

WISCONSIN CASES INVOLVING BATTERED WOMEN'S SYNDROME (BWS)

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State v. Schmidt

On April 19, 2009, Scott Schmidt shot and killed his estranged wife Kelly Wing-Schmidt. He fired his gun multiple times, striking her three times in the head and four times elsewhere on her body. Schmidt was ultimately convicted of first-degree intentional homicide, and he appealed his conviction on the grounds that he was denied his right to present a defense when the court excluded all “adequate provocation” evidence.

Schmidt argued that the provocative acts consisted of “false allegations, controlling behaviors, threats, isolation, unfaithfulness, verbal abuse and arguments.” In order to bring forth a mitigating defense of adequate provocation, the defendant must “come forward with some evidence in rebuttal of the state’s case—evidence sufficient to raise the issue of the provocation defense.” State v. Head, ¶111 (quoting Felton, 110 Wis. 2d at 507).

The Court of Appeals held that Schmidt did not meet this standard: he did not present “some evidence,” such that a jury could reasonably conclude that he shot Wing-Schmidt under adequate provocation. In support for this holding, the Court of Appeals stated the following: the immediate provocation—Wing-Schmidt’s arguing with or taunting Schmidt prior to the shooting—cannot constitute objective adequate provocation. Schmidt himself was the initial provocateur. Because Schmidt did not meet his burden in presenting “some evidence” adequate to constitute a mitigating defense, he was not denied his right to present a defense.

State v. Bednarz

On January 16, 1992, police responded to a domestic abuse call. The police met with Tamara Martner who was crying and had a swollen, cut lip. Ms. Martner complained that her boyfriend, William Bednarz had struck her and the police then arrested Mr. Bednarz. Ms. Martner then completed a victim questionnaire and recorded a statement in which she described previous assaults and stated that she feared that Mr. Bednarz would injure her again. At Mr. Bednarz's initial appearance, the court issued a restraining order on behalf of Ms. Martner. Ms. Martner later opted to lift the restraining order after she received an apology letter from Mr. Bednarz and he moved back into the apartment which he had previously shared with Ms. Martner. Ms. Martner then wrote two letters to the district attorney, stating that she had given false/misleading statements to the officers and recanted her accusations against Mr. Bednarz.

The District Attorney proceeded to trial and motioned the court to allow expert testimony regarding Ms. Martner's recantation. The court granted the motion and the district attorney produced an expert on domestic violence to testify on the three stages of the "cycle of violence" (tension-building, explosion, and honeymoon) and how that cycle may have motivated Ms. Martner to recant her accusation against Mr. Bednarz. The jury then delivered a verdict of "guilty" against Mr. Bednarz.

Mr. Bednarz appealed the ruling and claimed that the trial court misused its discretion in allowing the expert testimony on domestic violence. Mr. Bednarz asserted that the testimony was irrelevant because the expert did not testify that Ms. Martner was exhibiting Battered Women's Syndrome, that the facts were insufficient to support the three stages of the "cycle of violence," and that expert opinion testimony has no place in domestic abuse cases where there is enough evidence from the parties themselves to allow the jury to make a credibility determination. Mr. Bednarz claimed that the expert witness was unnecessary because a reasonable juror could make a credibility determination without the assistance of an expert.

The court rejected Mr. Bednarz's grounds for appeal. The court found that the expert's opinion was not irrelevant because the expert did not diagnose Ms. Martner with Battered Women's Syndrome. If the expert had testified that Ms. Martner had recanted because of Battered Women's Syndrome, the expert would have been testifying "that another mentally and physically competent witness is telling the truth," which is impermissible under Wisconsin law. See [*State v. Haseltine*, 120 Wis. 2d 92, 96, 352 N.W.2d 673, 676 \(Ct. App. 1984\)](#).

The court also rejected Mr. Bednarz's claim that the facts of the case were insufficient to support elements of the three stages of the cycle of violence. The jury heard evidence which correlated with all three stages that the expert mentioned.

Finally, the court rejected Mr. Bednarz's claim that the expert witness could not give an opinion on Ms. Martner's recantation. Wisconsin law allows expert witnesses to assist the jurors in understanding evidence or facts in issue. Wis. Stat. [907.02\(1\)](#).

The Court of Appeals affirmed the trial court's previous judgment against Mr. Bednarz.

[State v. Mayer](#)

Mr. Mayer committed battery against his then-girlfriend and now-wife (at the time of appeal), Kathryn Radcliffe-Mayer, during a dispute at a bar. Mayer pushed Kathryn into an external wall of the bar two times, causing her to lose consciousness. That same night, Kathryn contacted the police and the district attorney charged Mr. Mayer with battery resulting in substantial bodily harm. Kathryn's friend, Christine Ristow, was a witness to the incident and corroborated Kathryn's version of events in a written statement to the police. Kathryn did not give a wr

Later that night, Kathryn contacted the police and charges were filed against Mayer. Kathryn's version was corroborated by her friend, Christine Ristow, who also provided the police with a written statement. Kathryn did not give a written statement.

At the initial court appearance, Kathryn recanted her initial statement to the police and stated that her earlier version was one-sided because she wanted to “get back” at Mayer. Ristow then testified that Kathryn’s earlier version (that Mayer pushed her into the wall twice and caused her to lose consciousness) was correct.

At trial, the State brought expert witness Beth Schnorr as an expert witness to aid jurors in understanding why a domestic violence victim, such as Kathryn, might recant. On direct examination, the State asked Schnorr whether there were particular traits/behavior patterns that were consistent and observable in victims of domestic violence. The defense objected but was overruled. Schnorr then testified about women who suffer from Battered Women’s Syndrome (rather than domestic violence victims who do not have BWS), to which the defense did not object.

The jury then reviewed Ristow’s written statement (Mayer had claimed that she was intoxicated when she wrote it) for credibility and coherence and delivered a verdict of “guilty” of battery resulting in substantial bodily harm.

Mr. Mayer then appealed the conviction and argued that the trial court erroneously exercised discretion in allowing the jury review Ms. Ristow’s written statement and admitting Schnorr’s expert testimony.

The Court of Appeals found that the trial court correctly exercised discretion in allowing the jury to view Ristow’s written statement. Wisconsin law requires that a court consider three factors when submitting a witness statement to a jury: (1) whether the statement will aid the jury in proper consideration of the case; (2) whether a party will be unduly prejudiced by submission of the statement; and (3) whether the statement could be subjected to improper use by the jury. See [State v. Hines, 173 Wis. 2d 860 496 N.W.2d at 724 \(Ct. App. 1992\)](#). The Court of Appeals found that the trial court used a reasonable basis for giving the statement to the jurors, even if it did not explicitly address the factors in *Hines*.

The Court of Appeals also found that the trial court correctly exercised discretion in allowing Beth Schorr to testify about characteristics of victims of domestic abuse. Mayer had argued that the trial court erroneously exercised discretion in allowing Schnorr to testify about general characteristics of victims of domestic abuse because he interpreted *Bednarz* to mandate that an expert can testify about the common characteristics of victims of domestic abuse only when those characteristics result from BWS. The Court of Appeals found that Schnorr’s testimony did not violate the *Bednarz* holding, as the *Bednarz* holding only stated that expert testimony about Battered Women’s Syndrome and the victim’s recantation was permissible under Wisconsin law. Wis. Stat. [907.02\(1\)](#). The Court of Appeals further interpreted *Bednarz* to mean that an expert may testify about BWS where there is sufficient evidence that the alleged victim

possesses the syndrome's characteristics and where such testimony is relevant. The State offered Schnorr to testify about domestic abuse victims in general, not Battered Women's Syndrome specifically, so *Bednarz* did not apply. Mayer cited dicta from *Bednarz* in which a judge stated that the decision would establish precedent which allowed prosecutors to use expert testimony in all domestic abuse cases where there was a recantation, but the Court of Appeals did not view the dicta as reason to not admit expert testimony.

The Court of Appeals affirmed Mr. Mayer's conviction for battery causing substantial bodily harm.