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People v Neathway
2014 NY Slip Op 50936(U) [43 Misc 3d 1235(A)]
Decided on June 13, 2014
Supreme Court, New York County
Conviser, J.
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Decided on June 13, 2014

Supreme Court, New York County

The People of the State of New York

against

Louise Neathway a.k.a. LOUISE MEANWELL, Defendant.

1260/12

New York County District Attorney Cyrus R. Vance, Jr. (Daniel Garnaas-Holmes & Kenneth Kern, of counsel) for the People;

Lawrence P. LaBrew, for the Defendant.

Daniel P. Conviser, J.

The Defendant is charged with one count of Grand Larceny in the Second Degree, four counts of Falsifying Business Records and four counts of Offering a False Instrument for Filing. She has

indicated that she would like to call an expert witness, Dr. Lenore E. Walker, to testify during her trial that she suffers from post-traumatic stress disorder (PTSD) and battered women's syndrome (BWS) and that it was these conditions which caused her to engage in the conduct which forms the basis for the criminal charges in this case. The People move here to preclude the testimony of Dr. Walker, arguing that the Defendant "has provided no logical or reasoned link between the defendant's purported condition and any relevant legal issue". [\[FN1\]](#) For the reasons outlined below, the Court agrees with the People's position. The People's motion is therefore granted.**STATEMENT OF FACTS**

The charges here arise out of an allegation that the Defendant fraudulently obtained a moderate income apartment at a reduced rent by falsely asserting that her daughter would be living in the apartment with her. In fact, the People allege, the Defendant knew her daughter would not be living in the apartment and perpetrated a fraud by filing various written documents and making repeated claims that her daughter would occupy the apartment.

*The People allege that on March 27, 2007, the Defendant submitted an application for a moderate income apartment in a luxury apartment building at 88 Leonard St. in New York County and indicated that her daughter lived with her. On April 29, 2007, the People allege that [*2]Ms. Neathway submitted a resident certification form which indicated her daughter would be living with her in the apartment. On July 20, 2007, it is alleged that Ms. Neathway submitted a New York State Housing Finance Agency income certification form indicating that her daughter would be living with her in the apartment. She also wrote a letter to the building management company saying that her daughter's father had waived his parental rights, that he lived in the United Kingdom and that Ms. Neathway provided the sole financial support for her daughter.*

The People allege, however, that during this time the Defendant's ex-husband had sole custody of her daughter and that Ms. Neathway was permitted only supervised visitation with her. The People also allege that at no time did Ms. Neathway's daughter actually live with her at 88 Leonard St. At the time she applied for the apartment, the People allege that Ms. Neathway's income would have made her ineligible for the apartment had she lived there alone. She would have been eligible for the apartment, however, had she lived with her daughter. The People allege that Ms. Neathway lived in the apartment from August of 2007 until she was arrested in 2012. The People assert that during her grand jury testimony, Ms. Neathway acknowledged that she had submitted a letter to the management company which she knew contained false statements but did so pursuant to the order of a judge and with the assistance of her attorney.

On September 20 and 21, 2013, Ms. Neathway was examined in the Ft. Lauderdale, Florida offices of Dr. Lenore E. Walker, a board certified psychologist licensed to practice in Florida, Colorado and New Jersey. Dr. Walker is a nationally recognized forensic expert who has written, lectured and testified extensively on issues involving battered woman's syndrome, among other topics. Dr. Walker prepared a report on her examination dated December 9, 2013. In the report, Dr. Walker details Ms. Neathway's assertions that she was subject to a prolonged period of physical and emotional violence and abuse by her former husband, Jason Bump. Numerous specific instances of brutal physical abuse are alleged including the allegation that Mr. Bump shoved Ms. Neathway's head into a toilet and flushed it, threw her down stairs and threw metal clothing racks on top of her and at various times slapped her, spit at her and twisted her arm.

Mr. Bump is the father of Ms. Neathway's only daughter, "M.", who was born in 1997 and is currently 16 years old. [\[FN2\]](#) The couple were initially married in October of 1996 and divorced in 1998. Two years after the couple's divorce, Ms. Neathway dated a man named David Sano whom the report describes as a convicted child molester. The report says that Mr. Sano stalked, harassed and kidnaped Ms. Neathway and was convicted and sentenced to four years in prison for that crime. It is alleged that Mr. Bump also attempted to get Mr. Sano to take actions against Ms. Neathway.

*After the initial separation and divorce between Ms. Neathway and Mr. Bump, extensive court proceedings involving the custody and visitation of M. ensued. Ms. Neathway reported that the physical and non-physical abuse by Mr. Bump also continued and took various forms. For example, Ms. Neathway alleges that Mr. Bump's aunt illegally used her position as a state employee to access confidential information about Ms. Neathway from a state database and [\[*3\]](#) provide that information to Mr. Bump. Dr. Walker's report asserts that the aunt was prosecuted for this behavior and pled guilty to a crime in connection with those activities. Mr. Bump's family also "did use their power to try to get her deported" [\[FN3\]](#) from the United States. The Court understands that Ms. Neathway is a citizen of Great Britain. The couple originally had joint custody over the child, with Ms. Neathway having physical custody. That changed, however, and Ms. Neathway received sole custody of the child when she was three years old. As result of "illegally obtained fragments of information" [\[FN4\]](#) from Mr. Bump's aunt, the report asserts, Ms. Neathway was arrested and then lost custody of M. which was given to Mr. Bump. According to the report, Ms. Neathway lost custody of her child after Mr. Bump's aunt "provided incomplete information to the court that made it seem that she had written fraudulent checks when in fact, it occurred because the social security office gave her a new social security number and the bank made an error in freezing her account [\[FN5\]](#)*

and returning a check". Ms. Neathway, the report asserts, then lost custody of M. "without a hearing".[\[FN6\]](#) Following the loss of custody, Ms. Neathway went to live in Westchester, Connecticut and New Jersey and then applied for and leased the apartment at issue in this case. Additional contentious court proceedings continued.

*The report alleges that various judges acted improperly in handling M.'s custody case and that one judge was sanctioned by the New York State Commission on Judicial Conduct for those actions. In 2007, the Defendant was finally given unsupervised visitation with M. Conflicts between Ms. Neathway and Mr. Bump continued, however, and in 2010, Mr. Bump stopped bringing M. to visits with her mother. Ms. Neathway has not seen M. since. Further recriminations have followed although the report does not fully explain why Ms. Neathway has not seen her daughter for the past four years. The report also details Ms. Neathway's former relationship with Yankees General Manager Brian Cashman and the genesis of the criminal charges which are currently pending in a second case against Ms. Neathway including stalking, coercion and perjury in connection with that prior relationship. Various allegations against Mr. Cashman are made, including the charge that he tried to have Ms. Neathway committed to a mental hospital by violating the confidential relationship with Ms. Neathway's therapist. How Mr. Cashman was able to violate that confidential therapist-patient relationship is not outlined. Regarding the instant charges, the report provides different facts than those alleged by the People. The report acknowledges that Ms. Neathway leased the subject apartment and made various representations regarding her daughter but appears to indicate that Ms. Neathway did not provide any fraudulent information to the leasing company. The report says that the leasing company, Rose Associates, asked for information about Mr. Bump but that Ms. Neathway feared letting her ex-husband know where she was living. The report does not indicate [\[*4\]](#)whether Ms. Neathway provided any information about Mr. Bump nor does it indicate what connection the provision or the failure to provide such information might have to the allegations in this case. The report says that among the allegations Ms. Neathway faces in the instant case is "fraud for not telling the Housing Authority the correct address of M.'s father, Mr. Bump".[\[FN7\]](#) The Court is not aware, however, that any of the current allegations against Ms. Neathway arise from a claim that she provided a false address for Mr. Bump.*

Dr. Walker diagnosed Ms. Neathway with post-traumatic stress disorder (PTSD) and battered woman syndrome (BWS) which Dr. Walker described as a subcategory of PTSD.[\[FN8\]](#) According to the report, persons with PTSD experience a variety of symptoms including being hyper-aroused to the thought or experience of danger and seek to avoid such danger "sometimes by using

[\[FN9\]](#)

manipulative tactics themselves" . The goal of a person in such situations, however, is not to be deceptive but to protect the person from what she believes is certain harm she cannot defend against. Ms. Neathway feared that Mr. Bump would find out where she was living. Her feelings regarding Mr. Cashman "clouded her judgment". Dr. Walker opined that Ms. Neathway is a battered woman in her relationship with Mr. Bump. Many battered women believe their abuser is omnipotent and has powers beyond those possessed by ordinary people. Dr. Walker also says that it was reasonable for Ms. Neathway to be frightened of Mr. Bump and Mr. Sano.

Ms. Neathway "tends to fight back when she becomes scared and often gets into further trouble because of her impulsive striking out". She has "apparently angered Family Court judges by her insistence that they give her due process and permit her to dissent and appeal their decisions. Unfortunately, Family Court often does not protect children where one parent commits domestic violence". Ms. Neathway has continued to act to "protect herself as the legal system would not or could not do so. While on the one hand, this is admirable, on the other hand, it has consumed most of her and her daughter's life".[\[FN10\]](#)

*Dr. Walker opines that Ms. Neathway was suffering from PTSD at the time of the crimes alleged in this case and that her "attempt was to protect herself and her daughter; not to defraud the government . . . battered women often manipulate and do not tell the truth, in order to protect themselves from danger, usually from their abusive partners".[\[FN11\]](#) Ms. Neathway has suffered from ~~[*5]~~high levels of anxiety and has been depressed although her most prominent condition is PTSD. She has been unable to heal from this abuse because of "the long history of failure of the Family Court to protect her and her daughter".[\[FN12\]](#) Dr. Walker reports that her own review of documents and transcripts from the Family Court support the Defendant's "realistic fears and inability to get due process for legal relief".[\[FN13\]](#) Ms. Neathway "attempts to use the anxiety [she suffers from] to generate energy to continue to defend herself legally". Ms. Neathway's primary motivation, however, is to get her daughter returned to her. Concluding her 18 page report, Dr. Walker says that:*

It is my professional opinion, to a reasonable degree of psychological certainty, that it was her desire to protect herself and M. from Mr. Bump, his family — and Mr. Sano — that motivated her to write the letter that was faxed to Rose Associates concerning her daughter in reference to her application for an apartment at 88 Leonard Street.[\[FN14\]](#) CONCLUSIONS OF LAW

Case Law Governing Expert BWS Testimony

Expert testimony is proper where the conclusions to be drawn from facts "depend upon professional or scientific knowledge or skill not within the range of ordinary training or intelligence". People v. Crinion, 60 NY2d 430, 432 (1983) (quotation omitted). In determining whether expert testimony is proper in a given case, "the reason why the testimony is offered will determine its helpfulness, its relevance and its potential for prejudice". People v. Taylor, 75 NY2d 277, 292 (1990). Expert BWS testimony may be most clearly relevant and admissible where a defendant in a homicide or assault prosecution asserts the defense of justification and alleges that her actions were the result in part of being a BWS victim. In such cases, courts have held that "battered women's syndrome is not itself a defense but, rather, is relevant in the context of self-defense". [People v. Wilcox, 14 AD3d 941](#), 943 (3rd Dept 2005); see also [People v. Bradley, 20 NY3d 128](#) (2012). Even in cases where a defendant asserts that she has acted in self-defense, however, and moves to have an expert witness testify regarding battered women's syndrome, New York courts have repeatedly found that it was not an abuse of discretion to deny such a request where proffered expert testimony was not relevant to support a self-defense claim.

In Wilcox, for example, the Appellate Division found that it was not error for the court to refuse to allow a defense expert to offer BWS testimony in a gang assault case because the defendant was the initial aggressor and so a self-defense claim was unavailable. In [People v. Hartman, 86 AD3d 711](#) (3rd Dept 2011), similarly, the Court's refusal to allow a BWS expert to testify was upheld because there was no evidence the Defendant's use of deadly physical force against her lover was preceded by the use of deadly physical force during the incident against her.

*Courts have also refused to admit expert BWS testimony in cases where self-defense was not at issue. In [People v. Bryant, 278 AD2d 7](#) (1st Dept 2000), for example, the Court held it was [*6]not error for the trial court to refuse to allow expert BWS testimony where the Defendant was accused of injuring her four-year-old child and the Defendant's purported abuser, her husband, was not present when the crime occurred. In [People v. Matos, 83 AD3d 529](#) (1st Dept 2011), rev'd on other grounds, 19 NY3d 470 (2012) the Defendant was convicted of depraved indifference murder based on her failure to provide medical care to a child whom her co-defendant had assaulted. She sought to introduce expert testimony regarding the domestic violence which had been perpetrated upon both her and the child. Holding that the trial court's refusal to allow such expert testimony was not error, the First Department pointed out that the Defendant's liability arose by virtue of her actions*

on the particular night during which the child died, rather than actions which may have occurred over the previous course of her relationship with the co-defendant. Allowing expert testimony to show why she stayed with the co-defendant would have been "irrelevant and potentially misleading". 83 AD3d at 531.

Courts have also allowed expert testimony concerning the impact of domestic violence on defendants or complainants in other circumstances. In Matter of Glen G., 154 Misc 2d 677 (New York City Family Court 1992) the Court allowed expert testimony on battered women's syndrome in a child sexual abuse and neglect case to explain why the respondent mother who was the victim of domestic abuse by the respondent father could not be said to have "allowed" the sexual abuse of her children by the father. This Court recently allowed an expert in the dynamics of domestic violence to testify in a case alleging an assault in violation of an order of protection in a romantic relationship to help explain the complainant's behavior. [\[FN15\]](#) Courts in other criminal cases have sometimes allowed such expert testimony to explain why a domestic violence victim recanted prior allegations of abuse or delayed reporting abuse, actions which might seem inexplicable without an understanding of the unique behavioral patterns arising from domestic violence. See People v. Seeley, 186 Misc 2d 715, 720 (Kings County Supreme Court 2000).

In Pratt v. Wood, 210 AD2d 741 (3rd Dept 1994), the Court held that the failure of the trial court to allow such expert testimony in a child custody case improperly prevented the Respondent from explaining certain actions she had taken which, absent such testimony, seemed incredible. In [People v. Byrd, 51 AD3d 267](#) (1st Dept 2008) the Court held that the trial court properly considered the testimony of a BWS expert in determining that the defendant had induced the complainant not to testify at his domestic violence trial and that therefore the People could present the complainant's grand jury testimony to the trial jury. The Defendant here proposes a further and novel expansion of the use of the battered women's syndrome as a defense. She asserts that this syndrome and expert testimony regarding it would be relevant to determine whether she possessed the state of mind necessary to commit the crimes of Grand Larceny, Falsifying Business Records and Offering a False Instrument for Filing.

The Difference Between Mental Culpability and Motivation

*The crime of larceny occurs when a person "with intent to deprive another of property or to appropriate the same to himself or to a third person, [he] wrongfully takes, obtains or withholds such property from an owner thereof". Penal Law § 155.05 (1). The basic crime of [\[*7\]](#)Falsifying*

Business Records occurs, *inter alia*, when, "with intent to defraud" a person makes a false entry in the business records of an enterprise. Penal Law § 175.05. The crime is elevated to the first degree when that basic crime is committed and when the intent to defraud "includes an intent to commit another crime". Penal Law § 175.10. The crime of Offering a False Instrument for Filing in the First Degree is committed, *inter alia*, when, knowing that a written instrument contains false information and with the intent to defraud a public benefit corporation of the state, she offers such an instrument to such a corporation with the knowledge or belief that it will become part of the records of that corporation. Penal Law § 175.35.

All three crimes, like the vast majority of other crimes in the Penal Law, require that the State prove the Defendant acted with a particular mental state. Mental culpability under the Penal Law, however, is obviously distinguishable from the motivation an offender may have to commit a crime. See generally, Penal Law Article 15. Unless a crime is one of strict liability, the People must always prove that the Defendant acted with a specified degree of mental culpability. They do not have to prove what motivated a defendant to engage in such mentally culpable conduct. Indeed, the difference between mental culpability and motivation is a topic assistant district attorneys often discuss with juries during *voir dire* to make sure they understand the difference between the concepts. A defendant found guilty of a crime may be motivated by greed, lust, fear, vengeance, drug addiction, mental illness, panic, pressure or any other conceivable condition.

Circumstances like this may explain otherwise inexplicable behavior and the vicissitudes of the human condition. They may cause us to feel sympathy for a defendant's actions. They may be highly relevant to the possible punishment a defendant may face if convicted. They may help inform a prosecutor's decision to bring a charge, dismiss a charge or allow a defendant to plead guilty to a lesser crime. Under extraordinary circumstances, a court may dismiss a case in the interests of justice. A governor or president may choose to pardon an offender because of who that offender is or the circumstances surrounding an offender's crime. But a jury during a criminal trial is not generally asked to assess why a defendant may have committed a crime and then excuse such conduct if the defendant's life circumstances make her actions understandable. The reason is simple. People are generally held responsible for what they do.

The Penal law provides certain exceptions to that rule. A person who is not responsible by reason of mental disease or defect, entrapped, commits a crime by virtue of imminent coercion, acts in a emergency to prevent a harm more grievous than the crime he commits, acts in self-defense or the defense of another person or property or is a child will not be guilty of a crime. See generally, Penal Law, Title C, "Defenses". But there is no claim in this case that the Defendant's actions were justified for any of those reasons, nor, as the Court understands the alleged facts in this case, would

any such claim be plausible. Absent such exceptions, however, a defendant's sympathetic life circumstances or motivations are not a defense to criminal liability.

*The reason for that rule is also apparent. It is necessary for all of us to live together in an ordered society. As a judge handling serious felony cases, it has been my experience that criminal behaviors often have explanations which may paint defendants in a sympathetic light. Many of the defendants who appear daily in our criminal courts have lived lives characterized by homelessness, poverty, drug abuse, alcoholism, mental illness and physical or sexual violence. If we allowed those legitimately desperate circumstances to excuse criminal behavior, however, in [*8]practical terms it would be difficult for any of us to live safely. Perhaps at some future time when our society is more enlightened we may figure out a way to do so. We may devise a means to both keep us safe and excuse the conduct of offenders whose paths to criminality were effectively set long ago by tragic life circumstances. But that is not the world we live in today.*

Dr. Walker is obviously not an unbiased observer. She is an advocate for Ms. Neathway. She not only opines on the Defendant's psychiatric condition and the abuse she allegedly suffered from Mr. Bump and Mr. Sano. From her office in Ft. Lauderdale Florida, she opines on the ethics of Ms. Neathway's former therapist, the wrongdoing of the alleged victim of Ms. Neathway's stalking and coercion crimes, Brian Cashman, the due-process dispensed by individual Family Court judges and the fairness and integrity of the entire New York State Family Court system. The Court recognizes that Dr. Walker is nationally recognized forensic expert in PTSD and battered women's syndrome. The Court does not believe she is qualified, however, based on a record review and representations from Ms. Neathway to opine on a number of the issues she has rendered judgments about.

If even a portion of what Dr. Walker says in her report about the abuse Ms. Neathway suffered is correct, however, it is obvious that the Defendant was subject to a pattern of horrific domestic violence and emotional abuse which might go a long way to explaining her actions. The question is whether such evidence from an expert witness like Dr. Walker would be admissible at the Defendant's trial. In this Court's view, the answer is clearly no.

Why Expert BWS Testimony Should Not Be Admissible Here

First, there is no case law which would support allowing such expert testimony to be presented in a case like this. Second, Dr. Walker's own report does not make any claim that any of Ms. Neathway's psychiatric issues are directly relevant to any claim or defense she might have. Dr.

Walker's report speaks to Ms. Neathway's motivations. It says nothing about her mental culpability. Thus, Dr. Walker opines that it was the "desire to protect herself and M. from Mr. Bump, his family — and Mr. Sano — that motivated her to write the letter that was faxed to Rose Associates". Assuming that is true, however, it would be completely irrelevant to whether Ms. Neathway was guilty of the charges in this case.

*At other points in her report, Dr. Walker does appear to argue that Ms. Neathway's psychiatric condition is directly relevant to her mental culpability, as for example when she asserts that Ms. Neathway's actions were an attempt "to protect herself and her daughter; not to defraud the government". In the Court's view, however, such assertions improperly conflate motivation with mental culpability. Fraud has been defined as a "false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury".[\[FN16\]](#) If I intentionally provide false information to obtain an improper financial benefit, the fact that my motivation for that criminal conduct was a desire to protect myself or my daughter will not, absent the many broad exceptions outlined *supra*, relieve me of criminal responsibility for that crime.*

*The Defendant, in her written notice of intent to offer psychiatric evidence at the trial, which the People assert was filed on April 3, 2013, similarly indicated that evidence regarding [\[*9\]](#)battered women's syndrome would be offered to explain the Defendant's "state of mind" and "why the Defendant feared having any possible contact with Jason Bump, and also feared mentioning Jason Bump's name to any third party".[\[FN17\]](#) But again, such evidence would not be directly relevant to the charges in this case. Even if all of the assertions in Dr. Walker's report were true, moreover and even if the Defendant's motivations for her allegedly fraudulent conduct were required to be proven in this case, the Court does not understand the factual connection the Defendant seeks to draw between her motivations and her actions. The gravaman of the charges in this case, as the Court understands the allegations in the indictment, is that the Defendant lied about whether her daughter would be living with her in the subject apartment. The justification for Ms. Neathway's actions which is proffered here, however, is that she acted as she did because she was afraid of letting Mr. Bump know where she would be living. Why that fear would be alleviated by lying to Rose Associates about the fact that her daughter lived with her, however, is not explained.*

As the People note, "[t]here is no logical connection offered between her [Ms. Neathway's] supposed desire to avoid her ex-husband and the type of fraud she committed".[\[FN18\]](#) Ms. Neathway

was apparently living safely with her mother in Westchester County at the time the fraud in this case allegedly occurred. The domestic abuse Ms. Neathway allegedly suffered would not justify her moving from that home to an expensive luxury apartment in Manhattan by making fraudulent representations. Even had Ms. Neathway needed to move, she could have obviously moved to a cheaper apartment without committing the fraud alleged here. Generally, Dr. Walker asserts that "battered women often manipulate and do not tell the truth, in order to protect themselves from danger, usually from their abusive partners". But such motivations do not provide a defense under New York law for the crimes of Larceny, Falsifying Business Records or Offering a False Instrument for Filing. In that respect this case is distinguishable from others in which BWS evidence has been admitted to explain the behavior of defendants or complainants in abusive relationships. BWS may explain why a complainant or a defendant failed to report abuse, recanted previous allegations of abuse or was powerless to stop an abuser from victimizing a child. Such allegations do not provide a valid explanation for why a defendant would leave a safe environment and commit fraud to obtain a luxury Manhattan apartment.

*Indeed, if expert testimony regarding PTSD and BWS were allowed in a case like this it is difficult to see what kind of case involving a person who suffered from PTSD would not be a proper one for expert testimony on the disorder. If PTSD is relevant in a larceny case, then it would presumably be no less relevant in a robbery, burglary or drug sale prosecution. More broadly, the same rationale which would justify a PTSD expert in this case would also justify expert testimony to explain why a defendant with severe depression, anxiety or bi-polar disorder committed crimes. Ms. Neathway appears to have had a very difficult life and according to Dr. Walker's report has been subject to horrendous abuse. But it is a tragic fact that many defendants who are charged with serious offenses have also themselves been the victims of horrendous [*10]crimes in the past which may go a long way to explain their current criminal behavior. Most defendants unfortunately lack the means to have their disorders assessed by an expert forensic psychologist. The fact that Ms. Neathway was able to obtain such an assessment does not mean that the rules of evidence should be applied differently to her. Allowing expert testimony in this case would also create other problematic issues. It would, in this Court's view, clearly be more prejudicial than probative. Evidence regarding the Defendant's PTSD and battered women's syndrome would certainly engender sympathy. But it would have little if any probative value with respect to whether she intentionally stole property or had the intent to defraud. Dr. Walker's testimony, to be understandable, would necessarily require her to repeat a wealth of otherwise inadmissible hearsay information about the Defendant's history to explain her professional opinion and would create the danger that the jury would accept such information for its truth and not only for the purpose of understanding the basis for Dr. Walker's*

conclusions. See State v. Floyd Y., 22 NY3d 95 (2013). That testimony would distract the jury from its task: to determine whether the Defendant committed the specific crimes she was charged with.

Even beyond a description of the domestic violence which Ms. Neathway allegedly suffered, Dr. Walker's testimony would apparently venture even further afield to explain, for example, why the injustices visited upon the Defendant by the New York State Family Court system were a precipitating cause of her alleged crimes. It is difficult to imagine topics more tangential to the question of whether Ms. Neathway filed fraudulent documents to obtain an inexpensive apartment than the question of whether she was given the appropriate right to be heard in one of the innumerable child custody proceedings she was a party to years ago.

The Court does not agree with the People's arguments on this motion in one respect. The People argue that "fear of an abuser is not the type of novel or unusual reaction or behavior that requires expert testimony to explain." [FN19] With respect to BWS, however, a victim's actions may often be difficult for a jury to understand without expert testimony. "The psychological and behavioral characteristics and reactions typically shared by victims of abuse in a familial setting are not generally known by the average person . . .". *Matter of Nicole V.*, 71 NY2d 112, 120 (1987). Dr. Walker's report in this case makes that plain and it is for that reason that BWS evidence has been admitted in many cases. The reason the evidence proffered here should be excluded is not because Dr. Walker's testimony would inform the jury about behaviors they could clearly understand in the absence of expert testimony. The reason such testimony should be excluded is because it would have little if any relevance to the charges in this case and clearly be more prejudicial than probative. Were the Defendant to be convicted, in the Court's view, Dr. Walker's report might be highly relevant with respect to sentencing. But the Court does not believe Dr. Walker's expert testimony should be admissible at the Defendant's trial. The People also argue here that, assuming the Defendant is permitted to offer expert BWS testimony, Ms. Neathway has not cooperated with the psychologist they have employed to examine her with respect to that evidence. The Defendant rejects that contention. Since the Court will not allow expert BWS [*11]testimony to be admitted during the trial, however, the issue of whether Ms. Neathway has appropriately cooperated with the People's psychologist is academic and will not be addressed here. Finally two other questions may arise with respect to this Court's decision. The first is whether statements which Ms. Neathway made to the People's expert or her own expert in anticipation of the admission of BWS testimony will be admissible during the trial. The second is whether Ms. Neathway would be able to outline her history of alleged domestic violence and offer that history as an explanation for her actions if she testified at her trial. The parties have not yet addressed either of those issues and the Court will

address them when and if they arise.

For all of those reasons, the People's motion to preclude the Defendant from offering expert BWS testimony during the trial is granted.

June 13, 2014 _____

Daniel Conviser, A.J.S.C.

Footnotes

Footnote 1: *People's Memorandum of Law in Support of Motion to Preclude Expert Testimony, March 21, 2014 ("People's Memorandum"), p. 1.*

Footnote 2: *Although the parties have used the child's full name in their submissions, since the Court has submitted the instant decision for publication and the child is still a minor, the Court has decided to use an abbreviation rather than the child's full name.*

Footnote 3: *Dr. Walker's report, p. 14.*

Footnote 4: *Id.*

Footnote 5: *Id.*

Footnote 6: *Id.*

Footnote 7: *Dr. Walker's report, p. 12.*

Footnote 8: *Dr. Walker's report denotes the disorder as "Battered Woman Syndrome" while the courts have called the disorder using the plural "battered women's syndrome". The difference is obviously not material; both formulations are used here. Dr. Walker's report capitalizes the disorder while court decisions have not. This Court understands the courts have adopted the correct capitalization rule and so the term is not capitalized here except where the acronym "BWS" is used.*

Footnote 9: *Dr. Walker's report p. 13.*

Footnote 10: *Id., p. 15.*

Footnote 11:*Id.*, p. 17.

Footnote 12:*Id.*, p. 18.

Footnote 13:*Id.*

Footnote 14:*Id.*

Footnote 15:*People v. Martin Weiss, Indictment # 925\2013 (New York County Supreme Court 2014) (May 29, 2014 bench ruling).*

Footnote 16:*Blacks Law Dictionary, Abridged Sixth Edition, definition of the word "Fraud".*

Footnote 17:*People's Affirmation in Support of Motion to Preclude Expert Testimony, March 21, 2014, ¶ 9.*

Footnote 18:*People's Memorandum, p. 8.*

Footnote 19:*People's Memorandum, p. 7.*