome in Battered Women's Self-Defense Cases in Louisiana*, 47 LA. L. REV. 979, 979-83 (1987) (setting forth a workable definition of BWS and dispelling some common misbeliefs about battered women).

2. *People v. Arias*, 215 Cal. App. 3d 1178, 1199, 264 Cal. Rptr. 167, 180-81 (1990). However, such evidence is not to be used to establish the reasonableness requirement for justifiable self-defense. *Id.* See CAL. PENAL CODE § 197(3) (West 1988) (stating that homicide is justifiable when the defendant reasonably perceives that the victim will do some great bodily injury to the defendant and honestly believes that an unlawful attack by the victim is imminent).

3. CAL. PENAL CODE § 29 (West 1988) (requiring the trier of fact to make the determination as to whether the defendant had the requisite state of mind to commit a charged crime). Cf. C. MCCORMICK, HANDBOOK OF THE LAW OF EVIDENCE § 185, 434-35 (2d ed. 1972) (stating that the function of the expert is to aid the trier of fact and the testimony must be relevant and material).

4. See Hudsmith, *supra* note 1, at 985-86 (stating that expert testimony is often required to explain to jurors the complexity of a violent relationship and the effect violence might have on the manner in which a battered woman perceives danger).

5. CAL. EVID. CODE § 1107(a) (enacted by Chapter 812). See CAL. CIV. PROC. CODE § 542 (West Supp. 1991) (definition of domestic violence).

6. CAL. EVID. CODE § 1107(a) (enacted by Chapter 812).

relevant,⁷ and experts⁸ must be properly qualified for such testimony to be admissible.⁹ Chapter 812 also provides that expert testimony on BWS is not to be considered a new scientific technique whose reliability is unproven.¹⁰

JEL

Evidence; character evidence--specific instances of conduct

Evidence Code § 1103 (amended)
AB 263 (Quackenbush); 1991 STAT. Ch. 16

Under prior law, evidence¹ of character or a character trait of a criminal defendant or victim,² when offered to prove conduct³ in conformity with such trait or character, is admissible only in the form of opinion or reputation evidence.⁴ Chapter 16 restores the

7. See *id.* § 210 (West 1966) (providing that evidence is relevant if it has a tendency in reason to prove or disprove any disputed fact of consequence to the determination of an action).

8. See *id.* § 720 (West 1966) (listing the qualifications necessary to be an expert witness).

9. *Id.* § 1107(b) (enacted by Chapter 812). See Comment, *supra* note 1, at 130-32 (setting forth the role of expert testimony in a case involving BWS).

10. CAL. EVID. CODE § 1107(b) (enacted by Chapter 812). See *Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923) (finding that the "evidential force" of a scientific principle must be recognized and "sufficiently established to have gained general acceptance" in the scientific community to be admissible evidence in a judicial proceeding); *People v. Kelly*, 17 Cal. 3d 24, 30, 549 P.2d 1240, 1244, 130 Cal. Rptr. 144, 148 (1976) (holding that the proponent of scientific evidence must demonstrate that the scientific principle is generally accepted in the relevant scientific community). See also Carter, *Admissibility of Expert Testimony in Child Sexual Abuse Cases in California: Retire Kelly-Frye and Return to a Traditional Analysis*, 22 LOY. L.A. L. REV. 1103, 1107-1117 (1989) (tracing the development of the *Kelly-Frye* test and its application to psychological testimony). Cf. OHIO REV. CODE ANN. § 2091.06(A)(1) (Baldwin Supp. 1990) (stating that BWS "currently is a matter of commonly accepted scientific knowledge").

1. See CAL. EVID. CODE § 140 (West 1966) (definition of evidence).

2. See CAL. PENAL CODE § 1120.6(e) (West Supp. 1991) (definition of victim).

3. See *id.* § 125 (West 1966) (definition of conduct).

4. 1990 Cal. Stat. ch. 268, sec.2, at 1245-46 (amending CAL. EVID. CODE § 1103(a)) (amended by Chapter 16) (regulating admissibility of character regarding the victim); CAL. EVID. CODE § 1102(a)-(b) (West 1966) (regulating admissibility of character evidence regarding the defendant). Prior to 1990, evidence of a character or a character trait of the victim in the form of opinion, reputation or specific instances of conduct was admissible in a criminal trial if offered by

state of the law prior to 1990 by allowing the introduction of evidence of character or a character trait in the form of specific instances of conduct to prove conduct of the victim in conformity with the character trait.⁵ Chapter 16 also provides that if such evidence is introduced to prove violent conduct by the victim, similar evidence may then be introduced regarding violent conduct by the defendant.⁶

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the defendant to prove the victim's conduct in conformity with such trait or character, or if offered by the prosecution to rebut such evidence adduced by the defendant. 1981 Cal. Stat. ch. 726, sec. 2, at 2876-77 (amending CAL. EVID. CODE § 1103(a) (1)) (amended by Chapter 16); CAL. EVID. CODE § 1102 Comment-Law Revision Commission (West 1966). See JEFFERSON, CALIFORNIA EVIDENCE BENCHMARK, § 33.5 (1982) (explaining that the prosecution may introduce character evidence regarding the victim to prove his conduct in conformity with such character only to rebut character evidence regarding the victim offered by the defendant). Apparently, the Evidence Code changes made last year were introduced by prosecutors who felt it was inequitable to admit evidence of a victim's violent acts, but not to admit evidence of violent acts of the defendant. The Los Angeles Daily Journal, Jan. 22, 1991, at 11, col. 1. *But see id.* (quoting Judge Anthony DeCristoforo Jr. of the Sacramento Superior Court as stating that there was a possible conflict between the exclusion of evidence of the victim's past conduct and Proposition 8, which requires admission of all relevant evidence). See CAL. CONST. art. I, § 28(d) (West 1983) (requiring the admission of all relevant evidence).

5. CAL. EVID. CODE § 1103 (amended by Chapter 16). *Cf.* FED. R. EVID. 404(a)(2), 405(b) (stating evidence of character from specific instances of conduct is not admissible to prove the person acted in conformity therewith, although it may be admissible for other purposes, such as to show proof of a motive; evidence of a victim's character trait to prove conduct is limited to testimony in the form of opinion or reputation). See also FED. R. EVID. 405, Advisory Committee Notes (noting that evidence of specific instances is the most convincing, but has the greatest possibility of arousing prejudice). See 1991 Cal. Stat. ch. 16, sec. 2, at ___ (stating Chapter 16 was enacted as an urgency matter in order to correct the unintended consequences of the January 1, 1990 revision to Evidence Code section 1103, apparently referring to widespread controversy over the existing law after a Sacramento Superior Court's ruling to exclude certain evidence regarding the violent past of a victim in a domestic homicide). See *Evidence Code Changes Upset Defense Bar*, The Los Angeles Daily Journal, Jan. 22, 1991, at 1 (stating the exclusion of character evidence in the form of specific instances of conduct had outraged the defense bar, and discussing the case of *Naylor v. People*, Sac. Sup. Ct. Case No. 93969 (1991), in which the defendant presented a plea of self-defense to the killing, but was unable to allow witnesses to testify to specific violent acts the victim had committed in the past). See CAL. EVID. CODE §§ 782(a)(4) (West Supp. 1991), 1103(c) (amended by Chapter 16) (regulating the admissibility of evidence to show the character of a rape victim). In a rape prosecution, opinion evidence, reputation evidence, and evidence of specific instances of the victim's sexual conduct is not admissible under Chapter 16 to prove consent by the complaining witness, unless such sexual conduct was with defendant, or is offered by the defendant to rebut evidence introduced by the prosecution. CAL. EVID. CODE §1103(c)(1)-(3) (amended by Chapter 16).

6. CAL. EVID. CODE § 1103(b) (amended by Chapter 16) (stating evidence of defendant's violent conduct is admissible if evidence of victim's violent conduct is admitted).

