IT'S REASONABLE TO HEAR THE FULL STORY: THE ADMISSIBILITY OF EVIDENCE OF BATTERING AND ITS EFFECTS

Abstract: The COVID-19 pandemic ignited a shadow pandemic of violence within homes, as lockdowns caused incidents of domestic abuse to grow exponentially across the globe. Batterers abuse their partners both emotionally and physically, and some even force their partners to commit crimes. Nevertheless, when law enforcement charges battered people with the crimes they committed, some courts exclude evidence related to battering and therefore do not allow these victims to tell their story of abuse to a jury. On July 30, 2021, in *United States v. Dingwall*, the U.S. Court of Appeals for the Seventh Circuit held that evidence of battering and its effects may be admitted into evidence to support a defense of duress. Similar to the Sixth, D.C., and Ninth Circuits, the Seventh Circuit in *Dingwall* explained that evidence of battering and its effects may assist a jury in evaluating the reasonable person standard, an essential element of the duress defense. Contrastingly, the Fifth and Tenth Circuits exclude this type of evidence, finding that its consideration would make the jury's assessment of an objectively reasonable person too subjective. This Note overviews the reasoning of federal circuit courts on both sides of the circuit split and, ultimately, asserts that the Seventh Circuit's ruling in *Dingwall* is correct because it conforms best with the reasonable person standard and, as a result, generates fairness in criminal cases for victims of domestic abuse.

INTRODUCTION

In March 2020, the COVID-19 pandemic halted activity around the world, forcing people to stay home as they tried to shield themselves from the dangerous spread of the virus.[1] Nevertheless, for many, being confined to their homes posed its own dangers, as victims of abuse were stuck with their abus-

[1] *See* Amanda Taub, *A New Covid-19 Crisis: Domestic Abuse Rises Worldwide*, N.Y. TIMES, https://www.nytimes.com/2020/04/06/world/coronavirus-domestic-violence.html [https://perma.cc/4JES-76GM] (Apr. 14, 2020) (detailing the increase in domestic abuse during the COVID-19 pandemic); Tedros Adhanom Ghebreyesus, Dir.-Gen., World Health Org. (WHO), Opening Remarks at the Media Briefing on COVID-19 (Mar. 11, 2020), https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19—-11-march-2020 [https://perma.cc/H3RE-BRQS] (declaring the outbreak of COVID-19 to be a pandemic); Off. of Governor Gavin Newsom, Executive Order N-33-20 (Mar. 19, 2020), https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf [https://perma.cc/Q2DT-DN5W] (asking residents of California to stay in their homes in an effort to protect the state's public health).

ers.[2] Consequently, incidents of domestic abuse rose globally.[3] Specifically, by April 2020, only one month since each country's respective date of lockdown began, reports of domestic violence increased by 30% in France, 25% in Argentina, 30% in Cyprus, and 33% in Singapore.[4] Yet, in reality, the increase in domestic abuse is likely much greater, as underreporting is common in cases of domestic violence.[5] Although the COVID-19 pandemic has been a front-page epidemiological pandemic, a shadow epidemic of violence in homes lurked, and continues to lurk today.[6]

Several factors exacerbated by the COVID-19 pandemic have contributed to this shadow pandemic, including increased financial stress, separation from

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[2] *See* Miriam Berger, *The Pandemic Caused a Global Surge in Domestic Violence. For Victims with Few Options, Abuse Has Become the New Normal*, WASH. POST (Dec. 29, 2021), https://www.washingtonpost.com/world/2021/12/29/coronavirus-domestic-violence/ [https://perma.cc/D2LB-BGUQ] (telling the story of one woman from Jordan who suffered her husband's abuse throughout the pandemic).

[3] *See* Taub, *supra* note 1 (explaining how cases of domestic abuse increase as families spend longer periods of time together).

[4] *See* Brad Boserup, Mark McKenney & Adel Elkbuli, *Alarming Trends in US Domestic Violence During the COVID-19 Pandemic*, 38 AM. J. EMERGENCY MED. 2753, 2753 (2020) (describing the effect of the COVID-19 pandemic on domestic abuse around the world). Some reports also note that since states' initial stay-at-home orders, domestic violence in the United States increased by 8.1%. *See generally* ALEX R. PIQUERO ET AL., COUNCIL ON CRIM. JUST., DOMESTIC VIOLENCE DURING COVID-19: EVIDENCE FROM A SYSTEMATIC REVIEW AND META-ANALYSIS (2021) (providing a detailed review of various studies conducted across the United States that analyzed the increase in domestic violence following the onset of the pandemic). Further, based on data gathered from fourteen cities of different socioeconomic statuses and demographics across the United States, calls to police due to domestic violence increased by 9.7% throughout March and April of 2020. *See* EMILY LESLIE & RILEY WILSON, COUNCIL ON CRIM. JUST., SHELTERING IN PLACE AND DOMESTIC VIOLENCE: EVIDENCE FROM CALLS FOR SERVICE DURING COVID-19, at 3 (2020) (detailing studies analyzing the increase in domestic violence calls to police). On the other hand, the pandemic made it difficult for victims of domestic abuse to call for help, as some abusers were able to monitor their victim's internet access, making it dangerous for victims to search for ways to contact helplines. *See* Laken Brooks, *Domestic Violence Has Increased During COVID-19: Here's How to Create a Quarantine-Friendly Safety Plan*, FORBES (Oct. 13, 2021), https://www.forbes.com/sites/lakenbrooks/2021/10/13/domestic-violence-has-increased-during-covid-19-heres-how-to-create-a-quarantine-friendly-safety-plan/ [https://perma.cc/HC9C-BABA] (explaining the numerous ways the pandemic has affected victims of domestic violence and providing advice to victims).

[5] *See* Phumzile Mlambo-Ngcuka, *Violence Against Women and Girls: The Shadow Pandemic*, U.N. WOMEN (Apr. 6, 2020), https://www.unwomen.org/en/news/stories/2020/4/statement-ed-phumzile-violence-against-women-during-pandemic?gclid=CjwKCAiAzrWOBhBjEi [https://perma.cc/VD5G-RCYW] (describing the issue of underreporting and explaining that limited access to cell phones is one cause of the issue). In addition to not being able to use their cell phones without their abusers monitoring their activity, many public services dedicated to helping victims were halted during the pandemic. *Id.* Data suggests that, at most, only 40% of female victims of domestic violence report their abuse or seek support. *Id.* Additionally, just under 10% of those women who do seek support decide to contact law enforcement. *Id.*

[6] *See id.* (warning of the additional danger of domestic abuse caused by the COVID-19 pandemic). Further, the increase in domestic violence could impact the economy; prior to the pandemic, such abuse cost the world an estimated $1.5 trillion. *Id.*

family and friends, and mental health struggles.[7] The COVID-19 pandemic has also empowered abusers, providing them with greater control over their partner, including the ability to monitor them more closely during lockdowns.[8] Furthermore, the great number of patients suffering from COVID-19 has and continues to overwhelm both hospitals and domestic violence shelters, causing these support centers to shift their focus away from victims of domestic violence to those suffering from the direct effects of the virus.[9] As a result, victims of domestic abuse are experiencing an increase in violence and a decrease in outside support.[10]

Though signs of domestic abuse are most visible through physical injuries, such abuse mentally affects victims of domestic abuse as well.[11] The mental effects of continual and often long-term domestic abuse have been classified as "battered woman syndrome."[12] A battered woman is a person who has been abused mentally, physically, or both, by a person with whom they have an emotional connection.[13] In addition, the batterer will often force their partner

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[7] *See id.* (describing how the COVID-19 pandemic has caused this increase in domestic violence across the globe); *see also* Brooks, *supra* note 4 (articulating that, even prior to the pandemic, an increase in factors such as housing insecurity, loss of jobs, and various emergencies have been associated with an increase in domestic violence).

[8] *See* Mlambo-Ngcuka, *supra* note 5 (suggesting that lockdowns are the perfect opportunity for abusive behavior, and that victims are hindered even further from reporting or getting help due to the abuser's ability to restrict a victim's access to phones or other forms of communication); LIS BATES, KATHARINE HOEGER, MELANIE-JANE STONEMAN & ANGELA WHITAKER, VULNERABILITY KNOWLEDGE & PRAC. PROGRAMME, DOMESTIC HOMICIDES AND SUSPECTED VICTIM SUICIDES DURING THE COVID-19 PANDEMIC 2020–2021, at 8 (2021) (asserting that although the pandemic has not directly caused an increase in domestic violence, abusers have weaponized the pandemic by using its impacts to assert control over their victims).

[9] *See* Mlambo-Ngcuka, *supra* note 5 (stating that, in April of 2020, health systems and domestic abuse shelters were reaching their breaking points).

[10] *See generally id.* (describing the increase in violence within homes as a result of the COVID-19 pandemic, and a decrease in the resources typically available to battered persons as the focus of traditional support centers shifted toward combatting the virus); Proclamation No. 10271, 86 Fed. Reg. 55455, 55455 (Sept. 30, 2021) (recognizing domestic abuse as a shadow pandemic). Recently, through the American Rescue Plan, the White House made efforts to decrease domestic violence by allocating $450 million toward resources that support victims of domestic violence and sexual abuse. 86 Fed. Reg. at 55455. The Biden administration also contributed an additional $550 million to allow domestic violence services to address COVID-19 related issues. *Id.*

[11] LENORE E.A. WALKER, ABUSED WOMEN AND SURVIVOR THERAPY: A PRACTICAL GUIDE FOR THE PSYCHOTHERAPIST 56 (1994) (providing an overview of the types of abuse victims experience).

[12] *See* Kelly Grace Monacella, Note, *Supporting a Defense of Duress: The Admissibility of Battered Woman Syndrome*, 70 TEMP. L. REV. 699, 702 (1997) (describing battered woman syndrome as the psychological impact of domestic abuse). Throughout this Note, the phrase "battering and its effects" will be used instead of "battered woman syndrome." *See infra* notes 32–34 and accompanying text (explaining why battering and its effects is the preferred term when compared to battered woman syndrome).

[13] *See* WALKER, *supra* note 11, at 56 (noting that the partner could be a person to or with whom the battered woman is married, dating, or living). Despite the term "battered woman," the victim, as well as the abuser, may be of any gender. *Id.* Physical abuse involves, but is not limited to, hitting,

to commit crimes such as forgery to pay bills, robbery to steal food or money, or drug-related crimes to satisfy the batterer.[14] Despite knowing that consequences could result from their criminal acts, because the battered person lives under constant stress and is fearful of the batterer's violence, the battered person may comply with the batterer's orders and participate in the crimes.[15]

When the battered person is charged with the crimes they committed, they often assert the duress defense, asking the court to consider this state of mind.[16] To further support this defense, the battered defendant will likely offer evidence of the domestic abuse as well as expert testimony supporting a diagnosis of battered woman syndrome.[17] When considering the admissibility of such evidence, courts must use Federal Rule of Evidence 702 (Rule 702) to decide whether a jury should be able to consider evidence of domestic abuse when determining the defendant's culpability.[18] Rule 702 requires a judge to

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choking, using weapons, and holding the victim hostage. *Id.* at 57. Physical abuse is also often accompanied by sexual abuse. *Id.*

[14] *See* Monacella, *supra* note 12, at 699 (providing an overview of the experience of a battered woman and describing the types of crimes their abuser may force them to commit).

[15] *See id.* (stating that the battered person is typically pressured to commit criminal acts because they want to obey the batterer's orders).

[16] *See infra* notes 51–64 and accompanying text (explaining the duress defense); *see, e.g.*, United States v. Dingwall, 6 F.4th 744, 745–46 (7th Cir. 2021) (stating that the defendant admitted to her three robberies but asserted the defense of duress, arguing that she only committed the crimes because her abusive boyfriend ordered her to do so); United States v. Lopez, 913 F.3d 807, 811 (9th Cir. 2019) (noting that the defendant was asserting the duress defense because she claimed that she bought a handgun using false identification only when her partner threatened to harm her family if she did not do so); United States v. Nwoye, 824 F.3d 1129, 1131 (D.C. Cir. 2016) (articulating that the defendant asserted a duress defense because her partner allegedly forced her to commit extortion); Dando v. Yukins, 461 F.3d 791, 794 (6th Cir. 2006) (stating that the defendant claimed that she suffered long-term violence inflicted on her by her partner, and that he had threatened to kill her right before she committed the robberies).

[17] *See, e.g.*, *Dingwall*, 6 F.4th at 749 (stating that the defendant requested the ability to present evidence of emails, text messages, and expert testimony that would support her claim that she suffered from an abusive relationship at the time of the crimes); *Lopez*, 913 F.3d at 811 (noting that the defendant offered to present evidence to the trial court of battering and its effects in support of her duress defense); United States v. Dixon, 901 F.3d 1170, 1175 (10th Cir. 2018) (articulating that the defendant's proposed evidence included her own testimony, which would speak to her experience with sexual violence, and an expert testifying to how post-traumatic stress disorder (PTSD) may affect one's perspective).

[18] *See* Michaela Dunn, Note, *Subjective Vulnerabilities or Individualized Realities: The Merits of Including Evidence of Past Abuse to Support a Duress Defense*, 54 SUFFOLK U. L. REV. 347, 348 (2021) (describing the trial court's task of determining the relevance of domestic violence evidence in criminal cases); *see also* FED. R. EVID. 702 (laying out the requirements that an expert witness must meet before a judge allows the expert to testify, such as having certain knowledge that will assist the jury); *infra* notes 67–69 and accompanying text (describing the requirements of Rule 702 and discussing how a judge applies the rule to expert testimony).

find that an expert's testimony would be both reliable and relevant before allowing that expert to testify.[19]

In 2021, in *United States v. Dingwall*, the U.S. Court of Appeals for the Seventh Circuit considered whether trial courts may allow evidence of battering and its effects in support of a duress defense.[20] This Note argues that the U.S. Court of Appeals for the Seventh Circuit was correct in revising its precedent to allow such evidence, contrary to other circuits that have excluded it.[21] Part I of this Note outlines the legal and factual background of *United States v. Dingwall*.[22] Part II discusses the current circuit split on the issue of whether trial courts can admit evidence of battering and its effects, as well as the reasoning of courts on both sides of the split.[23] Lastly, Part III asserts that sister circuits should follow the approach of the Seventh Circuit and change their precedent to allow battered defendants to demonstrate why they committed the crimes for which they are accused.[24]

I. BATTERING AND ITS EFFECTS, DURESS EVIDENCE, AND *UNITED STATES V. DINGWALL*

In 2021, in *United States v. Dingwall*, the U.S. Court of Appeals for the Seventh Circuit held that, in attempting to support a duress defense, a defendant may offer evidence of battering and its effects.[25] Defendants like Dingwall use such evidence to help the fact-finder understand their psychological state at the time of the crime.[26] In turn, this understanding may help the jury evaluate whether the defendant's actions were reasonable.[27] Section A of this Part discusses the psychological condition of battering and its effects.[28] Section B outlines the affirmative defense of duress.[29] Section C describes the admissibility of evidence to support a duress defense.[30] Finally, Section D discusses the fac-

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[19] *See* FED. R. EVID. 702 (outlining the requirements an expert witness must meet before a judge allows the expert to testify); *see infra* notes 65–98 and accompanying text (describing the application of Rule 702 in further detail).

[20] *See Dingwall*, 6 F.4th at 746 (reviewing the district court's decision to exclude evidence of battering and its effects).

[21] *See infra* notes 25–257 and accompanying text.

[22] *See infra* notes 25–151 and accompanying text.

[23] *See infra* notes 152–235 and accompanying text.

[24] *See infra* notes 236–257 and accompanying text.

[25] *See* United States v. Dingwall, 6 F.4th 744, 761 (7th Cir. 2021) (agreeing with rulings on the issue from the U.S. Courts of Appeals for the District of Columbia, Ninth, and Sixth Circuits).

[26] *See id.* at 754 (reasoning that evidence of battering and its effects assists a jury in evaluating the defendant's actions).

[27] *See id.* (explaining that evidence of battering and its effects allows factfinders to take psychological abuse into account when evaluating the objective reasonableness of the defendant's actions).

[28] *See infra* notes 32–50 and accompanying text.

[29] *See infra* notes 51–64 and accompanying text.

[30] *See infra* notes 65–99 and accompanying text.

tual and procedural history of *Dingwall* and introduces the facts of cases from other circuits involving the same issue.[31]

A. Battering and Its Effects

In 1979, researcher and psychologist Lenore Walker coined the term "Battered Woman Syndrome."[32] Though a battered woman is often stereotyped as an uneducated woman of a low socioeconomic class, all types of people, including those of different genders, races, and classes, may experience battered woman syndrome.[33] As a result, academic literature has recently moved away from the term "battered woman syndrome" and toward the phrase "battering and its effects," as the latter more accurately represents all genders and the myriad effects of domestic abuse.[34] In an effort to most accurately convey the psychological condition, this Note will use the phrase "battering and its effects" in lieu of "battered woman syndrome."[35]

The cycle of battering typically involves rising tensions that lead to a moment of extreme violence, followed by the abuser's apology and periods of peace, until the tension starts to build again.[36] Nonetheless, the cycle of batter-

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[31] *See infra* notes 100–151 and accompanying text.

[32] *See* Linn v. State, 929 N.W.2d 717, 735 (Iowa 2019) (explaining the history of battered woman syndrome); LENORE E. WALKER, THE BATTERED WOMAN 15–16 (1979) [hereinafter WALKER, THE BATTERED WOMAN] (defining battered woman syndrome as a pattern of effects resulting from the sexual, physical, and/or emotional abuse of an intimate relationship). Even when Walker first described the condition, she noted that the abuser is usually a man, but implied that women can be abusers as well. WALKER, THE BATTERED WOMAN, *supra*, at 18–19; *see also* Lenore E.A. Walker, *Battered Women Syndrome and Self-Defense*, 6 NOTRE DAME J.L. ETHICS & PUB. POL'Y 321, 322 (1992) [hereinafter Walker, *Battered Women Syndrome*] (explaining that those who suffer from the condition also includes children of abusive parents, those in abusive same-sex relationships, and rape victims).

[33] *See* Monacella, *supra* note 12, at 703 (addressing and correcting the stereotypes of a battered woman); WALKER, *supra* note 11, at 62–63 (noting that battering affects those across all demographics, sexual orientations, and education levels); Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191, 1195 (1993) (suggesting a need to redefine battered woman syndrome because it did not accurately convey the various psychological effects involved with the condition).

[34] *See* United States v. Dingwall, 6 F.4th 744, 752 (7th Cir. 2021) (using the term "battering and its effects" instead of "Battered Woman Syndrome"); Bonnie J. Campbell, *Foreword* to U.S. DEP'T OF JUST. & U.S. DEP'T OF HEALTH & HUM. SERVS., THE VALIDITY AND USE OF EVIDENCE CONCERNING BATTERING AND ITS EFFECTS IN CRIMINAL TRIALS, at i–ii (1996) (rejecting the use of the term "battered woman syndrome" because it is not an accurate portrayal of the various ways in which abuse can affect a victim).

[35] *See infra* notes 36–257 and accompanying text.

[36] *See Dingwall*, 6 F.4th at 757 (describing the cyclical nature of abuse (first citing WALKER, THE BATTERED WOMAN, *supra* note 32, at 55–70; and then citing LENORE E.A. WALKER, THE BATTERED WOMAN SYNDROME (1984))). Although this theory is less widely accepted today, Walker asserted that battering involves three phases: (1) tension building; (2) acute battering; and (3) loving contrition. WALKER, THE BATTERED WOMAN, *supra* note 32, at 55.

ing can look different for each victim.[37] The commonality among battering and its effects is the victim's development of a sense of learned helplessness as a result of the abuse.[38] Learned helplessness is a psychological reaction that occurs when, instead of trying to escape their abuser, the battered person experiences a psychological paralysis, unable to respond to the abuse or think of solutions, and instead reacts passively.[39] Those experiencing this psychological paralysis believe that there is no escaping the abusive relationship.[40] Various factors, including the victim's economic or social dependence on the batterer, contribute to this belief, as a batterer often controls their partner's abilities to use money and communicate with friends and family.[41]

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[37] *See Linn*, 929 N.W.2d at 736 (noting that since Lenore Walker's research, studies have found that not all victims of battering experience these three phases). Walker also theorized that victims needed to experience two cycles of these three phases in order to qualify as a battered woman. *Id.* at 735 (citing BRENDA L. RUSSELL, BATTERED WOMAN SYNDROME AS A LEGAL DEFENSE: HISTORY, EFFECTIVENESS AND IMPLICATIONS 93 (2010)). Yet courts have since rejected this theory, and instead found that admissibility of battering and its effects evidence should not be based on either the length of the abusive relationship or the frequency of its abuse. *Id.* at 737.

[38] *See* WALKER, THE BATTERED WOMAN, *supra* note 32, at 58 (stating that during Walker's third phase, victims develop a sense of learned helplessness). Nevertheless, since Walker's research, scholars have found that not all victims of battering experience the three phases, nor do they always experience them in a similar way. *Linn*, 929 N.W.2d at 736. Walker described learned helplessness as meaning not that victims of battering and its effects learn to be helpless, but rather that they learn not to respond to the abuse. WALKER, THE BATTERED WOMAN, *supra* note 32, at 58. She further theorized that learned helplessness helps explain why victims of abuse do not simply end the abusive relationship. *Id.* at 76. Yet, like her phases of abuse, Walker's description of learned helplessness has been criticized as not inclusive of a diverse array of experiences with abuse. *Linn*, 929 N.W.2d at 741.

[39] *See* Monacella, *supra* note 12, at 709 (describing the theory of learned helplessness). Some research finds battering and its effects to be a sub-category of PTSD. *See* Dunn, *supra* note 18, at 354 (explaining how PTSD relates to battering and its effects). For example, victims of abuse may experience flashbacks to previous incidents of abuse, causing them to be hypervigilant toward signs of danger, which is also a symptom of PTSD. *See id.* at 355 (comparing symptoms of PTSD with effects of abuse). As a result, some doctors diagnose defendants with both PTSD and battering and its effects. *See, e.g.*, *Dingwall*, 6 F.4th at 749 (stating that the defendant's doctor diagnosed her with both conditions).

[40] *See* Monacella, *supra* note 12, at 709 (articulating that the battered person starts to believe that the best way to respond to the abuse is to be passive and submissive to it).

[41] *See id.* at 710 (explaining why victims of battering and its effects feel that they are unable to simply leave the relationship). Various cases concerning battering and its effects demonstrate this dependence phenomenon. *See, e.g.*, *Dingwall*, 6 F.4th at 748 (stating that the defendant's partner took her food stamps from her, making her unable to purchase food for her and her daughter); United States v. Nwoye, 824 F.3d 1129, 1132 (D.C. Cir. 2016) (articulating that in the defendant's testimony, she expressed that her boyfriend controlled her both psychologically and financially, including, for example, taking her ATM card from her). In addition, other factors may motivate a battered person to stay in the abusive relationship, such as the abuser's potential for retaliation, the victim's worry for their child or children, the victim's emotional connection to their abuser, the victim's hope that the situation may change, and the victim's cultural beliefs. *See* Dutton, *supra* note 33, at 1232 (explaining in detail the various factors that may affect a battered person's approach to their abusive relationship).

Common characteristics of a batterer include extreme possessiveness and sexual jealousy.[42] Typically, the abuser asserts power over the battered person through psychological or physical intimidation.[43] This intimidation often causes the battered person to obey their abuser out of fear of being physically abused.[44] Furthermore, drug and alcohol abuse commonly contribute to the violence between the batterer and the battered.[45] For the batterer, substance abuse usually increases their violent acts.[46] Meanwhile, the battered person tends to turn to substances to alleviate the physical or mental pain they are experiencing as a result of the abuse.[47] Additionally, a common habit among battered persons is blaming themselves for the batterer's violence.[48] The battered person usually believes that they did something to provoke the batterer, so in an effort to prevent future victimization, the battered will try to behave how they think the batterer wants them to behave.[49] Compliance with the batterer's orders may extend as far as committing criminal acts on their behalf in order to avoid further abuse.[50]

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[42] *See* WALKER, *supra* note 11, at 59–61 (explaining that the batterer treats the victim as property and will often accuse the victim of cheating).

[43] *See id.* at 56 (listing the types of abuse that battered people may experience in an abusive relationship).

[44] *See, e.g.*, *id.* at 57 (explaining that a batterer's physical harm toward the battered person will help them maintain control over the battered person); *Dingwall*, 6 F.4th at 748 (noting that the defendant's abusive boyfriend was not physically violent toward her the night she followed his order to rob a gas station, insinuating that this was one way for the defendant to prevent being physically abused).

[45] *See* WALKER, *supra* note 11, at 79 (describing the effect of drugs and alcohol on the relationship between a battered person and their abuser).

[46] *Id.*; *see, e.g.*, *Dingwall*, 6 F.4th at 748 (describing how the defendant's abuser became more violent, both emotionally and physically, after he started using cocaine).

[47] WALKER, *supra* note 11, at 79. Additionally, some victims of domestic abuse have reported that they drink alcohol to accompany their alcoholic abusers, and thereby decrease the chances of the abuser becoming violent toward them. *Id.* at 68. Many victims who reported that they were addicted to alcohol also revealed that their addiction did not exist before entering the abusive relationship. *Id.* Studies cited by Walker also show that some victims of abuse become dependent on prescription drugs, as the hospitals they visit to treat their wounds will often prescribe these drugs to treat their pain. *Id.* Interestingly, though, findings show that victims of domestic abuse tend not to leave their abusive relationships until they are substance free because they can think more clearly about their choice to leave the relationship. *Id.*

[48] *See id.* at 79 (summarizing common characteristics of a battered person, including self-blame and appeasing the batterer); Dutton, *supra* note 33, at 1218–19 (stating that one cognitive effect of abuse causes victims of domestic violence to view themselves negatively, believing that they are responsible for the abuse inflicted on them).

[49] *See* WALKER, *supra* note 11, at 66 (discussing a battered woman's tendency to assume responsibility for the batterer's violent behavior).

[50] *See* United States v. Nwoye, 824 F.3d 1129, 1138 (D.C. Cir. 2016) (stating that expert testimony on battering and its effects may help a jury understand why a battered person acted criminally).

B. The Duress Defense

In cases where defendants have committed a crime because their abuser ordered it or pressured them to commit the act, defendants often raise the affirmative defense of duress.[51] The defense acts as an excuse for defendants in cases where they only acted criminally because there was no viable, lawful alternative to committing the crime.[52]

Though the exact elements of duress vary among the U.S. Courts of Appeal, generally, in asserting a defense of duress under the common law, the defendant must demonstrate the defense's two main elements: (1) reasonably fearing bodily injury or death; and (2) not having any viable alternative to acting criminally.[53] Notably, both elements of duress under the common law formulation are centered around reasonableness.[54] Similarly, the Model Penal Code (MPC) focuses on reasonableness, as it defines the defense as the accused behaving criminally because the accused was forced to do so by the threat of or actual use of force against the accused or another person, "that a person of reasonable firmness in his situation would have been unable to re-

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[51] *See, e.g.*, *Dingwall*, 6 F.4th at 745–46 (discussing the defendant's attempt to support her duress defense); United States v. Lopez, 913 F.3d 807, 811 (9th Cir. 2019) (considering the defendant's duress defense that her partner threatened to hurt her family if she did not illegally purchase a gun); United States v. Dixon, 901 F.3d 1170, 1173 (10th Cir. 2018) (noting that the defendant based her duress defense on the argument that she committed theft because of the threat of being sexually assaulted by her stepfather); *Nwoye*, 824 F.3d at 1131 (reviewing the defendant's duress defense, which was based on the fact that her partner forced her to commit extortion); Dando v. Yukins, 461 F.3d 791, 796 (6th Cir. 2006) (reviewing whether the defendant's attorney was ineffective in not originally raising a duress defense); United States v. Willis, 38 F.3d 170, 174 (5th Cir. 1994) (stating that the defendant asserted a duress defense based on her belief that if she refused her abuser's act of putting a gun in her purse, he would have been physically violent toward her); *see also infra* note 61 (defining "affirmative defense" as a defense that, if successful, negates the defendant's liability).

[52] *See* Dunn, *supra* note 18, at 356–57 (explaining the purpose of the duress defense). The duress defense is very similar to self-defense in that both defenses require an objectively reasonable fear of an imminent threat. *Id.* at 357.

[53] *Compare Dingwall*, 6 F.4th at 746 (outlining the two elements of a duress defense (citing United States v. Sawyer, 558 F.3d 705, 711 (7th Cir. 2009))), *with Dixon*, 901 F.3d at 1176 (stating that duress requires three elements: that the defendant (1) was under imminent threat of death or serious bodily injury to himself or others; (2) had no reasonable and lawful alternative to committing a crime; and (3) could reasonably foresee a causal relationship between acting criminally and preventing the threatened harm), *and Lopez*, 913 F.3d at 813 (stating that the three elements of duress are (1) an imminent threat of death or serious bodily injury; (2) a reasonable fear that the threat would occur; and (3) no reasonable means of escaping the abuser). Duress originated under common law and was incorporated as an affirmative defense into federal criminal law by the Supreme Court. *See* United States v. Bailey, 44 U.S. 394, 415 (1980) (mentioning that the duress defense was an affirmative defense at common law).

[54] *See Dingwall*, 6 F.4th at 747 (noting that the duress defense uses the term "reasonableness" twice). The evaluation of the second prong of the defense—whether there was a reasonable alternative to committing the crime—asks whether a reasonable person would have recognized the alternative and used it. *See Nwoye*, 824 F.3d at 1137 (explaining the duress defense and, specifically, the reasonableness standard).

sist."[55] Therefore, when evaluating the strength of a duress defense in both common law and MPC jurisdictions, both the court's and the jury's key inquiry is an objective reasonableness standard.[56]

In asserting the defense, the defendant carries the burden of proving the elements of duress by a preponderance of the evidence.[57] When evaluating whether the defendant's evidence is sufficient to raise a duress defense, the court weighs the evidence in the defendant's favor.[58] But it is not enough for a defendant to prove subjective fear.[59] Rather, the defendant must show that a reasonable person under similar circumstances would have feared that the threat was real.[60] If the court finds that the evidence is insufficient to support any element of the defense, the court may reject the defendant's use of it.[61] On

[55] *See* MODEL PENAL CODE § 2.09(1)–(2) (AM. L. INST. 2021) (outlining the requirements of a duress defense, including that the defendant must be coerced, threatened, or forced to act criminally, and a reasonable person would not be able to object to such force). Yet, the defense is unavailable if the defendant recklessly or negligently put themselves into the situation*.* *Id.*

[56] *See* Dunn, *supra* note 18, at 350 (describing the duress defense in the context of battering and its effects). The origin of criminal law is based in the common law, which is judge-made law. JOSHUA DRESSLER, *Origins of the Criminal Law*, *in* UNDERSTANDING CRIMINAL LAW 27, 27 (8th ed. 2018). Over time, states have codified the common law into penal statutes. *Id.* Yet, beginning in the 1950s, the American Law Institute (ALI) found a need to reform states' piecemeal criminal codes to make them more consistent, modern, and fair across the nation. *Id.* at 30. Part of this reform involved the drafting of the Model Penal Code (MPC), which many states have since adopted. *Id.* at 31. Though the MPC is not itself binding law, many courts rely on it and cite to it when interpreting penal statutes. *Id.* Looking at the duress defense, the MPC is generally thought to define the defense more broadly than the common law has. *See* Joshua Dressler, *Battered Women and Sleeping Abusers: Some Reflections*, 3 OHIO ST. J. CRIM. L. 457, 470 (2006) (explaining the difference between the MPC and the common law with regard to the duress defense). Most notably, the MPC refers to reasonableness in a way that asks whether someone of reasonable firmness, under the same circumstances as the defendant, would have committed the crime, whereas common law generally fails to use the term "reasonable firmness." *Id.*

[57] *See Dixon*, 901 F.3d at 1177 (stating that a defendant's right to bring the duress defense is not guaranteed); *Preponderance of the Evidence*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "preponderance of the evidence" as the most convincing evidence, weighing more toward one side than the other).

[58] *See Dixon*, 901 F.3d at 1178 (outlining the steps in a court's review of a duress defense, including first reviewing the evidence and then determining whether the evidence is sufficient to support a duress defense).

[59] *See* Dunn, *supra* note 18, at 357–58 (highlighting the difference between subjective and objective fear within the context of a duress defense).

[60] *Id.* A defendant in a self-defense case must prove the same standard of fear. *See id.* at 357 (noting that the elements of the duress defense are parallel to those of self-defense). For example, the MPC describes the excuse of self-defense as when the defendant believes that use of force is imminently necessary to protect themselves from the threat of another person. MODEL PENAL CODE § 3.04(1).

[61] *See Dixon*, 901 F.3d at 1178 (providing an overview of the duress defense and its requirements); *Defense*, BLACK'S LAW DICTIONARY, *supra* note 57 (defining "affirmative defense" as when the defendant raises an argument that, if accurate and genuine, will prevail over the plaintiff's argument, even if all the facts and claims that the plaintiff asserted in their complaint are also accurate and genuine). The burden of proof when raising an affirmative defense falls on the defendant. *Defense*, BLACK'S LAW DICTIONARY, *supra* note 57. Types of affirmative defenses include, for example, duress, self-defense, and insanity. *Id.*

the other hand, if the defendant provides evidence sufficient to meet the required elements of duress, the defendant may avail themselves of the defense.[62] Then, if a defendant's duress defense succeeds, the court will excuse the defendant of the crime.[63] This is especially relevant in domestic abuse cases because if a battered defendant successfully asserts a duress defense, the court will exonerate them of a crime their abuser forced them to commit.[64]

C. The Admissibility of Expert Evidence in Support of a Duress Defense

In an effort to legally excuse their criminal actions, battered defendants will often offer evidence explaining the abuse they experienced leading up to the commission of the crime.[65] Although defendants may testify to their own experiences with abuse, defendants often seek to use expert testimony to bolster support for their assertion that they suffer from battering and its effects.[66] In federal court, expert testimony is only admitted if the trial court first deems it reliable and relevant.[67] This standard is codified by Rule 702, which allows trial courts to admit expert evidence if: (1) the expert is qualified to speak on the topic they are testifying about; (2) their testimony will assist a factfinder; and (3) the expert's testimony is reliably based and applied to the facts of the

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[62] *See Dixon*, 901 F.3d at 1178 (describing how the judge may reject the defendant's duress defense if it is insufficiently supported).

[63] *See* United States v. Lopez, 913 F.3d 807, 813 (9th Cir. 2019) (describing the duress defense and the court's steps in evaluating a claim of duress, including being required to find the defendant not guilty when a duress defense proves successful).

[64] *See* United States v. Navarro, 608 F.3d 529, 532 (9th Cir. 2010) (noting that the defense of duress legally excuses a defendant from their charged crime and providing an example of duress excusing the crime of possession of heroin).

[65] *See, e.g.*, United States v. Dingwall, 6 F.4th 744, 746 (7th Cir. 2021) (stating that the defendant offered evidence of battering and its effects in support of her duress defense); *Lopez*, 913 F.3d at 811 (noting that the defendant offered to present the district court with evidence of battering and its effects in support of her duress defense); Dando v. Yukins, 461 F.3d 791, 795 (6th Cir. 2006) (stating that the defendant asserted a duress defense and submitted three different affidavits to the court, all speaking to the defendant's experience with abuse); United States v. Willis, 38 F.3d 170, 174 (5th Cir. 1994) (stating that the defendant offered evidence to support her duress defense, including calling six witnesses to testify, two of them being police officers who witnessed the defendant's abuser's violence, and one being a clinical psychologist).

[66] *See Lopez*, 913 F.3d at 823 (concluding that expert evidence on battering and its effects is relevant to a defendant's defense because it provides the jury with helpful information). Expert testimony can assist the jury in both understanding the defendant's actions and assessing the defendant's credibility. *See id.* at 824–25 (suggesting that the proposed testimony from a doctor would assist the jury in evaluating the reasonableness of defendant's actions, as well as rehabilitate the defendant's credibility).

[67] *See* United States v. Nwoye, 824 F.3d 1129, 1136 (D.C. Cir. 2016) (evaluating whether the district court should have admitted expert testimony on battering and its effects); Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 578, 579–80 (1993) (stating that Federal Rule of Evidence 702 imposes these requirements on expert testimony).

case.[68] The role of the judge is to apply Rule 702 by confirming that the expert testimony is both reliable and relevant before admitting it into evidence.[69] Yet, the judge's role must be balanced with that of the jury.[70] Although the judge decides reliability of evidence, the judge does not determine the strength of the defense that the evidence is being used to support.[71] In contrast, the jury's role is to utilize the evidence to evaluate the case and determine the credibility and weight of the expert's testimony.[72] Subsection 1 of this Section details the judge's assessment of the reliability of expert testimony.[73] Subsection 2 discusses the judge's evaluation of the relevance of expert testimony.[74]

1. Reliability

First, the judge, as the gatekeeper of evidence, must find that the expert testimony is reliable.[75] According to the Supreme Court's 1993 decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, when presented with expert testimony, judges must evaluate the methodology on which the experts base their opinions, not the conclusions provided in the expert opinions themselves.[76] Specifically, in assessing reliability of expert testimony under Rule 702, the judge must decide whether the methods the expert uses to form their

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[68] *See* FED. R. EVID. 702 (setting out the requirements an expert witness must meet before being permitted to testify); *see also Dingwall*, 6 F.4th at 760–61 (describing the judge's role as the gatekeeper of evidence, using Federal Rule of Evidence 702 to decide admissibility of expert testimony).

[69] *See Daubert*, 509 U.S. at 579–80 (describing the role of the judge as a gatekeeper of evidence); Kumho Tire Co. v. Carmichael, 526 U.S. 137, 147 (1999) (evaluating the question as to whether the judge's gatekeeping role also applies to expert testimony); United States v. Scheffer, 523 U.S. 303, 309 (1998) (asserting that U.S. governments are interested in preventing the presentation of unreliable evidence to factfinders). The judge decides the reliability and relevance of an expert's testimony by applying the language of Rule 702, which requires a finding that the expert has sufficient knowledge or experience about the topic the expert is testifying about, that the testimony is supported by data, facts, and valid methods, and that the expert has applied their knowledge to the specific facts of the case at hand. *See* FED. R. EVID. 702 (listing the requirements an expert's testimony must meet to be admitted); *see also infra* notes 75–86 and accompanying text (explaining the factors that a judge uses in determining the reliability of an expert's testimony); *infra* notes 87–98 and accompanying text (discussing how a judge evaluates relevance).

[70] *See Daubert*, 509 U.S. at 597 (articulating that the judge's gatekeeping of evidence inevitably interferes with the jury's learning, yet is necessary to solve legal disputes).

[71] *See Dingwall*, 6 F.4th at 761 (explaining that the judge must only determine whether the evidence can be presented to the jury, not the strength of the arguments).

[72] *See id.* at 760–61 (comparing the roles of the judge and the jury in considering evidence).

[73] *See infra* notes 75–86 and accompanying text.

[74] *See infra* notes 87–99 and accompanying text.

[75] *See Dingwall*, 6 F.4th at 761 (distinguishing the role of the jury in assessing evidence from that of the judge); *see also Daubert*, 509 U.S. at 599 (setting out the judge's role of deciding whether or not to admit expert evidence, as assigned by Rule 702); *Kumho Tire Co.*, 526 U.S. at 141 (extending *Daubert*'s holding that the trial judge is to gatekeep evidence beyond just expert testimony on scientific information, to include other expert testimony on technical knowledge).

[76] *See Daubert*, 509 U.S. at 595–96 (describing the judge's evaluation of expert evidence and emphasizing a focus on the methods the expert uses).

opinion are valid.[77] This inquiry requires finding that the methods being used are both (1) scientifically valid; and (2) may be applied to the specific facts in the case at hand.[78] Next, the judge must decide if this expert opinion, if valid, would assist the factfinder.[79] In ensuring that the evidence meets both of these factors, the judge may consider whether the methods the expert uses to form their opinion have been tested, peer-reviewed, and/or published.[80] In addition, the judge must consider the method's potential or proven rate of error, as well as any standards governing the method.[81] Lastly, the judge may consider the method's general acceptance in its community in evaluating its reliability.[82]

Overall, in assessing the reliability of expert testimony, judges use their discretion to determine if the expert has sufficient knowledge and experience to testify on the topic at hand, which, for the purposes of this Note, is the psychological condition of battering and its effects.[83] Considering these factors

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[77] *See id.* at 592–93 (setting out the judge's role in assessing reliability and relevance of expert testimony, including an initial determination of the validity and applicability of the expert's knowledge). The court added that the judge's evaluation of expert evidence is dependent on Federal Rule of Evidence 104(a). *Id.* at 592; *see* FED. R. EVID. 104(a) (stating that the court, without being bound by the rules of evidence, determines initial questions of "whether a witness is qualified, a privilege exists, or evidence is admissible"). Furthermore, the judge must ensure that the expert testimony does not provide a legal opinion, including speaking to the state of mind or the level of guilt of the defendant. *See, e.g.*, Wolfe v. McNeil-PPC, Inc., 881 F. Supp. 2d 650, 661–62 (E.D. Pa. 2012) (deciding on the admissibility of expert opinions in the case before the court).

[78] *See Daubert*, 509 U.S. at 592–93 (laying out the steps a judge must take in admitting expert testimony into evidence, including an initial assessment of validity and methods of the testimony).

[79] *See id.* at 593 (stating that the main focus of the judge's inquiry involves deciding whether the evidence is composed of knowledge that would further the jury's understanding of the case at hand).

[80] *See id.* (noting that publishing is just one factor to consider, and that its existence does not necessarily guarantee reliability). This factor is not dispositive because, at the same time, some strong and reliable theories have not been published. *Id.*

[81] *See id.* at 594 (listing factors that the judge should consider in determining the validity of an expert's methodology, such as method controls and standards).

[82] *See id.* (describing the value of general acceptance in determining reliability). In contrast, if a method is widely unsupported within its community, the judge may use this factor to weigh against the expert's reliability. *Id.* Further, all evidence is subject to Federal Rule of Evidence 403, which excludes evidence "if its probative value is substantially outweighed by the danger of unfair prejudice," including confusing or misleading the jury. *See id.* at 595 (quoting FED. R. EVID. 403) (noting that, in addition to Rule 702, judges are restricted by other rules of evidence); FED. R. EVID. 403 (providing the court with a reason to exclude evidence based on the risk of "unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence"). For example, a trial judge may exclude some expert evidence, even if informative, if they deem that the testimony would mislead more than help the jury. *Daubert*, 509 U.S. at 595.

[83] *See* Kumho Tire Co. v. Carmichael, 526 U.S. 137, 152 (1999) (emphasizing the significance of the requirement that judges act as gatekeepers of evidence). In reviewing a lower court's decision to admit or deny evidence, appellate courts use an abuse of discretion standard. *Id.* (citing Gen. Elec. Co. v. Joiner, 522 U.S. 136, 138–139 (1997)); *see Abuse of Discretion*, BLACK'S LAW DICTIONARY, *supra* note 57 (defining "abuse of discretion" as the standard for a court of appeal's review of a decision that is claimed to be unreasonable, unlawful, or unsupported). This standard reviews how the lower court evaluated reliability of the expert evidence, as well as its final decision. *Kumho Tire Co.*, 526 U.S. at 152.

together, the judge must make a determination on the reliability of the expert testimony.[84] When faced with evidence that is admissible but involves some flaws, the judge must consider the opportunity for cross-examination of the expert witness, the ability for the opposing party to introduce evidence, and the use of jury instructions to limit any impermissible use of the expert evidence.[85] Yet, in general, most courts find expert testimony on battering and its effects to be reliable.[86]

2. Relevance

Nevertheless, the inquiry is not finished once the judge finds that the expert testimony is reliable, as the judge must also find the evidence to be relevant before exposing it to the jury.[87] When deciding if expert testimony is relevant to a duress defense, the judge must look to the key inquiry of the duress defense: reasonableness.[88] The judge may do this by analyzing whether the expert testimony is relevant to answering the question of the defendant's reasonableness.[89]

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[84] *See Kumho Tire Co.*, 526 U.S. at 152 (stating that the trial judge must have leeway in determining the reliability of expert testimony).

[85] *See* United States v. Dingwall, 6 F.4th 744, 761 (7th Cir. 2021) (reviewing the challenge of the lower court's exclusion of an expert's testimony and laying out the judge's role in assessing the reliability of such evidence (citing United States v. Truitt, 938 F.3d 885, 889–91 (7th Cir. 2019))).

[86] *See* United States v. Nwoye, 824 F.3d 1129, 1136 (D.C. Cir. 2016) (noting that, as far as the court was aware, no other court had held expert testimony on battering and its effects to be unreliable). Rather, the issue courts typically face is whether expert testimony on battering and its effects is relevant to the duress defense. *Id.* (citing Dando v. Yukins, 461 F.3d 791, 801 (6th Cir. 2006)).

[87] *See Dingwall*, 6 F.4th at 760–61 (noting that the testimony must be both reliable and relevant to be admitted). The Federal Rules find evidence to be relevant if: "(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." FED. R. EVID. 401. Generally, it is not difficult for pieces of evidence to satisfy these requirements. *See* Daniel J. Capra & Jessica Berch, *Evidence Circuit Splits, and What to Do About Them*, 56 U.C. DAVIS L. REV. 127, 154 (2022) (stating that Rule 401's "any tendency" threshold is not difficult to meet).

[88] *See Dingwall*, 6 F.4th at 760–61 (holding that the lower court erred in denying the admission of expert opinions on battering and its effects); *supra* notes 53–56 (discussing how reasonableness is a key factor of the duress defense). Courts use different tests to evaluate relevance. Christa Bunce, Note, *Psychologically Bound: Why Expert Evidence Regarding Battered Woman Syndrome Should Be Admissible*, 75 S.M.U. L. REV. 861, 871 (2022). The relevancy test focuses on whether the evidence will assist the jury, and the *Frye* test focuses on whether the evidence, or the principle it speaks to, is "generally accepted in the field of study to which it belongs." *Id.*; *see also* Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 2014) (requiring evidence that falls outside common knowledge to be embraced by the specialist community to which it belongs). Yet, both tests prioritize the ability of the evidence to assist the jury. Bunce, *supra*, at 871.

[89] *See Nwoye*, 824 F.3d at 1136 (agreeing with other courts that battering and its effects expert testimony may be relevant to support a defense of duress). A judge may deem expert testimony that speaks to the defendant's specific circumstances or perspective during the commission of the crime as relevant to the reasonableness element. *Id.* at 1137. For example, a judge may find relevant an expert's testimony on how battered persons often experience hypervigilance, a constant sensitivity to potential

Yet, courts disagree on the issue of whether evidence of battering and its effects can speak to the reasonableness standard of the duress defense.[90] For instance, some courts find that evidence of battering and its effects transforms the objective standard of reasonableness into a subjective one.[91] In general, the objective standard bases itself on the reasonable person's situation, whereas the subjective standard considers the individual defendant's perspective and circumstances.[92] But the reasonableness standard is complicated in that the line between subjective and objective reasonableness is often blurred.[93] For example, in 1992, in *United States v. Johnson*, the U.S. Court of Appeals for the Ninth Circuit suggested that courts should not consider evidence of battering and its effects in determining the reasonableness of a duress defense.[94] Still, at the same time, the court in *Johnson* articulated factors of the defendant's particular circumstances that courts should consider when evaluating reasonableness under the MPC standard.[95] These factors involved a defendant's physical characteris-

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threats. *Id.*; *see* Bunce, *supra* note 88, at 869 (providing, as an example of hypervigilance, an abuser's threat that he would kill his partner in her sleep, which caused the partner to constantly be on edge).

[90] *Compare* United States v. Lopez, 913 F.3d 807, 821 (9th Cir. 2019) (noting that the majority of courts have found that evidence of battering and its effects is admissible evidence), *with* United States v. Willis, 38 F.3d 170, 176 (5th Cir. 1994) (holding that evidence of battering and its effects was irrelevant to the duress defense).

[91] *See, e.g.*, *Willis*, 38 F.3d at 176 (reasoning that evidence of battering and its effects is too subjective for the ordinary person standard of the MPC); United States v. Dixon, 901 F.3d 1170, 1184 (10th Cir. 2018) (excluding evidence of battering and its effects and PTSD because it would only add to the subjective understanding of the defendant's fear and potential alternatives to committing the crime, rather than the objective understanding); United States v. Johnson, 956 F.2d 894, 901 (9th Cir. 1992), *superseded on other grounds as recognized by* United States v. Martinez-Martinez, 369 F.3d 1076 (9th Cir. 2004) (holding that evidence of subjective fear should only be considered in sentencing).

[92] *See* Heather R. Skinazi, Note, *Not Just a "Conjured Afterthought": Using Duress as a Defense for Battered Women Who "Fail to Protect,"* 85 CALIF. L. REV. 993, 993, 1002 (1997) (defining both standards of objective and subjective reasonableness and explaining that the subjective standard is more individualized). *But see* Recent Case, United States v. Dingwall, *6 F.4th 744 (7th Cir. 2021)*, 135 HARV. L. REV. 1937, 1940 (2022) (asserting that the male perspective created the reasonableness standard and referring to it as the "reasonable *man* standard").

[93] *See Lopez*, 913 F.3d at 816 (discussing how the Ninth Circuit had previously found that evidence of subjective vulnerability should not be admitted, relying on the concept of special vulnerability, which encompasses a defendant's fear caused by their own past experiences of violence, but failing to clearly define what subjective vulnerability involves).

[94] *See Johnson*, 956 F.2d at 898 (finding that evidence of special, or subjective, vulnerability has been held to be inadmissible). The Ninth Circuit in 2019, in *United States v. Lopez*, rejected this suggestion in *United States v. Johnson*, noting that one defendant was allowed to have an expert testify to battering and its effects generally, whereas another defendant was denied that same opportunity because the expert would have testified about the defendant's specific experience with battering and its effects. *Lopez*, 913 F.3d at 818. As a result of the lack of explanation provided in *Johnson*, the Ninth Circuit in *Lopez* decided that it could not read *Johnson* in a way that bars all evidence of battering and its effects, as that reading would be too expansive. *Id.*

[95] *See Lopez*, 913 F.3d at 816 (stating that some factors about the specific defendant must be considered (citing *Johnson*, 956 F.2d at 898)). The Ninth Circuit based the standard of reasonableness on the MPC's "person of reasonable firmness" language. *Id.*; *see also* MODEL PENAL CODE § 2.09(1)

tics, including their gender, size, age, fitness, and overall health.[96] This assessment is consistent with the precedent of other courts that consider those physical factors in evaluating reasonableness, but have typically excluded psychological conditions from that same consideration.[97] Therefore, based on this precedent, evidence of battering and its effects could only be relevant and as a result, admissible, if it spoke to the defendant's particular circumstances, equating to that of a reasonable person's circumstances in that situation.[98] Meanwhile, some courts that find evidence of battering and its effects to be inadmissible will instead consider the defendant's history of suffering from abuse as a mitigating factor during the sentencing phase, rather than as a complete defense.[99]

D. Factual and Procedural History of United States v. Dingwall

Numerous battered defendants have attempted to introduce evidence that would depict their history of abuse to a factfinder.[100] Prior to the Seventh Circuit's 2021 decision in *United States v. Dingwall*, sister circuits laid the groundwork in cases involving expert testimony on battering and its effects.[101] Subsection 1 of this Section introduces the facts of *Dando v. Yukins*, a 2006 U.S. Court of Appeals for the Sixth Circuit case which set the foundation for more

(AM. L. INST. 2021) (requiring, as part of a duress defense, that the defendant committed the crime because the defendant "was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, that a person of *reasonable firmness* in his situation would have been unable to resist" (emphasis added)).

[96] *See Lopez*, 913 F.3d at 816 (listing the factors that the *Johnson* court identified as sufficient for consideration in evaluating reasonableness). The court mentioned, for example, that an older, thinner, and smaller person would likely fear physical threats more easily than a younger, heavier, and taller person would. *Id.*

[97] *See* United States v. Nwoye, 824 F.3d 1129, 1137 (D.C. Cir. 2016) (stating that the standard of reasonableness considers a defendant's specific situation to an extent). Courts may also consider the defendant's understanding of the assailant's reputation for violence, as well as other information the defendant knows at the time, in assessing reasonableness. *Id.* In contrast, courts have historically excluded consideration of psychological conditions such as the defendant's mental incapacity, their ability to understand morals, and their judgment. *Id.* (stating that consideration of mental illness in determining liability is impracticable, and rather should be considered during sentencing (citing MODEL PENAL CODE § 2.09 cmt. at 373–74 (1985))).

[98] *See id.* (applying past decisions on reasonableness to evidence of battering and its effects).

[99] *See, e.g.*, United States v. Dingwall, 6 F.4th 744, 750 (7th Cir. 2021) (noting that the district court considered the defendant's abuse as a mitigating factor in her sentencing); Dando v. Yukins, 461 F.3d 791, 794 (6th Cir. 2006) (stating that the earlier court considered the defendant's abuse in deciding to sentence her toward the lower end of the sentencing guidelines provided by the state); *see also infra* notes 142–144 (describing Dingwall's sentence in more detail).

[100] *See, e.g.*, *Dingwall*, 6 F.4th at 747 (addressing that the defendant offered texts, photos, and witness statements, along with additional evidence, in support of her duress defense); *Lopez*, 913 F.3d at 813 (stating that the defendant attempted to offer expert testimony from a doctor, who would speak on her knowledge of violence and trauma); *Nwoye*, 824 F.3d at 1131 (describing the procedural history of the case before the court and mentioning that the defendant testified to her own experience with domestic abuse).

[101] *See infra* notes 105–118 and accompanying text (describing the facts of those cases).

recent cases on the issue of admissibility of evidence of battering and its effects.[102] Next, Subsection 2 outlines the facts of *United States v. Nwoye*, a more recent 2016 case from the U.S. Court of Appeals for the District of Columbia Circuit, upon which the Seventh Circuit in *Dingwall* heavily relied in its reasoning.[103] Finally, Subsection 3 describes the facts of the defendant's story in the most recent circuit case on this issue from the Seventh Circuit in *Dingwall*.[104]

1. The Facts of *Dando v. Yukins*

On a January day in 2000, Debra Dando engaged in a series of armed robberies with her boyfriend, Brian Doyle, in the state of Michigan.[105] The first robbery the two committed occurred when Dando asked a man to provide her with a ride to a store.[106] Doyle followed them in his own car, approached the man, and stole his wallet and car keys.[107] The couple then drove to and tried to rob customers of a gas station, shopping mall, restaurant, and party store.[108] When police eventually found the couple, Doyle was shot and killed by law enforcement, and Dando fled the police, but they later apprehended her.[109]

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[102] *See infra* notes 105–112 and accompanying text.

[103] *See infra* notes 114–118 and accompanying text; *see also Dingwall*, 6 F.4th at 751–52 (introducing and analyzing the D.C. Circuit's decision in *Nwoye*).

[104] *See infra* notes 121–151 and accompanying text.

[105] Dando v. Yukins, 461 F.3d 791, 793 (6th Cir. 2006). The numerous robberies the couple committed on this day occurred throughout Oakland County, Michigan. *Id.*

[106] *Id.* The first robbery began at 6:15 AM on January 28, 2000. *Id.* Dando asked a man named George Cubitt to drive her to the Kroger store in White Lake Township, Michigan. *Id.*

[107] *Id.* During this first robbery, and throughout the rest of the day, Doyle used a sawed-off shotgun to threaten his robbery victims. *Id.* After robbing Cubitt, the couple fled the scene. *Id.* The couple then attempted to purchase $32 of gas at a nearby gas station using Cubitt's stolen credit cards, and when the cards were declined, the couple left without paying for the gas. *Id.*

[108] *Id.* The third robbery began at around 7:15 in the morning. *Id.* Dando and Doyle waited in their pickup truck until a customer of the Mobil gas station, Cheryl Gibbons, walked to her car. *Id.* Doyle got out of the car, walked toward Gibbons, placed his shotgun near her face, and demanded that she move over in her car. *Id.* Gibbons did not comply to his demand, nor to Doyle's demand for Gibbons to hand over her money. *Id.* Subsequently, Doyle returned to his car and Dando drove herself and Doyle out of the gas station. *Id.* The couple next drove to the Great Lakes Crossing Shopping Mall in Auburn Hills, Michigan, and arrived at approximately 9:06 in the morning. *Id.* There, Doyle stole the wallet and keys of a customer. *Id.* at 793–94. Dando was driving the pickup truck both when she and Doyle entered the shopping center and when they exited. *Id.* The two then drove to a restaurant where Doyle unsuccessfully attempted, once again, to commit armed robbery. *Id.* at 794. The couple arrived at Shanigan's restaurant in Pontiac, Michigan at approximately 12:30 in the afternoon. *Id.* Doyle threatened a waitress of the restaurant with his shotgun. *Id.* Rather than giving him the money he demanded, the waitress ran to another part of the restaurant to call the police. *Id.* Lastly, they traveled to a party store, where Doyle stole $100 from an employee. *Id.* Dando first entered the party store and asked the employee if he was the only person in the store. *Id.* Dando then left, and Doyle entered the party store with his shotgun and robbed the employee. *Id.* The couple then drove off. *Id.* At this point police from several law enforcement agencies were searching for the couple. *Id.* After a police officer saw the couple's pickup truck, police conducted a traffic stop of the truck. *Id.*

[109] *Id.* at 794. Doyle confronted the police officer who stopped his truck with his shotgun. *Id.* Meanwhile, Dando took off on foot. *Id.*

Dando quickly confessed to the numerous crimes, but explained to her attorney that Doyle abused her sexually and physically, thereby raising a duress defense.[110] Specifically, on the morning of the robberies, Doyle threatened Dando's life and allegedly hit her, potentially making her concussed.[111] Therefore, Dando based her duress defense on the theory that her abuser gave her no choice but to participate in this crime spree.[112] Dando requested an expert to speak on her abuse, and the Sixth Circuit ultimately decided that she should have been able to introduce such expert.[113]

2. Background to *United States v. Nwoye*

Queen Nwoye was involved in an extortion scheme with her boyfriend at the time, Adriane Osuagwu.[114] At trial, Nwoye confessed to the extortion scheme, but also claimed that her partner, Osuagwu, physically abused her and forced her to participate in the crime.[115] Specifically, Nwoye claimed that whenever she refused to participate in the extortion scheme, Osuagwu would become physically violent toward her, at one point even threatening to kill her if she ever told anyone about the crime.[116] Additionally, Nwoye claimed that Osuagwu con-

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[110] *Id.* Police apprehended Dando and appointed her an attorney. *Id.*; *see infra* notes 161–162 and accompanying text (explaining the procedural history of Dando's case). Dando also experienced abuse throughout her childhood. *Dando*, 461 F.3d at 801. Starting when she was six years old, Dando's drug addict mother would force her to provide her drug dealers with sexual favors. *Id.* Further, Dando's mother and father were both physically and sexually violent toward her, including her father taking inappropriate photographs of Dando at a young age. *See id.* (describing Dando's experience with abuse as "shocking").

[111] *Id.* at 801–02. Affidavits submitted on Dando's behalf demonstrated that Doyle was abusive toward Dando and implied that he was forcing her to provide sexual favors for others in exchange for money. *Id.* at 801.

[112] *See id.* at 802 (finding that, given the fact that Doyle threatened to kill her if she did not comply with his orders, as well as Doyle's violent tendencies, Dando's evidence of battering and its effects should have been found to be relevant to her defense).

[113] *Id.* at 794, 802; *see infra* notes 161–165 and accompanying text (describing the issue of Dando's case).

[114] United States v. Nwoye, 824 F.3d 1129, 1132 (D.C. Cir. 2016). Prosecutors indicted Nwoye on conspiracy charges in January 2007. *Id.* The scheme involved extorting money from an established doctor, Ikemba Iweala, with whom Nwoye had engaged in an affair, based on threats of exposing the affair to the public. *Id.* The doctor was married to a government official from Nigeria. Brief for Appellee at 5, *Nwoye*, 824 F.3d 1129 (No. 14-3060). Nwoye and Osuagwu's threats to Iweala lasted forty-nine days in 2006. *Nwoye*, 824 F.3d at 1132. Iweala complied, paying over $200,000 to Nwoye and Osuagwu in an effort to prevent the couple from revealing Nwoye's previous relationship with Iweala. *Id.* The doctor paid the $200,000 to Nwoye and Osuagwu over the course of six different payments. *Id.*

[115] *Nwoye*, 824 F.3d at 1132. Nwoye also noted that her partner was controlling of her. *Id.* The two began dating in 2005, and the relationship became abusive shortly after that. *Id.* The physical abuse Nwoye endured at the hands of Osuagwu involved hitting, slapping, and beating. *Id.*

[116] *Id.* The first time Nwoye refused to participate in the extortion scheme by declining to introduce Osuagwu to the doctor, Osuagwu beat her. *Id.* These beatings repeated every additional time Nwoye refused to act in a way that would further the extortion. *Id.* At one point, this physical violence escalated to Osuagwu threatening to strangle Nwoye and end her life. *Id.*

trolled her both mentally and financially, as she lived at his house, he would often take her ATM card, and he would require her to communicate with him frequently via cell phone and Bluetooth headphones.[117] Based on her experience with Osuagwu, Nwoye asserted a duress defense.[118] At trial, she testified to her experience, but her attorney failed to introduce an expert to speak on battering and its effects.[119] The D.C. Circuit ultimately found that Nwoye's case was prejudiced due to her attorney's failure to introduce such expert.[120]

3. The Story Behind *United States v. Dingwall*

Marjory Dingwall met Aaron Stanley when she was at an alcohol abuse treatment center.[121] After relapsing and being kicked out of the treatment center, Dingwall and her daughter bounced around from place to place, living in a rented room, a homeless shelter, a friend's floor, and lastly, Stanley's home.[122] During this time, Stanley was abusing drugs, as well as Dingwall, both emotionally and physically.[123] Over time, Dingwall began experiencing a cycle, which involved Stanley abusing her, apologizing, behaving amicably, and then

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[117] *Id.* Nwoye, with her children, lived at Osuagwu's Maryland house. *Id.* No one that Nwoye knew was aware that she was living with him. *Id.* He would often take her ATM card and knew her PIN number. *Id.* At trial, it was revealed that Osuagwu used Nwoye's finances to purchase a home in California under Nwoye's name, without notifying her of this purchase. Brief for Appellee, *supra* note 114, at 5. Further, he threatened to murder Nwoye and dispose of her body. *Nwoye*, 824 F.3d at 1132. Osuagwu also indicated to Nwoye that he had previously worked for the Federal Bureau of Investigations (FBI). *Id.* Nwoye would also spend time apart from Osuagwu when she would go to classes at her nursing school, go to a hospital to work a few days a week, and stay at his Maryland home while Osuagwu would frequently travel to California. *Id.* When apart, Osuagwu demanded that Nwoye have her phone on her at all times, answer him quickly, and wear Bluetooth earphones. *Id.*

[118] *See Nwoye*, 824 F.3d at 1133 (stating that the defendant's duress defense was based on her testimony at trial).

[119] *Id.* at 1131.

[120] *Id.* at 1141.

[121] United States v. Dingwall, 6 F.4th 744, 747 (7th Cir. 2021). At the time that Dingwall sought treatment due to the encouragement of her family, Dingwall had worked as a paralegal at a Wisconsin law firm and was a single mother. Brief for Defendants-Appellees at 6, *Dingwall*, 6 F.4th 744 (No. 20-1394). Aaron Stanley was a volunteer truck driver for the treatment center. *Dingwall*, 6 F.4th at 747.

[122] *Dingwall*, 6 F.4th at 747–48. Dingwall relapsed after going on a date with Stanley one night after an Alcoholics Anonymous meeting. Brief for Defendants-Appellees, *supra* note 121, at 7. The treatment center did not allow her to live there once she relapsed. *Dingwall*, 6 F.4th at 747. Dingwall then briefly rented a room but she left after waking up and seeing her landlord at her bedside. *Id.* at 748. Then, Dingwall went to but quickly left a homeless shelter because it did not have enough space for her and her daughter. *Id.* Originally, Dingwall stayed at Stanley's home for only a week, eventually leaving because she was uncomfortable with the way Stanley treated her. *Id.* Dingwall then returned to the homeless shelter. *Id.* Dingwall later returned to stay with Stanley once again. *Id.*

[123] *Dingwall*, 6 F.4th at 748. The physical violence, which included strangling and dragging Dingwall down the stairs, escalated to the point of Stanley breaking Dingwall's nose. *Id.* Stanley also took Dingwall's food stamp card so that she was unable to purchase food for her and her daughter. *Id.*

returning to violence again.[124] Stanley's violence escalated to the point of breaking Dingwall's nose, splitting her eyelid, and sending her to the emergency room.[125] Even then, Dingwall claimed that she believed she could not leave the abusive relationship, a belief which is a key indicator of battering and its effects.[126]

After Stanley purchased a gun, he started committing robberies to steal money to pay for drugs.[127] He then claimed that Dingwall owed him money.[128] Dingwall asked her parents for money to pay Stanley, and even though they refused, Dingwall assured Stanley that she would send the money, but was simply delayed.[129] After a few days passed and Stanley was still without the money, he hit Dingwall in the face with his pistol.[130]

The following day, January 6, 2019, Stanley drove Dingwall to a nearby gas station, handed her his gun, and instructed her to rob the gas station.[131]

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[124] *Id.*; *see supra* notes 36–37 and accompanying text (describing the cycle of abuse characterized as battering and its effects). This cycle included one incident where Stanley accused Dingwall of cheating on him, and he strangled her. Brief for Defendants-Appellees, *supra* note 121, at 11. The next day, Stanley cried, apologized, and promised not to hurt Dingwall anymore. *Id.* A few weeks later, Stanley once again strangled Dingwall and proceeded to drag her down their stairs. *Id.* at 12. Part of the evidence that Dingwall aimed to offer in support of her duress defense included testimony from her friend, who could speak to the injuries she endured as a result of this moment of violence. *Id.* Furthermore, at times, Dingwall fought back against Stanley's abuse. *Id.* at 15–16. To support this claim, the defense sought to offer evidence of text messages where Stanley asked Dingwall what his explanation should be when a co-worker asks about the scratches on his face. *Id.* at 16. Dingwall replied to the text by suggesting that Stanley admit that the scratches occurred when Stanley was strangling her. *Id.*

[125] Brief for Defendants-Appellees, *supra* note 121, at 13, 16. When Dingwall visited the emergency room, she reported that her injuries were caused by a car accident. *Id.*

[126] *Id.* at 13; *see supra* notes 38–41 and accompanying text (explaining the concept of learned helplessness, which is centered around the belief that there is no escaping the abusive relationship); *see also Dingwall*, 6 F.4th at 749 (introducing quotes from the expert testimony of Dr. Hanusa, who classified Dingwall as a battered person). Specifically, if permitted by the court, Dr. Hanusa's testimony would have involved explaining the concept of learned helplessness to the jury, which occurs when a battered person fails to realize their various options of escape from the abusive relationship, and rather acts in whatever way they know will prevent the batterer's violence. *Id.* In Dingwall's case, according to Dr. Hanusa, this sense of learned helplessness extended so far as to motivate Dingwall to follow all of Stanley's orders, even if it meant committing robbery. *Id.*

[127] *Dingwall*, 6 F.4th at 748. Additionally, Stanley once used the gun to shoot a bullet into the mattress, in a spot where Dingwall normally slept. *Id.* The defense's proposed evidence included text messages from Dingwall to Stanley's mother describing this incident and expressing how Dingwall felt heartbroken. Brief for Defendants-Appellees, *supra* note 121, at 14.

[128] *Dingwall*, 6 F.4th at 748. Stanley claimed that Dingwall owed him $425. Brief for Defendants-Appellees, *supra* note 121, at 18.

[129] *Dingwall*, 6 F.4th at 748.

[130] *Id.*

[131] *Id.* Specifically, Stanley instructed Dingwall to wear her sweatshirt backwards and told her "it was her 'turn.'" *Id.* Dingwall claimed that she did not refuse Stanley's orders because she felt that she did not have that option. Brief for Defendants-Appellees, *supra* note 121, at 19.

Dingwall committed that robbery and was not abused that night.[132] Yet, because she did not steal enough money to pay off her debt to Stanley, Dingwall committed a second robbery.[133] Following the second robbery, Stanley still demanded more money, and told Dingwall that a gas station would be a good place to rob.[134] Dingwall then robbed that gas station, committing her third robbery.[135]

A few days later, law enforcement arrested Dingwall.[136] Marjory Dingwall was charged with, and admitted to, three counts of robbery.[137] Nonetheless, she claimed that she committed these robberies because she feared her abusive boyfriend, and therefore, asserted the duress defense.[138]

Dingwall's defense counsel, seeking to introduce evidence at trial supporting that Dingwall should be classified as a battered woman, filed a pretrial motion in limine, requesting a ruling to admit such evidence.[139] The evidence included text messages, photographs of the abuse, and witness statements that would speak to the abuse Dingwall endured, as well as expert testimony that would state that Dingwall suffered from post-traumatic stress disorder (PTSD), battered woman syndrome, and an abusive relationship.[140]

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132 *Dingwall*, 6 F.4th at 748. Dingwall stole about $80 in cash from the gas station cashier. *Id.* The Seventh Circuit noted that Stanley's failure to abuse Dingwall the night of her robbery signaled to her that robbery was one way to escape his violence. *Id.*

133 *Id.* In her second robbery, Dingwall robbed a boutique store while Stanley was at work. *Id.* She gave Stanley the money she acquired, claiming it was provided by her parents. *Id.*

134 *Id.* Stanley had called Dingwall from work, ordering that she pay him more money. *Id.*

135 *Id.* at 748–49. The next day, January 9, 2019, Stanley was violent toward Dingwall, strangling her and punching her face. *Id.* at 749. Dingwall then texted Stanley, stating that that punch was the hardest hit she had ever received, and asking Stanley to be nicer to her. *Id.*

136 *Id*. The defense claimed that this arrest possibly saved Dingwall's life. Brief for Defendants-Appellees, *supra* note 121, at 21.

137 *Dingwall*, 6 F.4th at 745. A federal grand jury indicted Dingwall with three violations of the Hobbs Act. *Id.* at 749. The Hobbs Act makes illegal any effort, including a conspiracy, to interfere with interstate commerce by means of extortion or robbery. United States v. Taylor, 480 F.3d 1025, 1026 (11th Cir. 2007). Therefore, the two elements of the Hobbs Act are (1) robbery; and (2) affecting interstate commerce. 18 U.S.C. § 1951(a) (stating that any person who commits a robbery under the Act should be punished, "fined . . . imprisoned not more than twenty years, or both"). The grand jury also charged Dingwall with three counts of "brandishing a firearm during and in relation to a crime of violence," violating 18 U.S.C. § 924(c)(1)(A)(ii). *Dingwall*, 6 F.4th at 749; *see* 18 U.S.C. § 924(c)(1)(A)(ii) (stating that any person who carries, possesses, or uses a brandished firearm during a crime of violence should be sentenced to at least seven years in prison).

138 *Dingwall*, 6 F.4th at 746; Brief for Defendants-Appellees, *supra* note 121, at 26.

139 *Dingwall*, 6 F.4th at 746; *see Motion in Limine*, BLACK'S LAW DICTIONARY, *supra* note 57 (defining "motion in limine" as a request before trial that certain evidence be or not be admitted at trial).

140 *See Dingwall*, 6 F.4th at 749 (listing the type of evidence that the defense was offering to support the defendant's duress defense); Brief for Defendants-Appellees, *supra* note 121, at 3–4 (stating that the expert was planning to testify to the way the abusive relationship conditioned Dingwall, changed her perceptions, and caused her to avoid future violent interactions with her partner). The expert witness, Dr. Hanusa, had evaluated Dingwall's mental state over the course of one day, and diagnosed her with PTSD and battered woman syndrome. *Dingwall*, 6 F.4th at 749. Further, Dr. Hanusa found that Dingwall was at risk of being murdered by Stanley, and could not safely refuse his orders to rob the

The district court denied admission of the evidence on the grounds that it did not meet either required element of the duress defense: (1) imminence; and (2) an absence of legal alternatives.[141] Subsequently, Dingwall pleaded guilty to all counts.[142] At sentencing, the trial court considered Dingwall's evidence of battering and its effects not as a complete defense, but rather as a mitigating circumstance, and thus sentenced her to ten years in prison and three years of supervised release, at the lower end of the sentencing guidelines.[143] Notably, at sentencing, the district court judge requested that the Seventh Circuit change its position on the duress defense.[144]

Dingwall appealed the district court's exclusion of the evidence, alleging that the evidence could support her defense by showing that a reasonable person, experiencing similar physical and emotional abuse, would have imminently feared serious bodily injury and had no alternative to committing the crime.[145] Specifically, Dingwall asserted that the expert testimony from a doc-

stores. *Id.* at 750. Other potential witnesses for the defense included Amanda (Dingwall's friend from rehab who observed the relationship between Dingwall and Stanley), Dingwall's sister, and Stanley's mother. Brief for Defendants-Appellees, *supra* note 121, at 21.

[141] *See Dingwall*, 6 F.4th at 750 (noting that although, based on precedent, the trial court judge could not allow in the evidence of battering and its effects, the judge mentioned that he was looking forward to seeing how the Seventh Circuit would decide on the question). During trial, a court can revisit its pretrial ruling admitting or excluding evidence. *Id.* at 761.

[142] *Id.* at 750. Dingwall entered these pleas under Federal Rule of Criminal Procedure 11(a)(2). *Id.*; *see* FED. R. CRIM. P. 11(a)(2) (stating that a defendant may reserve the right to appeal a pretrial motion through a conditional guilty plea, as long as the defendant obtains both the court's and the government's consent to do so). Thus, Dingwall reserved her right to appeal the denial of the motion in limine. *Dingwall*, 6 F.4th at 750; *see supra* note 139 (defining motion in limine). If a defendant's appeal prevails, the defendant may then withdraw their guilty plea. FED. R. CRIM. P. 11(a)(2).

[143] *Dingwall*, 6 F.4th at 750. For charges of robbery, the federal sentencing guidelines recommend that a defendant, depending on the extent of the defendant's criminal history, be sentenced to prison for a period between thirty-three and eighty-seven months. *See* U.S. SENT'G GUIDELINES MANUAL § 5(A) (U.S. SENT'G COMM'N 2018) (providing a sentencing table with recommended months of imprisonment). This recommendation is based on robbery having a base offense level of 20, and this base level is increased when a firearm is used during the crime, increasing the recommended sentencing length. *See id.* § 2B3.1 (outlining offense levels for robbery and extortion). For example, if during the crime of robbery, the defendant brandished or possessed a firearm, the base offense level is increased by 5, making it 25. *Id.* In turn, the recommended sentence would be increased to between 57 and 137 months of imprisonment. *Id.* § 5(A); *see* Madeline C. VerHey, Comment, *Restrain Your Enthusiasm:* United States v. Taylor *and Robbery Enhancement for Restraint of a Victim*, 62 B.C. L. REV. E. SUPP. II.-226, -232 (2021) (noting that circuit courts approach these increases differently, and do not always add the suggested enhancements). Therefore, Dingwall's sentence was on the lower end of the sentencing guidelines. *See Dingwall*, 6 F.4th at 750 (describing Dingwall's sentence and stating that she was to serve thirty months and one day in prison); U.S. SENT'G GUIDELINES MANUAL § 5(A) (recommending months of imprisonment depending on the level of the offense).

[144] *Dingwall*, 6 F.4th at 750 (stating that the district court judge urged the Seventh Circuit to acknowledge battering and its effects as useful evidence in evaluating the duress defense).

[145] *See id.* at 751 (acknowledging the defendant's argument for appeal); Brief for Defendants-Appellees, *supra* note 121, at 41 (asserting that the proffered evidence would speak to Dingwall's fear of Stanley, as well as her belief that she had no alternative to committing the robberies).

tor was necessary for a jury to understand her situation and how the abuse affected her actions.[146]

On appeal, the Seventh Circuit reversed the district court's evidentiary ruling, and thus Dingwall's convictions and sentence, allowing Dingwall to withdraw her guilty plea.[147] The court concluded that Dingwall's fear could be classified as imminent under the standard for a duress defense, and therefore the evidence should not have been excluded.[148] The Seventh Circuit prefaced that its decision was limited to the holding that the evidence was admissible, and that the question of imminence was one for the jury to decide.[149] The court reasoned that trial courts should admit evidence of battering and its effects because it could significantly assist the jury in determining whether the defendant acted in an objectively reasonable manner.[150] The holding in *Dingwall* contributed to a circuit split, as the Seventh Circuit joined the Sixth, D.C., and Ninth Circuits in finding that the duress defense does not require the physical presence of a threat, and thus can be proved using evidence of battering and its effects.[151]

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[146] *See Dingwall*, 6 F.4th at 751 (noting that the defendant asserted that the expert testimony she offered should have been admitted); Brief for Defendants-Appellees, *supra* note 121, at 40–41 (stating that Dr. Hanusa's testimony would have answered the jury's question of why Dingwall never called the police).

[147] *See Dingwall*, 6 F.4th at 761 (stating that Dingwall could withdraw her pleas because her evidence of battering and its effects could be admitted on remand).

[148] *See id.* at 746 (agreeing with the majority of circuit courts in finding that evidence of battering and its effects could be admitted in support of a duress defense). The Seventh Circuit reviewed the district court's decision using the de novo standard. *Id.* at 750. Yet the court noted that decisions regarding the admissibility of evidence are typically reviewed using an abuse of discretion standard. *Id.* (citing United States v. Wade, 962 F.3d 1004, 1011 (7th Cir. 2020)); *see supra* note 83 and accompanying text (explaining the abuse of discretion standard). Despite this, the Seventh Circuit used the de novo standard because the district court's decision was based on Dingwall's failure to meet certain elements of a defense. *Dingwall*, 6 F.4th at 750; *see De Novo*, BLACK'S LAW DICTIONARY, *supra* note 57 (defining "de novo" as reviewing a district court's decision anew).

[149] *See Dingwall*, 6 F.4th at 761 (holding that the decision did not rule on the success of Dingwall's defense). The court noted that Dingwall's evidence was still vulnerable to other objections. *Id.* The Seventh Circuit also acknowledged a major flaw in Dingwall's argument that her situation involved imminence, pointing to the fact that, during all three of the robberies she committed, Dingwall was holding a gun and Stanley was not physically with her. *Id.* at 750. During the first robbery, Stanley stayed in the car. *Id.* During the next two robberies, Stanley was working. *Id.*

[150] *See id.* at 747 (noting that such evidence assists the jury and thus should be admissible).

[151] *See id.* at 761 (agreeing with the D.C., Ninth, and Sixth Circuits in holding that evidence of battering and its effects may be admitted to support a duress defense); United States v. Lopez, 913 F.3d 807, 814 (9th Cir. 2019) (holding that expert testimony of battering and its effects is admissible); United States v. Nwoye, 824 F.3d 1129, 1139 (D.C. Cir. 2016) (holding that evidence of battering and its effects can be offered to prove the duress defense); Dando v. Yukins, 461 F.3d 791, 801 (6th Cir. 2006) (holding that evidence of battering and its effects could be admitted and used to evaluate reasonableness).

II. Circuit Courts Split Over the Admissibility of Battering and Its Effects Evidence in Support of a Duress Defense

Federal circuit courts diverge on the question of whether trial courts may admit evidence of battering and its effects to support a duress defense.[152] In 2021, in *United States v. Dingwall*, the U.S. Court of Appeals for the Seventh Circuit agreed with the majority view followed by the Sixth, D.C., and Ninth Circuits in finding that evidence of battering and its effects is relevant to proving the elements of a duress defense.[153] Meanwhile, the U.S. Courts of Appeals for the Fifth and Tenth Circuits take an opposing stance and exclude evidence of battering and its effects.[154]

Section A of this Part discusses the majority view of circuit courts that admit evidence of battering and its effects to support a defense of duress.[155] Section B explores the contrary position of opposing circuits.[156] Lastly, Section C further elaborates on the Seventh Circuit's holding in *Dingwall*.[157]

A. Circuits Allowing Battering and Its Effects Evidence

In holding that evidence of battering and its effects may be admitted to support a defense of duress, the Sixth, D.C., and Ninth Circuits explained that this evidence significantly assists jurors in evaluating the reasonableness component of the duress defense.[158] In assessing the relevance of evidence, judges

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[152] *Compare* United States v. Dingwall, 6 F.4th 744, 761 (7th Cir. 2021) (finding that the district court erred in excluding evidence of battering and its effects), Dando v. Yukins, 461 F.3d 791, 801 (6th Cir. 2006) (finding evidence of battering and its effects to be admissible and relevant to a duress defense), United States v. Nwoye, 824 F.3d 1129, 1137 (D.C. Cir. 2016) (holding that evidence of battering and its effects is relevant to the duress defense), *and* United States v. Lopez, 913 F.3d 807, 814 (9th Cir. 2019) (finding that expert testimony of battering and its effects is admissible evidence), *with* United States v. Willis, 38 F.3d 170, 176 (5th Cir. 1994) (rejecting the use of expert evidence of battering and its effects to support a defense of duress), *and* United States v. Dixon, 901 F.3d 1170, 1184 (10th Cir. 2018) (refusing to consider evidence of PTSD and a history of abuse in determining whether the defendant has presented sufficient evidence to support a duress defense).

[153] *See Dingwall*, 6 F.4th at 761 (agreeing with the D.C., Ninth, and Sixth Circuits in holding that evidence of battering and its effects may be admitted to support a duress defense); *infra* notes 158–188 and accompanying text (explaining the reasoning of circuit courts that follow the majority view).

[154] *See Dixon*, 901 F.3d at 1184 (upholding the district court's exclusion of evidence of battering and its effects); *Willis*, 38 F.3d 170, 171 (holding that evidence of battering and its effects was irrelevant to the defendant's duress defense).

[155] *See infra* notes 158–188 and accompanying text.

[156] *See infra* notes 189–203 and accompanying text.

[157] *See infra* notes 204–235 and accompanying text.

[158] *See* Dando v. Yukins, 461 F.3d 791, 801 (6th Cir. 2006) (asserting that jurors should be permitted to consider evidence of battering and its effects in determining the reasonableness of the defendant's actions); United States v. Nwoye, 824 F.3d 1129, 1137 (D.C. Cir. 2016) (same); United States v. Lopez, 913 F.3d 807, 814 (9th Cir. 2019) (same).

typically focus on whether the evidence can assist the factfinder.[159] If the judge finds that the evidence will not be helpful to the jury, the judge may exclude the evidence as irrelevant under Federal Rule of Evidence 402.[160]

In 2006, in *Dando v. Yukins*, the Sixth Circuit found that evidence of battering and its effects was relevant to a duress defense.[161] Specifically, the court held that trial courts should admit evidence of battering and its effects because such evidence helps determine whether the defendants' actions were reasonable given their circumstances and history of abuse.[162] The court compared its reasoning to cases involving self-defense, where courts had found that evidence of battering and its effects add to the jury's determination of whether the defendant held a reasonable belief that their life was at stake.[163] Similarly, the Sixth Circuit rejected the argument that evidence of battering and its effects is inconsistent with the reasonable person standard of the duress defense.[164] Ra-

[159] *See* Bunce, *supra* note 88, at 871 (explaining the focus of tests on relevance, which is the assistance the evidence may provide to the jury).

[160] *See* FED. R. EVID. 402 (stating that irrelevant evidence is inadmissible).

[161] *See Dando*, 461 F.3d at 801 (rejecting the district court's finding that evidence of battering and its effects is irrelevant to a defense of duress); *supra* notes 105–112 and accompanying text (describing the facts of *Dando*). Dando based her appeal on a habeas corpus petition, which questioned the Michigan state court's denial of Dando's ineffective assistance of counsel claim, as well as the court's denial of her request for a psychological expert. *Dando*, 461 F.3d at 793; *see Habeas Corpus*, BLACK'S LAW DICTIONARY, *supra* note 57 (defining "habeas corpus" as a petition brought by a person to challenge the legality of their arrest, imprisonment, extradition, or bail). Ultimately, the Sixth Circuit reversed the district court's denial of Dando's habeas corpus petition. *Dando*, 461 F.3d at 802. The Sixth Circuit reasoned that the state court failed to adequately apply court precedent, so the writ of habeas corpus should be granted. *Id.* A writ of habeas corpus is intended to protect the innocent against illegal custody. Clarke D. Forsythe, *The Historical Origins of Broad Federal Habeas Review Reconsidered*, 70 NOTRE DAME L. REV. 1079, 1080 (1995).

[162] *See Dando*, 461 F.3d at 801 (explaining that evidence of battering and its effects is relevant to a duress defense because it aids the jury's determination of reasonableness). The defendant, Dando, had been charged with, confessed to, and pleaded no contest to several robbery charges. *Id.* at 794. Prior to submitting her plea, Dando informed her attorney of the abusive relationship she had with her boyfriend. *Id.* Further, she asked her attorney to obtain a mental health expert, but the attorney refused. *Id.* Dando was sentenced to between ten and thirty years of prison time, which was toward the low end of the sentencing guidelines, as the court took her abusive relationship with her boyfriend into account during sentencing. *Id.* Dando then appealed and offered affidavits from her aunt, her friend, and herself to support her claim that she was a battered person. *Id.* at 794–95. In Dando's case before the Sixth Circuit, the court reviewed whether the lower court should have allowed Dando to introduce an expert witness, and whether her counsel acted ineffectively in deciding not to bring a duress defense. *Id.* at 796.

[163] *See id*. at 801 (articulating that the Michigan Court of Appeals has admitted battering and its effects evidence in support of self-defense (citing People v. Wilson, 487 N.W.2d 822, 824 (Mich. Ct. App. 1992))).

[164] *See id.* (reasoning that the fact that this type of evidence is used to determine reasonableness in a self-defense case only supports the notion that the same evidence should be admitted to evaluate reasonableness in a duress defense).

ther, the Sixth Circuit concluded that this type of evidence could add to the understanding of reasonableness in the defendant's situation.[165]

Similarly, in 2016, in *United States v. Nwoye*, the D.C. Circuit addressed the same question of whether trial courts may admit expert testimony of battering and its effects in support of a duress defense.[166] The court's inquiry involved two issues: reliability and relevance of the evidence to the duress defense.[167] Assuming that the expert testimony was reliable, the court focused on the issue of relevance.[168] The court agreed with the majority of other courts in finding expert testimony on battering and its effects to be relevant in proving a duress defense.[169]

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[165] *See id.* (explaining that the average juror would better understand the defendant's fear if presented with evidence of battering and its effects). The evidence in this case would have involved expert testimony describing the history of abuse that Dando endured, including the fact that her boyfriend threatened to kill her if she did not participate in the crime. *Id.* at 802. The court therefore concluded, based on the facts of the case, that evidence of battering and its effects would have been sufficient to demonstrate both elements of the duress defense—imminent fear and lack of opportunity to escape. *Id.*

[166] *See* United States v. Nwoye, 824 F.3d 1129, 1135–36 (D.C. Cir. 2016) (asking the question of whether expert testimony on battering and its effects would have sufficiently supported the defendant's duress defense, and therefore entitled her to a jury instruction on duress). The defendant appealed her extortion conviction, basing the appeal on ineffective assistance of counsel. *Id.* at 1131; *see also supra* notes 114–118 and accompanying text (explaining in more detail the facts of *Nwoye*). At trial, the defendant had asserted a duress defense and testified in support of the defense, explaining to the jury that her boyfriend physically abused her. *Nwoye*, 824 F.3d at 1131. Despite this initial testimony, the defendant's attorney did not further support the duress defense by offering expert testimony on battering and its effects. *Id.* At the conclusion of the trial, when the defendant requested a jury instruction from the court on the duress defense, the trial court concluded that the defendant did not offer sufficient evidence to meet the elements of the defense, and subsequently denied the jury instruction request. *Id.* at 1133. The jury then convicted the defendant of conspiracy to commit extortion, and the trial court ultimately sentenced her to twenty months of prison time. *Id.* The defendant then unsuccessfully appealed the district court's denial of jury instruction. *Id.* In 2013, the defendant sought to vacate her conspiracy conviction, arguing that a competent attorney would have offered expert evidence on battering and its effects. *Id.* at 1133–34. The district court denied the defendant's motion to vacate and found that she was not prejudiced by her attorney's failure to introduce expert testimony. *Id.* at 1134.

[167] *See Nwoye*, 824 F.3d at 1136 (stating that expert testimony must be reliable and relevant).

[168] *See id.* (noting that there is no bright-line rule finding expert testimony on battering and its effects to be unreliable). Specifically, the court assumed that expert testimony from a doctor would have been reliable based on the fact that the government did not object to the testimony, and that the court had no indication that the testimony was unreliable. *Id.*

[169] *See id.* (holding the evidence to be relevant because it assists the jurors in their reasonableness determination (first citing *Dando*, 461 F.3d at 801 (6th Cir. 2006); then citing United States v. Dixon, 413 F.3d 520, 524 & n.3 (5th Cir. 2005); then citing United States v. Ceballos, 593 F. Supp. 2d 1054, 1060–62 (S.D. Iowa 2009); then citing United States v. Marenghi, 893 F. Supp. 85, 91–97 (D. Me. 1995); then citing Wonnum v. State, 942 A.2d 569, 57–73 (Del. 2007); and then citing Commonwealth v. Pike, 726 N.E.2d 950, 948 (Mass. 2000))). Specifically, the court found the evidence to be relevant because it spoke to the defendant's circumstances, a factor the jury should consider in evaluating reasonableness. *Id.* at 1137.

Writing for the majority of a three-judge panel, then-Judge Brett Kavanaugh explained that, because the duress defense evaluates whether the defendant acted reasonably under the specific circumstances, battering and its effects evidence is relevant.[170] Specifically, this evidence adds to the understanding of reasonableness in the first element of the duress defense—imminent harm under the defendant's particular circumstances—by demonstrating a battered person's heightened sensitivity to perceived dangers.[171] For example, the court noted, a battered person may interpret certain statements or body language as violent, whereas the average person may not.[172]

Further, the court reasoned that the evidence also adds to the understanding of the second element of the duress defense—whether a reasonable alternative to the crime existed—because battered persons may feel that they have many fewer alternatives than the average person would due to an abuser's financial or emotional control over them.[173] For instance, the court mentioned the phenomenon of separation abuse, which involves the batterer's increased physical abuse, and in some cases, even murder, of their partner after the partner attempts to leave the relationship.[174] In sum, the D.C. Circuit concluded

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[170] *See id.* at 1137 (finding evidence of battering and its effects relevant to the duress defense).

[171] *See id*. (describing the relevance of expert testimony on battering and its effects to a battered person's specific circumstances). In deciding that expert evidence of battering and its effects would have been relevant to the imminence prong of the duress defense in the defendant's case, the D.C. Circuit implied that imminence does not necessarily require close physical proximity to the abuser. *Id.* at 1132, 1137; *see also infra* notes 207–209 (describing the Seventh Circuit's discussion of physical proximity in *Dingwall*). The defendant testified to being fearful of and controlled by her boyfriend. *See Nwoye*, 824 F.3d at 1132 (stating that the defendant's boyfriend threatened to kill her and bury her body, and also told the defendant that he was a former FBI agent, deterring her from reporting him to the police); *supra* notes 114–118 and accompanying text (describing the facts of *Nwoye*). Yet the D.C. Circuit also noted that the defendant's boyfriend did not constantly exert physical control over the defendant, as he maintained control over the defendant by requiring her to have her phone on her, promptly respond to him, and wear headphones during her nursing school classes. *See Nwoye*, 824 F.3d at 1132 (noting that the defendant was physically away from her boyfriend when she went to work and nursing school, and also when he traveled out of state).

[172] *See Nwoye*, 824 F.3d at 1137 (comparing the perspectives of the average reasonable person to that of a battered person in discussing reasonableness); *see also* Walker, *Battered Women Syndrome*, *supra* note 32, at 324 (explaining that a battered person would better anticipate impending violence than the average person would); Bunce, *supra* note 88, at 869 (suggesting that defining imminence as something on the brink of happening better encompasses how battered women feel imminence).

[173] *See Nwoye*, 824 F.3d at 1137 (explaining how evidence of battering and its effects helps the jury's understanding of the reasonable person standard); *supra* note 41 and accompanying text (describing how batterers often gain control over those whom they batter by exerting emotional and/or financial control over the battered person).

[174] *See Nwoye*, 824 F.3d at 1137–38 (introducing and explaining the phrase "separation abuse"). In fact, the killing of women in abusive relationships most frequently occurs when the woman leaves the relationship, as compared to any other point in the relationship. Cynthia Grover Hastings, Note, *Letting Down Their Guard: What Guardians Ad Litem Should Know About Domestic Violence in Child Custody Disputes*, 24 B.C. THIRD WORLD L.J. 283, 301 (2004). Additionally, studies have found that divorced women continue to suffer abuse at the hands of their ex-partners. *Id.* Separation abuse encompasses not only physical abuse, but also stalking and harassment. *Id.* at 302. Batterers

that an expert witness could explain the subtle differences between a battered person and the average person to a jury.[175]

Overall, then-Judge Kavanaugh found that such expert testimony is helpful to the jury in its assessment of whether the defendant's actions were reasonable.[176] The court further supported its conclusion by noting that expert testimony of battering and its effects is generally admitted in self-defense cases, where the factfinder's main inquiry is also the reasonableness of the defendant's actions.[177] In fact, in the 1991 self-defense case *People v. Humphrey*, the California Supreme Court reasoned that evidence of battering and its effects adds to the evaluation of the "reasonable person," without transforming that standard into the "reasonable battered woman."[178]

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typically engage in separation abuse because they want revenge against their partner for ending the relationship or because the batterer feels the need to regain control over their partner. *Id.* at 301.

[175] *See Nwoye*, 824 F.3d at 1138 (reasoning that expert testimony would further the jury's understanding of the elements of the duress defense). The D.C. Circuit also concluded that, in Nwoye's case, evidence of battering and its effects would have met both requirements of Rule 702: reliability and relevance. *Id.* In addition, the court reasoned that expert testimony on battering and its effects would have assisted the jury in Nwoye's trial because her testimony indicated that she was a victim of battering, and expert testimony would have explained how this may alter the reasonableness standard. *Id.* at 1138–39. For example, expert testimony could have explained how abusers tend to become more violent once their victims try to escape them and how victims may feel that reporting the abuse to law enforcement may place them in even further danger. *Id.* at 1139. In addressing another issue in Nwoye's appeal, the court found that the admission of this expert testimony would have entitled the defendant to a duress instruction during her trial. *Id.* The court also concluded that Nwoye's trial attorney's failure to present expert testimony prejudiced the defendant, a necessary element of an ineffective-assistance-of-counsel claim. *Id.* at 1140. *See generally* Strickland v. Washington, 466 U.S. 668 (1984) (holding that, to reverse a conviction based on an ineffective-assistance-of-counsel claim, the defendant must show that their attorney's performance was so deficient that it deprived the defendant of a fair trial). Based on this conclusion, the D.C. Circuit remanded the case to the district court to decide whether Nwoye had a viable ineffective-assistance-of-counsel claim. *Nwoye*, 824 F.3d at 1141.

[176] *See Nwoye*, 824 F.3d at 1136 (reasoning that evidence of battering and its effects can assist the jury). The court held that the defendant was prejudiced because her attorney failed to offer expert testimony of battering and its effects. *Id.* at 1132 (reversing and remanding the district court's judgment).

[177] *See id.* at 1138 (making a comparison to self-defense (first citing People v. Humphrey, 921 P.2d 1, 8–9 (Cal. 1996); then citing State v. Kelly, 478 A.2d 364, 377–78 (N.J. 1984); and then citing Ibn-Tamas v. United States, 407 A.2d 626, 631–35 (D.C. 1979))). The court noted that most jurisdictions require a defendant asserting self-defense to demonstrate that they reasonably believed force was needed to avoid death or serious injury. *Id.*

[178] *See Humphrey*, 921 P.2d at 9 (finding evidence of battering and its effects to be relevant to both the reasonableness standard and the defendant's credibility). In *Humphrey*, the defendant shot her husband, Albert Hampton, admitting to police that she could not take his abuse any longer. *Id.* at 3–4. The defendant reported to the police that the day before she shot Hampton, he had hit and threatened to kill her. *Id.* at 3. Specifically, Hampton allegedly shot a bullet at the defendant and missed. *Id.* The next day—the day of the shooting—the defendant warned Hampton not to hit her anymore. *Id.* When he responded with movement, as if he was going to hit her, the defendant shot him. *Id.* The defendant offered a self-defense claim and supported that claim with both expert and nonexpert testimony. *Id.* The trial court instructed the jury that evidence of battering and its effects was irrelevant to the reasonableness inquiry. *Id.* at 5. On appeal, the court reversed, finding the evidence to be relevant to reasonableness. *Id.* at 19.

Finally, in 2019, in *United States v. Lopez*, the Ninth Circuit reversed the district court's exclusion of evidence of battering and its effects in support of a defendant's duress defense.[179] Instead, like the Sixth and D.C. Circuits, the Ninth Circuit permitted the defendant to introduce expert testimony on battering and its effects to help satisfy the preliminary evidentiary showing for duress.[180] Relying on the D.C. Circuit's reasoning in *Nwoye*, the Ninth Circuit compared duress to self-defense, recognizing that both focus on the reasonableness of the defendant's actions.[181] Further, the court noted that, as with self-defense, evidence of battering and its effects is relevant to a juror's consideration of the defendant's specific circumstances, whereas the jury's question of what the reasonable person—not the reasonable battered person—would do remains.[182] In both defenses, jurors view the situation through the defendant's eyes, which, when the defendant is a battered person, may include a hyper-

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[179] *See* United States v. Lopez, 913 F.3d 807, 811 (9th Cir. 2019) (reversing the district court's decision to exclude evidence of battering and its effects to support a duress defense). The district court reasoned that because the duress defense looks at reasonableness using an objective standard, the expert testimony should be excluded because it would only provide insight supporting a subjective standard. *Id.* Yet the district court did allow Lopez to testify about her experience with domestic abuse. *Id.* at 814. The jury found Lopez guilty on all counts, and the court sentenced her to thirty months in prison. *Id.* Lopez appealed to the Ninth Circuit. *Id.*

[180] *See id.* at 814 (holding that expert testimony of battering and its effects is admissible to prove a defense of duress, as well as to support the defendant's credibility). Lopez faced three federal charges for purchasing a firearm using false identification (ID). *Id.* Lopez's relationship with her alleged abuser, Karaca, began when they were both teenagers. *Id.* It ended when he went to prison, but the two reunited years later upon his release when Karaca showed up to Lopez's house. *Id.* at 811–12. Karaca informed Lopez that police were looking for him and that he needed a gun. *Id.* Lopez responded by saying that she could not get him a gun. *Id.* Karaca appeared at her house two more times, asking for a gun. *Id.* Both times Lopez responded by saying she could not buy a gun because she was on probation, and both times Karaca responded by threatening to hurt Lopez and her family. *Id.* Karaca insisted that Lopez use her twin sister's ID to purchase the gun, which she did. *Id.* Two days later, Karaca accused Lopez of flirting with someone, slapped her, and threatened to hurt her. *Id.* Lopez later admitted to her probation officer that she illegally purchased the gun, but refused to provide any information about Karaca because she was afraid of him. *Id.* at 812–13. Only after Lopez was sent to jail and felt safe from Karaca did she provide law enforcement with information about Karaca. *Id.* at 813. At trial, Lopez confessed to her use of the false ID, but asserted the duress defense based on the fact that Karaca threatened to hurt her and her family if she did not attempt to purchase the gun. *Id.* To prove duress, Lopez tried to present expert testimony that would speak to battering and its effects. *Id.* at 811. Lopez explained to the court that admission of this expert evidence would describe to the jury the experience of domestic abuse and how it affects a victim's behavior. *Id.* The district court denied her request, finding the evidence to be too subjective for the reasonableness standard of duress. *Id.*

[181] *See id.* at 821 (discussing the reasonableness standard and how battering and its effects applies to self-defense (citing *Nwoye*, 824 F.3d at 1138)); *supra* note 177 and accompanying text (explaining the D.C. Circuit's comparison to self-defense in *Nwoye*).

[182] *See Lopez*, 913 F.3d at 821 (asserting that evidence of battering and its effects does not change the reasonableness standard from being objective to being subjective (citing *Humphrey*, 921 P.2d at 2)).

awareness toward threats of violence, as well as a consideration of past experiences with abuse.[183]

In addition to emphasizing the relevancy of evidence of battering and its effects for proving each element of the duress defense, the Ninth Circuit also articulated that expert testimony of battering and its effects can support the defendant's credibility.[184] For instance, the evidence provides the jury with insight into abusive relationships and dispels myths about them.[185] Specifically, this expert testimony can allow a jury to understand the concept of learned helplessness, or why a battered person may feel as though they cannot escape their abuser—which helps demonstrate constant imminence of violence.[186] In so ruling, the Ninth Circuit announced the precedent that trial judges within its circuit will allow juries to consider evidence of battering and its effects in evaluating the duress defense, and, in particular, the reasonable person standard.[187] Like the Sixth and D.C. Circuits, the Ninth Circuit's decision also contributed to the growing current circuit split on the issue.[188]

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[183] *See id.* at 821–22 (distinguishing between the perspective of the average reasonable person and that of a battered person). The court noted that jurors may consider defendants' past experiences in evaluating reasonableness. *Id.* at 822. For example, a jury may consider a defendant's previous negative encounter with law enforcement to understand why a defendant felt uncomfortable calling police. *Id.*; *see, e.g.*, *Nwoye*, 824 F.3d at 1132 (recognizing the defendant's claim that she was too scared to report her abusive partner to law enforcement because he said he had formerly worked for the FBI).

[184] *See Lopez*, 913 F.3d at 823 (explaining that expert testimony helps alleviate the jury's doubts toward a battered person's testimony). Though this evidence adds to a determination of credibility, whether the defendant is credible would still be left to a jury to decide. *Id.* at 824. Additionally, the court noted that expert testimony of battering and its effects can help explain to juries why some battered people make inconsistent or false statements. *Id.* at 823. For example, expert testimony may explain why a battered wife recanted her statements against her abusive husband, or why an abused child failed to report the abuse. *Id.* at 823–24 (admitting evidence of battering and its effects because it was relevant in explaining why the wife recanted her statement against her husband (citing Arcoren v. United States 929 F.2d 1235, 1238–39 (8th Cir. 1991))). Expert testimony can also resolve issues of credibility. *Id.* (highlighting the value of evidence of battering and its effects in rehabilitating the victim's credibility after she made inconsistent statements (citing United States v. Bighead, 128 F.3d 1329, 1331 (9th Cir. 1997))). In *Lopez*, the court indicated that expert testimony could have explained why the defendant referred to her abuser as her "man" when speaking to her probation officer, despite her not wanting anything to do with Karaca. *Id.* at 825.

[185] *See id.* at 823 (stating that the doctor's testimony in this case would serve to explain to the jury why Lopez followed her abuser's orders).

[186] *See id.* at 820 (reasoning that expert testimony can explain to the jury the concept of separation abuse, and therefore why a battered person faces obstacles in leaving an abusive relationship); *supra* note 174 and accompanying text (defining the term "separation abuse"); Samantha M. Musick, Note, *Explaining the Whys: Allowing Battered Woman Syndrome in Aid of a Duress Defense*, 17 SEVENTH CIR. REV. 60, 88 (2022) (articulating that the inclusion of evidence of battering and its effects helps to demystify abuse); Bunce, *supra* note 88, at 872 (explaining that expert evidence helps to explain to a jury why battered persons do not ask for help).

[187] *See Lopez*, 913 F.3d at 826 (holding that there is no categorical exclusion on expert testimony on battering and its effects). The Ninth Circuit rejected the possible reading of *United States v. Johnson* that would bar all evidence of battering and its effects to support a duress defense for being too

B. Circuits Excluding Battering and Its Effects Evidence

Meanwhile, the U.S. Courts of Appeals for the Fifth and Tenth Circuits continue to exclude evidence of battering and its effects, reasoning that it is not relevant to the objective standard of reasonableness necessary to support a duress defense.[189]

In 1994, in *United States v. Willis*, the Fifth Circuit barred evidence of battering and its effects when used to support a duress defense.[190] There, the court explained that because evidence of battering and its effects is subjective, it cannot be squared with making an objective determination of the reasonable-

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subjective. *Id.* at 818 (citing 956 F.2d 894, 901 (9th Cir. 1992), *superseded on other grounds as recognized by* United States v. Martinez-Martinez, 369 F.3d 1076 (9th Cir. 2004)). Instead, the Ninth Circuit looked to the decision it made a few months after *Johnson* in 1992, in *United States v. Homick*, which left open the question of whether evidence of battering and its effects is admissible. *Id.* at 818–19 (citing United States v. Homick, 964 F.2d 899, 905 (9th Cir. 1992)). After deciding, based on this precedent, that there was no categorical bar on expert testimony of battering and its effects, the court confirmed that its holding did not clarify the permissible scope of this type of testimony. *Id.* at 826. Rather, a district court would have to determine the allowed scope of such expert testimony in a later case. *Id.*

[188] *See id.* at 827 (holding that the district court erred in finding expert testimony on battering and its effects inadmissible). The Ninth Circuit articulated that it was joining the majority of state and federal courts in making its decision. *Id.* at 821 (first citing Dando v. Yukins, 461 F.3d 791, 801 (6th Cir. 2006); then citing United States v. Ramírez, Crim. No. 10-344, 2012 WL 733973 (D.P.R. Mar. 6, 2012); then citing United States v. Ceballos, 593 F. Supp. 2d 1054, 1060–63 (S.D. Iowa 2009); then citing United States v. Marenghi, 893 F. Supp. 85, 91–97 (D. Me. 1995); then citing Commonwealth v. Asenjo, 82 N.E.3d 966, 973–74 (Mass. 2017); then citing Wonnum v. State, 942 A.2d 569, 572–73 (Del. 2007); and then citing State v. Williams, 937 P.2d 1052, 1058 (Wash. 1997) (en banc)).

[189] *See* United States v. Willis, 38 F.3d 170, 176 (5th Cir. 1994) (barring the use of expert evidence of battering and its effects to support a defense of duress); United States v. Dixon, 901 F.3d 1170, 1184 (10th Cir. 2018) (finding that evidence of PTSD and a history of abuse is not admissible to support a duress defense).

[190] *See Willis*, 38 F.3d at 176 (holding evidence of battering and its effects to be irrelevant to the duress defense). The defendant was appealing a verdict that convicted her for violating 18 U.S.C. § 924(c)(1) and sentenced her to five years in prison. *Id.* at 173–74; *see* 18 U.S.C. § 924(c)(1)(A)(ii) (prohibiting a person from carrying, possessing, or using a firearm while committing a crime). Defendant focused her appeal on the lower court's exclusion of evidence of battering and its effects to support her duress defense. *Willis*, 38 F.3d at 173. An undercover officer, Officer Bond, had reached out to Willis to arrange a drug transaction. *Id.* Willis then asked Officer Bond to meet her at a local food establishment. *Id.* Willis showed up to the restaurant in a car with a man named David Perez. *Id.* Willis got out of the car, sold Officer Bond marijuana, and arranged a future deal, which was to take place at a Denny's restaurant. *Id.* Even though Willis told Officer Bond that she would show up to the Denny's alone, Willis again arrived alongside Perez. *Id.* Police eventually arrested both Willis and Perez. *Id.* Willis did not resist arrest. *Id.* She also informed police that she had a loaded gun in her purse, which she later testified was put in her purse by Perez. *Id.* Willis claimed she was repeatedly beaten by Perez and, as a result, feared him. *Id.* at 174. She claimed this fear is why she did not prevent Perez from placing the gun in her purse. *Id.* At trial, a psychologist testified that Willis had experienced abuse throughout her life and displayed symptoms of depression, anxiety, and battering and its effects. *Id.*

person standard.[191] The court found the consideration of battering and its effects to be too subjective because it addresses the defendant's specific psychological state and, as a result, only speaks to whether the specific defendant's actions were reasonable under the circumstances.[192] The court thus concluded that evidence of battering and its effects would merely demonstrate why the particular defendant is different from the reasonable person because the battered person is unusually vulnerable to coercion.[193] In support of its holding, the Fifth Circuit relied on the Ninth Circuit's 1992 decision in *United States v. Johnson*—which, notably, the Ninth Circuit later distinguished in *United States v. Lopez*—and read it as barring evidence of battering and its effects in evaluating a defendant's culpability.[194] In sum, the Fifth Circuit found evidence of battering and its effects not to be relevant to the objective test of the duress defense.[195]

Likewise, over a decade later, in 2018, in *United States v. Dixon*, the Tenth Circuit utilized similar reasoning in concluding that evidence of psychological conditions should not be considered when determining if a defendant has provided sufficient evidence to present a duress defense.[196] There, the de-

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[191] *See Willis*, 38 F.3d at 176 (rejecting the argument that evidence of battering and its effects contributes to the understanding of what a reasonable person would have done in the situation).

[192] *See id.* at 175 (reviewing whether the district court erred in excluding the defendant's battering and its effects evidence).

[193] *See id.* (reasoning that evidence of battering and its effects is naturally subjective).

[194] *See id.* at 175–76 (noting that the *Johnson* decision found that evidence of battering and its effects is too subjective to be used in determining liability, but not in determining sentencing (citing United States v. Johnson, 956 F.2d 894, 898 (9th Cir. 1992), *superseded on other grounds as recognized by* United States v. Martinez-Martinez, 369 F.3d 1076 (9th Cir. 2004))). This interpretation was based on the fact that the sentencing guidelines indicated that subjective factors may be considered. *Id.* at 176. In 2019, in *United States v. Lopez*, the Ninth Circuit drew the opposite conclusion from *Johnson* and permitted inclusion of such evidence. *See* United States v. Lopez, 913 F.3d 807, 818 (9th Cir. 2019) (rejecting the potential interpretation that *Johnson* bars all evidence of battering and its effects to support a duress defense). Moreover, the Fifth Circuit also cited to the 1993 Second Circuit case *United States v. Smith*, where an indigent defendant, who argued he was especially vulnerable to coercion, asked the court for money to pay a psychiatrist to support his duress defense. *Id.* (citing 987 F.2d 888, 890 (2d Cir. 1993)). There, the Second Circuit approved the funds for the purposes of sentencing, but did not allow the expert to testify in support of the defendant's duress defense because the testimony would be too subjective. *Id.* (citing *Smith*, 987 F.2d at 890–91).

[195] *See Willis*, 38 F.3d at 176 (noting that if the evidence was admitted, the jury's inquiry would change to whether the specific defendant, given their psychology, acted reasonably in the situation, which is antithetical to the objective reasonable person standard required under the duress defense).

[196] *See* United States v. Dixon, 901 F.3d 1170, 1184 (10th Cir. 2018) (stating that because the duress defense is objective, any evidence demonstrating the effect of PTSD on a defendant's perception is inadmissible). The defendant, Dixon, aimed to present a duress defense based on the belief that if she did not commit a theft, she would be sexually assaulted by her stepfather. *Id.* at 1173; *see also supra* note 197 and accompanying text (laying out the facts of Dixon in greater detail). The district court granted the government's motion in limine, which requested that the court deny the defendant's duress defense and any evidence in support of it. *Dixon*, 901 F.3d at 1173; *see also supra* note 139 and accompanying text (defining motion in limine). At trial, the district court also rejected the defendant's request for a jury instruction on the duress defense. *Dixon*, 901 F.3d at 1173. The jury eventually

fendant, Dixon, raised a duress defense based on her belief that the only way to escape her stepfather's sexual abuse was to provide money to her mother, thereby providing her mother with no reason to allow her stepfather to move back into her mother's home.[197] To support her claim, Dixon requested the admission of expert testimony, which would diagnose her with PTSD and speak to how PTSD generally affects one's perceptions.[198] The Tenth Circuit affirmed the district court and rejected Dixon's claims, reasoning that she failed to establish a necessary element of her duress defense—that she lacked a reasonable alternative to committing the crime.[199] Rather than stealing money from her place of work, the Tenth Circuit explained that Dixon could have taken other actions, such as contacting law enforcement about her stepfather's abuse.[200] Though Dixon asserted that she did not believe that the police could

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convicted Dixon of embezzlement. *Id.* Dixon subsequently appealed both the district court's denial of the motion in limine and the request for the jury instruction. *Id.*

[197] *See Dixon*, 901 F.3d at 1173–75 (detailing the facts leading up to the defendant's claim of duress). Dixon worked as a cashier at a convenience store in Oklahoma. *Id.* at 1173. In 2014, police received a report claiming that Dixon was pocketing the convenient store's cash sales. *Id.* Police later uncovered that there was truth to the report, and that Dixon had voided more than 845 cash sales, taking home $16,937.83 between October of 2013 and January of 2014. *Id.* In addition, it was possible that Dixon stole cash prior to October 2013, but there were no sales records prior to this time. *Id.* at 1173–74. When interviewed by police, Dixon admitted to the theft, but claimed that she had no choice but to steal because her family was struggling financially. *Id.* at 1174. Dixon claimed she had been sexually abused by her stepfather since age twelve. *Id.* She did not report the abuse because her stepfather threatened to hurt her and her mother if she did. *Id.* Eventually, Dixon's stepfather moved out of Dixon's mother's house, and cut the family off financially until they allowed him to move back in. *Id.* To prevent her stepfather from moving back in and therefore making herself vulnerable to his abuse, Dixon began stealing money from her place of work, and giving the stolen cash to her mother to pay their bills. *Id.* Therefore, Dixon based her duress defense on the fear of sexual assault by her stepfather, as she felt that she had no other way to escape the abuse but to embezzle the money. *Id.* at 1175.

[198] *See id.* at 1175 (discussing the defendant's proposed expert evidence); *supra* note 39 and accompanying text (explaining how battering and its effects is often recognized as a subset of PTSD).

[199] *See Dixon*, 901 F.3d at 1179 (finding that the defendant did not meet the threshold showing of a duress defense). The court evaluated Dixon's claim of duress using the Tenth Circuit's Criminal Pattern Jury Instructions No. 1.36, which require three elements: (1) the defendant faced an imminent threat of death or bodily injury; (2) the defendant did not have a reasonable, lawful alternative; and (3) there was a causal relationship between acting criminally and escaping the threat. *Id.* at 1176; *see* CRIMINAL PATTERN JURY INSTRUCTIONS, 2021 EDITION 57 (2021) https://www.ca10.uscourts.gov/sites/ca10/files/documents/downloads/Jury%20Instructions%202021%20Version.pdf [https://perma.cc/3MLE-8R2Y] (codifying the three elements); *see also supra* note 53 and accompanying text (explaining that the elements of a duress defense vary slightly among different circuit courts). The Tenth Circuit noted that the defendant was required to establish sufficient evidence of each of the duress defense's elements. *Dixon*, 901 F.3d at 1177. In evaluating whether the defendant met this minimum standard, the court viewed the evidence in the defendant's favor. *Id.* at 1178. If the court found that any element was insufficiently supported by evidence, then the duress defense would not go to the jury. *Id.*

[200] *See Dixon*, 901 F.3d at 1179 (noting that the option to report abuse to the police is generally a reasonable alternative to committing a crime). Additionally, the Tenth Circuit agreed with the district court in finding that the defendant had options other than stealing money, such as leaving her house, finding help from another family member, or getting a loan. *Id.* at 1180.

help, the court found that Dixon needed to demonstrate something more than her subjective belief that the police were not a viable option for her.[201] The Tenth Circuit rejected the use of any psychological factors in a duress defense based on its pattern jury instructions, which it noted did not include any subjective language, as opposed to the MPC formulation.[202] Overall, the Tenth Circuit concluded that because the jury could not consider the defendant's PTSD, the defendant, as a reasonable person, had lawful alternatives other than theft and thus could not avail herself of the duress defense.[203]

C. The Seventh Circuit's Approach in Dingwall

In 2021, in *United States v. Dingwall*, the U.S. Court of Appeals for the Seventh Circuit agreed with the Sixth, D.C., and Ninth Circuits' holdings that criminal defendants may introduce evidence of battering and its effects to establish a duress defense.[204] Like its sister circuits, the Seventh Circuit reasoned that such evidence could assist a jury in evaluating whether the defendant's actions were objectively reasonable, and thus the evidence was relevant under Rule 702.[205] Specifically, in its case of first impression on this issue, the Seventh Circuit looked to the Sixth Circuit's ruling in *Dando*, the D.C. Circuit's ruling in *Nwoye*, and the Ninth Circuit's ruling in *Lopez*.[206]

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[201] *See id.* at 1179 (articulating that Dixon felt that the police would not believe her if she informed them of her stepfather's abuse). The Tenth Circuit required that Dixon assert more specific reasons as to why the police would be unable to assist her. *Id.*

[202] *See id.* at 1181–82 (distinguishing its decision from those circuits who used the MPC "reasonable firmness" standard); *Jury Instruction*, BLACK'S LAW DICTIONARY, *supra* note 57 (defining "pattern jury instruction" as state bar or other association-approved instructions that courts view as authority). Still, the court admitted that the pattern instructions were not entirely objective, as they considered the perspective of the defendant. *Dixon*, 901 F.3d at 1182. The Tenth Circuit reasoned, for example, that a factfinder would take into account the inability of a quadriplegic defendant to run away from an imminent threat. *Id.* at 1183. Nevertheless, similar to the historic approach of courts on the issue, the Tenth Circuit drew the line at physical conditions, refusing to allow a factfinder to consider a defendant's psychological conditions. *Id.*; *see supra* notes 94–98 and accompanying text (discussing an earlier approach to the consideration of the defendant's circumstances within the objective reasonableness standard, which made a distinction between physical and psychological features of the defendant). Furthermore, in rejecting the defendant's duress defense, the Tenth Circuit explicitly mentioned that it was specifically relying on the pattern instructions. *Dixon*, 901 F.3d at 1185. Despite the defendant citing to the MPC in her appeal, the Tenth Circuit refused to consider that part of her argument, finding that she forfeited the argument by not raising it earlier. *Id.* at 1184. Therefore, the Tenth Circuit in *Dixon* failed to indicate whether its decision would have been different had it relied on the MPC. *See id.* (declining to explore this question).

[203] *See Dixon*, 901 F.3d at 1184 (concluding that the district court did not make an error in deciding that the defendant did not present sufficient evidence to assert a duress defense).

[204] *See* United States v. Dingwall, 6 F.4th 744, 754 (7th Cir. 2021) (agreeing with other circuit courts that had come to the same conclusion).

[205] *See id.* at 761 (describing the judge's role to gatekeep evidence under Rule 702).

[206] *See id.* at 751–52 (evaluating the reasoning of its sister circuits and noting that the court had not previously decided on the issue (first citing Dando v. Yukins, 461 F.3d 791, 801 (6th Cir. 2006); then citing United States v. Lopez, 913 F.3d 807, 818 (9th Cir. 2019); then citing United States v.

Similar to the facts in *Dingwall*, in both *Dando* and *Nwoye* the abuser was not always physically with the defendant while the defendant committed her crimes.[207] Yet the Seventh Circuit held that the imminence element of duress does not require proximity.[208] Additionally, the court found that the lack of proximity in both *Dingwall* and the sister circuits' cases elucidated a need for expert testimony on battering and its effects because the evidence would help illustrate the defendant's imminent fear, despite the fact that their abuser was not physically present.[209]

The Seventh Circuit also made comparisons to other types of cases where defendants introduced expert evidence to explain psychological conditions.[210] For example, in 2002, in *United States v. Young*, the Seventh Circuit admitted evidence of battering and its effects to explain why victims may recant reports of their abuse.[211] Additionally, in *Dingwall*, the court noted that courts typically admit expert testimony describing the psychological impact of human trafficking.[212] Likewise, in cases where children are victims of sexual abuse, courts also tend to admit expert testimony to explain to the jury that abusers typically form an emotional connection with the child, and then proceed to

Nwoye, 824 F.3d 1129, 1137 (D.C. Cir. 2016); and then citing United States v. Madoch, 149 F.3d 596, 600 (7th Cir. 1998))).

[207] *See id*. at 751 (looking to the guidance of other courts on the issue of imminence); *see also Dando*, 461 F.3d at 793–94 (detailing the facts of the case, including the fact that the defendant was alone in the car for part of the robberies); *Nwoye*, 824 F.3d at 1132 (outlining the facts of the case, including the fact that the abuser was in a different state when the defendant committed the crimes).

[208] *See Dingwall*, 6 F.4th at 757 (rejecting the necessity of proving physical proximity of the abuser to determine whether the defendant's fear of imminent violence was reasonable).

[209] *See id.* at 751 (reasoning that evidence of battering and its effects helps the jury understand why the defendant's actions were reasonable, considering their experience with abuse (citing *Dando*, 461 F.3d at 801))).

[210] *See id.* at 753 (stating that the district court's ruling was inconsistent with previous Seventh Circuit rulings in cases addressing similar issues (citing United States v. Young, 316 F.3d 649, 657–59 (7th Cir. 2002))).

[211] *Id.* (citing *Young*, 316 F.3d at 657–59). The Seventh Circuit explained that in *Young*, the victim of domestic abuse and kidnapping recanted her statements that attested to the violence she experienced at the hand of the defendant. *Id.* To explain to the jury why the victim may have recanted her statements, the government presented an expert who testified to the fact that domestic violence victims often recant their statements. *Id.* The Seventh Circuit upheld the admission of this expert testimony, finding it especially probative in explaining the victim's recantations. *Id.*

[212] *See id.* (explaining that such evidence can demonstrate the level of control traffickers have over their victims (first citing *Young*, 955 F.3d at 615; and then citing States v. Alzanki, 54 F.3d 994, 1006, 1009 (1st Cir. 1995))). The Seventh Circuit also discussed a human trafficking case in the U.S. District Court for the Northern District of Indiana where the victim argued that the defendant-trafficker stripped the victim of their free will. *Id.* (citing United States v. Jackson, 535 F. Supp. 3d 809, 815–16 (N.D. Ind. 2021)). In that case, the court admitted expert evidence explaining this psychological abuse, finding that it would assist the jury in evaluating the credibility of the victim and ultimately determine whether the victim acted with their own free will. *Id.* at 753–54 (citing *Jackson*, 535 F. Supp. 3d at 816–18).

sexually abuse the child.[213] Using these examples of courts permitting expert evidence to support abuse victims, the Seventh Circuit concluded that courts should award criminal defendants the same opportunity to use experts to explain their psychological conditions.[214]

Moreover, the Seventh Circuit rejected the positions of the Fifth and Tenth Circuits.[215] Based on the Tenth Circuit's holding in *Dixon*, the court stated that under the objective reasonableness standard a factfinder could consider, for example, colorblindness because this would be an external, physical condition.[216] Yet, according to the Seventh Circuit, consideration of colorblindness would simply alter the factfinder's question to how a colorblind person would have reacted under the circumstances—the same inquiry as to how a battered person would react.[217]

Further, the court clarified that consideration of psychological conditions would only involve acknowledging the existence of the condition and how it generally affects a person, not how it affects the particular defendant.[218] The court used the example of employment discrimination cases, where the factfinder objectively evaluates the work environment.[219] In that example, the court still considers characteristics of the specific plaintiff, such as their race or gender, depending on the type of discrimination claim.[220] The court also noted that, in cases deciding whether law enforcement used excessive force, expert testimony is often admissible to establish whether the office acted objectively

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[213] *See Dingwall*, 6 F.4th at 754 (referencing *United States v. Romero*, a case where the Fifth Circuit upheld the district court's decision to permit the use of expert testimony (citing 189 F.3d 576, 583 (5th Cir. 1999))).

[214] *See id.* (asserting that the government could not argue that this type of expert evidence is admissible only when it would benefit their side of the case).

[215] *Compare id.* (rejecting the government's arguments, which relied on that of minority circuits on this issue), *with* United States v. Dixon, 901 F.3d 1170, 1183 (10th Cir. 2018) (holding that the objective reasonableness standard only considers tangible, external factors and not mental conditions), *and* United States v. Willis, 38 F.3d 170, 177 (5th Cir. 1994) (holding that evidence of battering and its effects is not relevant to a duress defense).

[216] *See Dingwall*, 6 F.4th at 754–55 (reviewing the government's argument, which asserted that the objective reasonableness standard could consider conditions like colorblindness or photographic memory, but not psychological conditions).

[217] *See id.* at 755 (rejecting the government's argument and instead finding that the fact that a defendant suffers from either a physical or mental condition is objective and therefore relevant to the reasonableness inquiry); *see also* FED. R. EVID. 401 (outlining when evidence is relevant).

[218] *See Dingwall*, 6 F.4th at 755 (distinguishing between a subjective consideration of a mental condition and an objective one).

[219] *See id.* at 756 (comparing the analysis of this case to that of employment discrimination cases). For example, if the employment discrimination case centered around racism, the factfinder would need to consider the employee's race in order to make an accurate decision. *Id.*

[220] *See id.* (explaining that, if an employment discrimination claim is based upon sexist comments, the factfinder would need to consider the gender of the victim).

reasonable.[221] The Seventh Circuit introduced these examples of cases turning on the objective reasonableness standard to demonstrate that there are many circumstances where expert testimony is used to explain perspectives that may differ from the average reasonable juror or judge.[222] Therefore, the court concluded that it was possible to consider how someone with a certain mental condition may have interpreted the circumstance while still maintaining an objective analysis.[223]

Both elements of the duress defense utilize the objective reasonable person standard.[224] Applying its reasoning to the facts of *Dingwall*, the Seventh Circuit first articulated that the jury would first have to determine whether a reasonable battered person, experiencing a situation similar to that of the defendant, would have perceived the situation as an imminent threat to her safety.[225] Specifically, the court indicated that its interpretation of imminence did not include physical proximity.[226] Therefore, even though Dingwall's alleged abuser was not physically with her during any of her three robberies, she may still have perceived an imminent threat of death or injury, and thus an expert would be needed to explain this fear.[227] Second, the jury must decide whether a

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[221] *See id.* (providing examples of cases where courts assess the objective reasonableness standard). The court noted, however, that in all of these cases there is typically a limit on the scope of this expert testimony. *Id.*

[222] *See id.* at 756–57 (conveying that expert testimony is so often used in cases where factfinders assess the objective reasonableness standard because it provides the jury with a better understanding of the defendant's actions). The court distinguished these examples from cases involving threats of gang violence, focusing on how those threats are typically generalized threats, not backed by repeated abuse. *Id.* at 759. In contrast, in cases involving battering and its effects, the threat reaches the threshold to be considered imminent because the threat comes from the defendant's intimate partner, who continually abuses the defendant. *Id.*

[223] *See id.* at 756 (finding that consideration of a defendant's mental condition does not automatically transform the analysis into a subjective one).

[224] *See id.* at 757 (noting that the defendant must provide sufficient evidence to demonstrate that she held a reasonable fear of imminent death or harm and had no viable, legal alternative to committing the crime); *see also supra* notes 51–64 and accompanying text (describing the duress defense).

[225] *See Dingwall*, 6 F.4th at 757 (articulating that because a batterer could become violent toward a battered person at any time, an expert is needed to explain this state of constant imminence to a factfinder).

[226] *See id.* (explaining that even though physical proximity of the abuser is not necessary for a situation to be perceived as imminent, jurors may assume that it is).

[227] *See id.* (agreeing with the majority of circuits that physical proximity should not be a requirement for the first element of the duress defense—a reasonable fear of imminent death or bodily injury); *see also* United States v. Nwoye, 824 F.3d 1129, 1132, 1138 (D.C. Cir. 2016) (holding that even though the defendant's alleged abuser was not physically with her during the commission of the crime, because he monitored her actions through her cell phone and a Bluetooth device, his threats could be perceived by the defendant as imminent); *supra* note 171 and accompanying text (discussing the issue of physical proximity). The Seventh Circuit emphasized that Dingwall experienced countless acts of physical violence at the hands of her abuser, Stanley, and that this violence was often unpredictable. *Dingwall*, 6 F.4th at 758. Additionally, when he was not being physically violent toward Dingwall, Stanley would abuse her emotionally through text messages and phone calls. *Id.* Using this

reasonable person, in Dingwall's shoes, would have feared imminent violence as a result of not committing the crime.[228] In making this determination, the jury would assess evidence that included the facts that the defendant's abuser hit her in the face with a gun the day prior to her first robbery; drove her to the location of her first robbery and handed her his gun; then, even after committing a robbery, sent her texts aggressively asking for money; sexually abused her; and strangled her while her toddler daughter was present.[229] Based on this evidence, the court concluded that a jury could find that Dingwall's abuser's demand to commit the robberies left her with no viable, legal alternative other than to do so.[230] Moreover, expert evidence speaking to battering and its effects could be helpful to the jury in answering these questions.[231]

Overall, the Seventh Circuit emphasized the need to consider a defendant's circumstances when evaluating reasonableness.[232] Specifically, evidence explaining the defendant's mental condition would allow a factfinder to base

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evidence, the court held that a jury could have decided that Dingwall was experiencing Stanley's imminent threats at the time of her robberies. *Id.*

[228] *See Dingwall*, 6 F.4th at 758 (discussing the second prong of the duress defense within the context of the defendant's case).

[229] *See id.* (detailing Stanley's abuse of Dingwall leading up to and following her robberies). The court also indicated that Stanley's lack of physical presence during the three robberies was another factor for the jury to consider, but was not itself dispositive. *Id.* Together, these various incidents of Stanley's abuse were sufficient to demonstrate more than simply a general fear of her abuser. *Id.* at 759. In contrast, the Seventh Circuit distinguished an Eleventh Circuit case where the defendant only demonstrated a general, rather than an imminent, fear of her husband. *Id.* (citing United States v. Sixty Acres in Etowah Cnty., 930 F.2d 857 (11th Cir. 1991)). In *United States v. Sixty Acres in Etowah County*, a wife asserted the duress defense, arguing that she did not give her husband consent to grow marijuana on their property. 930 F.2d at 859–60. She based the defense on the fact that her husband was violent toward her and killed his first wife. *Id.* The Seventh Circuit agreed with the Eleventh Circuit's holding that there was no imminent threat by the husband to force his wife to participate in the drug crime. *Dingwall*, 6 F.4th at 759. Instead, the wife only demonstrated a general fear of her husband. *Id.* Therefore, the wife failed to present sufficient evidence to avail herself of a duress defense. *Id.* (citing *Sixty Acres in Etowah Cnty.*, 930 F.2d at 861). Lastly, the Seventh Circuit indicated that cases involving the duress defense based on battering and its effects are different than cases involving prisoners raising a necessity defense. *Id.* at 760; *see also Defense*, BLACK'S LAW DICTIONARY, *supra* note 57 (defining "necessity defense" as a justification for acting wrongfully because, when forced to choose between two evils, the defendant chose the lesser of the two). Specifically, cases where prisoners claim the necessity defense based on a fear of future violence stem from a general fear, rather than an imminent one. *Dingwall*, 6 F.4th at 760. Additionally, in the cases raised by prisoners, the future violent person is usually unknown, whereas a batterer's future abuser is usually their partner or someone with whom they are intimately involved. *Id.*; *see* WALKER, *supra* note 11, at 56 (characterizing a batterer as someone to whom the victim is typically emotionally connected).

[230] *See Dingwall*, 6 F.4th at 758 (finding that the jury could find that the defendant provided sufficient evidence to demonstrate the second element of the duress defense). Still, the court noted that the jury could also decide the opposite: that the defendant did have alternatives to committing the crime. *Id.*

[231] *See id.* (demonstrating how expert evidence may be helpful to the jury's reasonableness inquiry).

[232] *See id.* at 755–57 (listing instances where courts use the objective reasonableness standard while also considering the defendant's circumstances).

the standard on a reasonable person with that specific condition.[233] The court articulated that, although a factfinder should not be able to consider a defendant's specific mental processes—as they would be too subjective—the mental condition itself is an objective factor that alters the reasonableness inquiry.[234] The fact that the defendant suffers from the mental condition, and the condition's general impacts on a person, are both factors the jury should contemplate and are therefore relevant to a duress defense.[235]

III. Courts Should Follow the Seventh Circuit's Approach Because It Ensures Fairness for Victims of Domestic Abuse

The U.S. Court of Appeals for the Seventh Circuit's decision in *United States v. Dingwall* to join the majority of circuits in holding that criminal defendants may admit evidence of battering and its effects to establish a duress defense is preferable to the minority view of circuit courts.[236] Admission of evidence of battering and its effects promotes fairness to battered persons facing criminal charges and advances the judiciary's mission to seek justice.[237] In contrast, courts that continue to exclude evidence of battering and its effects strip the factfinder of the ability to see what the battered person was experiencing at the time of the crime, and, as a result, make the reasonable person stand-

[233] *See id.* at 755 (articulating how evidence of psychological conditions assists a jury).

[234] *See id.* (discussing how a defendant's specific thoughts are subjective, whereas a defendant's mental condition is objective). For example, the court seemed to suggest that an expert would not be able to testify about a defendant's specific thought that robbing a Mobil gas station was a safer option for her than informing her partner that she could not participate in the robbery. *See id.* (inferring that mental processes are too subjective to be admissible). Instead, the expert would be able to testify to the fact that the defendant has suffered from a history of abuse and has a diagnosis of battering and its effects, and thus experiences a perspective different from that of the average reasonable person. *See id.* (distinguishing between mental processes and external factors). The court recognized that this distinction could be a difficult one to make, as it is not based on any bright-line rule. *Id.* Nonetheless, the court stated that it was confident that other courts would be able to draw this line between an expert's testimony on how battering and its effects impacts a person and an expert's testimony on the defendant's specific perceptions of her circumstances at the time of the crime. *Id.*

[235] *See id.* (explaining that evidence making sense of the psychological condition should be admitted into evidence). In his concurrence, Judge Kirsch clarified that it would be up to the district court to determine whether Dingwall presented sufficient evidence to prove all of the elements of the duress defense, despite the Seventh Circuit suggesting that she already had. *See id.* at 762–63 (Kirsch, J., concurring) (emphasizing the flaws in Dingwall's defense). Then, the district court would face the task of instructing the jury on the duress defense. *Id.* at 762.

[236] *Compare* United States v. Dingwall, 6 F.4th 744, 761 (7th Cir. 2021) (agreeing with the Sixth, District of Columbia, and Ninth Circuits in finding that evidence of battering and its effects is admissible to demonstrate a duress defense), *with* United States v. Dixon, 901 F.3d 1170, 1184 (10th Cir. 2018) (excluding evidence of battering and its effects from the objective reasonableness analysis), *and* United States v. Willis, 38 F.3d 170, 177 (5th Cir. 1994) (holding that evidence of battering and its effects is not relevant to a duress defense).

[237] *See* Monacella, *supra* note 12, at 743 (concluding that exclusion of evidence of battering and its effects from a defendant's trial denies the defendant of both a fair trial and an otherwise valid duress defense).

ard needlessly exacting.[238] By excluding this evidence, courts prevent defendants from presenting a full duress defense.[239] Therefore, it is critical that courts do not allow the judge's role as a gatekeeper of evidence to extend too far, and thus find expert testimony on battering and its effects to be relevant to both prongs of the duress defense.[240] For the first prong of the duress defense—that the defendant reasonably feared imminent death or inquiry—a factfinder should be able to take into account the hypersensitivity of a battered person.[241] For instance, the jury may conclude that the average reasonable person may not fear that a man yelling at her would result in her death or serious injury.[242] Yet, after hearing expert testimony on battering and its effects, a jury may also determine that an average reasonable person with a history of being abused could fear that her husband yelling at her would result in her death or serious

[238] *Compare, e.g.*, *Dixon*, 901 F.3d at 1184 (failing to recognize the phenomenon of separation abuse, and instead suggesting that the defendant had several alternatives to committing the charged crime, such as simply obtaining a loan or leaving the house where she was experiencing abuse), *and Willis*, 38 F.3d at 176 (upholding the lower court's exclusion of evidence of battering and its effects because it is not relevant to the factfinder's evaluation of the defendant's culpability), *with Dingwall*, 6 F.4th at 758 (suggesting multiple ways in which evidence of battering and its effects could assist a jury in its determination of reasonableness), *and* Dunn, *supra* note 18, at 367 (explaining that evidence of battering and its effects is not used to garner sympathy from a jury, but rather is used to assist the jury in accurately comparing the defendant's actions to that of a reasonable person in their situation).

[239] *See, e.g.*, *Dixon*, 901 F.3d at 1179 (excluding evidence that the defendant suffered from abuse and concluding that the defendant did not meet the threshold showing of a duress defense); *see also supra* notes 196–203 and accompanying text (explaining the court's decision in *Dixon*). For example, in *Dingwall*, the trial judge's exclusion of evidence of battering and its effects prevented the defendant from presenting a duress defense and, as a result, she pleaded guilty to the crimes of which she was accused. *Dingwall*, 6 F.4th at 750; *see supra* notes 141–144 and accompanying text (describing this chain of events and the judge's request that the circuit court change its precedent).

[240] *See Dingwall*, 6 F.4th at 761 (agreeing with the Sixth, D.C., and Ninth Circuits in holding that evidence of battering and its effects is admissible to support a defense of duress); FED. R. EVID. 702 (outlining the requirements for the admissibility of expert evidence); *supra* notes 71–72 and accompanying text (describing the difference between the judge's and the jury's roles in evaluating expert evidence). Circuit courts that do not reverse their precedent like the Seventh Circuit did in *Dingwall* will leave lower courts with no choice but to exclude evidence of battering and its effects. *Dingwall*, 6 F.4th at 750. This is the exact dilemma the district court judge faced in *Dingwall*, as the court's precedent forced it to exclude the defendant's expert evidence, only allowing it to consider the defendant's history of abuse as a mitigating factor in sentencing. *Id.* In this sentencing hearing, the judge even encouraged the Seventh Circuit to change its precedent and acknowledge that experience with battering has the ability to severely alter a defendant's psychology. *Id.*

[241] *See Dingwall*, 6 F.4th at 752 (explaining that an expert could inform the jury of the concept of hypervigilance and asserting that the reasonable person standard of the duress defense involves consideration of how the defendant's past experiences may have shaped their perspective (first citing United States v. Nwoye, 824 F.3d 1129, 1137 (D.C. Cir. 2016); and then citing United States v. Lopez, 913 F.3d 807, 821–22 (9th Cir. 2019))).

[242] *See id.* at 754 (concluding that the factfinder must be able to evaluate the defendant's reasonableness by considering the circumstances, including the existence of a history of physical or psychological abuse).

injury.[243] Similarly, for the second prong of the duress defense, without considering evidence of the difficulties that battered persons face in escaping their abusers, a factfinder will not be able to make an accurate determination of whether a reasonable person in the defendant's situation would have had the opportunity to avoid committing the crime.[244] For example, the average reasonable juror may fail to understand why a battered person did not simply call law enforcement.[245] Thus, without insight into the perceptions of a battered person, the jury may make decisions based on misleading or inaccurate beliefs about the defendant's situation.[246] This risk of error additionally supports the argument that courts may consider evidence of battering and its effects beyond the sentencing phase, as limiting the evidence only to mitigating circumstances would prevent the defendant from presenting a complete duress defense.[247] Therefore, courts should admit evidence of battering and its effects when offered because it provides jurors with the ability to conduct the most well-informed analysis.[248] In turn, courts will promote more fair and accurate results for battered persons facing criminal charges.[249]

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[243] *See id.* (distinguishing between the perceptions of the average reasonable person and that of a battered person in reacting to a potential threat of violence).

[244] *See Lopez*, 913 F.3d at 822 (finding that evidence of battering and its effects is relevant to the factfinder's evaluation of whether the defendant could have reasonably escaped the person forcing them to commit the crime). The court noted that, typically, this inquiry is focused on the specific question of why the defendant did not decide to contact the police during or before the commission of the crime. *Id.*

[245] *See id.* (discussing how a battered person's decision to call or not to call law enforcement for help is shaped by their past experiences with abuse (citing Dutton, *supra* note 33, at 1219)). For example, a battered person who has seen their parent, or even themselves, try and fail to get help from the police may believe that calling the police is not a viable option. *See* Dutton, *supra* note 33, at 1220 (providing an example of how past experiences may shape a battered person's future approaches). On the other hand, a battered person may feel that contacting law enforcement is not an option for them even after positive experiences with the police because, after each of those positive experiences, the battered person was beaten by their abuser for contacting the police. *Id.* at 1219. Based on these various experiences, a battered person learns which options will not keep them safe and unharmed, which affects their ability to escape the situation; they deem staying to be their best option. *Id.* at 1219–20. Meanwhile, the Tenth Circuit in *Dixon* failed to consider reasons why the defendant would have no alternative but to commit the crime, leading the court to conclude that the defendant did not demonstrate that she had no other alternatives to committing the crime. *See* 901 F.3d at 1180 (listing the various alternatives of which the defendant could have availed herself).

[246] *See* Monacella, *supra* note 12, at 728 (asserting that exclusion of evidence of battering and its effects lowers the defendant's chances of successfully presenting a duress defense); Dunn, *supra* note 18, at 368 (describing how the average person fails to understand a battered person's approach toward trying to survive the abusive relationship, and rather tends to characterize their approach as weak).

[247] *See, e.g.*, *Dingwall*, 6 F.4th at 750 (explaining that the district court excluded the defendant's evidence of battering and its effects, concluded that her duress defense was insufficient, and considered her history of abuse during sentencing instead).

[248] *See* Monacella, *supra* note 12, at 728 (arguing that providing the jury with evidence of battering and its effects allows the juror to understand the entire story of the case).

[249] *See, e.g.*, *Dingwall*, 6 F.4th at 761 (allowing the defendant to withdraw her guilty pleas and acknowledging that, in order to have a fair trial, the defendant should have had the opportunity to

The Fifth and Tenth Circuits pushed back on this argument by articulating that consideration of battering and its effects changes the objective reasonableness standard into a subjective one.[250] Yet, this point was rejected by the California Supreme Court in the context of self-defense in 1991, in *People v. Humphrey*, which concluded that admission of evidence of battering and its effects does not make the standard subjective, nor does it change the standard to that of a reasonable battered person.[251] Instead, admission of this evidence simply asks the jury to consider the defendant's perspective and circumstances in making an objective reasonableness analysis.[252] Although this argument is within the context of self-defense—where evidence of battering and its effects is generally admissible—to further promote fairness to criminal defendants, the same argument should apply in the context of duress, as both defenses focus on the standard of objective reasonableness.[253]

The one caveat to this approach is that, as the Seventh Circuit mentioned in *Dingwall*, admission of evidence of battering and its effects would require courts to distinguish between using the evidence objectively versus subjective-

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present evidence of battering and its effects); *see also* Recent Case, *supra* note 92, at 1940 (arguing that inclusion of battering and its effects evidence makes the reasonableness standard more equitable).

[250] *See Dixon*, 901 F.3d at 1184 (stating that in evaluating a duress defense, courts may only look at what is objectively reasonable, and that the defendant's evidence of how PTSD affected her perceptions was too subjective for that evaluation); United States v. Willis, 38 F.3d 170, 176 (5th Cir. 1994) (holding that consideration of evidence of battering and its effects would transform a question of objective reasonableness into a question of subjective reasonableness).

[251] *See* People v. Humphrey, 921 P.2d 1, 9 (Cal. 1996) (holding that expert testimony of battering and its effects was admissible in the context of a self-defense case). In making its decision, the California Supreme Court clarified that the essential question for the factfinder was still whether a reasonable person would believe that force was necessary to avoid an imminent threat of death or bodily injury. *Id.* The court further noted that the expert simply testifies to their knowledge, and does not make a determination of the reasonableness of the defendant's actions. *Id.* Rather, the jury is to decide this issue, using the evidence that is presented. *Id.*

[252] *See id.* (stating that the reasonableness standard requires the jury to consider the defendant's situation); *Dingwall*, 6 F.4th at 747 (emphasizing that the MPC's reasonableness standard of the duress defense looks at what a reasonable person, in the defendant's situation, would have done (citing MODEL PENAL CODE § 2.09(1) (AM. L. INST. 1985))); United States v. Lopez, 913 F.3d 807, 821 (9th Cir. 2019) (explaining the need for factfinders to be able to consider reasonableness from the defendant's perspective); United States v. Nwoye, 824 F.3d 1129, 1137 (D.C. Cir. 2016) (articulating that a factfinder's evaluation of a defendant's reasonableness requires consideration of the defendant's circumstances).

[253] *See Lopez*, 913 F.3d at 821 (noting that self-defense and duress are similar in that they are both centered around whether the defendant's actions were reasonable in light of the situation); *Nwoye*, 824 F.3d at 1138 (comparing duress to self-defense and noting that a majority of courts admit evidence of battering and its effects in self-defense cases (first citing *Humphrey*, 921 P.2d at 8–9; then citing State v. Kelly, 478 A.2d 364, 377–78 (N.J. 1984); then citing Ibn-Tamas v. United States, 407 A.2d 626, 631–35 (D.C. 1979); and then citing Janet Parrish, *Trend Analysis: Expert Testimony on Battering and Its Effects in Criminal Cases*, *in* U.S. DEP'T OF JUST. & U.S. DEP'T OF HEALTH & HUM. SERVS., *supra* note 34, at 19, 28)).

ly.[254] Nevertheless, on a case-by-case basis, courts can analyze the evidence, make the distinction, and exclude any evidence that would demonstrate how the defendant, specifically, would have mentally processed the event.[255] Thus, by evaluating the evidence presented, courts would be able to admit evidence that is objective and speaks to how a reasonable person, under the circumstances of the battered person, would have reacted to the situation.[256] All in all, this one limitation pales in comparison to the unjust approach of circuits that exclude evidence of battering and its effects, as that approach denies defendants from presenting a valid defense and, in turn, fails to achieve the correct result.[257]

CONCLUSION

In 2021, in *United States v. Dingwall*, the U.S. Court of Appeals for the Seventh Circuit held that defendants may present expert evidence of battering and its effects to support a duress defense. In doing so, the Seventh Circuit joined the majority view consisting of the U.S. Courts of Appeals for the Sixth, District of Columbia, and Ninth Circuits. By contrast, the U.S. Courts of Appeals for the Fifth and Tenth Circuits continue to exclude evidence of battering and its effects to establish a duress defense, reasoning that the evidence is too subjective to be considered in an objective analysis. Despite the Fifth and Tenth Circuits' view, courts should follow the majority approach, as it better promotes fairness to criminal defendants who have experienced battering and its effects by allowing jurors to make the most accurate determination of the defendant's criminal responsibility. Going forward, future circuit courts that have yet to rule on the issue should follow the Seventh Circuit in establishing the precedent that trial courts may admit evidence of battering and its effects in duress defenses, as doing so would help maintain an impartial and fair judicial system.

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[254] *See Dingwall*, 6 F.4th at 755 (acknowledging that drawing the line between objective and subjective factors can be difficult).

[255] *See id.* (expressing confidence in the judiciary's ability to distinguish between subjectiveness and objectiveness); FED. R. EVID. 402 (mandating that irrelevant evidence is inadmissible).

[256] *See Dingwall*, 6 F.4th at 755 (suggesting that this issue of drawing a line between subjective and objective evidence is not problematic enough to force the categorical exclusion of evidence of battering and its effects).

[257] *See id.* (acknowledging that it is not easy to draw a bright line between objective and subjective reasonableness, but that this caveat is not enough of an issue to warrant exclusion of evidence of battering and its effects entirely); *see supra* notes 63–64 and accompanying text (explaining that, when a defendant successfully presents a duress defense, the defense will negate the defendant's criminal liability).