"I Shot Him Because I Feared for My Life": How U.S. Self-Defense Laws Affect Women Who Kill in Self-Defense

A THESIS

Submitted to the University of Michigan

in partial fulfillment of the requirements for the degree of

HONORS BACHELOR OF ARTS

Department of Philosophy, Politics, and Economics

Maeve O'Brien

April 2020

Advised by Professor Mika Lavaque-Manty

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Acknowledgements

I wish to express my gratitude to Professor Brian Min and Political Science Ph.D. Candidate Michael Lerner, who dedicated a great amount of time and care to assisting me and my fellow Political Science honors thesis writers develop and execute our projects.

Thank you to the Honors Summer Fellowship Program, which gave me the time and resources to pursue my research to the fullest during the summer of 2019. The support and guidance that the fellowship provided was invaluable to this thesis.

Thank you to my friends, fellow Political Science honors thesis writers, and my fellowship cohort, for listening to me ramble about my thesis topic for about a year now. Your feedback and suggestions prompted me to think about my research in new ways.

Thank you to my parents, who always encouraged me to pursue answers to the questions that interested me. Your hard work and encouragement helped make this thesis a reality.

Finally, I would first like to express my deepest thanks to my advisor, Mika Lavaque-Manty, for being a mentor to me not only throughout the thesis-writing process, but throughout my entire college experience. You are always generous with your time, attention, and reflections, and I would not be graduating from college as the same person I am today without you.

Abstract

This thesis is about U.S. self-defense laws and how they affect women who kill in self-defense. I argue that U.S. self-defense laws do not work well to protect women who kill in self-defense because these laws were originally written by men to protect themselves in masculine situations of violence, and thus do not account for women's experiences. Many women experience severe intimate partner violence that threatens their lives, which is a departure from the scenarios self-defense laws were originally created to protect against and thus demands different considerations. In my research, I reviewed all homicide cases in which the defendant pleaded self-defense in the Sixth Circuit Court of Appeals in the 21st century. I found that when women kill and claim self-defense, they almost exclusively kill abusive intimate partners, yet they face marginally more prison time on average than men, who often kill friends, strangers, and acquaintances in public settings. I explored in depth the cases in which women defendants killed their abusers and identified four main challenges they faced in successfully convincing judges and juries that they had acted in self-defense. First, the women lacked documentation of a history of abuse. Second, abusive men were viewed as non-deadly if they were unarmed. Third, prosecutors often portrayed the women as liars with ulterior motives. Fourth, the court often misused or misunderstood expert testimony relating to battered women.

Introduction

This thesis examines United States self-defense laws and how they affect women pleading self-defense to homicide charges. Modern U.S. self-defense laws as we know them evolved from English common law, a body of legal norms developed from judges' decisions. These laws popped up in medieval England, a time when women were considered property of and subsumed all their rights to their husbands and fathers.[1] As such, public male violence was common and private male violence toward women was legal. When the U.S. was founded and adopted English common law, self-defense laws were meant to apply to two different situations of violence in which a man would need to defend himself. The first situation was a random attack by a violent assailant. The second was two people of roughly equal physical ability entering into fist fight, such as a modern-day bar fight.[2] In the U.S. today, self-defense laws vary state-by-state, but generally include that a person can use a reasonable amount of force to defend him or herself against an imminent threat.[3] Since self-defense laws were written by men to protect men in masculine situations of violence, their development did not remotely consider the experiences of women. In the history of self-defense laws, women are absent, evidenced by the fact that from the establishment of the colonies to the 20th century, there were only three documented appellate self-defense cases with a woman defendant.[4]

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[1] Cynthia K. Gillespie, *Justifiable Homicide: Battered Women, Self-Defense, and the Law* (Columbus: Ohio State University Press, 1989).
[2] Ibid., 41.
[3] George E. Dix, *Criminal Law: Cases and Materials* (St. Paul, MN: West Academic Publishing, 2015).
[4] Gillespie, *Justifiable Homicide: Battered Women, Self-Defense, and the Law*.

In the late 20th century, some scholars started to explore how women were affected by these male-constructed laws, producing a wave of works, most notably *Justifiable Homicide* by C.K. Gillespie, founder of the feminist legal organization now called Legal Voice. These scholars called attention to the fact that women may be disadvantaged by self-defense laws, because the situations in which women kill in self-defense are a far cry from the kind of situations in which men kill in self-defense. Unlike the scenarios of a random violent assailant or a fist fight among physical equals, women often have to defend themselves from abusive intimate partners, such as husbands and boyfriends. Intimate partner violence affects a staggering number of women in the U.S., with one in four women reporting that they have experienced severe intimate partner physical violence, sexual violence, or stalking in their lifetimes.[5] Intimate partner violence is the single largest cause of injury to women in the U.S., and intimate partners are the perpetrators of about one third of homicides committed against women, by a conservative estimate.[6] Unfortunately, the criminal legal system has not been able to halt intimate partner violence, as it is a crime that often evades arrest and is serially under-prosecuted.[7] Despite fearing that their lives are in danger from the brutal physical and sexual violence they experience at the hands of their abusers, many women feel that seeking a solution in the criminal legal system is futile and that leaving the relationship is more dangerous than staying, a feeling supported by research.[8] These

[5] Jennifer L Truman, "Nonfatal Domestic Violence, 2003-2012," (2014).
[6] Stephen A. Saltzburg et al., *Criminal Law, Cases and Materials* (Durham, North Carolina: Carolina Academic Press, 2017).
[7] Gillespie, *Justifiable Homicide: Battered Women, Self-Defense, and the Law*.
[8] Jacquelyn C Campbell et al., "Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study," *American Journal of Public Health* 93, no. 7 (2003).

women may be financially dependent on their abusive intimate partners. They may have children with them. They may love them.

While there are no national statistics about the number of women who kill their abusers in self-defense, a study by the New York Department of Corrections and Community Supervision in 2005 found that sixty-seven percent of women imprisoned for killing someone close to them, besides their children, had been abused by their victim.[9] Additionally, in one 2004 study conducted by the Department of Justice, half of the women surveyed in a maximum security prison in the Southeast had acted in self-defense or retaliated after abuse.[10] Nationwide, most women awaiting execution on death row are either imprisoned for a crime relating to child abuse or intimate partner violence involving a male partner.[11] These figures are supported by literature that identifies the motivations behind men and women who kill. In homicide cases, men are more often motivated by possessiveness and a desire to control, whereas women are usually motivated by fear. Men are more likely than women to kill strangers or acquaintances, whereas women more often kill someone they know.[12] In incidents of intimate partner homicide, women often kill their abusers, while men kill out of jealousy, rage, or perceived or actual infidelity.[13]

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[9] Eliot Spitzer and Brian Fischer, "Female Homicide Commitments: 1986 Vs. 2005," *State of New York Department of Correctional Services* (2007).
[10] Dana D. DeHart, "Pathways to Prison: Impact of Victimization in the Lives of Incarcerated Women," *Violence Against Women* 14, no. 12 (2008).
[11] Bryan Stevenson, *Just Mercy: a Story of Justice and Redemption* (New York: Spiegel & Grau, 2014).
[12] Geris Serran and Philip Firestone, "Intimate Partner Homicide: A Review of the Male Proprietariness and the Self-Defense Theories," *Aggression and Violent Behavior* 9 (2004).
[13] Danielle Rosiejka, "Killing for Possession and Killing for Survival: Gender and the Criminal Law of Provocation and Self-Defense." *Law School Student Scholarship* 54 (2012).

While there existed a body of research on how self-defense laws affected women in the late 20th century, I could not identify if anything had changed since then, if at all. I wanted to explore whether the theoretical problems that women encountered pleading self-defense to homicide charges, as detailed in the literature, still existed today in real life. I wanted to know whether women were disadvantaged when pleading self-defense to homicide charges.

My research indicates that women are seldom successful in convincing juries and judges that they killed their abusive intimate partners in self-defense and are thus legally innocent and should not face prison time. In my research, while women claiming self-defense to homicide charges received comparable prison sentences to men claiming self-defense to homicide charges, women almost exclusively killed abusive intimate partners in self-defense, while men mostly killed acquaintances, friends, and strangers. When women killed in self-defense, it was often in a private home, while men often killed in self-defense in public settings, such as a bar, nightclub, or store. In examining why women had difficulty in successfully pleading self-defense, I identified four main themes. First, women had trouble making the case that they were abused if they did not have a lengthy paper trail of police reports documenting prior abuse. Second, abusive men were treated as non-deadly if they were unarmed. Third, prosecutors often casted women defendants as liars with ulterior motives, putting their history of abuse into question. Fourth, the court often misused or misunderstood expert testimony relating to battered women, which had the potential to make a decisive difference in how the juries evaluated the women defendants' actions.

Introduction to Research

For my research, I read all of the homicide cases from the 21st century in which the defendant claimed self-defense that appeared before the Sixth Circuit Court of Appeals or one of the federal district courts that the Sixth Circuit has appellate jurisdiction over. This U.S. court of appeals covers the states of Ohio, Michigan, Tennessee, and Kentucky. I chose this court because I am from Columbus, Ohio and attend school in Ann Arbor, Michigan, so I am familiar with the region. It also had a substantial but doable caseload—higher than average after I put in my search parameters—but not as high as a few of the courts that cover the most populated urban areas.

I read all relevant cases, including cases with men defendants to compare to the cases with women defendants. I read 234 cases in total. I found these cases by searching for the terms "self-defense" and "homicide" from the database NexisU, which houses court decisions from the U.S. Supreme Court and U.S. Circuit Courts. I then skimmed each case and discarded the ones where the search terms erroneously appeared, and only thoroughly read the homicide cases in which the defendants claimed they killed the victim in self-defense, either to their attorneys or at trial. I then documented the basic facts of the cases, including what charges the defendants originally faced, what they were convicted of, how many years they were sentenced to in prison, what kind of weapon was involved, and whether the defendant was in an intimate relationship with the victim. I used the data I collected from this case review to form a broad comparative overview between women and men defendants, presented later in my findings section. After reading these 234 cases, I returned to the cases in which a woman killed her abusive intimate partner, and identified themes appearing throughout these cases of

interest, attempting to articulate why women encounter challenges in killing abusive partners and pleading self-defense.

While I would have preferred to read cases from lower courts with original jurisdiction, these documents are not available online. I was necessarily limited in the scope of the cases I could read. Therefore, in every case I read, the defendant had already been convicted and was appealing his or her conviction. The main independent variable of interest in the case review is the gender of the defendant, and the dependent variable is the outcome of the case, defined in years sentenced. There are a wide range of other possible independent variables, including age, race, religion, or ethnicity of defendant, jury make up, or background of the lawyer. A study of the effects of each of these variables would probably lead to interesting findings and generate conversations about other biases that exist in the U.S. legal system. While I do not mean to discount the impact and importance of the other independent variables, they are not the main subject of my interest, so I am focusing solely on the gender of defendant. My research is both unique in that I have not found a similar study conducted in this century, and important in that it has far-reaching implications for how the U.S. can modernize self-defense law to be more fitting to the experiences of women and to better protect victims of intimate partner violence.

A Note on Terminology

In this thesis, I talk about intimate partner violence in gendered terms, often referring to women as the victims and men as the perpetrators. This is not to invalidate the intimate partner violence that men experience; it is merely a reflection of larger national patterns about intimate partner violence. Women are almost twice as likely as

men to experience severe physical violence in their relationships.[14] Women are much more likely than men to experience types of abuse beyond just physical violence, including sexual violence and stalking.[15] Women often experience a range of physical violence beyond hitting and kicking that men generally do not report experiencing, including being strangled, suffocated, and attacked with knife or gun.[16] The fact that intimate partner violence is a gendered issue does not mean it affects all women in the same way. Women's experiences of violence are inherently impacted by race, ethnicity, socioeconomic status, and disability.

Further, I focus on intimate partner violence in heterosexual relationships. This is a reflection of the cases that I read. Of the over 200 cases I reviewed, only one involved a homosexual couple. I am not attempting to downplay the violence that people in the LGBTQ+ community experience. For the purpose of this thesis, however, I am interested in the power dynamics at play between men and women, which often manifest in heterosexual relationships.

Additionally, I focus on the binary genders of men and women. All I have access to are court documents in which the genders of the subjects and perpetrators of the crimes are not explicitly stated and are instead implied through pronoun use. I am taking the pronoun "she" to refer to a woman and the pronoun "he" to refer to a man. No nonbinary "they" pronouns appeared in the cases I reviewed. This is not to exclude nonbinary people from this discussion of gender and violence. I am merely centering my thesis around the cases I read.

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[14] Leigh Goodmark, *Decriminalizing Domestic Violence: a Balanced Policy Approach to Intimate Partner Violence* (Oakland, California: University of California Press, 2018).
[15] Ibid.
[16] Ibid.

In recent years, there has been a discussion over what to call people who have experienced violence, particularly sexual violence. The discussion oscillates between the terms "survivor" and "victim." While I acknowledge that the term survivor may be a source of empowerment for those who have lived through trauma, I am going to be referring to those who have experienced intimate partner violence as the victims of such violence. The court itself refers to subjects of violence as victims, and I want to be consistent in my language. I want to acknowledge that people who have experienced violence can identify in whatever way they are most comfortable with, and I am not attempting to reduce anyone to labels.

Intimate Partner Violence in the U.S.

Before explaining the deficiencies of self-defense laws in protecting women who kill their abusers, I discuss the prevalence and severity of intimate partner violence in the U.S. and its repercussions on those affected. I explore how the criminal legal system often fails to protect victims from their abusers, and why women often cannot just leave abusive relationships, as prompted by skeptics. I then dive into the parts of self-defense laws that are problematic for women who kill their abusive intimate partners in self-defense.

While intimate partner violence may be widely acknowledged and condemned today, it did not enter public consciousness as a serious criminal offense until the 1970s.[17] The decisive turn to the criminal legal system as a response to intimate partner violence began in 1984, when the U.S. Attorney General's Task Force on Domestic

[17] Edna Erez, "Domestic Violence and the Criminal Justice System: An Overview" *Online Journal of Issues in Nursing* 7, no. 1 (2002).

Violence called for a stronger criminal legal response to intimate partner violence.[18] In the 1990s, women's groups lobbied Congress for years to produce the Violence Against Women Act, the first comprehensive federal legislation to address intimate partner violence.[19] The legislation dedicated almost a billion dollars to women's shelters, required states to recognize protective orders against abusive partners issued in other states, and dedicated resources to increasing the arrest and prosecution of abusers.[20] While in the past, police were not allowed to make warrantless arrests for assault because it was a misdemeanor, now almost every state has expanded police authority to arrest abusers.[21] The criminal legal system is now the primary response to intimate partner violence in the U.S.[22] Even though intimate partner violence was treated with serious national concern in the late 20th century, the perception that intimate partner abuse is different than other violent assaults persisted into the 21st century. Long after intimate partner violence was deemed a criminal offense, many states defined sexual assault and rape as only criminal when the victim was not the perpetrator's wife.[23]

Despite federal and state legislative efforts, by all estimates, intimate partner violence is still rampant in the U.S., with recent studies reporting that one in four women and one in nine men experience severe intimate partner physical violence,

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[18] Goodmark, *Decriminalizing Domestic Violence: a Balanced Policy Approach to Intimate Partner Violence*.
[19] Kit Kinports, "So Much Activity, So Little Change: A Reply to the Critics of Battered Women's Self-Defense." *Saint Louis University Public Law Review* 23, no. 155 (2004), 176.
[20] U.S. Congress, Senate, *To combat violence and crimes against women on the streets and in homes* (*Violence Against Women Act of 1993),* S. 11, 103rd Cong., 1st sess., introduced in Senate January 21, 1993.
[21] Kinports, "So Much Activity, So Little Change: A Reply to the Critics of Battered Women's Self-Defense."
[22] Goodmark, *Decriminalizing Domestic Violence: a Balanced Policy Approach to Intimate Partner Violence*.
[23] Erez, "Domestic Violence and the Criminal Justice System: An Overview."

sexual violence, or stalking in their lifetimes.[24] At least one million women are assaulted each year.[25] The fact that intimate partner violence is common does not make it less dangerous, or potentially deathly. Intimate partner violence is the single largest cause of injury to women in the U.S., and intimate partners are responsible for about one third of homicides committed against women, at a conservative estimate.[26] Women are killed by intimate partners more often than by any other perpetrator.[27]

One 2003 landmark study attempted to identify the risk factors for femicide, homicide committed against women, in abusive relationships. The researchers found that the abuser's access to a firearm and abuser's use of illegal drugs were among the factors most strongly associated with intimate partner femicide.[28] After controlling for other factors, the abuser using a gun in the worst incident of abuse increased the likelihood of intimate partner femicide forty-one-fold.[29] This was reflected in the stories of severe abuse I read when researching my thesis, in which abusers would assault or rape their victims using a gun.

The abuse that women experience from their partners is habitual, and rarely ever stops at one incident. Research indicates that once a man develops a pattern of abusing his intimate partner, it is highly unlikely that he will ever willingly stop, and the violence will just likely increase with time.[30] Furthermore, the techniques that people usually employ to avoid violence often don't work for battered women. The two main

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[24] Truman, "Nonfatal Domestic Violence, 2003-2012."
[25] Kinports, "So Much Activity, So Little Change: A Reply to the Critics of Battered Women's Self-Defense."
[26] Saltzburg et al., *Criminal Law, Cases and Materials*.
[27] Campbell et al., "Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study."
[28] Ibid.
[29] Ibid.
[30] Gillespie, *Justifiable Homicide: Battered Women, Self-Defense, and the Law*, 129.

techniques identified by sociologists to avoid violent confrontations—withdrawal from the situation and agreement with the accusations made by the aggressor—are shown to be ineffective for battered women who are facing accusations and threats by their abusers.[31] Studies show that beyond escaping, the only thing a woman can do once her abuser has begun an assault is to passively submit to it.[32]

It is often asked, both in public discourse and in the courtroom, why these women do not just leave their abusive partners.[33] The argument goes that no one is forcing them to stay in abusive relationships; they are electing to do so. A battered woman claiming that her only option was to kill her abuser or be killed is silly—she could have simply left him.

There are many anecdotal reasons why a woman would not leave her abuser. She may fear retaliation from her abuser. She may be concerned about the fate of her children and losing custody. She may be financially dependent on her abuser.[34] Like most people, she may expect to stay married to the person she fell in love with, and constantly employ strategies to deescalate the violence.[35]

There are ample empirical studies illuminating just how dangerous it is for women to leave their abusive partners. At least half the women who leave their abusers are stalked, harassed, or attacked by them in some form.[36] In one study of intimate partner homicide, more than half of the men who killed their partners did so after they were

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[31] Ibid., 132.
[32] Ibid., 133.
[33] Rachel Louise Snyder, "When Can a Woman Who Kills Her Abuser Claim Self-Defense?" *The New Yorker*, December 20, 2019. https://www.newyorker.com/news/dispatch/when-can-a-woman-who-kills-her-abuser-claim-self-defense.
[34] Ibid.
[35] Gillespie, *Justifiable Homicide: Battered Women, Self-Defense, and the Law*.
[36] Saltzburg et al., *Criminal Law, Cases and Materials*.

separated, citing the loss of control as a primary motivator.[37] In the study identifying risks of femicide, the researchers found that being separated from an abusive partner after living together, as well as asking to separate or having been separated in the past, was associated with a higher risk of death for a battered woman.[38]

With the threats to safety that come with leaving an abusive relationship, some might point to personal protection orders, or restraining orders, as a solution. Seeking protective orders can be far from safe for battered women. A protective order may provoke a battered woman's abuser even more, as he fears he is losing control of the situation and other parties are becoming involved.[39] It may prompt him to file a protective order against her, as if she were the threat.[40] Furthermore, these orders can be difficult to enforce. Studies show that at least half of protective orders are violated at least once, and many are violated repeatedly.[41] Still, the police are more much likely to arrest an assailant who is a stranger.[42] Police are reluctant to arrest an abuser with a protective order unless some unrelated crime was committed.[43]

Given how dangerous it is for a woman to leave an abusive relationship and how risky it can be to seek a protective order, it is realistic for her to believe she only has two choices—to kill her abuser or to be killed by her abuser.[44]

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[37] Ibid.
[38] Campbell et al., "Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study."
[39] Kinports, "So Much Activity, So Little Change: A Reply to the Critics of Battered Women's Self-Defense."
[40] Ibid.
[41] Ibid.
[42] Ibid.
[43] Ibid.
[44] Gillespie, *Justifiable Homicide: Battered Women, Self-Defense, and the Law*, 152.

The Role of the Criminal Legal System

In discussing intimate partner violence and why women cannot just leave abusive relationships, it is important to elaborate on the role of the criminal legal system. In *Justifiable Homicide*, Gillespie explores at length how police, prosecutors, and judges have failed to treat intimate partner violence as a serious crime.[45] She describes how some police may consider intimate partner violence a civil matter rather than a criminal one, and treat calls that report such violence as low priority. She discusses the reasons prosecutors often don't bring intimate partner violence cases to court, including lack of prestige, the belief that abusing an intimate partner is not a real crime, or the belief that women are using the legal system to settle relationship quarrels and manipulate their partners. However, the biggest reason that prosecutors don't bring intimate partner violence cases to court, according to Gillespie, is that they believe the victim will change her mind and drop the case. This creates a vicious cycle; since intimate partner violence cases are not treated as serious or desirable, women encounter challenges when attempting to pursue charges, which further discourages them from seeking recourse through the criminal legal system and makes prosecution of intimate partner violence even less frequent.

Up until the 1960s, police arrests in the case of intimate partner violence were rare. Intimate partner violence had yet to be considered a serious criminal act, and many police viewed such domestic disputes as not real police work.[46] Police were trained not to make arrests in intimate partner violence cases.[47] Although there was a proven

[45] The following section will draw upon Gillespie, *Justifiable Homicide: Battered Women, Self-Defense, and the Law*.
[46] Erez, "Domestic Violence and the Criminal Justice System: An Overview."
[47] Goodmark, *Decriminalizing Domestic Violence: a Balanced Policy Approach to Intimate Partner Violence*.

pattern of under-enforcement of calls reporting intimate partner violence, it was not clear whether it was related to state laws that prevented officers from making warrantless arrests.[48] For example, some states required that the officer be present for a misdemeanor assault in order to make an arrest.[49] One woman described her experience with the police's failure to help in her case of intimate partner violence: "every time I went to the authorities, they laughed at me stating that they, the law, would have to see my husband kill one of us before they could help."[50] Under-enforcement of the law was a significant concern in low-income communities and communities of color.[51]

In the late 1970s, feminist lawyers, frustrated with the police's inaction and failure to enforce laws against intimate partner violence, sued police departments in New York City and Oakland, California for policies that avoided arresting perpetrators.[52] Concerned about incurring similar lawsuits, jurisdictions across the country looked to different policing practices that shielded them from liability. A 1977 Oregon law emerged as a model, which required police to make arrests in intimate partner violence cases when the officer had probable cause to believe an assault had been committed, a precursor to mandatory arrest policies that required police officers to arrest perpetrators.[53] By the 1990s, there was a decisive shift toward pro-arrest policies, and over three quarters of jurisdictions in the U.S. allowed police to make warrantless

[48] Erez, "Domestic Violence and the Criminal Justice System: An Overview."
[49] Ibid.
[50] Goodmark, *Decriminalizing Domestic Violence: a Balanced Policy Approach to Intimate Partner Violence*, 1.
[51] Ibid.
[52] Ibid.
[53] Ibid.

arrests in the case of intimate partner violence.[54] As of 2014, twenty states and Washington, D.C. had mandatory arrest policies.[55]

While the number of arrests did rise dramatically, arrest levels still remain low. One Ohio study evaluating the effectiveness of pro-arrest policies found that arrest levels rose from about twelve to eighteen percent-in the past to about thirty-two percent.[56] That is partly due to the fact that police still draw upon personal opinions about intimate partner violence when evaluating whether to arrest a perpetrator. As described by Edna Erez, criminologist and former chair of the American Society of Criminology Task Force on Violence Against Women, in *Domestic Violence and the Criminal Justice System: An Overview,* "[r]esearch has demonstrated that even when law or policy dictate arrest, the police still exercise discretion in finding that a crime has occurred, and do not always use arrest as a response to domestic violence. For instance, considerations such as an officers' interpretation or understanding of the law; ideological factors or the beliefs officers hold regarding battered women; practical considerations such as the amount of work involved in processing an arrest compared to the likelihood of a reprimand for failing to do so; and political issues such as the relationships between police department administrators and street officers, are all factors that affect the decision to arrest batterers."[57]

Erez's overview of intimate partner violence and the criminal justice system corroborates Gillespie's insights on why intimate partner violence cases are rarely prosecuted. Intimate partner violence is often comprised of a series of events, with little

[54] Erez, "Domestic Violence and the Criminal Justice System: An Overview."
[55] Goodmark, *Decriminalizing Domestic Violence: a Balanced Policy Approach to Intimate Partner Violence*.
[56] Erez, "Domestic Violence and the Criminal Justice System: An Overview."
[57] Ibid.

physical evidence and no witnesses.[58] The victims themselves often refuse to testify, "citing fear of retaliation by their partners, concern about exposing their partners to criminal liability, or opposition to having their partners incarcerated, because incarceration would deprive them of economic, emotional, parenting, and other forms of support."[59] These crimes are often charged as misdemeanors, and due to a high turnover rate, perpetrators do not gain the criminal record that would indicate dangerousness to a prosecutor or judge.[60] Further, victims of intimate partner violence engage in the criminal legal system sometimes with motives other than seeking convictions for their abusers. For example, they sometimes want immediate protection from their abusers, or want the abusers to receive help.[61] Once victims have reached their aims, they are inclined to withdraw their case even if a conviction hasn't been brought about.[62] As such, few intimate partner violence cases reach the courtroom, and fewer receive convictions.[63]

In recent years, some people have advocated moving away from the U.S. criminal legal system as the primary response to intimate partner violence. According to University of Maryland law professor Leigh Goodmark and author of *Decriminalizing Domestic Violence*, "[t]he reassessment [of the role of the criminal legal system] is driven by concerns that the criminal legal system is ineffective, focuses disproportionately on people of color and low-income people, ignores the large structural issues that drive

[58] Ibid.
[59] Goodmark, *Decriminalizing Domestic Violence: a Balanced Policy Approach to Intimate Partner Violence*, 14.
[60] Erez, "Domestic Violence and the Criminal Justice System: An Overview."
[61] Ibid.
[62] Ibid.
[63] Ibid.

intimate partner violence, robs people subjected to abuse of autonomy, and fails to meet the pressing economic and social needs of people subjected to abuse."[64]

The first reason Goodmark cites is the ineffectiveness of the criminal legal system in halting intimate partner violence. Rates of intimate partner violence dropped between 1994 and 2000, the years immediately after the passage of the Violence Against Women Act, but so did overall crime rates.[65] Between 2000 and 2010, rates of intimate partner violence fell even further, but by less than the overall crime rate fell. According to Goodmark, no reliable social science data has tied the decrease in intimate partner violence rates to the increase in funding and criminal legal system response spurred by the Violence Against Women Act. Further, the evidence of criminalization having a deterrent effect on intimate partner violence is inconclusive. Incarceration in particular may induce violence instead of preventing it. Perpetrators are sent to institutions where they witness more violence and can become perpetrators or victims of such violence. Further, incarceration is linked with unemployment after release, and rates of intimate partner violence correlate with male unemployment.

The criticisms of criminalizing intimate partner violence mirror the criticisms of criminalization generally. Criminalizing intimate partner violence is an example of using the criminal legal system as a tool to achieve social justice. Both critiques are concerned with the disproportionate effect of criminalization on men of color. Some criticisms, however, remain unique to the criminalization of intimate partner violence. According to Goodmark, criminalization can harm the women it is meant to help. Since the introduction of pro-arrest policies, arrest rates have increased among women

[64] Goodmark, *Decriminalizing Domestic Violence: a Balanced Policy Approach to Intimate Partner Violence*, 5.
[65] The following three paragraphs draw upon Goodmark, *Decriminalizing Domestic Violence: a Balanced Policy Approach to Intimate Partner Violence.*

significantly, even though women do not commit acts of violence at nearly the same rate as men. In particularly, arrest rates of women of color for intimate partner violence are higher in mandatory arrest jurisdictions. Lastly, police involvement in families experiencing intimate partner violence can put the mothers at risk of being reported to child protective services for failing to protect their children from exposure to violence.

With raising these criticisms of the criminalization of intimate partner violence, it is important to highlight its benefits. Laws prohibiting intimate partner violence validate the experiences of victims and clearly state that what has been done to them is wrong. Laws have expressive value; they communicate what a society's values are and what is socially harmful. They legitimate harm and allow victims to see themselves as harmed. Additionally, criminalization can increase safety for victims. Some victims report that criminal sanctions such as jail time and probation give them the opportunity to put short and long-term precautions into place to protect themselves from their abusers. Some research suggests that arrests do have an impact on perpetrators and can make the lives of victims safer. In the study identifying risk factors for femicide, researchers found that a perpetrator's prior arrest for intimate partner violence actually decreased the risk for femicide, which suggested that arresting abusers can protect against future intimate partner homicide.[66]

Women Who Defend Themselves

Given what we know about the incidence intimate partner violence of the U.S., how dangerous it is for women to leave their abusive partners, and the failure of the criminal legal system to stop intimate partner violence, it is no surprise women feel that

[66] Campbell et al., "Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study."

they have no option other than to kill their abusive partners or be killed. A growing body of research indicates that fear of intimate partner violence and self-defense from abusive partners are main drivers behind women who kill or use violence. It is difficult to know how many women are imprisoned for killing their abusive intimate partners in self-defense; no national dataset exists. However, one 2004 study conducted by the Department of Justice surveyed sixty women imprisoned at a maximum-security prison and found that almost half of them said they acted in self-defense or retaliated against abuse.[67] Another 2008 review by researchers at Yale University and University of South Carolina found that the vast majority of women who used violence against their intimate partners had been victims of intimate partner violence themselves, citing multiple studies in which around ninety percent of women surveyed who used violence had also been victims.[68] Further, the landmark femicide study found that no matter who was killed, anywhere from sixty-seven to eighty percent of intimate partner homicides involved the man abusing the woman before the killing.[69] The 2008 review also highlighted that women's use of violence is more likely than men's to be motivated by fear and self-defense.[70] One study of women who had used violence against their intimate partners in the past six months found that that self-defense was the most commonly-cited motive for the violence, with seventy-five percent of participants saying that they had acted in self-defense.[71]

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[67] DeHart, "Pathways to Prison: Impact of Victimization in the Lives of Incarcerated Women."
[68] Suzanne C. Swan et al., "A Review of Research on Women's Use of Violence with Male Intimate Partners," *Violence and victims* 23, no. 3 (2008).
[69] Campbell et al., "Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study."
[70] Swan et al., "A Review of Research on Women's Use of Violence with Male Intimate Partners."
[71] Suzanne C. Swan and David L. Snow, "Behavioral and Psychological Differences Among Abused Women Who Use Violence in Intimate Relationships," *Violence Against*

It is difficult to pinpoint why some women kill their abusers and others don't. One 1983 study discussed in *Justifiable Homicide* compared a group of battered women that killed their abusers and a control group of battered women that did not.[72] They found three main differences. First, the group who killed their partners suffered from far more severe and frequent beatings at the hands of their abusers. Second, they experienced more severe and frequent sexual abuse from their abusers. Third, they sustained more serious injuries as a result of the abuse. In the study, killing an abusive intimate partner was a matter of how serious, frequent, and life-threatening the abuse was.

As for how the women who kill their abusive partners in self-defense actually fare in court compared to men, that is partly the undertaking of my project. Again, it is difficult to compare men and women defendants on the hole, as there is no comprehensive dataset of everyone who has killed and claimed self-defense either privately to their lawyer or publicly in a courtroom. One 2020 New Yorker article explored this issue, and requested that a senior fellow at N.O.R.C. at the University of Chicago, John Roman, analyze F.B.I. data to shed light on the differences in outcomes between men and women who claim self-defense.[73] Roman looked at the number of justifiable homicides, or killings that are deemed to be done without criminal guilt, of which self-defense is one, from 1976 to 2018. He found that the likelihood of a justifiable homicide ruling in cases in which men killed other men was ten percent greater than when women killed men.[74] This finding bolsters my argument and illuminates that

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Women 9, no. 1 (2003).
[72] Gillespie, *Justifiable Homicide: Battered Women, Self-Defense, and the Law*, 125-27.
[73] Elizabeth Flock, "How Far Can Abused Women Go to Protect Themselves," *The New Yorker*, January 13, 2020. https://www.newyorker.com/magazine/2020/01/20/how-far-can-abused-women-go-to-protect-themselves.
[74] Ibid.

there is a discernible difference in justifiable homicide cases with women defendants and men defendants.

The imprisonment of women who kill their abusers in self-defense manifests in larger, equally concerning trends of women imprisonment across the board. Women are now the fastest growing group of the incarcerated population.[75] From 1978 to 2015, the women's state prison populations grew 834 percent, more than doubling the pace of growth of the men's population. My states of interest—those covered by the Sixth Circuit Court of Appeals—embody this national trend. In Michigan, the number of men incarcerated fell by eight percent between 2009-2015, whereas the number of women incarcerated grew by thirty percent. In Kentucky, almost half the prison growth in that same time period was in women's prisons, even though these prisons have much smaller total populations than men. In Ohio and Tennessee, in the same six years, more women became newly incarcerated than men. Further, women around the country are more likely to enter prison with a history of trauma, abuse, and mental health issues. Once in prison, many women are sexually abused by prison staff or other women, and are more prone to experiencing severe psychological distress than incarcerated men. Many incarcerated women facing the most serious sentences committed crimes related to intimate partner violence. Nationwide, most women awaiting execution on death row are either imprisoned for an allegation of child abuse or intimate partner violence involving a male partner.[76]

[75] The following sections draws upon Wendy Sawyer, "The Gender Divide: Tracking Women's State Prison Growth." *Prison Policy Initiative*, January 9, 2018. https://www.prisonpolicy.org/reports/women_overtime.html.
[76] Stevenson, *Just Mercy: a Story of Justice and Redemption*.

Why Self-Defense Laws Are Problematic for Women

While I have walked through the circumstances that may drive a woman to kill her abuser in self-defense, I have yet to highlight the parts of self-defense laws that prove problematic for women. To illustrate the problems that the language of self-defense laws can pose, let's examine the self-defense law in Michigan, excerpted from the Michigan Self-defense Act: "An individual…. may use deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if… the individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself."[77] The literature I've read raises many problems with the language of self-defense laws, and two are salient here. The first is that the individual must *reasonably* believe it is necessary to use deadly force, which I will be referring to as the reasonableness requirement. The second is that the threat of death or great bodily harm must be *imminent*, which I will be referring to as the imminence requirement.

Reasonableness Requirement

The reasonableness requirement is problematic for women for a few reasons. First, it is rooted in something called the "reasonable man standard." Starting in the 19th century, English courts started adopting a reasonable man standard, where the legal validity of an action was determined by what a reasonable man would do.[78] In terms of self-defense cases, the standard was applied to decide how much force a reasonable

[77] MI Act 309 § 780.972 (2006).
[78] Alafair S Burke, "Equality, Objectivity, and Neutrality," *Michigan Law Review* (2005): 1043-80.

man would use to defend himself from a threat of violence. As a result, the reasonable man standard invites the jury to view any situation of violence as a fight between men.[79] As described by lawyers and legal scholars Elizabeth M. Schneider and Susan B. Jordan, "standards of justifiable homicide have been based on male models and expectations. Familiar images of self-defense are a soldier, a man protecting his home, family, or the chastity of his wife, or a man fighting off an assailant."[80]

Modern American courts have revised this standard to be gender-neutral, but its origins still remain rooted in the male experience, of which women's experiences do not comply. Women are less likely to have experience fighting, often deal with socially-imposed rules about physical aggression, and are typically of smaller stature than men, all of which have an impact on a woman's perception of the reasonableness of using deadly force to defend herself from an imminent serious threat.[81] For example, a woman using a weapon to defend herself from her unarmed abuser could be seen as unreasonable, as if she was exceeding the threat she originally faced. However, a woman may need a weapon to adequately defend herself, because she may be unable to defend herself from a man with her physical strength only, as another man perhaps could.[82] She is then labeled as unreasonable, even if she had no other option. Masculine notions of reasonableness are imposed on battered women whose reasons for self-defense do not comply with such a framework.

Second, the reasonableness requirement leaves a woman defendant to convince a jury that what she did was reasonable and not an overreaction. This is difficult because

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[79] Gillespie, *Justifiable Homicide: Battered Women, Self-Defense, and the Law*, 99.
[80] Elizabeth M. Schneider, Susan B. Jordan, and Cristina C. Arguedas, "Representation of Women Who Defend Themselves in Response to Physical or Sexual Assault," *Women's Rights Law Reporter* 4, no. 3 (1977), 153.
[81] Saltzburg et al., *Criminal Law, Cases and Materials*.
[82] Gillespie, *Justifiable Homicide: Battered Women, Self-Defense, and the Law*, 97.

of cultural perceptions of women that find their way into the courtroom. Women are perceived and portrayed in popular culture as dramatic, irrational, and emotional, a stereotype that some jurors have subconsciously consumed for years. Some jurors may also have a hard time believing that a normal-seeming man could commit such horrible acts. Others may fear that ruling in favor of a woman would give other women a license to kill their partners and claim self-defense.[83] Others may just be repulsed by the idea of a woman being violent. Cultural views about women using violence against men are deep-rooted. When self-defense laws originated, a man killing a woman was sometimes considered murder and other times completely allowed, whereas a woman killing a man was considered treason, and she was burned alive at the stake.[84]

In reality, a woman's perceptions of what is reasonable is shaped by her past experiences of abuse from her partner. Some women receive death threats that they have every right to take seriously. Others have nearly died in previous encounters. The literature suggests that battered women are nearly unanimous in their belief that their abusers are capable, both physically and mentally, of killing them.[85] The threat of death by an abusive partner is not solved by simply leaving that partner. Many women believe that the act of leaving will get them killed. As I've discussed, evidence shows that the most dangerous time for a battered woman is when she is attempting to leave her abuser.[86] A reasonable battered woman differs from any other reasonable woman in that she is familiar with her abuser's attacks and understands the severity of his threats, she is often hypersensitive to his actions and can sense when a beating is imminent, and

[83] Ibid., 94.
[84] Ibid., 35-36.
[85] Ibid., 133.
[86] Campbell et al., "Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study."

she understands the uselessness of relying on other means of protection.[87] These factors are not apparent to people who have not been abused and therefore do not influence their perception of what is reasonable, but they are highly relevant in determining reasonableness for a battered woman.

Additionally, the failure of the criminal legal system to take intimate partner violence seriously may leave women to believe that seeking the help of police and lawyers is useless. In one case, *State v. Norman (1989)*, a woman named Judy Norman was tried for first-degree murder for shooting and killing her husband while he was sleeping after he had allegedly abused her for years.[88] The serious abuse included beatings, cigarette burns, thrown objects, forced prostitution, starvation, making her sleep on the floor, and forcing her to bark like a dog, among other things. She was convicted of voluntary manslaughter and sentenced to six years in prison, although on appeal her conviction was reversed because the jury had not been instructed on self-defense laws. At Norman's trial, witnesses described her experiences with both social service agencies and law enforcement, which "contributed to her sense of futility and abandonment through the inefficacy of their protection and the strength of her husband's wrath when they failed."[89] Experiences like Norman's, and the feeling of having no source of outside support or alternative options, contribute to an explanation of why a woman would believe it is reasonable to kill an abusive partner.

In discussions of reasonableness, victims of intimate partner violence are often seen as seeking special treatment by the criminal legal system, as if it has to make exceptions to the traditional reasonableness requirement to be specifically tailored to

[87] Saltzburg et al., *Criminal Law, Cases and Materials*.
[88] Ibid.
[89] Ibid., 903.

these victims. Under conventional self-defense doctrine, however, the question is whether a reasonable person i*n the defendant's circumstances* would have believed she was under imminent threat of death or serious bodily harm.[90] For example, in traditional self-defense law, physical attributes of both the defendant and victim, including size, are strength, and physical condition, are considered relevant when evaluating whether a reasonable person in the defendant's position would've perceived an imminent serious threat.[91] Furthermore, defendants are traditionally permitted under criminal law to introduce evidence about the reputation or violent history of the victim to bolster their claim that they honestly and reasonably believed they were under threat of deathly or serious bodily harm.[92] With abused women, it is no different. Their perceptions of reasonableness are necessarily informed by their specific circumstances, which complies with traditional self-defense doctrine as opposed to seeking an exception.

Imminence Requirement

The second part of self-defense laws that proves problematic for women is the imminence requirement. Here, imminence is generally defined as "immediate danger, such as must be instantly met, such as cannot be guarded against by calling for the assistance of others or the protection of the law."[93] In other words, the imminence requirement means the homicide is unjustified if it's too soon or too late. In the case of

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[90] Kinports, "So Much Activity, So Little Change: A Reply to the Critics of Battered Women's Self-Defense."
[91] Saltzburg et al., *Criminal Law, Cases and Materials*.
[92] Kinports, "So Much Activity, So Little Change: A Reply to the Critics of Battered Women's Self-Defense."
[93] Henry Campbell Black, Joseph R. Nolan, and Michael J. Connolly, *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (St. Paul: West Pub. Co., 1979).

killing an abusive partner in self-defense, it can be very hard to prove that death or great bodily harm were imminent. When intimate partner violence has been routine and reaches a point where a woman believes her life is in danger, if she waits until her partner is in the midst of abusing her, then she may die. A woman typically kills her abuser before this point, because she often has every reason to believe that her partner will be the death of her. For example, women who have been chronically abused whose lives are in danger may come to reasonably believe that the only time they can defend themselves is when their abusers are asleep.[94] This may be the case because fighting back during beatings has only escalated the violence, and attempts at leaving the relationship have only posed more danger.

An analogy is often drawn between an abused woman who knows her abuser will be the death of her, and a hostage who has been kidnapped and is slowly being poisoned by the kidnapper.[95] The hostage knows the poison will kill her eventually, and if she has the chance to kill her kidnapper to save herself from eventually dying, she will, even if her death is not imminent. An abused woman is in a similar scenario of knowing that she is gradually dying at the hands of someone else. Yet, if an abused woman believes her life is in danger and kills her abuser in the middle of the night, she will not have satisfied the imminence requirement of self-defense laws because she cannot prove killing her abuser was necessary to prevent her death at that time. The imminence requirement fits more of a masculine, bar-fight type of scenario, where the nature of the violence might cause one person to die if they do not kill the other first at that very moment.

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[94] Kinports, "So Much Activity, So Little Change: A Reply to the Critics of Battered Women's Self-Defense."
[95] Ibid.

Another reason it can be even more difficult for battered women to prove that death or great bodily harm were imminent is because they often recognize signs that precede abusive episodes that might not be obvious to a jury. Research indicates that battered women often become hypersensitive to their abusers' behavior and the signs that predict beatings.[96] In characterizing why imminence is difficult for battered women to prove, Goodmark highlighted the distinction between an attack by a random stranger "versus someone you've studied for a long time, whose tendencies you know very well. You can easily believe the threat is imminent, because you know what is coming based on your past experience."[97] In *Justifiable Homicide*, Gillespie gives the example of an abusive husband who would tap his wrists before he was about to abuse his wife, indicating that she should put her wrists together so that he could handcuff her. Just the act of tapping his wrists did not pose any immediate danger, but to his wife, it carried a potentially life-threatening message.[98]

Gillespie also highlights that the imminence requirement completely misses the mark in situations where a woman needs to defend herself from rape or sexual assault. In such cases, there really is no such thing as defending herself too soon; if the perpetrator is attempting to assault her, then rape is imminent. If she must wait to defend herself until that point, then she will be in plain danger of being raped. If she kills the perpetrator afterwards, then the act has already happened and is no longer imminent.[99] Further, waiting until an abuser acts upon verbal threats to satisfy the imminence requirement puts the woman in more danger of dying. For example, "when a man who has beaten her up before says to his wife, 'This time I really am going to put

[96] Ibid.
[97] Snyder, "When Can a Woman Who Kills Her Abuser Claim Self-Defense?"
[98] Gillespie, *Justifiable Homicide: Battered Women, Self-Defense, and the Law*, 73.
[99] Ibid., 74.

you in your place,' it is hardly reasonable (or just) to expect that woman to wait, for the sake of the imminence requirement, until his hands are around her throat and she is losing consciousness before she acts to save herself."[100]

Battered Spouse Syndrome

In this next section, I discuss battered spouse syndrome, a set of features that are thought to characterize abusive relationships and the effects they have on victims. Battered spouse syndrome will later be relevant when I discuss my findings, as expert testimony on the subject was often misunderstood, mishandled, or not permitted in the cases I read where a woman pleaded self-defense to killing an abusive partner. When battered spouse syndrome was first conceived in the late 1970s, it was called battered woman syndrome, and that was the terminology used in the beginning of the 21st century, when the cases I read began. In more recent years, the court moved away from that terminology and toward using battered spouse syndrome, which is gender-neutral, so I reflect that transition by using the term battered spouse syndrome in my thesis.

The term battered woman syndrome was first coined by psychologist Lenore Walker in her book *The Battered Woman*, published in 1979, to describe the effects of intimate partner violence.[101] One of her most well-known findings was the cycle of violence that abusive relationships go through. Walker found that these relationships often experience a tension-building stage between the perpetrator and the victim, in which the perpetrator becomes agitated with the victim and the victim senses the onset of abuse. This stage peaks with an abusive incident, followed by a period of adoration and

[100] Ibid., 68.
[101] Lenore E. Walker, *The Battered Woman* (New York: Harper & Row, 1979).

contrition, in which the perpetrator is apologetic and tries to win back the affection of the victim. The stages then repeat. Walker also explained her theory of "learned helplessness," in which victims learn that they cannot prevent or control future beatings and eventually come to feel that abuse is unavoidable and there is no escaping the relationship.[102] She highlighted the reasons women stay in abusive relationships, including "not only their feelings of helplessness and the reinforcement they received during the third stage of the cycle, but also other factors - namely, fear, lack of resources, concern for children, love for their partner, shame, and lack of external support resulting from the batter's efforts to isolate them from others."[103]

Additional common effects of abuse include that it creates a constant state of fear among victims and a perception that the abusive intimate partner is omnipotent.[104] There is also a common belief among victims that the next beating will be the one that kills them.[105] Additionally, victims are often unwilling to confide in the people that they are close with out of shame, humiliation, fear of what would happen if the abusive intimate partner found out, or a feeling that they won't be believed.[106] In some victims, the abuse triggers a form of Post-Traumatic Stress Disorder (PTSD), a psychiatric disorder that can occur in people who have witnessed or experienced an extremely traumatic event.[107] Victims of intimate partner violence can exhibit common symptoms of PTSD, including reliving the trauma in flashbacks, attempting to avoid triggers,

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[102] Ibid.
[103] Kinports, "So Much Activity, So Little Change: A Reply to the Critics of Battered Women's Self-Defense," 168.
[104] Saltzburg et al., *Criminal Law, Cases and Materials*.
[105] Ibid.
[106] Ibid.
[107] "What Is Posttraumatic Stress Disorder?" American Psychiatric Association. Accessed April 4, 2020. https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd.

exhibiting avoidance behavior such as being unable to recall traumatic events, and experiencing arousal symptoms such as hyper-vigilance, irritability, and sleep disorders.[108]

Psychologists and experts on battering and its effects can provide testimony in criminal trials to provide the jury with more context to make an informed decision on the culpability of the defendant. Battered spouse testimony is routinely admitted in every state.[109] In the cases of women killing their abusers in self-defense, the point of such expert testimony is to shed light on the reasonableness of the women's actions. As discussed earlier, the jury may bring preconceived notions of battered women to the courtroom. According to Gillespie, "unless the defense is allowed to educate the jurors and the judge about what has been learned about battered women in recent years, they will have no choice but to fall back on what they know."[110] The point of expert testimony is not to say that an abused woman is always justified in killing her abuser, nor is it an insanity defense, meaning that the defendant is not responsible for her actions because of a psychiatric disease.[111]

The term battered spouse syndrome and the way it characterizes victims have received ample criticism. Critics say the use of the word syndrome pathologizes battered women, which in turn undermines the reasonableness of their perceptions and actions.[112] Others say it generalizes all battered women by creating one profile, of which some women don't fit.[113] This generalization could disadvantage certain groups who

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[108] Kinports, "So Much Activity, So Little Change: A Reply to the Critics of Battered Women's Self-Defense.".
[109] Ibid.
[110] Gillespie, *Justifiable Homicide: Battered Women, Self-Defense, and the Law, 160*.
[111] Ibid.
[112] Kinports, "So Much Activity, So Little Change: A Reply to the Critics of Battered Women's Self-Defense."
[113] Ibid.

appear less helpless to a jury, namely women of color and women who are financially independent.[114] As early as 1996, a Justice Department report commissioned by Congress concluded that the term battered woman syndrome "was no longer useful or appropriate."[115] The authors cited that it "does not reflect the breadth of empirical knowledge now available concerning battering and its effects," the term "implies that a single effect or set of effects characterizes the responses of all battered women," and that the use of the word syndrome "may be misleading, by carrying connotations of pathology or disease."[116] The report found that "the interdisciplinary fields of domestic violence and traumatic stress, which reflect work in psychology, psychiatry, sociology, nursing, criminal justice, and other disciplines," support the fact that intimate partner violence is associated with a wide range of traumatic psychological responses, as opposed to one response.[117]

Another line of criticism is that battered spouse syndrome gives rise to an affirmative battered spouse defense in court, which it doesn't. It is not its own affirmative defense in a criminal case. Rather, a battered spouse defense means presenting battered spouse syndrome expert testimony to aid the jury in determining whether the defendant honestly and reasonably believed she was in imminent danger and thus has a valid self-defense claim.[118]

It is also worth noting that medical and legal definitions are not always identical and transferrable. Having a diagnosable medical condition does not invalidate a self-

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[114] Ibid.
[115] U.S. Department of Justice. 1996. *The Validity and Use of Evidence Concerning Battering and Its Effects in Criminal Trials: Report Responding to Section 40507 of the Violence Against Women Act.* Washington, D.C.: Department of Justice, vii.
[116] Ibid., vii.
[117] Ibid., 4.
[118] Kinports, "So Much Activity, So Little Change: A Reply to the Critics of Battered Women's Self-Defense."

defense claim or a finding of reasonableness.[119] As a replacement for the term battered spouse syndrome, the Justice Department report offered the terminology "battering and its effects," which some researchers and expert witness have adopted to avoid confusion by the use of the word syndrome. Experts testifying in support of battered women today tend to "emphasize the social realities facing victims of [intimate partner] violence, including the control exercised by the batterer, the lack of alternatives available to the women, and the dangers of leaving the abusive relationship."[120] They describe how victims attempt to protect themselves and the challenges to receiving help, and their testimony often focuses on the non-psychological effects of abusive relationships.[121] When I present my findings, I use the term battered spouse syndrome testimony to describe expert testimony on battering and its effects, because the court documents I reference use that terminology. I do not want to misrepresent the language that the court uses or alter what it is saying in any way.

Current Self-Defense Laws

Before presenting my findings, I review the current state of the self-defense laws in Michigan, Ohio, Kentucky, and Tennessee, which are under the jurisdiction of the U.S. Court of Appeals for the Sixth Circuit. I then mention a few developments in the revision of self-defense laws to show the direction in which self-defense laws are moving.

[119] Ibid.
[120] Saltzburg et al., *Criminal Law, Cases and Materials, 909*.
[121] Ibid.

All four states have an explicit imminence requirement, but Kentucky differs from other states in that it uses a different definition of imminence. In the late 1990s, the Kentucky legislature adopted a definition of imminence in which for intimate partner violence cases, "belief that danger is imminent can be inferred from a past pattern of repeated serious abuse."[122] Kentucky is the only state I am aware of that uses such a definition and acknowledges a defendant's history of intimate partner violence as affecting perceived imminence. Michigan, Ohio, Kentucky, and Tennessee all mention imminent danger of death or serious bodily harm as grounds in which someone can use deathly force to defend themselves. Michigan and Kentucky mention imminent threat of sexual assault specifically as justification for using deathly force, and Kentucky alone mentions kidnapping.

Of the four states, Michigan and Tennessee require the definition of reasonableness that was set forth earlier:"[the] individual honestly and reasonably believes the use of deadly force is necessary".[123] Tennessee places a special emphasis on reasonableness, mentioning it in the general statute and then later stipulating again that "[t]he belief of danger is founded upon reasonable grounds."[124] Ohio requires a bona fide belief, which is different than reasonableness in that it only requires the belief to be genuine, potentially avoiding the problems that arise when judging the reasonableness of a defendant.[125] Kentucky requires only a belief of imminent danger: "The use of physical force by a defendant upon another person is justifiable when…[t]he defendant believes

[122] KY Rev Stat § 503.010 (2015).
[123] MI Act 309 § 780.972 (2006).
[124] Mason v. Tennessee, U.S. Dist. Lexis 9462 (2011).
[125] State v. Martin, 21 Ohio St. 3d 91 (1986).

that such force is necessary to protect himself against the use or imminent use of unlawful physical force by the other person."[126]

All four states' self-defense laws have places where an individual has no duty to retreat from a threat of violence. Kentucky and Michigan have variations of the castle doctrine, which means an individual has no duty to retreat from his or her home. The castle doctrine is a reminder of how old the origins of current self-defense laws are, since the doctrine emerged at a time when people literally lived in castles.[127] In Michigan, the castle doctrine applies to the individual's "dwelling," meaning place of abode and any structures attached to that place, like a garage.[128] In Kentucky, the castle doctrine extends beyond the individual's residence and to their occupied vehicle.[129] In Ohio and Tennessee, the exceptions to the duty to retreat are weaker, with no absolute lack of duty to retreat in the home. In Ohio, self-defense is presumed when an individual uses defensive force against someone who is in the process of unlawfully entering or having entered his or her residence or occupied vehicle.[130] In Tennessee, this same language extends to businesses. Individuals are presumed to have acted in self-defense when using defensive force against anyone who "unlawfully and forcibly enters or has entered [their] residence, business, dwelling or vehicle."[131]

Ohio, Kentucky, and Tennessee all require that the defendant claiming self-defense was not the one that instigated the conflict. In Ohio, the defendant must show "[he] was not at fault in creating the situation."[132] Kentucky and Tennessee effectively have the

[126] KY Rev Stat § 503.050 (2015).
[127] Gillespie, *Justifiable Homicide: Battered Women, Self-Defense, and the Law*.
[128] MI Act 175 § 768.21c (2006).
[129] KY Rev Stat § 503.055 (2015).
[130] OH Rev Stat § 2901.05 (2007).
[131] TN Code § 39.11.611 (2010).
[132] State v. Martin, 21 Ohio St. 3d 91 (1986).

same rule as each other, which is that self-defense is not justified if "the defendant provokes the use of physical force by the other person or the defendant was the initial aggressor," except if the defendant "withdraws from the encounter and effectively communicates to the other person his intent to do so and the latter nevertheless continues or threatens the use of unlawful physical force."[133] Kentucky allows an additional exception if the defendant's initial force was non-deadly.

Ohio and Kentucky both allude to victims of intimate partner violence who kill in self-defense in their main self-defense statutes. In Ohio, the law states that a defendant pleading self-defense may introduce expert testimony on battered spouse syndrome as evidence to establish belief of an imminent danger of death or great bodily harm. The law specifies that battered spouse syndrome is "a matter of commonly accepted scientific knowledge," but the "subject matter and details of the syndrome are not within the general understanding or experience of a person who is a member of the general populace."[134] In Kentucky, an entire subsection of the law is dedicated to the admissibility of evidence of prior abuse in self-defense cases. According to the law, "any evidence presented by the defendant to establish the existence of a prior act or acts of domestic violence and abuse aby the person against whom the defendant is charged with employing physical force shall be admissible."[135]

It is difficult to review the state of self-defense laws as a whole because they vary state to state, but there have been a few notable developments in the way some jurisdictions handle candles of women killing their abusers and claiming self-defense. As I mentioned, Kentucky uses a definition of imminence for intimate partner violence

[133] KY Rev Stat § 503.050 (2015).
[134] OH Rev Stat § 2901.06 (2007).
[135] KY Rev Stat § 503.050 (2015).

that acknowledges that the belief of imminent danger is informed by a past pattern of abuse.[136] Additionally, some courts have turned away from using the reasonable person standard, and instead evaluate relevant self-defense claims by considering how a "reasonable battered woman," or a reasonable person with a history of abuse, would have perceived the instance in question.[137] The California Supreme Court, however, ruled in a 1996 decision that a reasonable battered woman standard could not replace the reasonable person standard. The court said the jury should view the situation from the defendant's perspective, including all relevant circumstances, which is essentially what the reasonable battered woman standard is trying to get the jury to do anyway.

There has also been some legislative action acknowledging how victims of intimate partner violence are treated by the criminal justice system. In 2012, Canada re-wrote its self-defense law to take into account not only the size, age, gender, and physical abilities of the parties, but also evidence of history of abuse between the parties. The goal of including this was to "contextualize the accused's experience so as to allow their actions to be viewed and understood as objectively 'reasonable' in the circumstances."[138] In May of 2019, New York Governor Andrew Cuomo signed into law the Domestic Violence Survivors Justice Act, which seeks to reduce the sentences of victims of intimate partner violence who are convicted for a range of crimes committed in relation to their abuser. The bill allows judges to reduce sentences and redirect sentencing from incarceration to community-based rehabilitative programs, as well as allow for a small

[136] KY Rev Stat § 503.010 (2015).
[137] Kinports, "So Much Activity, So Little Change: A Reply to the Critics of Battered Women's Self-Defense."
[138] Government of Canada, Department of Justice. *Bill C-26 (S.C. 2012 c. 9) Reforms to Self-Defence and Defence of Property: Technical Guide for Practitioners.* Ottawa, Canada: Department of Justice Canada, 2013.

population of incarcerated victims to apply for re-sentencing and earlier release.[139] Speaking about the Domestic Violence Survivors Justice Act, President and C.E.O of the New York Women's Foundations Ana Oliveira said: "It begins to acknowledge in the law that there's something else going on. You kill your torturer. Is that the same thing as a torturer killing you?"[140]

Stand Your Ground Laws

In discussing self-defense laws and how they pertain to victims of intimate partner violence who fight back, the concept of Stand Your Grand laws often comes up. Stand Your Ground laws, which were first passed by Florida in 2005 and then popularized by George Zimmerman's killing of unarmed African-American teenager Trayvon Martin, say that a person has no duty to retreat from anywhere he or she has a right to be, and does not have to go through any reasonable means to avoid danger before resorting to deadly force.[141] Stand Your Ground departs from traditional self-defense law in that it authorizes the use of deadly force to protect property, changes presumptions of the reasonableness of using deadly force, extends the castle doctrine to dwellings and occupied vehicles, as seen in some of the states' self-defense laws discussed above, and grants immunity from prosecution, and sometimes arrest, to people claiming self-defense under Stand Your Ground.[142]

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[139] "Governor Cuomo Signs Domestic Violence Survivors Justice Act," *Governor Andrew M. Cuomo*, May 14, 2019. https://www.governor.ny.gov/news/governor-cuomo-signs-domestic-violence-survivors-justice-act.
[140] Snyder, "When Can a Woman Who Kills Her Abuser Claim Self-Defense?"
[141] Mary Anne Franks, "Real Men Advance, Real Women Retreat: Stand Your Ground, Battered Women's Syndrome, and Violence as Male Privilege," *University of Miami Law Review* 68, no. 4 (2014).
[142] Ibid.

Proponents of Stand Your Ground, such as the Chief Executive of the National Rifle Association Wayne LaPierre, have justified such laws by using rhetoric of female empowerment. The classic example is a woman using Stand Your Ground to defend herself from a stranger attempting to rape her in an alley. For example, at a Conservative Political Action Conference in 2013, LaPierre said that "the one thing a violent rapist deserves to face is a good woman with a gun."[143] In reality, though, according to University of Miami Law Professor Mary Anne Franks, instead of empowering women who fight back against aggressors, Stand Your Ground has resulted in "the normalization and promotion of (often white) male violence in an increasing number of scenarios."[144]

According to Franks, Stand Your Ground is the chief narrative by which men can justify provoking deathly fights, whereas battered spouse syndrome remains the chief narrative available to women who fight back. Stand Your Ground is a justification defense, in which those who successfully claim it are deemed to have done something right. In some cases, Stand Your Ground allows claimants to evade evaluation by the criminal legal system altogether by granting them immunity from prosecution and even arrest.[145] On the other hand, battered spouse syndrome is not a justification defense at all, and is often seen as an excuse for wrongdoing in which the woman needs to plea for mercy, subjecting her behavior and history of abuse to extensive scrutiny.[146] Further, the female empowerment rhetoric used to justify Stand Your Ground doesn't comport with reality. Rather than facing sexual assault at the hands of a stranger in an alley, women are more likely to be assaulted by intimate partners, friends, or family members in a

[143] Ibid., 1101.
[144] Ibid., 1102.
[145] Ibid.
[146] Ibid.

place they often feel safe, such as a bedroom.[147] It is unclear how women are meant to stand their ground in such vulnerable scenarios, in which they don't prepare or expect to need to use deadly force.

Findings

In presenting my findings, I first provide a broad overview of my data. I draw some overarching comparisons between the women and men defendants, showing how the situations in which women and men kill and plead self-defense are inherently different, and how self-defense laws apply better to scenarios of masculine violence. Namely, women predominantly kill intimate partners in self-defense, while men predominantly kill acquaintances, strangers, or friends in self-defense. Women often kill in the privacy of a home with few witnesses, while men often kill in public spaces such as bars and stores.

After providing a broad overview, I take a deeper dive into the cases in which women killed their abusive intimate partners. I do this to show the specific hurdles women face in the courtroom, and to provide more detailed narratives of the very real women affected in these cases. The hurdles include: women struggling with a lack of a paper trail of police reports, abusive partners being deemed non-deadly if unarmed, prosecutors casting women defendants as liars with ulterior motives, and the court mishandling expert testimony relating to battered women.

[147] Ibid.

The Courtroom Is Accustomed to Men

My research entailed thoroughly reading and documenting the facts and outcomes of 234 cases. Of the 234 cases, only ten cases had women defendants. I had to read over twenty cases with a man defendant in order to read one case with a woman defendant. This was nonideal in two ways. First, I would have liked to have a larger sample of women defendants, or at least one that was more comparable to the number of men, for the sake of having more data. Regardless, these ten cases still illuminate how women defendants are treated in a male-dominated criminal justice system.

The second reason is more problematic. The fact that I read 234 cases, and only ten had women defendants, means that the federal district courts overseeing Michigan, Ohio, Kentucky, and Tennessee saw the same 234 cases, and the same ten women defendants. Courtrooms are used to dealing with men. Women defendants are rare, and their cases may necessitate other considerations and perspectives than the ones that suffice for men defendants. It seems as though, with only ten women defendants pleading self-defense to homicide charges over the course of almost twenty years, women are foreign objects to the courtroom. It is clear from the outcomes of the cases with women defendants that their experiences of intimate partner violence, experiences mostly unique to women, were not fully understood by a system that does not need to regularly consider them.

Situations and Settings

My research indicates that the situations in which women kill and plead self-defense are fundamentally different than the situations in which men kill and plead self-defense. Out of the ten women defendants, eight of them killed men and one killed a woman. In the last case, the gender of the victim is unclear based on the available court

documents. Of the eight women who killed men, all of them killed abusive intimate partners. One was an ex-husband, four were current husbands, and three were current boyfriends. The abuse these women faced varied, but they all were unsuccessful with the self-defense theories they presented to their lawyers and at trial, as they were all ultimately convicted of some homicide charge.

Further, the incidents of women killing abusive partners by and large took place in private homes, away from the public eye, without direct witnesses. Of the eight women who killed abusive partners, seven took place in private homes, and only one took place in public after exiting a car. Of the cases I reviewed, the standard case of a woman pleading self-defense looked something like this: the woman faced intermittent abuse from a partner over a long stretch of time, which culminated in either some episode of abuse, or in some moment when her partner was vulnerable, in which she used a gun or knife to kill her partner, and claimed that she did so because she feared for her life. Such an incident leaves no eyewitness but herself, and she is left to deal with a legal process that does not make it easy to prove a history of intimate partner violence.

This standard case for women is far different from the standard case for men. Of the 224 men defendants, twenty-nine killed women, twenty of which were in intimate relationships with the women. Of the twenty cases of intimate relationships, eighteen involved intimate partner violence from the men inflicted on the women, who ultimately were killed. The self-defense pleas appeared to be attempts to present the women as a threatening force during an abusive episode. Such killings are unfortunate testimonies to what happens if women don't kill in the scenarios in which they feel their lives are threatened: the violence ultimately kills them.

Considering women make up a small proportion of the victims of the men defendants, most of the cases I read were man-on-man crimes. An entire forty-four

cases involved some altercation regarding doing, selling, or buying drugs, which was about a fifth of all the cases I read. The incidents of men killing in self-defense in a public setting occurred at a much higher rate than women. For example, of the cases I read, sixteen occurred in a bar or club, ten occurred outside or inside stores, four occurred outside public housing complexes, and three occurred at gas stations. These often public fights that culminated in one man killing another in self-defense aligned with the situations that self-defense laws were originally designed for: random attacks by violent assailants and fights among physical equals.[148] In this way, the self-defense cases I read with men defendants provided examples of the masculine conceptions of violence that underpin the self-defense laws themselves.

Number of Years Sentenced

The men and women defendants faced an array of homicide charges, convictions, and sentences, some more severe than others. Often defendants were sentenced to a range of years (e.g. fifteen years to life in prison), plus the sentences from the charges that can accompany a homicide charge, such as using a firearm in the commission of a felony, often called felony firearm. I simplified the years sentenced for each defendant to be the sum of the minimum number of years sentenced, so the numbers I present are the best-case scenario for those convicted. If a defendant was sentenced to fifteen years to life in prison plus an additional two years for felony firearm, the years simplified would be seventeen years. I rounded both life and death sentences to 100 years for the sake of the average calculation.

[148] Gillespie, *Justifiable Homicide: Battered Women, Self-Defense, and the Law*, 41.

On average, the women defendants were sentenced to 61.423 years in prison. Of the ten women, three of them had life sentences. One of these women was individually sentenced to two life sentences. Even though most of these women had pleaded self-defense for killing an abusive partner, they still on average spent almost a lifetime in prison.

On average, the men defendants faced 61.23 years in prison, between two or three months less than the woman defendants. Even after controlling for men-on-men crime, men who killed women in intimate relationships were on average sentenced to 62.2 years in prison. This surprised me. Although I suspected that women defendants would have trouble successfully pleading self-defense and being exonerated on their charges, I didn't expect their sentences to be almost exactly the same as men. Given that women almost exclusively kill in self-defense to kill an abusive partner, I expected the women would receive somewhat reduced sentences. My findings proved otherwise, that despite women's experiences of intimate partner violence and the serious threat to their lives their partners posed, women faced the same amount of years in prison as men, who often killed in self-defense over bar fights, drug deals, family disputes, and money. They even faced comparable years in prison to the twenty men who killed their intimate partners, eighteen of which had a history of abuse in the relationship.

Success on Appeal

All of the cases I read were appellate court cases, meaning the defendants had already been convicted and were appealing their convictions. The prospects of success of appeal were extremely bleak across the board for both genders, with the women in my small sample faring slightly better than men. Of the ten women defendants, only one had success in appealing her conviction. This appeal was later reversed in a

subsequent appellate court. Of the 224 men defendants, only thirteen had success in appealing their convictions. This seems to be more of a testimony to how difficult it is to appeal an original conviction, regardless of the gender of the defendant. Case after case raised numerous issues on appeal—often ineffective assistance of counsel or inadequate jury instructions—and case after case the judge rejected the defendants' reasoning. In order for the conviction to be overturned, the error in the original trial needed to be so egregious that the appellate judge was sure the outcome would have been different if the error had not occurred.

Issues Raised on Appeal

Interestingly, the issues raised on appeal by the women defendants were noticeably different than the issues raised on appeal by the men defendants. Out of the ten women defendants, five of them claimed ineffective assistance of counsel, saying that their lawyers failed to introduce relevant self-defense evidence. That is half of the sample of women. Out of the 224 men defendants, sixty-three claimed the same, so a little over a quarter of the sample of men. The women in my study were more likely than men to not receive legal counsel that presented an extensive enough self-defense theory. At least, the women in my study were more likely than men to feel that they had not received legal counsel that presented an extensive enough self-defense theory. I will explore the specifics of the women's ineffective assistance of counsel claims and other legal challenges the women encountered later in this thesis.

Women Who Killed Abusive Intimate Partners

In this section, I discuss in depth the eight cases of women who killed their abusive partners. After reading all 234 cases, I returned to these eight cases and dove deeper into the problems women encountered pleading self-defense in their original trials and what issues they raised on appeal. This second read was illuminating. The same themes appeared in the women's stories and trials; their frustrations and challenges were recurrent. Some of the court decisions provided more detailed accounts of the abuse that the women suffered, others simply mentioned that they were abused. In my discussion, I provide the level of detail that was provided in the decisions, varying from case to case. After combing through the eight cases, I identified a few overarching themes, which I explore individually.

First, at trial, many women encountered issues with lacking a paper trail that proved prolonged abuse in the relationship. Having just one documented police report was considered insufficient, and this lack of official documentation was used by the prosecution to bolster the argument that these women did not actually suffer abuse at the hands of their partners.

Second, the abusive partners were largely considered not to be deathly threats if they were unarmed. There was an implication that a woman using a gun to defend herself was excessive when the man didn't have a gun, neglecting the reality that abusive men can and do kill their partners without weapons.

Third, prosecutors often characterized the women at trial as liars who may not actually have suffered abuse and had ulterior motives in killing their partners. The prosecutors played on cultural perceptions of women in a way that downplayed the violence the women faced and wrongly asserted the innocence of the men killed.

Fourth, expert testimony regarding battered women and battered spouse syndrome was limited, not permitted, misunderstood, or deemed irrelevant. Many women on appeal were frustrated with the lack of or mishandling of battered spouse syndrome expert testimony in their original trials, and the appellate court struggled to see how adequate battered spouse syndrome testimony would have affected the outcome of the trial.

Lack of Paper Trail

A few of the cases I read embodied the issues women face with lacking documented police reports of intimate partner violence when attempting to claim self-defense. As discussed earlier, there are many reasons why abused women would not have faith in the criminal legal system and hence why intimate partner violence is underreported. Police officers may treat intimate partner violence calls as low priority or elect not to arrest the perpetrator based on personal attitudes toward intimate partner violence.[149] If the case gets brought to the county prosecutor, the prosecutor may not bring it to court for a multitude of reasons. The prosecutor may have difficulty in getting anyone to testify, may fear that the judge won't take it seriously for lack of prestige or the perceived lack of abuser's danger, or may believe that the woman will ultimately change her mind and drop the case.[150] Sometimes women engage with the criminal legal system for motives other than obtaining convictions for their abusers, and withdraw their cases once they feel there is nothing else to be gained.[151]

[149] Ibid., 135-44.
[150] Ibid., 135-44.
[151] Erez, "Domestic Violence and the Criminal Justice System: An Overview."

One case that exhibited issues with a lack of police documentation was *Shimel v. Warren*, which came before the United States District Court for the Eastern District of Michigan, Northern Division in 2015 and appealed to the 6th Circuit Court in 2016.[152] In this case, Rebecca Shimel shot her husband Rodney Shimel nine times. Rebecca testified that her husband had abused her physically and emotionally throughout their thirty years of marriage, and that he had previously threatened to kill her. He had punched, strangled, and restrained her, as well as inflicted sexual violence. Early in their relationship, she had stabbed him with a knife while he was choking her. At the time of the killing, Rebecca was addicted to gambling and the family was having financial troubles. Rodney was working multiple jobs, and some money had gone missing. Allegedly, he was considering leaving the home and divorcing Rebecca.

Initially, Rebecca did not tell the detective that she thought her husband was going to kill her that day. She later said this was an effort to protect her family from media attention. At trial, Rebecca's best friend from high school testified that Rebecca had shown her bruises from Rodney before, as well as a gun that Rebecca said her husband had threatened to kill her with. Rebecca's daughters, however, did not recall witnessing any physical abuse. Rebecca's lawyer met with her only twice, for a total of one and a half hours. He did not explain to her the sentencing guidelines or ask if she had any prior convictions. Rebecca was ultimately found guilty of second-degree murder and felony firearm and sentenced to eighteen to thirty-six years in prison for the murder charge, plus an additional two years for the felony firearm charge.

In her habeas petition, Rebecca claimed her defense counsel was ineffective for failing to present battered spouse syndrome testimony, as well as inadequate

[152] The following section draws upon Shimel v. Warren, U.S. Dist. Lexis 150817 (2015).

communication. In this section, I focus on the failure to pursue battered spouse syndrome testimony. Prior to trial, the defense attorney was investigating a battered spouse syndrome claim and intended to hire an expert to evaluate Rebecca and provide battered spouse syndrome testimony. The attorney said he spoke several times with a lawyer from the National Clearinghouse for the Defense of Battered Women and received information on prior cases that contained battered spouse syndrome testimony. He said that he spoke with Rebecca and her family about it, but decided not to present battered spouse syndrome testimony in the end. Instead, the attorney requested a plea deal, and eventually the prosecutor agreed to drop the open murder charge in exchange for Rebecca pleading guilty to second-degree murder, with no sentence recommendation. Her defense attorney said his intention was to get Rebecca out of prison sooner and with her family, which he thought would be better achieved with a plea deal than with presenting battered spouse syndrome testimony in court. Rebecca took the plea deal under her attorney's advice without fully understanding what it meant.

Rebecca's attorney's main concerns with claiming self-defense were that Rebecca reloaded the gun while shooting Rodney, which indicates premeditation, and that there was not much evidence to prove a history of physical abuse. There was one documented incident of intimate partner violence in which Rebecca had called the police, which was not enough in the attorney's eyes. When asked about whether he thought battered spouse syndrome was a viable defense, the attorney responded that he didn't think it could be "sold" to a jury.

Out of the eight cases I read, this was the only one that even had a prior documented history of physical abuse. For reasons I discussed earlier, it is difficult to have a lengthy paper trial of evidence proving physical abuse. Even one documented

incident should be treated with significance. The court decided in favor of the defense attorney because Rebecca did not meet the burden of showing that battered spouse syndrome testimony would have been successful if it had been presented at trial. As far as I know, Rebecca is imprisoned in the Women's Huron Valley Correctional Facility less than ten miles away from the University of Michigan.

Another case I read that suffered from a lack of a paper trail was *Bason v. Yukins*, which appeared before the United States District Court for the Eastern District of Michigan, Southern Division in 2005 and the 6th Circuit Court in 2009.[153] Lanise Bason killed her husband, Bryant Branch, by hitting him with a car that was going over forty miles per hour. She then crashed the car into a tree. At trial, witnesses and Branch's family testified that Branch had had an affair, the couple fought, were separated, and were getting a divorce. The defense counsel called no witnesses and argued that the death was accidental, despite Bason's claims that Branch was abusive during their marriage and she killed him in self-defense. The defense counsel maintained she had previously investigated and decided not to pursue the defenses of diminished capacity, heat of passion, and battered spouse syndrome. Bason was ultimately convicted of second-degree murder and sentenced to eighteen to fifty years in prison.

In her habeas petition, Bason argued that her trial counsel was ineffective for failing to present a viable defense. It's most relevant to this thesis to focus on why the counsel did not pursue a battered spouse defense. According to the trial counsel, she did not pursue such a self-defense theory in court because she could find no police reports of abusive activity, and the witnesses testified that they saw mutual fights between Bason and Branch. This implies that in order to pursue a battered spouse

[153] The following section draws upon Bason v. Yukins, U.S. Dist. Lexis 12749 (2005).

defense, there would have had to be police reports of abusive activity. Not having the paper trial of police reports delegitimized Bason's self-defense claim to her lawyer to the point where her lawyer did not think it was worth pursuing in court. Second, this justification also implies the occurrence of "mutual" fights somehow contradicted the idea that Bason's husband was abusive toward her and she suffered from battered spouse syndrome as a result. In reality, Branch could have been abusive, and the couple could also have gotten in mutual fights. The two are not mutually exclusive.

In its decision reviewing whether or not the trial counsel was ineffective, the United States District Court for the Eastern District of Michigan, Southern Division said that in order to admit expert testimony on battered spouse syndrome, it must be reasonable to infer that the defendant was a battered spouse. The court casted doubt that Bason even was a battered spouse at all, and thus could not believe that she feared for her life at the time of the killing: "While there may have been evidence of physical fights with [Branch] in the past, the existing record does not establish that the defendant honestly or reasonably believed she was in imminent danger of death or great bodily harm sufficient to establish a claim of self-defense".[154] The court rested this opinion on the fact that the night before the killing, Branch had come to Bason's house, treated her well, and not abused her. The court seemed to believe that Branch not abusing Bason on one night was sufficient evidence that Bason could not have feared for her life, which is not true. Bason could have feared for her life for reasons unrelated to what happened the night directly before the killing.

[154] Bason v. Yukins, U.S. Dist. Lexis 12749 (2005), 7.

Abusers Considered Non-Deadly If Unarmed

Across the cases I read, there was an implication that the woman claiming self-defense was not under imminent deathly threat if her partner was unarmed or was *only* beating her using his physical strength. More broadly, the woman defendant was seen as escalating things if she used a weapon such as a knife or a gun to protect herself from her partner punching, hitting, strangling, or choking her. The idea that someone needs a weapon to be deathly is rooted in a masculine perspective. It is very plausible that a woman could fear for her life when facing an unarmed abusive man and could only reasonably defend herself using a weapon.

This theme was present in the case *Connell v. Andrews*, which appeared before the United States District Court for the Northern District of Ohio in 2009.[155] In the case, Linda Connell killed her husband of ten years, Alexander. In the time leading up to the killing, their marriage had become strained and they were planning on getting a divorce. The day before the killing, Linda had asked her friends if she could do target practice in their backyard with her gun. One of the roommates was uncomfortable with the idea and advised her not to keep a gun while she was dealing with marital stress. The other allowed her to do the target practice. The next day, Linda shot her husband twice, the details of which were not disclosed in the court's decision. After she shot Alexander, Linda penned an apology letter, and then drove to the police station to turn in her gun and report a case of domestic violence. The police searched her home and found Alexander's body. At the arraignment, Linda submitted a written not guilty plea by reason of insanity. At trial, she claimed that she shot her husband in self-defense. She was convicted of involuntary manslaughter and felony firearm in Huron County,

[155] The following section draws upon Connell v. Andrews, U.S. Dist. Lexis 16569 (2009).

Michigan, and sentenced to nine years in prison for the manslaughter charge and three years for the felony firearm charge.

In Linda's habeas petition, she claimed that the trial court usurped the role of the jury by imposing a non-minimum sentence. She also claimed that she received ineffective assistance of counsel because her lawyer did not object to the sentence. Involuntary manslaughter convictions carry a minimum sentence of three years, and the maximum sentence that can be attached to that without any additional findings is three years, which still makes her nine-year conviction too long. The court's reasoning was that they didn't want to undermine the seriousness of the crime by only sentencing Linda to three years in prison.

More relevant to this section is the claim that Linda raised when she appealed her conviction to the appellate state court. On appeal, she said that the trial court erred by refusing to admit expert evidence about her husband's drug use at the time of his death, which would've supported her self-defense claim. She alleged that the absence of this expert evidence prejudiced her trial. The expert toxicology that Linda was referring to would have explained the behavior that can result from drug use, and would have contextualized Alexander's behavior, who Linda claimed was on drugs at the time of the killing. In reviewing the decision to exclude such testimony, the state court said the record contained no compelling evidence that Alexander was behaving in a drug-induced, aggressive fashion when Linda shot him. On the contrary, the court claimed there was ample evidence indicating that Linda was the one who started the incident that lead to her husband's death, because she was the one who went to the drawer and got the gun, which she admitted in her apology letter. In the state court's owns words: "Appellant, not the decedent, but the gun in play. There is no evidence to suggest appellant had any reasonable cause to fear for her safety when she sought out the gun.

There is nothing to suggest a nexus between the decedent's substance use and appellant's act of aggression."[156]

In this case, the court seemed unable to understand that the incident that lead to Alexander Connell's death did not have to be isolated, and did not begin with Linda retrieving a gun. Linda could have reasonably feared for her life for a long time before she confronted Alexander. Once she took action and secured a gun, she was the instigator in the court's eyes, despite Alexander allegedly being the perpetrator of the abuse that drove Linda to do what she did. In a reading of events that differs from the court's, Linda putting the gun into play represents a potential sign that she feared for her life, not evidence that she did not. Alexander Connell did not need to put the gun into play to be life-threatening.

The next case of interest involves a knife instead of a gun, but demonstrates the same theme, nonetheless. In *Hunter v. Andrews*, a case that the United States District Court for the Northern District of Ohio, Eastern Division heard in 2008, Thomia Hunter killed her on-and-off boyfriend Andrew Harris and claimed self-defense.[157] The day of the killing, the couple had been drinking and returned to Hunter's apartment to have sex. Hunter testified that she woke up to Harris accusing her of cheating on him. When she told him to leave, he hit her, and then obtained a knife and started poking it at her, cutting her leg. Harris continued to hit Hunter, so she retrieved a different knife from the kitchen. Harris then picked Hunter up by her throat and began to choke her while slamming her back and forth. Meanwhile, she fended him off with the knife. He pulled her head back and poured hot sauce in her eyes while she continued to blindly wield the knife. Once Harris fell, Hunter called 911 and reported that they were both injured.

[156] State v. Connell, 2005-Ohio-3202, 7.
[157] The following section draws upon Hunter v. Andrews, U.S. Dist. Lexis 90517 (2008).

She waited for the police and paramedics to arrive, and immediately told police that Harris couldn't be dead because she had only stabbed him in the leg. The officers later testified that Hunter seemed shaken up and concerned about Harris's condition.

Two knives were recovered from the scene. Only one had blood on it, and it was Harris's. Harris had sustained nine deeper stab wounds and thirteen incised wounds, with some in his chest and arms, while Hunter only had a cut on her knee. The couple had previously lived together with Hunter's daughter Marshia, who testified at trial about the extent of Harris's abuse. Marshia testified that she had witnessed Harris kick in a door, throw things, and slam Hunter against a couch. On one occasion, after an argument between Hunter and Harris, Hunter and Marshia checked into a hotel so that they could hide from Harris. Marsha testified that the abuse occurred when Harris was drinking. Despite Hunter's testimony explaining the sequence of events, Marshia's testimony corroborating her mother's experiences of abuse, and Hunter's immediate self-defense claim and compliance with the police, she was convicted by a jury in Cuyahoga County, Ohio of felony murder and felonious assault. She was sentenced to serve fifteen years to life in prison.

In her habeas petition, Hunter claimed that she had ineffective assistance of counsel and that the trial court failed to instruct the jury on lesser offenses than felony murder. In this second claim, Hunter argued that the state appellate court, which had heard her case on appeal and affirmed the lower court decision, erred in finding that she knowingly intended to injure Harris. The state appellate court has said that the evidence presented by Hunter did not support a self-defense claim because she had not demonstrated that she believed she was in imminent danger of death or great bodily harm at the time of the killing. The court hinged this decision on the fact that the only blood found on a knife was Harris's, and the only blood found on the blinds and floor

of the apartment was Harris's as well. In the words of the state appellate court: "Thus, even if we assume that Harris caused the scrape on Hunter's knee, the evidence demonstrates that Hunter used excessive force—22 knife wounds to Harris as opposed to one wound to Hunter—to defend herself."[158]

In the same way that the court in *Connell* could not see how Alexander could have been a deathly threat without a gun, the court in *Hunter* could not see how Harris could have been a deathly threat without drawing blood. The court basing its decision almost exclusively on blood evidence is odd, especially because the abusive acts that Hunter mentioned—hitting, slamming her against things, strangling her—do not necessarily draw blood. This kind of psychical abuse is dangerous and does not need to break skin or draw blood in order to be deathly. Moreover, Hunter's account of the abuse leading up to the killing aligned with the type of abuse Marshia had witnessed—kicking, throwing objects, slamming Hunter against a couch. These things do not necessarily draw blood either, but they can still be deathly. The United States District Court for the Northern District of Ohio, Eastern Division ended up siding with the state appellate court and denying Thomia Hunter's habeas petition. As of now, she will spend up to a lifetime in prison for allegedly defending herself from her abusive boyfriend while he was hitting and choking her.

Treatment by Prosecutors

Another theme present throughout the eight cases I read was the prosecutors framing the women defendants as vindictive liars during trial, and often casting doubt that the women were ever abused at all. Women were depicted by prosecutors as

[158] State v. Hunter, 2006-Ohio-20, 18.

having ulterior motives for killing their partners and making up abuse as an excuse. This finding reinforced the literature I presented earlier about how cultural perceptions of women can influence jury decisions in homicide cases where a woman defendant is pleading self-defense. Prosecutors may play on the stereotypes that women are irrational, crazy, reactive, or overly emotional, and in turn portray the abusive partners as innocent and noble.

One prominent case exhibiting this kind of prosecutorial conduct was *Ewing v. Washington*, which the United States District Court for the Eastern District of Michigan, Southern Division heard in 2010.[159] In the case, Shirley Ewing shot and killed her abusive boyfriend of thirteen years named Leon Smithers. The day of the killing, Ewing and Smithers were hanging out with Ewing's brother and two other friends at Smithers' house, drinking and playing games. Ewing and Smithers got into an argument, and Smithers called the police to take Ewing away. Ewing was brought to the police station, given a ticket, and released later that night. According to Ewing's testimony, Smithers had been texting her while she was at the station asking her to come back over, so she returned to his house. When she arrived, she sat on his lap and they started talking to reconcile what happened earlier, which escalated into an argument. Smithers slapped Ewing and she slapped him back. He then began to punch and kick her, so she reached under the chair where she knew he kept a gun. Ewing was on the floor from being punched and kicked, and as she was getting up, she pointed the gun at him with the intention of getting him to back away so she could leave the house. The gun discharged once as she was getting up, hitting Smithers. Ewing's brother, who had a history of violence, called her name, so she turned in his direction and the gun discharged again.

[159] The following section draws upon Ewing v. Washington, U.S. Dist. Lexis 9587 (2010).

Another friend who was present came toward her, so she shot the gun at him twice and fled the house.

At trial, Ewing claimed she killed Smithers in self-defense. Her bother had testified on behalf of the prosecution that Ewing had brought her own gun to the house and intended to shoot Smithers. Ewing maintained that her brother was lying. She testified to the extent of Smithers's abuse. She said he beat her every week or two and had twice assaulted her using a gun, which, as I discussed, is correlated with a much higher likelihood of femicide in an abusive relationship.[160] Her testimony was to no avail. The jury in Genesee County Circuit Court, Michigan convicted her of one count of second-degree murder, two counts of assault with intent to do great bodily harm less than murder, and felony firearm. She was originally sentenced to fifty to eighty-three years in prison for the murder charge, plus five to ten years for each assault charge, plus two years for the felony firearm charge. She appealed her sentenced and was re-sentenced to thirty-one years and three months to fifty years for the homicide charge, with the same sentences for the other charges.

In her habeas petition, Ewing claimed that the prosecutor committed misconduct by evoking sympathy for Smithers, appealing to the jurors to do their civic duty, and denigrating Ewing and her lawyer, among other claims. During trial, the prosecutor kept referring to Smithers as innocent and repeatedly made sympathy-evoking comments. He lamented to the jury about how Smithers would "never eat another ice cream cone" or "spend another Christmas with his family".[161] The prosecutor also called Ewing a liar who was telling a "self-interested story".[162] He said she was "guilty as sin,"

[160] Campbell et al., "Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study."
[161] Ewing v. Washington, U.S. Dist. Lexis 9587 (2010), 5.
[162] Ibid., 6.

and called her "miss congeniality" and "the terminator".[163] The prosecutor also called her self-defense claim laughable and desperate. Ewing claimed the cumulative effect of the prosecutor's conduct rendered her trial unfair. These claims are obviously intended to paint Ewing as conniving and heartless while making Smithers seem innocent.

In deciding whether or not to grant Ewing the habeas petition based on the prosecutor's conduct, the court validated the legitimacy of the prosecutor's remarks. To the claim about the prosecutor evoking sympathy and framing Smithers as innocent, the court said this characterization was not calculated to stir up the jury's prejudices. To the claim that the prosecutor denigrated Ewing by calling her a guilty, self-interested liar, the court said this was a permissible attack on Ewing's character. To the claim that the prosecutor denigrated the self-defense claim by calling it laughable and desperate, the court said these comments attacked the defense on its merits and urged the jury to question the credibility of Ewing's testimony. In order to get habeas relief for the prosecutorial misconduct claim, Ewing would have had to show that her due process was violated, meaning the prosecutorial misconduct was so apparent and persistent that it permeated the entire trial.[164] The United States District Court for the Eastern District of Michigan, Southern Division said she had not done so. As far as I know, Shirley Ewing is imprisoned in the Huron Valley Correctional Facility in Ypsilanti, Michigan along with Rebecca Shimel.

This kind of prosecutorial conduct was not isolated to *Ewing*. In *Seaman v. Washington*, a case that I explore in the next section, the prosecutor facing Nancy Seaman called her a liar and questioned her about her religious beliefs, attempting to cast doubt on Seaman's claim that she was Catholic and stayed with her abusive

[163] Ibid., 6.
[164] Byrd v. Collins, 209 F.3d 486 (2000).

husband partly because of her marital vows. The prosecutor also wrongly recounted a key detail of the killing at trial, alleged to be an expert on battered spouse syndrome herself, and introduced an anonymous unauthenticated letter as evidence against Seaman at trial. In her habeas petition, Seaman claimed that the prosecutor committed misconduct for these reasons, along with six others. On every count, the court ruled over and over again that although the prosecutor's conduct may have been improper, it did not deprive Seaman of a fair trial. In another case I explain in the next section, *Sanford v. Stewart*, the prosecutor attacked Celita Sanford's credibility by calling into question the extent and severity of her boyfriend's abuse and whether she was attacked on the day of the killing at all. The prosecutor also attempted to undermine Sanford's self-defense claim by saying that she could have just left the house to flee her boyfriend's abuse. Time and time again, prosecutors attempted to undermine the women defendants' credibility and label them as liars.

Battered Spouse Syndrome Expert Testimony

Last, one of the things I found most interesting in the cases I read was the role of battered spouse syndrome expert testimony. Battered spouse syndrome testimony was not relevant to all of the cases I read, but for the ones that it was, it played a central role. Often times, in the original trials, the defense counsel had chosen not to pursue expert battered spouse syndrome testimony, which provided grounds for the women to claim ineffective assistance of counsel in their habeas petitions. In their petitions, the women stressed how the presence of battered spouse syndrome testimony would have helped the jury understand the effects of prolonged abuse and contextualized some of the women's actions that would not have made sense otherwise. The lack of battered

spouse syndrome testimony left the women defendants vulnerable to misinformed juries.

The first case I read, *Seymour v. Walker*, suffered from a lack of battered spouse syndrome expert testimony. It appeared before the Sixth Circuit Court in 2000, after Beverly Seymour had been convicted of voluntary manslaughter for killing her abusive ex-husband Richard Reams.[165] The couple had been married for eleven years. After being unable to have a child, they entered into a contract with another woman in which she would attempt to get impregnated by Reams and then give the child to the couple to raise. The woman became impregnated by a different man, but still gave the child to Seymour and Reams. According to Seymour, their marriage was abusive, and she eventually filed for divorce. The divorce was finalized, but the question of their child's custody was left up in the air until the days immediately preceding the killing.

Reams ended up receiving custody of their daughter, and went to Seymour's apartment while she was not home in the days following the decision. Seymour testified that when she arrived home, Reams "went into a little rage," hitting her and slamming her against the entrance.[166] At one point, as he was coming toward her to continue his attacks, she grabbed the gun off of the kitchen table and warned him that she was not kidding around. Seymour testified that the gun then fired without her intending to. She did not remember pulling the trigger but did remember hearing gunfire. She fled the apartment without knowing the bullet struck Reams. After the incident, Seymour checked herself into a motel and attempted to commit suicide by overdosing on aspirin. She was eventually discovered by a friend and rushed to the hospital.

[165] The following section draws upon Seymour v. Walker, 224 F.3d 542 (2000).
[166] State v. Seymour, Ohio App. Lexis 5387 (1993), 199.

Seymour testified in self-defense at her own trial. She was convicted of voluntary manslaughter and a firearm charge, which resulted in a sentence of eight to twenty-five years in prison plus an additional three years. As with the other women, if the jury had believed her self-defense claim, she would have been considered legally innocent and walked free.

There were a whole host of issues with Seymour's original trial that she raised in her habeas petition. She claimed her due process was violated when the prosecution called a surprise witness without notifying her, and the court refused to let her call her own witness to rebut the surprise witness's testimony. Furthermore, she claimed she was subjected to an unconstitutional interrogation when the county sheriff questioned her while she was in the intensive care unit at the hospital after her suicide attempt. She claimed she was not read her Miranda rights and was too drugged and ill to voluntarily waive her right to an attorney. The sheriff had only obtained a verbal waiver, and not a written one. The court did not grant her habeas relief on either of these issues.

Seymour also claimed that her trial counsel was ineffective for seventeen different reasons. Most relevantly, she claimed her lawyer was ineffective for failing to introduce evidence on battered spouse syndrome. While I do not have access to Seymour's original habeas petition, the court's decision said she painstakingly laid out the specific elements of battered spouse syndrome that matched the evidence and her behavior. Prior to trial, she was not evaluated by an expert or medically tested to determine if she exhibited battered spouse syndrome symptoms. In its decision, the Sixth Circuit Court said that such evidence would have been admissible, but that Seymour had not proved that her lawyer was deficient for not presenting such evidence. In order to be successful in her claim, Seymour would have had to show that the outcome of her case would have been different if battered spouse syndrome evidence was introduced, a conclusion

that the court said was "simply too speculative— especially in light of the facts that Seymour was no longer involved in the abusive relationship and that Seymour herself had acted violently toward Reams prior to the shooting."[167]

Here, the court's implication is that Seymour and Reams' marriage being over somehow made battered spouse syndrome testimony less relevant, as if the effects of abuse on victims somehow go away after an abusive relationship ends. This assertion shows a lack of understanding among circuit court judges about battering and its effects, further underscoring the necessity of expert testimony at trial. Furthermore, it seems exceedingly difficult to prove that battered spouse syndrome evidence would have changed the outcome of the case, which is what the court was asking Seymour to do. These decisions are necessarily speculative to some degree. *Seymour* was the first case I read where a woman killed her abusive partner and claimed self-defense. A woman who claimed she endured abuse for eleven years allegedly shot her husband on accident to defend herself from his attacks, attempted suicide, lived, and then faced a criminal justice process that seemed unconstitutional at points and unsympathetic to her experiences throughout. It exemplified the problems I had read about, but it was not in theory. It was someone's life.

One case in which a lack of battered spouse syndrome expert testimony especially posed an issue was *Sanford v. Stewart*. It was the most recent case I read, appearing before the United States District Court for the Eastern District of Michigan, Southern Division in 2017.[168] In the case, Celita Sanford shot and killed her boyfriend, who she had dated for eleven years and lived with for six years. She claimed that he had abused her for years, which multiple witnesses testified to at trial. The day of the killing, they

[167] Seymour v. Walker, 224 F.3d 542 (2000), 13-14.
[168] The following section draws upon Sanford v. Stewart, U.S. Dist. Lexis 88544 (2017).

had gotten into an argument in which she requested he move out of the house because she had caught him cheating on her. Sanford heard a pop and saw that her boyfriend had fired a gun, but the bullet had not hit her. He then began physically assaulting her and choking her. The choking scared Sanford, because she had passed out the last time he choked her. Sanford's boyfriend then threw her on the ground and started looking for his gun that he had discarded earlier, but Sanford found it first. She testified that she picked up the gun and started backing away from her boyfriend, who then lunged toward her. She fired the gun and dropped it as her boyfriend grabbed his side. At trial, she said in that moment she feared for her life: "I shot him because I feared for my life being that he already shot once and then when he said, where the f**k is his gun, and I didn't know where it was, but when I saw him looking through the clothes and I found it first I feared for my life and I may not be here. It's a lot of women that didn't get to make it."[169] At trial, she presented a straightforward claim of self-defense. Still, with the record of abuse and the evidence corroborating her testimony, the jury did not exonerate her. Sanford was convicted of voluntary manslaughter and felony firearm and sentenced to three years and three months to fifteen years in prison for the manslaughter charge, plus two years for the felony firearm charge.

In her habeas petition, Sanford claimed the she had received ineffective assistance of counsel because her lawyer failed to investigate and call an expert on battered spouse syndrome. In her petition, Sanford laid out all the reasons why battered spouse syndrome testimony would have contextualized her otherwise puzzling behavior to the jury. Sanford argued that battered spouse syndrome testimony could have explained why she initially told the police that her boyfriend had accidentally discharged the gun,

[169] Sanford v. Stewart, U.S. Dist. Lexis 88544 (2017), 2.

because battered women often protect their abusers. She still thought her boyfriend was alive when she talked to the police, which explains why she wanted to protect him. Battered spouse syndrome testimony could have also discredited the prosecutor's claims that I mentioned earlier. The prosecutor questioned why Sanford did not just leave the house, and battered spouse syndrome testimony would have explained that battered women often feel that they have no choice other than to kill their abusers, because leaving is not an option.

Battered spouse syndrome testimony could have also bolstered her credibility in the eyes of the jury, which was under attack by the prosecutor. The prosecutor was casting doubt on the extent and severity of past abuse and whether Sanford was actually attacked on the day of the killing at all. Further, battered spouse syndrome testimony would have explained why her mom never knew of the abuse she suffered, because abusers go to great lengths to conceal their abuse. Last, it would have explained why her boyfriend's violence escalated when she intended to leave him, which is characteristic of abusive relationships.

The court acknowledged the merit of her arguments but found them insufficient to establish that the lack of battered spouse syndrome testimony prejudiced her trial. The court rebutted her claims by saying that this case was too standard of a self-defense case for battered spouse syndrome testimony to be necessary or helpful. In the exact words of the court: "As we view [battered spouse syndrome] in the context of a defendant raising a self-defense claim, it would only be useful in assisting a jury where the victim was killed under circumstances that did not outwardly appear to present an imminent threat of great bodily harm or death."[170] Sanford's claims assert that this is just not true.

[170] Ibid., 5.

Battered spouse syndrome testimony can be useful in cases that may be more standard and reflect the more masculine notions of violence discussed earlier. As Sanford highlighted, battered spouse syndrome testimony can contextualize an abused person's behavior both before and after a self-defense killing that would be otherwise confusing and indicate guilt to the jury. These things matter for convictions and sentencing. Battered spouse syndrome is not irrelevant whenever a woman kills her abusive partner in too "standard" of a case, because she may still experience effects associated with battered spouse syndrome.

The last case I discuss in depth is *Seaman v. Washington*. In this case, the United States District Court for the Eastern District of Michigan, Southern Division ultimately granted the defendant habeas relief on the ground that her trial counsel was ineffective for failing to use an expert witness at trial, therefore mandating her release.[171] It was the only case I read where a federal court granted habeas relief. I am not sure what made this case's appeal successful compared to others. The court's decision mentioned that the defendant was a schoolteacher, suggesting that she may have had a high enough income to hire a good lawyer. Regardless, the ruling in the defendant's favor was appealed to the Sixth Circuit Court, which reversed the decision and remanded the case. Nevertheless, Seaman's case illuminates how crucial battered spouse syndrome testimony can be, and how its absence can make for ill-informed convictions.

Nancy Seaman killed her husband Robert Seaman, who she claimed was both physically and verbally abusive for many years. He died by blunt force, having been struck on the head with a hatchet at least sixteen times and stabbed at least twenty-one times with a knife. The day of the killing, she claimed he confronted her about her plans

[171] The following section draws upon Seaman v. Washington, U.S. Dist. Lexis 115588 (2010).

to leave him, having discovered that she bought a condominium three months prior. Nancy testified that he threw her against the fridge, and then picked up a knife and drew it across her hand. She tried to escape, but the key was missing from the dead bolt in the front door, so she ran to the garage. As she was running into the garage, her husband shoved her down. As she was getting back up, she felt a hatchet on top of the generator, which she grabbed and swung at him countless times to fend him off. She continued to swing the hatchet, testifying that she was terrified and believed that if her husband got his hands on her, he would kill her. She then grabbed a knife and stabbed him.

The federal district court decision contained ample material about other witnesses' testimonies. Both of Nancy and Robert Seaman's sons testified, offering conflicting testimonies. One said he had never witnessed any abuse and was skeptical of his mother's testimony. The other said he had personally witnessed abuse, and that his relationship with his father had soured when he had confronted his father about it a year prior. He testified that he knew his mother was planning on leaving his father, but that he had been instructed to keep it a secret because his mother feared for her life if his father found out. Nancy was an elementary school teacher, and multiple school employees testified that they witnessed signs of abuse. The principal testified that he recalled a very severe black eye in the two years leading up to the killing. Two teachers and the head custodian also testified that they observed various injuries on her during her time at the school.

At trial, Nancy claimed that she exhibited signs of battered spouse syndrome and killed her husband in self-defense. The prosecution's theory was that the killing was premeditated, hinging on the fact that she had purchased the hatchet the day before. Nancy's explanation for this was that the yard was unkept and needed trimming, which

was corroborated by evidence that her and her husband had been in a dispute over yard work and it was unkept as a result. The court convicted Nancy of first-degree murder and sentenced her to life in prison.

In her habeas petition, Nancy listed multiple ineffective assistance of counsel claims. The most relevant for discussion was the claim that her counsel was ineffective for failing to adequately prepare and use an expert witness, Dr. Lenore Walker, because this claim led to the court granting habeas relief. Nancy argued that her counsel failed to have Dr. Walker independently assess her, which left Dr. Walker vulnerable to cross-examination at trial. Further, Nancy claimed her counsel lacked an understanding of the extent of permissible expert testimony on battered spouse syndrome under Michigan law, which left the jury without an expert opinion as to whether Nancy's behavior was consistent with the characteristics of battered spouse syndrome.

At Nancy's original trial, two clinical experts on battered spouse syndrome testified, Dr. Walker and Dr. Abramsky. Neither were allowed to disclose their opinions or conclusions on Nancy's case, at the instruction of Nancy's lawyer. They were only allowed to testify about what battered spouse syndrome was in general, with no specific relation to Nancy's case. Dr. Abramsky had met with Nancy on two separate occasions and performed psychological tests on her, but could not testify to his results or conclusions. Dr. Walker had never met with Nancy, and could only testify about the characteristics of battered spouse syndrome, without connecting them to Nancy's actions.

In Nancy's appeal to the state appellate court, she attached a letter from Dr. Walker detailing how Nancy's case related to battered spouse syndrome and how her behavior was consistent with the characteristics of battered spouse syndrome. This is what Dr. Walker would have testified in the original trial if Nancy's counsel had

allowed it. During the district court evidentiary hearing, Dr. Walker testified that Nancy's "actions before, during, and after the killing were consistent with someone suffering from battered spouse syndrome".[172] She contextualized for the court some of Nancy's puzzling behavior. Despite claims that she had been abused for decades, Nancy showed very little physical evidence of abuse. Dr. Walker testified that often abusers know where to hit their victims so as not to cause visible bruising. After she killed her husband, Nancy covered his body and cleaned up the garage instead of calling the police right away. Dr. Walker testified that this behavior was consistent with someone who exhibited battered spouse syndrome. During trial, Nancy was flat and unemotional, which the jury analyzed as showing a lack of remorse for a premeditated killing. Dr. Walker testified that this kind of emotional conduct can be the result of years of abuse.

Further, upon review, the district court found that the trial counsel was wrong that expert witnesses could only testify about general characteristics of battered spouse syndrome. State case law at the time indicated that expert witnesses were allowed to testify that a defendant's actions were consistent with someone exhibiting battered spouse syndrome.

In order to receive habeas relief for ineffective assistance of counsel, Nancy had to pass a two-prong test that was established under the case *Strickland v. Washington*. First, Nancy had to show that her counsel was deficient, which required showing that her lawyer made errors so serious that he was not functioning as "the counsel" guaranteed by the Sixth Amendment.[173] The Sixth Circuit Court found that the counsel's "failure to argue for the admissibility of the full breadth of experience testimony allowed under

[172] Seaman v. Washington, U.S. Dist. Lexis 115588, (2010), 11.
[173] Strickland v. Washington, 466 U.S. 668 (1984).

Michigan law, his failure to present that testimony, and his failure to arrange for Dr. Walker to personally interview and evaluate Petitioner satisfie[d] the first prong of Strickland".[174] Second, Nancy had to show that her counsel's deficient performance prejudiced her. This requires that she show that there is a reasonable probability that without her counsel's errors, the outcome of the case would have been different. The District Court found that for the reasons mentioned earlier, combined with the lack of overwhelming evidence that supported premeditation and deliberation, there was a "reasonable probability that at least one juror would have struck a different balance had that additional testimony been presented".[175] Thus, Nancy satisfied both prongs of the Strickland test, adequately showing that her trial counsel was ineffective.

This was the only case out of eight where a woman who killed her abusive partner was granted habeas relief. After the court siding against the woman defendant over and over again, Seaman represented a sliver of hope, and then back-pedaled. It showed appellate courts were capable of identifying and rectifying critical errors in original trials, but weren't capable of making their decisions definite.

Limitations

While my findings were notable and informative, they were constrained by a few research limitations. First, as I mentioned in my introduction, all of the cases I read were appellate court decisions, because those were the only documents that were available on online databases. My preference was to use both original and appellate court decisions to see what percentage of women who pleaded self-defense to homicide

[174] Seaman v. Washington, U.S. Dist. Lexis 115588, (2010), 9.
[175] Ibid., 12.

charges received convictions overall, and if the original decisions illuminated anything new about these cases. In order to retrieve all of the original trial documents, however, I would have had to drive to all of the courthouses that the cases were originally litigated in and scan the physical copies of the decisions, which was not feasible if I wanted to cover a considerable amount of territory. Thus, I could only read the decisions of cases in which the defendant was already convicted and was appealing his or her case. This may have biased the results toward defendants with the resources and means to hire appellate counsel. Additionally, this may have biased the results toward defendants who had did not have clear-cut cases, as they were originally convicted, but believed they had a compelling argument for having their conviction overturned. It could have also biased the results in ways that are completely unknown and unpredictable.

Second, as I explained earlier, out of the 234 cases appellate cases that I read, only ten of them had women defendants. The population of men defendants compared to women, 224 to ten, was too imbalanced to do any kind of rigorous statistical analysis of the numerical findings I presented. Further, there was a high amount of variability in the homicide charges and convictions being appealed. I included any homicide charge in the pool of cases that I read, which ranged from involuntary manslaughter to first-degree premeditated murder. They were not standardized to all be the same kind of homicide case. My findings were interesting nonetheless, but did not carry the statistical soundness that a designed experiment would have.

Finally, I want to address a potential concern that the Sixth Circuit Court of Appeals is only reflective of the Midwest, and not the U.S. as a whole. While I was drawn to this jurisdiction because of personal connection, I was also aware that the Sixth Circuit Court covered both urban and rural areas and was considered politically neutral, and therefore less likely to skew my findings than a historically conservative or

historically liberal circuit court. This awareness was borne out of my personal connection to the Midwest, because I had a better understanding of the cultural terrain. According to Visual First Amendment, a data visualization website produced by the Pratt School of Information that compiled all Circuit Court cases from 1943 to 2010 and calculated a ratio of liberal to conservative decisions for each circuit, the Sixth Circuit Court is one of the four courts with the most balanced decisions.[176] The Sixth Circuit Court had only slightly more conservative decisions than liberal ones. This was far from the case for the most conservative courts, the Fifth and Eleventh Circuit Courts, which cover Texas, Louisiana, and Mississippi and Alabama, Georgia, and Florida respectively, as well as the most liberal courts, the First and the Ninth Circuit Courts, which cover much of New England and the West Coast and Alaska. Given all of the options, the Sixth Circuit Court was one of the least likely to have its rulings lean one way politically and misrepresent the country as a whole.

Conclusion

Summing Up

This thesis has examined U.S. self-defense laws and how they affect women who kill in self-defense. I argue that because modern self-defense laws originated from laws exclusively written by men to protect men in masculine situations of violence, they do not work well to protect women who kill in self-defense in the U.S. today. Unlike men, who often defend themselves from violent attacks by random assailants or during fights

[176] "Circuit Court Map." *Visual First Amendment.* Pratt School of Information. Accessed April 4, 2020. http://visualfa.org/circuit-court-map/.

between physical equals, women often defend themselves from abusive intimate partners.

The literature I reviewed illuminated the frequency and severity of intimate partner violence and the toll it takes on victims. Due to the ineffectiveness of the criminal legal system in halting intimate partner violence, among a host of other reasons, many women do not see pursuing legal action against their perpetrators as a viable option to ending the abuse. Leaving an abusive relationship is often not an option either, as research has shown that the most dangerous time for a battered woman is when she is attempting to leave her abuser.[177] Given the lack of exit options and the danger that abusive partners pose, some women feel that they either have to kill their abusers or be killed.

It may not be immediately obvious why current self-defense laws would pose a problem for women who kill in self-defense, but a closer look at the language can illuminate why this is. Two hallmarks of current U.S. self-defense laws are the reasonableness requirement, which means that the individual who acted in self-defense must have *reasonably* believed it was necessary to use deadly force, and the imminence requirement, which means that the threat of death or great bodily harm must have been *imminent* in order for self-defense to be justified.

The reasonableness requirement can be problematic for women because reasonableness was historically judged in a courtroom by asking what a reasonable man would do in the given scenario. Additionally, the reasonableness requirement leaves the woman to attempt to convince the jury that was she did was reasonable and not an

[177] Campbell et al., "Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study."

emotional impulse or overreaction, which can be difficult to do because of cultural perceptions of women that can make their way into the courtroom.

The imminence requirement can also be problematic for women because it can be difficult to prove that death by an abusive intimate partner was imminent. If a woman believes that her abusive partner will be the death of her, but waits until that death is imminent during an abusive episode, then she may actually die because she does not have the physical ability to defend herself at that time. Some women act before this point, when their abusers are vulnerable, because that is the only time that they can defend themselves. Additionally, it can be even more difficult for battered women to prove that a life-threatening abusive episode was imminent because they often recognize signs that precede abuse that might not be evident to a jury, such as a slammed door, a code word, or a hand signal.

My own research attempted to answer the question as to how women who claim self-defense to homicide charges fare in court compared to men. From my review of 234 cases in which the defendant pleaded self-defense to homicide charges, all from the 21st century and the Sixth Circuit Court of Appeals or one of the federal district courts under its jurisdiction, the women defendants were sentenced to slightly more time than the men defendants, serving on average 61.423 years compared to 61.23 years. Out of the ten women defendants, eight of them had killed an abusive intimate partner. Of these eight cases, seven took place in private homes. My research indicates that women defendants claiming self-defense to homicide charges almost exclusively killed abusive intimate partners, yet they received the same prison sentences on average as the men defendants, who often killed strangers, acquaintances, or friends in public over drugs, money, bar fights, and family disputes.

I carefully reviewed the eight cases in which women claimed they killed abusive intimate partners in self-defense, and identified four main challenges that these women encountered in the courtroom. First, the women had trouble convincing juries and judges that they were abused if they did not have a lengthy paper trail of police reports documenting a history of abuse. Second, abusive men were viewed as non-deadly if they were unarmed. Third, prosecutors often portrayed women defendants as liars with ulterior motives, attempting to undermine their credibility and put their experiences of abuse under scrutiny. Fourth, the court often misused or misunderstood expert testimony relating to battered women, which had the potential to make a significant difference in how the juries perceived the defendants' actions and understood the effects of prolonged abuse on women. Of the eight cases I reviewed, one of them had success on appeal, but even this ruling was overturned. Even after litigating their experiences of abuse and attempting to convince multiple courts that they acted out of fear for their lives, none of the women had success in permanently having their convictions overturned and walking free.

Policy Implications and Moving Forward

While there is no one solution to making self-defense laws protect women defendants just as well as men, my findings do carry a few specific policy implications, many of which center on the education of lawyers, jurors, and judges on the reality of intimate partner violence. First, my findings point toward a need for a broad and sound understanding within the courtroom of why battered women often do not leave abusive relationships or rely on the criminal legal system for protection, an understanding that, based on my research, is missing. If this was understood, then a lack of documented

intimate partner violence incidents would not be damning for women defendants, as it at times was in the cases I reviewed.

Second, my research calls for a rethinking of the standard of reasonableness imposed on battered women who kill their abusers in self-defense, because the specific factors that influence what battered women believe to be reasonable are not reflected in the reasonable person standard as it is often being applied. Is it reasonable for a battered woman to use a weapon to defend herself against an unarmed abuser? A definition of reasonableness that considers the experiences of battered women indicates that it would be. This rethinking can be extended to conventional definitions of imminence as well. Kentucky's imminence statute, which states that the defendant's belief that danger is imminent can be inferred from a past pattern of repeated serious abuse, can serve as a model.

Third, the widespread education of lawyers, jurors, and judges on intimate partner violence and its effects on victims would be partly achieved by a better use of expert testimony. Although such expert testimony is routinely admitted across the country, trial counsel in the cases I reviewed either did not understand how to use it effectively or chose to forgo it entirely out of belief that it would not be helpful. Better use of expert testimony could help courtroom officials understand why the framework used to evaluate a standard man defendant's self-defense claim often does not work when evaluating a woman defendant's self-defense claim.

The natural next step in this project would be to research which self-defense law revisions are effective in helping women successfully plead self-defense in a courtroom. Jurisdictions in which specific policy adjustments have already been made would need to be identified, and there would need to be a rigorous examination of how women pleading self-defense fared in the coatroom before and after such policies went into

effect. The revisions that prove to be effective and just, the ones that consider the experiences and perspectives of women just as much as those of men, can then be implemented in other jurisdictions, eventually becoming the new status quo. The law is not static. It is possible to identify its deficiencies and adjust accordingly, so that the law can protect everyone equally. That is the hope of my thesis.

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