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## ***Calif. Justices Clear Way for Testimony on Domestic Abuse***

**By Mike McKee, *The Recorder***

Expert testimony on battered women's syndrome may be introduced at domestic violence trials, the California Supreme Court ruled Monday, even in the absence of any prior evidence of abuse. Such evidence can be admitted, the court held 6-1, because the judge could use it in evaluating the credibility of the victim's courtroom testimony.

"In rape and child abuse cases, we do not require either the trial judge or the jury to determine that the victim was raped or abused before the trial court admits expert testimony on credibility," Justice Joyce Kennard wrote. "The same principle applies to admission of expert testimony on domestic violence."

In April 2001, Cornell Brown was sentenced to 10 years, eight months in prison after Los Angeles County jurors convicted him of assaulting Kimberly Pipes, whom he had been dating on and off for about 11 years. Pipes told deputies that Brown had threatened her with a steak knife and a barbecue fork after an argument, and that he had punched her in the stomach.

At trial, Pipes' testimony changed, as she downplayed the events of the day. Over defense opposition, Los Angeles County Superior Court Judge Pamela Rogers let Jeri Darr, a domestic violence counselor, testify that 80 percent to 85 percent of battered women recant their testimony before or at trial.

Defense lawyers had argued that such testimony shouldn't be allowed in situations involving no prior abuse. They had the backing of *People v. Williams*, 78 Cal.App.4th 1118, a 2000 ruling by Division 4 of Los Angeles' Second District Court of Appeal that said such testimony was inadmissible under Evidence Code §1107, which deals specifically with the admission of expert testimony on battered women's syndrome. A year earlier, Division 3 of the same appeal court had ruled just the opposite.

On Monday, the Supreme Court dodged that conflict by avoiding §1107 altogether, instead basing its ruling on the more generalized §801, which permits testimony that may assist the trier of fact.

The court's ruling drew a sharp dissent from Justice Janice Rogers Brown, who argued that the record showed no evidence that the witness suffered from battered women's syndrome.

“Recantation is not a predicate of abuse, but the other way around,” she wrote. “Only when a woman is in a relationship exhibiting characteristics of domestic violence can expert evidence elucidate its effects on her behavior and the reasons she may be more likely to recant an initial claim of assault.”

Brown also upbraided her colleagues for evading the §1107 conflict within the lower courts, noting that it had been the high court’s reason for taking the case in the first place.

San Rafael, Calif., lawyer William Farber represented the defendant, while Los Angeles-based Deputy Attorney General John Yang argued the state’s position.

The ruling is *People v. Brown*, 04 C.D.O.S. 6938.

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