

**SYNDROME ADMISSIBILITY IN THE HEART OF DIXIE:  
TO ADMIT OR NOT TO ADMIT?**

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**INTRODUCTION**

The purpose of this paper is to address admissibility of syndromes in Alabama. The paper will discuss what the legal definition of a “syndrome” is and which syndromes have gained admissibility in Alabama based on the “*general acceptance test*” laid forth in *Frye v. United States* as well as how syndromes are used in conjunction with other evidence, to show that a crime or victimization occurred. Additionally, the paper will demonstrate how the accused injects syndrome testimony as a defense or mitigating factor.

**A. *What is a Syndrome?***

A syndrome is defined as “a cluster or pattern of symptoms that appear together in a way that is considered clinically meaningful.”<sup>1</sup> The symptoms of a syndrome have no set formulations or “sequential nature.”<sup>2</sup> A syndrome usually bridges the gap between a series of events and certain characteristics.<sup>3</sup> Notably, it is distinguishable from a profile although often used within the same context.<sup>4</sup>

[S]yndromes typically refer to a set of common symptoms, affect, thoughts, or behaviors . . . that appear to occur together and to be interrelated, profiles are more specific and have a particular use. A profile refers to a set of symptoms and behavioral or physical characteristics associated with specific behavior patterns. A profile is used to predict specific behavioral activity.<sup>5</sup>

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<sup>1</sup> Veronica B. Dahir, Judicial Application of Daubert to Psychological Syndrome and Profile Evidence: A Research Note, 11 Psych. Pub. Pol. and L. 62, 63 (2005) (comparing a syndrome to a disease).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

Courts usually hold that a set of characteristics qualify as a syndrome if they are recognized in the field of psychology and pass the “*generally accepted test*” expressed in *Frye v. United States*.<sup>6</sup> Syndromes are generally used for two purposes: (1) To indicate that a crime or victimization occurred; or (2) As a mitigating factor or defense on behalf of the accused.<sup>7</sup>

***a. Syndrome used to show abuse, crime, or victimization occurred***

Syndrome testimony is admissible at trial to show a crime occurred.<sup>8</sup>

The fourth edition of the American Psychiatric Association’s *Diagnostic And Statistical Manual of Mental Disorders* (“DSM-IV-TR<sup>TM</sup>”), focuses on clinical and educational research in the field of psychology and describes several syndromes.<sup>9</sup> Some examples included in the DSM-IV-TR<sup>TM</sup> are: “Post-Traumatic Stress Disorder” (“PTSD”); “Child Sexual Abuse Syndrome” (“CSAS”); and “Intermittent Explosive Disorder.”<sup>10</sup> However, many syndromes are not included in the DSM-IV-TR<sup>TM</sup>.<sup>11</sup> Moreover, the additional syndromes that are somehow categorized outside the scope of the DSM-IV-TR<sup>TM</sup>, has no bearing on their validity or worth as being “a focus of research or treatment.”<sup>12</sup>

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<sup>6</sup> See *C.J.L. v. M.W.B.*, 879 So. 2d 1169, 1172 (Ala. Civ. App. 2003) (explaining a mother’s basis for appealing the admissibility of parent alienation syndrome); See generally, *Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923) (explaining the “general acceptance test”).

<sup>7</sup> Susan J. Becker, *Child Sexual Abuse Allegations Against a Lesbian or Gay Parent in a Custody or Visitation Dispute: Battling the Overt and Insidious Bias of Experts and Judges*, 74 Denv. U.L. Rev. 75, 147 (1996) (explaining the conflicting use of syndromes as a defense or that event occurred).

<sup>8</sup> *Id.* at 147-48.

<sup>9</sup> American Psychiatric Association, *Introduction to the Fourth Edition of Diagnostic And Statistical Manual Of Mental Disorders*, xxiii-xxv (4 ed. 2000).

<sup>10</sup> American Psychiatric Association, *Diagnostic And Statistical Manual Of Mental Disorders*, 467, 738, 663, 737.

<sup>11</sup> DSM-IV-TR<sup>TM</sup> -Frequently Asked Questions, <http://dsmivtr.org/2-1faqs.cfm>.

<sup>12</sup> *Id.*

*b. Syndrome used as a defense or mitigating factor*

In addition to showing that a crime occurred, a defendant may use a syndrome to prove that no abuse occurred or as a mitigating factor.<sup>13</sup> Accordingly, the choosing of the “particular syndrome [may] dictate the [finding] of whether abuse did or did not occur.”<sup>14</sup> As a result, the trial court decisions on evidentiary syndrome testimony may result in one defendant’s exoneration or a life sentence.

*c. Alabama Courts and Syndrome Testimony*

Some *Frye* jurisdictions will not use the “generally acceptance test” in considering psychological syndromes such as “Battered Woman Syndrome” (“BWS”) or Rape Trauma Syndrome (“RTS”).<sup>15</sup> The courts which do not apply the test reason that “*Frye* has traditionally been applied in cases that concern ‘*novel scientific*’ devices or processes involving the evaluation of physical evidence.”<sup>16</sup> We will cover: BWS; CSAS; and other syndromes that have not been contested or completely inadmissible in Alabama. This research intends to focus on psychological testimony that requires a qualified expert. We will begin by covering the legal standard of admissibility in Alabama and how it is applied.

**THE LEGAL STANDARD FOR ADMISSIBILITY IN ALABAMA**

The *Frye* test states that expert testimony “must be sufficiently established to have gained ‘*general acceptance*’ in the particular field in which it belongs.”<sup>17</sup> Aside from the

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<sup>13</sup> Becker, *supra* note 7, at 147.

<sup>14</sup> *Id.*

<sup>15</sup> The Harvard Law Review Association, *Confronting The New Challenges Of Scientific Evidence*, 108 Harv. L. Rev. 1481 (1995).

<sup>16</sup> *Id.* (emphasis added).

<sup>17</sup> *Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923).

“*general acceptance test*,” the proffered testimony must: (a) assist the trier of fact; (b) must be proffered by a qualified expert; and (c) its probative value must outweigh the potential for prejudice.<sup>18</sup> In addition, evidence in *Frye* jurisdictions must qualify as *scientific*.<sup>19</sup> As a result, the qualified expert “must prove that he relied on *scientific* principles, methods, or procedures that have gained ‘*general acceptance*’ in the field in which the expert is testifying.”<sup>20</sup>

#### ***A. Frye-Test: Applicability in Alabama Courts***

Historically, Alabama has used the “*general acceptance test*” under *Frye v. United States*.<sup>21</sup> The Alabama Courts have admitted some expert testimony on syndromes listed in the DSM-IV-TR™ psychiatric manual in case law while concurrently excluding others.<sup>22</sup> The federal courts’ standard for expert testimony in all states is that of *Daubert v. Merrell Dow Pharmaceuticals*.<sup>23</sup> Nonetheless, the *Daubert Test* only applies to DNA evidence within state courts of Alabama.<sup>24</sup>

As early as 1986, the *Frye-Test* began to surface in criminal cases as psychological evidence.<sup>25</sup> The Alabama Courts hold that:

[A] person who offers an opinion as a scientific expert must prove that he relied on scientific principles, methods, or procedures that have gained *general acceptance* in the field in which the expert is testifying . . . mere assertions of belief, without any supporting research, testing, or experiments, cannot qualify as proper expert scientific testimony under

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<sup>18</sup> *Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923); Fed. R. Evid. 403, 702

<sup>19</sup> *Id.*

<sup>20</sup> *Ex parte Layton*, 911 So. 2d 1052 (Ala. 2005) (quoting *Slay v. Keller Industries, Inc.*, 823 So. 2d 623, 626 (Ala. 2001) (emphasis added).

<sup>21</sup> *Rivers v. Black*, 259 Ala. 528 (Ala. 1953) (implementing the general acceptance test to determine the reliability of a “*drunkometer*” test).

<sup>22</sup> *See e.g., Ex parte Hill*, 507 So. 2d 558 (Ala. 1987); *C.J.L. v. M.W.B.*, 879 So. 2d 1169 (Ala. Civ. App. 2003).

<sup>23</sup> *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579, 593-594 (1993).

<sup>24</sup> Robert J. Goodwin, *Fifty Years Of Frye In Alabama: The Continuing Debate Over Adopting The Test Established In Daubert V. Merrell Dow Pharmaceuticals, Inc.*, 35 *Cumb. L. Rev.* 231, 240-241 (2004); *Barber v. State*, 2005 Ala. Crim. App. LEXIS 120 (2005)(citing Ala.Code § 36-18-30 (2005)).

<sup>25</sup> *Hill v. State*, 507 So. 2d 554, 555 (Ala. Crim. App. 1986).

either the '*general-acceptance*' standard enunciated in *Frye* or the '*scientifically reliable*' standard of *Daubert*.<sup>26</sup>

Considering the *Frye* standard of Alabama along with prior precedent, we may attempt to predict the admissibility of syndromes in Alabama. However, Alabama courts have discretion concerning the admission of expert testimony, and their decisions stand unless there is a clear abuse of discretion.<sup>27</sup> The cases seem to dictate that passing the *Frye-test* should mandate acceptance of some syndromes that qualify as "*scientific*." However, many of the "newer" syndromes in Alabama, which are inadmissible, seem to show equal or significant basis for scientific validity than the admissible syndromes.

The Alabama case of *Hoosier v. State* discussed the issue of "battering parent profile" ("BPP") and later compared it to BWS.<sup>28</sup> The defendant in *Hoosier* was accused of manslaughter of an 18-month-old child.<sup>29</sup> The court upheld the trial courts exclusion of expert testimony regarding the "battering parent profile."<sup>30</sup> During *Hoosier*, the Alabama courts never addressed a battering profile.<sup>31</sup> The lower court stated that it could "find no authority for the admission of the testimony."<sup>32</sup> The court states that such testimony was "scientific" and must pass the *Frye* test.<sup>33</sup> The court compares the admissibility of "battered parent profile" to BWS and explains that there must be "proper predicate and foundation" as well as a presentation from a qualified expert.<sup>34</sup> The court

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<sup>26</sup> *Ex parte Layton*, 2005 Ala. LEXIS 62, 13-14 (Ala. 2005)(quoting *Slay v. Keller Industries, Inc.*, 823 So. 2d 623, 626 (Ala. 2001))(emphasis added).

<sup>27</sup> *McGahee v. State*, 885 So. 2d 191, 201 (Ala. Crim. App. 2003)(citing *Robert v. State*, 516 So. 2d 936 (Ala. Crim. App. 1987); *Reed v. State*, 748 So. 2d 231, 233 (Ala. Crim. App. 1999); *Grady v. State*, 831 So. 2d 646, 648 (Ala. Crim. App. 2001)).

<sup>28</sup> *Hoosier v. State*, 612 So. 2d, 1352, 1353 (Ala. Crim. App. 1992).

<sup>29</sup> *Id.* at 1353.

<sup>30</sup> *Id.* at 1354.

<sup>31</sup> *Id.* at 1353.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

also emphasized that although “battering parent profile” has not gained “*general acceptance*”, this “is not to imply that the battering parent profile will never receive ‘*general acceptance*.’”<sup>35</sup> Accordingly, in other cases, where it seems that such evidence would run into admissibility problems, the courts used its discretion to determine expert testimony something is officially profile evidence. In essence, they are determining if it must meet the “*general acceptance test*.”<sup>36</sup> In *Hoosier*, the expert was asked if the profile evidence is recognized in scientific literature and he stated:

It is not a diagnosable entity, if you will. It is *not a syndrome*. It is not listed in our list of diagnostic and statistical [manual] . . . DSM3 . . . You don’t have the battering parent profile. It is a profile that is devised from considerable research with numerous individuals, psychologists and psychiatrists that are working in the area of child abuse and child neglect.<sup>37</sup>

It seems under *Hoosier* that the converse should be true; if a syndrome is “diagnosable, a syndrome in the DSM-IV-TR™, and you “have it,” the “*generally acceptance test*” is satisfied.

In the case of *Hill v. State*, the court examined the issue of the reliability of BWS.<sup>38</sup> In *Hill*, the defendant killed her husband while he was sleeping by shooting him three times in the head.<sup>39</sup> The court held that the qualified expert’s testimony was properly excludible because it was “unreliable scientific testimony.”<sup>40</sup> At the time of this case, the court simply relied on Florida’s precedent in stating that such evidence fails the

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<sup>35</sup> *Hoosier v. State*, 612 So. 2d, 1352, 1354 (Ala. Crim. App. 1992) (emphasis added).

<sup>36</sup> Goodwin, *supra* note 24, at 256 n.107; *Simmons v. State*, 797 So. 2d 1134, 1150 (Ala. Crim. App. 1999) (holding that the Federal Bureau of Investigation profiling behavior assessment unit is not profiling evidence).

<sup>37</sup> *Hoosier*, at 1353 (emphasis added).

<sup>38</sup> *Hill v. State*, 507 So. 2d 554, 555 (Ala. Crim. App. 1986).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

*Frye-test*.<sup>41</sup> However, the Eleventh Circuit Court of Appeals adopts the concurring opinion, which states that BWS is admissible where a proper predicate and foundation lay.<sup>42</sup>

## THE CURRENT SYNDROMES ADMISSIBLE AND THE TRENDS IN ALABAMA

### *A. Battered Woman Syndrome*

Since the ruling of *Ex parte Hill*, the BWS has been admissible in the state of Alabama.<sup>43</sup> Following *Hill*, the Alabama courts simply stated that BWS is admissible so long as it established the psychological phases of the syndrome and is relevant to the case at bar.<sup>44</sup> According to the case of *Barrett v. State*, “[BWS] has three phases: the tension phase, the battering phase, and the honeymoon phase.”<sup>45</sup> The stages of “battered woman syndrome . . . presuppose a relationship between a *batterer* and a *partner*.”<sup>46</sup> If the defense fails to note the preexisting relationship between the alleged batterer and the partner then the claim is inapplicable.<sup>47</sup> Further, if BWS fails basic relevancy test and demonstrates unfair prejudice, it is inadmissible.<sup>48</sup> Aside from satisfying pre-existing elements of BWS, the syndrome may be admissible “to assist the jury in understanding the syndrome, and to help the jury determine whether the defendant had an honest belief that she was in imminent danger, as that determination related to a claim of self-defense.”<sup>49</sup> Moreover, if a defendant chooses to rely on “battered woman syndrome” as a

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<sup>41</sup> *Hill v. State*, 507 So. 2d 554, 555 (Ala. Crim. App. 1986).

<sup>42</sup> *Hill v. State*, 507 So. 2d 554, 557 (Ala. Crim. App. 1986) (Bowden, J., concurring); *Ex parte Hill*, 507 So. 2d 558 (Ala. 1987).

<sup>43</sup> *Id.*

<sup>44</sup> *Barrett v. State*, CR-03-1310, 2005 Ala. Crim. App. LEXIS 50, at \*9-10 (Ala. Crim. App. 2005).

<sup>45</sup> *Id.* at \*9.

<sup>46</sup> *Id.* (emphasis added).

<sup>47</sup> *Id.* at \*11.

<sup>48</sup> *Id.* at \*8, \*12.

<sup>49</sup> *Harrington v. State*, 858 So. 2d 278, 294 (Ala. Crim. App. 2002) (quoting *Ex parte Haney*, 603 So. 2d 414 (Ala. 1992)).

defense, she may not refuse to submit to an examination by the State's expert.<sup>50</sup> In the case of *Bonner v. State*, the court held that:

The basis for the defense is the reasonableness of the woman's actions given the circumstances of her life; the basis does not rest on any claimed psychological incapacity inflicted on the woman by these circumstances . . . . Instead, such testimony would be offered to show that because . . . [the defendant] suffered from the syndrome, it was reasonable for her to have remained in the home and . . . to have believed that her life and the lives of her children were in imminent danger.<sup>51</sup>

Although the courts have acknowledged that “battered woman syndrome is almost completely admissible throughout the country, it has traditionally been held admissible in murder for hire cases.<sup>52</sup>

### ***B. Child Sexual Abuse Syndrome***

The court addressed the issue of CSAS in the case of *Sciscoe v. State*.<sup>53</sup> In *Sciscoe*, the defendant was charged with rape and sodomy of children under the age of 16.<sup>54</sup> There was testimony by the victim's that the defendant touched and licked their privates.<sup>55</sup> The expert in the case stated, “[t]hat is where he put it” and testified that the children were sexually abused.<sup>56</sup> There was additional testimony from an investigator who was not an expert per se, but completed 100 of 150 hours of course work to become a certified sexual abuse intervention specialist.<sup>57</sup> The defendant argued that such testimony did not pass the *Frye* test and that the expert was not qualified.<sup>58</sup> On the issue

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<sup>50</sup> *Harrington v. State*, 858 So. 2d 278, 294 (Ala. Crim. App. 2002) (quoting *Ex parte Haney*, 603 So. 2d 414 (Ala. 1992)).

<sup>51</sup> *Bonner v. State*, 740 So. 2d 439, 443 (Ala. Crim. App. 1998).

<sup>52</sup> *Ex parte Haney*, 603 So. 2d 412, 417-419 (Ala. 1992).

<sup>53</sup> *Sciscoe v. State*, 606 So. 2d 202, 203 (Ala. Crim. App. 1992).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 204.

of the expert, the court held that the trial court did not abuse discretion.<sup>59</sup> In upholding the lower court, the court stated that the investigator had 150 sexual abuse cases and had trained other lawyers.<sup>60</sup> The court cites the case of *Parker v. State*, stating, “an expert witness is one who can enlighten a jury more than the average man in the street.”<sup>61</sup> It seems that expert qualification under *Sciscoe* and *Parker* is exceedingly broad or highly discretionary. Further, the court admitted that the expert testimony did not have a high degree or reliability, but “*general acceptance*” is not the only factor to consider.<sup>62</sup> The court explained the factors used in the case of *Sexton v. State*.<sup>63</sup>

The court elaborates on the four factors of CSAS in the case of *Sexton v. State*.<sup>64</sup> In *Sexton*, the courts used four factors should determining the “*general acceptance*” of psychological evidence in child sexual abuse cases<sup>65</sup> These elements are: necessity, reliability, understandability, and importance.<sup>66</sup> Moreover, the court states “necessity for expert testimony increases if there are certain inferences made by the defense, or certain unusual behavior of the child witness which ‘should not be allowed to go un rebutted when there exists a recognized phenomenon which may explain it.’”<sup>67</sup> Similar to BWS, if the defendant uses the factors of CSAS as a defense or to cast doubt, he is increasing the chances admitting testimony that is otherwise inadmissible.<sup>68</sup>

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<sup>59</sup> *Sciscoe v. State*, 606 So. 2d 202, 204 (Ala. Crim. App. 1992).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Sexton v. State*, 529 So. 2d 1041, 1049 (Ala. Crim. App. 1988) (quoting McCord, “Expert Psychological Testimony About Child Complaints in Sexual Abuse Prosecutions: A Foray Into the Admissibility of Novel Psychological Evidence,” 77 J. Crim. L & Criminology 1, 14-64 (1986)).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *See id.*

The widely received criticism of syndromes and profiles is usually concerning their “lack of empirical support in the legal and psychological literature.”<sup>69</sup> Moreover, some critics suggest that many syndromes are political in nature.<sup>70</sup> On the federal level, Daubert has long overthrown the *Frye* test by claiming the “*general acceptance*” standard was neither necessary nor sufficient.<sup>71</sup> A survey of 260 judges showed that the most common syndromes in the courtroom are “battered woman syndrome” and CSAS.<sup>72</sup>

The Alabama courts acknowledge that “battered woman syndrome” is admissible throughout the country.<sup>73</sup> However, the admissibility of Post Traumatic Stress Disorder as it related to Rape Trauma Syndrome has been uncontested in some Alabama cases.<sup>74</sup> An expert in the case of *Harrington v. State* describes PTSD as relating to a traumatic event where someone feels “powerless, helpless, and experience great fear” in two steps: (1) The Individual re-experienced the traumatic event in some form, and (2) The individual tried to avoid situations that remind them of the traumatic experience or develop and “emotional numbness.”<sup>75</sup> The expert in *Harrington* stated, “any repetitive situation, including sexual and physical abuse, could cause PTSD.”<sup>76</sup> The court officially states that it accepts testimony on the issue of “battered woman syndrome” in this case but it was silent concerning the issue of PTSD.<sup>77</sup>

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<sup>69</sup> Dahir, *supra* note 1, at 63.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 54.

<sup>72</sup> *Id.* at 70.

<sup>73</sup> *Harrington v. State*, 858 So. 2d 278, 294 (Ala. Crim. App) (citing *Bonner v. State*, 740 So. 2d 439 (Ala. Crim. App. 1998)).

<sup>74</sup> *See id.*

<sup>75</sup> *Id.* at 282.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 295.

Munchausen’s Syndrome by Proxy (“MSP”) is referenced in Alabama cases but has not been contested.<sup>78</sup> “Munchausen’s syndrome” is a “medical diagnosis that is used to refer to fictitious or made-up medical phenomenon.”<sup>79</sup> Adding the phrase, “by proxy” at the end, “means that the individual involved is not manifesting the need or the problem, but someone else is causing the need or the problem.”<sup>80</sup> Psychologists have also used a “separation test,” where the psychologist separates the victim for ten days, and observes if the victim’s health improves.<sup>81</sup> The court has acknowledged that the DSM-IV-TR™ IV does not recognize such a syndrome and psychologist have testified “psychological examination is not helpful in determining whether a person might be an MSP abuse perpetrator.”<sup>82</sup> However, there are no challenges in Alabama pertaining to its scientific validity of MSP under the “*generally accepted test*” of *Frye*.

A defendant attempted to call an expert on “prison psychology” in the case of *Peraita v. State*.<sup>83</sup> According to psychologist, “prison psychology” is “the process that people go through when they go into institutional settings and the ways that they are [changed] by being in an institutional setting.”<sup>84</sup> The expert was to explain the defendant’s response under the circumstances.<sup>85</sup>

[The] [expert] would have testified that in his response to being assaulted or threatened by [the] [victim] was reasonable under the circumstances [in] [] Prison; that the prison made it reasonable for him to believe that he

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<sup>78</sup> *B.M. v. State*, 895 So. 2d 319, 321 (Ala. Civ. App. 2004) (explaining the “separation test,” where the victim is separated from the perpetrator); *Fessler v. State Dep’t of Human Resources*, 567 So. 2d 301, 302 (Ala. Civ. App. 1989) (explaining that Munchausen Syndrome was present when a child had seizures); *Ex parte M & D Mech. Contrs., Inc.*, 725 So. 2d 292, 294 (Ala. 1998) (referring to “hysterical blindness” in which a person simulates the process of being blind when they are not actually blind).

<sup>79</sup> *Fessler*, 567 So. 2d at 303.

<sup>80</sup> *Id.*

<sup>81</sup> *B.M.*, 895 So. 2d at 327.

<sup>82</sup> *Id.*

<sup>83</sup> *Peraita v. State*, 897 So. 2d 1161, 1178 (Ala. Crim. App. 2003).

<sup>84</sup> *Id.* at 1179.

<sup>85</sup> *Id.* at 1178-79.

was in imminent danger of physical harm because [the] [victim] had threatened and then assaulted him; and that it would have been extremely risky for him to ask prison authorities for help or placement in protective custody because he allegedly would have then been subject to further victimization by other prisoners. Therefore, he concludes that Haney's testimony would have established that he acted reasonably in self-defense.<sup>86</sup>

However, the expert also concedes that each person's changes are unique with "prison psychosis" and that such change relates to the "nature of the environment and conditions."<sup>87</sup> The court denied such testimony because they "didn't want to set a different standard for people in prison than we do for people who are not in prison" and it failed to show a relationship to self-defense.<sup>88</sup> However, the dissenting opinion points out that excluding the defendant from such testimony violated the defendant's rights to present his defense.<sup>89</sup> Further, the opinion points to the admissibility of "battered woman syndrome" in self-defense and asserts that the two are legally interchangeable.<sup>90</sup>

The courts have not made an official ruling on the scientific validity of the "parent alienation syndrome" ("PAS").<sup>91</sup> However, the courts agree that PAS will probably fail *Frye's* "general acceptance test."<sup>92</sup> And that it is unnecessary "to make [a] decision" about admissibility at the present time."<sup>93</sup> Perhaps the court is avoiding the question of admissibility of PAS until presented with a more pressing case.<sup>94</sup> Similarly, in the case

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<sup>86</sup> *Peraita v. State*, 897 So. 2d 1161, 1178-79 (Ala. Crim. App. 2003).

<sup>87</sup> *Id.* at 1179.

<sup>88</sup> *Id.* at 1182.

<sup>89</sup> *Id.* at 1223 (Cobb, J., dissenting).

<sup>90</sup> *See Id.*

<sup>91</sup> *C.J.L. v. M.W.B.*, 879 So. 2d 1169, 1178 (Ala. Civ. App. 2003).

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *See id.*

of *K.B. v. Cleburne County Dep't of Human Res.*, a counselor testified that a child was alienated from a parent and there were no challenges to the validity of such a theory.<sup>95</sup>

The courts tackled the issue of “battered child syndrome” (“BCS”) in the case of *Eslava v. State*.<sup>96</sup> In *Eslava*, the defendant challenged the testimony of BCS.<sup>97</sup> The expert stated that the victim in the case “fits into the Battered Child Syndrome.”<sup>98</sup> Although the court admitted such testimony because the defense failed to object, the courts stated that the “expert testimony was admissible that [the] [victim] received injuries which were inflicted by another person other than by accidental means and that he fit the battered child syndrome.”<sup>99</sup>

In the case of *Ward v. State*, the court allowed videotape evidence in support of BCS but there was no question on its admissibility.<sup>100</sup> Additionally, in the case of *Ray v. State*, a doctor testified that a victim suffered from BCS and it went unchallenged.<sup>101</sup>

### CONCLUSION

The current syndromes accepted in Alabama are BWS and CSAS. Other syndromes that are either (a) not well received, or (b) unchallenged includes: RTS-PTSD, MSP, “Prison Psychology”, PAS, and BCS. Although CSAS is admitted, the Alabama courts only determined that “*general acceptance test*” is only one component of the analysis and that it must past a four part test: necessity, reliability, understandability, and importance. Moreover, using a defense that describes CSAS increases the chances of

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<sup>95</sup> *K.B. v. Cleburne County Dep't of Human Res.*, 897 So. 2d 379, 384 (Ala. Civ. App. 2004).

<sup>96</sup> *Eslava v. State*, 473 So. 2d 1143, 1146 (Ala. Cr. App. 1985).

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 1147.

<sup>100</sup> *Ward v. State*, 814 So. 2d 899, 907 (Ala. Crim. App. 2000).

<sup>101</sup> *Ray v. State*, 580 So. 2d 103, 104 (Ala. Crim. App. 1991).

admissibility of the syndrome. Further, the trial court has discretion to admit non-expert testimony if the judge feels the qualification is sufficient.

With increasing constitutional questions at stake, coupled with the intrinsic compelling interest of the state to protect the rights of the accused, the question lingers as to whether Alabama's exclusion of syndrome evidence, which may be exculpatory or mitigating, will continue to be inadmissible or gain admissibility within the state courts. Given the history of precedent with traditional syndromes, it seems the current ruling on "new" syndromes faces challenges for its scientific reliability. In the alternative, denial of some syndromes may persist, but such rulings may raise constitutional questions.

The new DSM-V <sup>TM</sup> manual is due for publication in 2011. There will be new syndromes added and non-included syndromes do not necessarily mean a syndrome fails the *Frye* test. The next six years will determine whether the attorneys raise questions concerning the admissibility of *Frye* and whether their discretion violates the accused right to present a defense.

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