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# State v. Nemeth: Equal Protection for the Battered Child

Joseph A. Shoaff

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## **STATE v. NEMETH<sup>1</sup>**

### **EQUAL PROTECTION FOR THE BATTERED CHILD**

*"I'm disgusted with the shit you turned out to be. . . . I don't care what I have to do, I'm going to get rid of you . . . you bastard."<sup>2</sup>*

#### **I. INTRODUCTION**

The "equality of men in legal right is a most sacred principle" that must never be abridged by our political structure.<sup>3</sup> This principle is embodied in the Equal Protection Clause of the Fourteenth Amendment<sup>4</sup> to the United States Constitution which guarantees "the protection of equal laws"<sup>5</sup> to all citizens. The equal protection clause ensures that the government does not enact legislation which discriminates against a class of individuals by treating similar persons differently,<sup>6</sup> on a purely illogical and arbitrary basis.<sup>7</sup> When the government takes such action, the courts should step in to review the constitutionality of the governmental action under the equal protection clause.<sup>8</sup>

In *State v. Nemeth*, the Seventh District Court of Appeals was asked to decide whether 16-year-old Brian Nemeth should be permitted to introduce expert psychological testimony to support his claim of self-defense for the shooting death of his mother.<sup>9</sup> The Court recognized that the battered child and battered woman syndromes are analogous conditions.<sup>10</sup> Therefore, since Ohio allows battered women to present expert testimony of the battered woman syndrome to support their claims of self-defense,<sup>11</sup> the *Nemeth* Court reasoned that battered children should be afforded the same right under the Equal Protection Clauses of the United States and Ohio Constitutions.<sup>12</sup>

This Note analyzes the Court's decision in *Nemeth*.<sup>13</sup> Part II presents a background of the battered child syndrome followed by a discussion of the admissibility of battered woman and battered child syndrome testimony in Ohio.<sup>14</sup> In addition, it contains a brief overview of Ohio's ambiguous self-defense standard.<sup>15</sup> Part III presents the facts, procedural history, and holding of *Nemeth*.<sup>16</sup> Part IV analyzes the Court's holding.<sup>17</sup>

This Note establishes why the Ohio Supreme Court should recognize the psychological equivalency of the battered woman and battered child syndromes and affirm the *Nemeth* holding on equal protection grounds. In doing so, the Court will ensure that abused children enjoy the same evidentiary right as abused women. Namely, the right to present expert psychological testimony to support their self-defense claims.

#### **II. BACKGROUND**

##### **A. The Battered Child Syndrome**

"In recent years, experts have declared the child abuse and neglect problem an epidemic."<sup>18</sup> Two-and-a-half million children each year are victims of serious abuse.<sup>19</sup> Since 1980, the number of reported cases of child maltreatment has quadrupled.<sup>20</sup> While the majority of abused children do not retaliate against their attacker,<sup>21</sup> a small percentage

are forced to commit parricide<sup>22</sup> in self-defense.<sup>23</sup> To understand why a child would use deadly force against his abusive parent, one must understand the psychological effects of the abuse on the child's perceptions and behavior.

Originally, most child abuse researchers focused their attention on the medical rather than psychological aspects of abuse.<sup>24</sup> In 1962, Dr. C. Henry Kempe and associates coined the term "battered child syndrome" in a landmark study published in the *Journal of the American Medical Association*.<sup>25</sup> Kempe used the term to describe the clinical presentation of young children who had received serious physical abuse at the hands of their parents.<sup>26</sup>

Since Kempe's study, a huge body of research on the psychological characteristics of child abuse has emerged.<sup>27</sup> This research illustrates the identical psychological features of the battered child and battered woman syndrome.<sup>28</sup> Abused women and children both suffer from post-traumatic stress disorder (PTSD),<sup>29</sup> a condition that results from a psychologically traumatic event that is outside the range of normal human experience, such as severe abuse.<sup>30</sup> Both exhibit a wide array of psychological disturbances ranging from fear, aggression, and hostility to "learned helplessness,"<sup>31</sup> apathy, and withdrawal.<sup>32</sup> Both become psychologically attached<sup>33</sup> to their batterers and fear reprisal should they attempt to escape the abusive relationship.<sup>34</sup> These factors, coupled with a child's complete dependence on his parent for financial and emotional support,<sup>35</sup> explain why the battered child cannot comprehend an escape from his life of abuse,<sup>36</sup> other than by killing his abuser.<sup>37</sup>

Abused children, like their battered women counterparts, often kill their abusers during a lull between attacks, in a so-called nonconfrontational period.<sup>38</sup> After enduring years of repeated abuse, a battered child learns how to detect subtle changes in his abuser's behavior; this condition, termed "hypervigilance," alerts the child that an attack is imminent.<sup>39</sup> Facing the threat of danger, the child believes that he must act now, in-between attacks, or suffer the consequences of an impending, perhaps fatal beating.<sup>40</sup> Without the aid of expert testimony to describe the child's "hypervigilant" state of mind, the average juror is simply unequipped to understand why the child believed that an attack was imminent, absent an objectively apparent reason for such a belief.<sup>41</sup>

#### B. Admissibility of Expert Psychological Testimony of the Battered Woman and Battered Child Syndromes in Ohio.

Over the last two decades, Ohio has gone from refusing to recognize the battered woman syndrome to allowing experts to testify concerning the syndrome to help the jury evaluate the woman's unique self-defense claim.<sup>42</sup>

In 1981, the Ohio Supreme Court unanimously denied admissibility of expert testimony of the battered wife syndrome in *State v. Thomas*.<sup>43</sup> The defendant in *Thomas* sought to introduce expert testimony on the battered wife syndrome to help the jury understand her state of mind when she shot her abusive husband.<sup>44</sup> The Court held that the battered wife syndrome had not gained sufficient scientific acceptance to warrant admissibility and that

the jury was competent to understand whether the defendant presented a self-defense claim without the aid of an expert.<sup>45</sup>

Nine years later, in *State v. Koss*,<sup>46</sup> the Ohio Supreme Court reversed its holding in *Thomas*. In *Koss*, the Court found that expert testimony<sup>47</sup> concerning the battered woman syndrome was necessary to assist the jury in determining whether the defendant had reasonable grounds for an honest belief that she was in imminent danger and that the use of force was her only means of escape.<sup>48</sup> The Court based its holding on the fact that the battered woman syndrome had gained wide-spread scientific acceptance since *Thomas* was decided.<sup>49</sup> Furthermore, the court noted that expert testimony was essential to dispel common myths that lay persons have concerning battered women.<sup>50</sup> More importantly, the *Koss* Court recognized that knowledge of a battered defendant's state of mind was crucial to the jury's determination of whether he or she properly acted in self-defense.<sup>51</sup>

Shortly before *Koss* was decided, the General Assembly introduced H.B. 484, later codified as Revised Code 2901.06, the battered woman statute.<sup>52</sup> This statute recognizes the validity of the battered woman syndrome, acknowledges that the syndrome is outside the understanding of the general public, and allows battered women to introduce expert testimony to satisfy the requisite belief of an imminent danger of death or great bodily harm that is necessary to establish the affirmative defense of self-defense.<sup>53</sup>

Ohio courts have had little occasion to address self-defense claims by battered children.<sup>54</sup> The first case to consider this issue was *State v. Holden*.<sup>55</sup> In *Holden*, the child-defendant killed his father with an ax.<sup>56</sup> Claiming self-defense, the defendant argued that the trial court erred when it refused to allow a psychiatrist to testify regarding the "battered person syndrome."<sup>57</sup> The Eighth District Court of Appeals held that it was "unable to discern a distinction between a 'battered wife syndrome' and a 'battered person syndrome.'"<sup>58</sup> But, since the case was decided before *Koss*, the court was bound by its decision in *Thomas* to exclude the expert's testimony on the battered person syndrome.<sup>59</sup> In *State v. Young*,<sup>60</sup> the Sixth District Court of Appeals had to decide whether the trial court erred when it allowed the State to introduce expert testimony attacking the battered child syndrome to rebut expert testimony presented by the defense.<sup>61</sup> The court concluded that expert testimony was necessary to assist the trier of fact in determining the battered defendant's state of mind at the time of the killing.<sup>62</sup>

### C. Ohio's Conflicting Self-Defense Standard

In *State v. Koss*, the Ohio Supreme Court stated that Ohio uses a purely subjective test to evaluate whether a defendant properly acted in self-defense.<sup>63</sup> However, just recently, in *State v. Thomas*,<sup>64</sup> the Court declared that the second element of self-defense<sup>65</sup> is a "combined subjective and objective test."<sup>66</sup> While *Thomas* is replete with language purporting to adopt an objectively reasonable standard of self-defense,<sup>67</sup> the Court's opinion nonetheless begins with a statement that the second element of self-defense requires that the defendant show he had a "bona fide belief" of imminent danger - a purely subjective standard.<sup>68</sup>

In light of this ambiguity,<sup>69</sup> this Note suggests that the High Court clarify whether Ohio's self-defense standard is purely subjective, or whether it contains an objective component as well. Regardless of what standard is adopted, evidence of a battered defendant's state of mind is necessary to assist the trier of fact in determining whether the defendant had an honest and objectively reasonable belief that he was in imminent danger of harm when he killed his abuser.<sup>70</sup>

### III. STATEMENT OF THE CASE

#### A. Facts

On Friday, January 6, 1995, 16-year-old Brian Nemeth was afraid to go home because once again his mother, Suzanne, was drunk.<sup>71</sup> Brian had been the victim of Suzanne's beatings and verbal abuse for as long as he could remember and tonight was no exception.<sup>72</sup> When Brian arrived home, Suzanne hit him in the mouth with a full can of beer and threatened to "beat his face in."<sup>73</sup> Brian tried to escape by climbing out the window to go to a friend's house for safety, but she followed him.<sup>74</sup> On their ride home, Suzanne repeatedly slapped Brian and called him a "prick, fag, asshole, dickhead and mother fucker."<sup>75</sup> Upon returning home, Brian locked himself in his bedroom while Suzanne proceeded to beat on his door for hours, threatening to kill him.<sup>76</sup> Finally, when it appeared that she had stopped, at approximately 4:45 a.m., January 7, 1995,<sup>77</sup> Brian grabbed his hunting bow and shot his mother in the head five times while she was laying on the couch.<sup>78</sup> Suzanne Nemeth died eight days later and Brian was charged with her murder.<sup>79</sup>

#### B. Procedure

The Grand Jury indicted Brian and charged him with one count of aggravated murder.<sup>80</sup> He pled not guilty and the trial began on September 28, 1995 in the Jefferson County Court of Common Pleas.<sup>81</sup> Prior to trial, the State filed a motion in limine to prevent the defense from introducing expert testimony concerning the battered child syndrome<sup>82</sup> by Dr. James Eisenberg.<sup>83</sup> The trial court granted the motion on the basis that Ohio does not recognize the battered child syndrome.<sup>84</sup> Brian was subsequently found guilty of murder.<sup>85</sup>

Defense counsel appealed to the Seventh District Court of Appeals, asserting two assignments of error.<sup>86</sup> This Note deals with the defendant's first assignment of error in which he alleges that the trial court erred in excluding the defendant's proffer of expert testimony of the battered child syndrome to establish his claim of self-defense.<sup>87</sup>

#### C. Holding

In a unanimous decision, the appellate court found that battered women and battered children are similarly-situated for purposes of the equal protection clause.<sup>88</sup> Accordingly, the court held that because Ohio allows abused women to present expert testimony to establish their self-defense claims, the same opportunity should be afforded battered

children.<sup>89</sup>

#### IV. ANALYSIS

There are four reasons why the Ohio Supreme Court should affirm the Nemeth holding on equal protection grounds. First, the uncontroverted similarities between abused women and children make any distinction between the two groups wholly arbitrary.<sup>90</sup> Second, Ohio's battered woman statute is underinclusive<sup>91</sup> because it excludes battered children. Third, expert psychological testimony of the battered child syndrome is needed to assist the jury in assessing the honesty and reasonableness of the child's belief of imminent danger.<sup>92</sup> Fourth, such testimony satisfies the admissibility requirements of Rule 702 of the Ohio Rules of Evidence.<sup>93</sup>

The equal protection clauses of the United States and Ohio Constitutions guarantee that similarly-situated persons receive equal treatment under the law.<sup>94</sup> A statutory classification must be rationally related to a legitimate state interest to be constitutional.<sup>95</sup> Otherwise, the classification is arbitrary<sup>96</sup> and violates the equal protection clause.<sup>97</sup>

The Nemeth court wisely concluded that it is "illogical and arbitrary" to treat abused women and children differently because both groups exhibit identical psychological responses.<sup>98</sup> This Note, with much support from numerous courts and commentators, agrees with Nemeth concerning the profound similarities between abused women and children.<sup>99</sup>

In the landmark case of *State v. Janes*,<sup>100</sup> the Washington Supreme Court declared that "the battered child syndrome is the functional and legal equivalent of the battered woman syndrome."<sup>101</sup> Likewise, in *State v. Holden*, the Eighth Appellate District of Ohio stated that it could not distinguish between a battered woman and a battered person.<sup>102</sup> Even the majority in *Jahnke*, which held that battered child syndrome testimony is inadmissible to establish the reasonableness of the child's self-defense claim,<sup>103</sup> stated that "conceptually there is no reason to distinguish a child [from a battered woman] who is a victim of abuse."<sup>104</sup>

As these opinions illustrate, the psychological effects that plague battered women are also indigenous to battered children.<sup>105</sup> Both are victims of long-term abuse and both suffer feelings of learned helplessness, fear, and isolation.<sup>106</sup> Likewise, both the battered woman and battered child syndromes are rooted in abuse-induced post traumatic stress disorder.<sup>107</sup> In light of these analogies, the Nemeth court's decision to treat battered women and children similarly<sup>108</sup> is well-founded and consistent with equal protection principles.

Nemeth, however, could have gone further and held that R.C. 2901.06<sup>109</sup> is underinclusive<sup>110</sup> because it excludes battered children from receiving the evidentiary benefit of expert testimony authorized by the statute.<sup>111</sup> Abused women and children are similarly-situated, especially when it comes to the need to introduce expert testimony to support their self-defense claims. The legislative intent behind the enactment of R.C.

2901.06 was to allow battered women to present experts to dispel myths of jurors concerning battered women<sup>112</sup> and to help the jury determine the honesty and reasonableness of the accused's perception of imminent danger.<sup>113</sup>

These same purposes apply with equal force to battered children. Absent expert testimony, the average juror would be unable to comprehend why an abused child could not escape the abusive environment or otherwise seek help.<sup>114</sup> Likewise, without expert testimony concerning the child's unique state of mind at the time of the killing,<sup>115</sup> the lay juror would be unable to fairly judge the reasonableness of the child's belief that he was in imminent danger.<sup>116</sup> Because battered women and children are similarly-situated for purposes of 2901.06, the General Assembly's decision to exclude battered children from the statute<sup>117</sup> rendered it underinclusive.<sup>118</sup> To cure this defect, the Ohio Supreme Court must expand the scope of R.C. 2901.06 to encompass battered children.

Expert testimony of the battered child syndrome is crucial to the jury's determination of whether the abused child honestly and reasonably believed himself to be in imminent danger when he acted against his abuser.<sup>119</sup> Likewise, such testimony comports with the admissibility requirements set forth in Rule 702 of the Ohio Rules of Evidence.<sup>120</sup>

An expert on the battered child syndrome can explain characteristics to the jury that are unique to victims of abuse which lie outside the jury's common knowledge.<sup>121</sup> Indeed, many jurisdictions have concluded that "the pattern of behavioral and emotional characteristics common to the victims of battering lies beyond the ken of the ordinary juror and may properly be the subject of expert testimony."<sup>122</sup> In a recent decision dealing with sexual child abuse, the Ohio Supreme Court acknowledged that "most jurors would not be aware in their everyday experiences of how . . . abused children might respond to abuse."<sup>123</sup>

Expert testimony can also counteract prevailing myths and stereotypes concerning battered persons<sup>124</sup> and educate the jury of what perceptions are "reasonable for the battered person" to have.<sup>125</sup> Further, an expert can explain to the jury how the effects of repeated batterings shape the perceptions of the battered child causing him to "sense" impending danger even during periods of apparent calmness.<sup>126</sup> Absent such testimony, the lay juror would fail to understand how the battered child reasonably believed himself to be in imminent danger, particularly when his abuser was in a nonconfrontational posture at the time of the killing.<sup>127</sup>

Finally, expert testimony of the battered child syndrome is based on reliable specialized information.<sup>128</sup> In determining the reliability of expert testimony, the Ohio Supreme Court first inquires whether the evidence is relevant, and then balances its probativeness and reliability against the risk of misleading or confusing the jury.<sup>129</sup> Testimony by an expert with specialized knowledge of the battered child syndrome is highly relevant to the jury's determination of the reasonableness of the child's self-defense claim.<sup>130</sup> Moreover, such testimony has significant probative value because it assists the jury in determining matters that are beyond its common knowledge.<sup>131</sup> Thus, the probativeness of battered child syndrome testimony far outweighs any prejudicial impact such

testimony may have on the jury.<sup>132</sup>

In sum, expert testimony of the battered child syndrome comports with the admissibility requirements of Rule 702 and must be admitted to inform the jury of the child's unique state of mind at the time of the killing.<sup>133</sup> Only then can the jury properly evaluate whether the child's "seemingly unreasonable behavior may actually have been reasonable."<sup>134</sup>

## V. CONCLUSION

The Nemeth court confronted the issue of whether expert psychological testimony of the battered child syndrome should be admitted to support the child's self-defense claim.<sup>135</sup> Wisely, the court concluded that no rational basis exists for treating battered women and children differently.<sup>136</sup> An abused child's self-defense claim is "virtually identical" to that of a battered woman who kills her abuser.<sup>137</sup> Thus, the same rationales for applying expert testimony in the battered women context are applicable to battered children.<sup>138</sup> As one commentator aptly put it, judicial acceptance of the battered women self-defense "not only pave[s] the way for admissibility of similar evidence regarding battered children, it mandates such a result."<sup>139</sup> Accordingly, the Ohio Supreme Court must affirm Nemeth on equal protection grounds<sup>140</sup> and judicially expand the reach of R.C. 2901.06 to allow battered children to present expert testimony in support of their self defense claims.

**Joseph A. Shoaff**