STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HOOMAN HOOSHYAR,

Defendant-Appellant.

UNPUBLISHED
April 25, 1997

No. 175976
Midland Circuit Court
LC No. 93-007099

Before: Reilly, P.J. and MacKenzie, and B.K. Zahra,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of first-degree criminal sexual conduct with a person under the age of thirteen, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), and two counts of second-degree criminal sexual conduct with a person under the age of thirteen, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). He was sentenced to concurrent terms of thirty to sixty years' imprisonment for the first-degree criminal sexual conduct conviction, and ten to fifteen years' imprisonment for each of the second-degree criminal sexual conduct convictions. Defendant appeals as of right, and we affirm.

I.

Defendant argues that he was denied a fair trial when an expert testified that the complainant fit the profile of a typical sexual abuse victim. We agree that admission of portions of the testimony was improper, but conclude that the error was harmless.

Bonnie J. Larson, a clinical social worker, testified that she conducted therapy with the complainant twenty-eight times, from August 31, 1992 to October, 1993. During direct examination, the prosecutor asked if there is "what's called a profile or a behavior pattern of sexually abused children." She responded affirmatively and stated that in Roland Summit's research, five "factors" were identified:

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* Circuit judge, sitting on the Court of Appeals by assignment.

> Number one is secrecy where the child is reminded not to tell.
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> Number two is a sense of helplessness where they are feeling like they don't have any power.
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> Number three, factor number three, is entrapment where they feel like they are trapped and they have to accommodate their abuser.
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> Factor four he identified as delayed disclosure where, um, the telling comes quite awhile after the abuse.
>
> And number five is recanting or retracting, taking back, the story that they told.

Larson stated that these factors are "typical" in sexually abused children. The prosecutor asked whether Larson detected secrecy in her counseling with the complainant.

> Um, yeah. Initially, he was really reluctant to talk about it. Um, and he continued to be pretty reluctant over time to talk about it, and so I would get bits and pieces. Um, but as he seemed to feel safer and as I had given him a feeling vocabulary with which to describe it -- because some of these things happened without his having language or a particular word, so I would give him a feeling vocabulary of mad, sad, glad, and scared; and with that, he would begin to elaborate the details.

The prosecutor asked how helplessness was manifested. Larson responded:

> Feeling like no one's going to believe him or, or um, if his abuser would tell him that it was his fault or that -- that [the complainant] somehow lied, that [the complainant] would not be believed; and at one point he told me that he had told his grandma that terrible things were happening --

Defense counsel asked that the jury be excused, and out of the presence of the jury, objected to the line of questioning. The prosecutor argued that the information "goes to the profile." The court explained that "the profile" could not be used in this case and that it was not evidence. After a brief discussion, the court sustained defendant's objection.

The direct examination continued with the expert indicating that delayed disclosure and "telling the story differently, or maybe not disclosing all in one setting" was typical. The prosecutor then asked, "[I]n your opinion, [the complainant] fits that profile?" Larson responded, "In my opinion, he fits at least four factors."

After defense counsel's cross-examination, the court questioned Larson as follows:

> THE COURT: . . . Does your experience - - you've testified that - - you probably talk to about 50 - - have given therapy to roughly 50 children who would fall into the category of sexually abused children; is that right?

THE WITNESS: That's right.

THE COURT: All right. In your experience with those 50 children, is there a pattern of how they behave that falls out of that? Forgetting about the literature for a moment, in your experience is there a pattern?

THE WITNESS: There's, um, a pattern of anger, um, and denial, um, and some suicidal and homicidal kinds of ideation, and concern about them hurting themselves or others.

THE COURT: And do you see these children acting in ways that convince you that there really are signs that you can look to when you are dealing with sexually abused children?

THE WITNESS: Each, each child is quite unique.

THE COURT: Yes. The bottom line here that I want to ask you is, did this child, [the complainant] act consistently with children who you have given therapy to who you believed to be sexually abused or who you were treating for sexual abuse?

THE WITNESS: Yes. In terms of the pattern of needing to feel safe and then - - and then [sic] disclosing what occurred. What - - what struck - - strikes me as different about [the complainant] is that he did not act out sexually what went on. I mean, he did not masturbate or, um, act towards others in a sexual manner. I am concerned that if he doesn't address the feelings that he may act that out in some way in the future, because he has denied feelings.

Defense counsel then attempted to explore this apparent discrepancy between the complainant's behavior and other sexually abused children. Counsel asked Larson to explain what she meant by acting out.

[THE WITNESS]: Some children masturbate frequently, some children use objects to penetrate themselves, some children might act out towards a sibling.

[DEFENSE COUNSEL]: This is a pattern that you have seen as a result of your - -

[THE WITNESS]: It can be a pattern. [The complainant], it appears to me has internalized that.

[DEFENSE COUNSEL]: Let me ask you another possibility. Maybe he has internalized it, but is it possible he is making this up?

[THE WITNESS]: It's not possible in my opinion.

[DEFENSE COUNSEL]: In your opinion, it's not possible; is that correct?

[THE WITNESS]: That's correct.

Again, trying to establish the possibility that the complainant might be lying, defense counsel asked Larson whether, in the course of the children that she's examined, she ever found any child who was not telling the truth. Larson testified that that had never happened to her.

The issue in this case is whether portions of Larson's testimony were inadmissible under *People v Peterson*, 450 Mich 349; 537 NW2d 857 (1995) and *People v Beckley*, 434 Mich 691; 456 NW2d 391 (1990).

Beckley is a plurality opinion in which the justices could not agree on the limitations that should be imposed on the admissibility of expert testimony regarding the child sexual abuse accommodation syndrome (CSAAS). In *People v Christel*, 449 Mich 578, 589-590; 537 NW2d 194 (1995), the Court discussed *Beckley*, its holding, and the disagreement among the justices.

> In *Beckley*, this Court addressed whether expert testimony regarding the rape trauma syndrome is admissible in child sexual abuse cases in order to rebut the inference that the victim's behavior was inconsistent with that of an actual sexual abuse victim. In a plurality opinion, we held that this expert testimony is generally admissible when the scientific or technical evidence is from a recognized discipline, the testimony is helpful to the trier of fact in understanding relevant evidence, and the expert is qualified. *Id*. at 711, (opinion of Brickley, J.); *id*. at 736-737 (opinion of Boyle, J.). Assuming these tests are satisfied, the expert may testify regarding the characteristics of the syndrome and whether the complainant's behavior is consistent with those traits.
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> However, seven justices agreed that syndrome evidence is not admissible to demonstrate that abuse occurred. *Id*. at 724 (opinion of Brickley, J.); *id*. at 734 (opinion of Boyle, J.); *id*. at 744 (opinion of Archer, J.). The Court also agreed that the expert may not give an opinion about whether the complainant is being truthful or the defendant is guilty. Moreover, five justices agreed that where syndrome evidence is merely offered to explain certain behavior, the Davis/Frye test for recognizing an admissible science is inapplicable. *Beckley*, supra at 721, 734.
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> The basis for the three separate opinions in *Beckley* stemmed from disagreement regarding the necessary foundation for and the parameters of this expert testimony. Justice Brickley would limit its admission " 'for the narrow purpose of rebutting an inference that a complainant's postincident behavior was inconsistent with that of an actual victim of sexual abuse, incest or rape.' " *Id*. at 710 (citation omitted). Justice Archer concurred in part, but would hold that an expert only can testify in generalities and cannot discuss whether the victim's behavior is consistent with that of other abuse victims. *Id*. at 744. On the other hand, Justice Boyle would allow the expert to testify about these similarities to assist the jury in deciding a fact at issue. *Id*. at 736.

In *Peterson*, the Court revisited its decision in *Beckley* and determined the proper scope of expert testimony in child sexual abuse cases. *Peterson, supra* at 352. The Court summarized its decision as follows:

> As a threshold matter, we reaffirm our holding in *Beckley* that (1) an expert may not testify that the sexual abuse occurred, (2) an expert may not vouch for the veracity of a victim, and (3) an expert may not testify whether the defendant is guilty. However, we clarify our decision in *Beckley* and now hold that (1) an expert may testify in the prosecution's case in chief regarding typical and relevant symptoms of child sexual abuse for the sole purpose of explaining a victim's specific behavior that might be incorrectly construed by the jury as inconsistent with that of an actual abuse victim, *and (2) an expert may testify with regard to the consistencies between the behavior of the particular victim and other victims of child sexual abuse to rebut an attack on the victim's credibility.* [Emphasis added.]

Although *Peterson* appears to limit the admissibility of expert testimony in child sexual abuse cases, the opinion also contains language indicating that the syndrome evidence would almost always be admissible. The Court in *Peterson* recognized that child sexual abuse cases raised particular concerns because of the suggestibility of children and the prejudicial effect expert testimony regarding child sexual abuse "syndrome" may have on the jury. *Id.* at 371. The Court adopted "the position that the admission of expert testimony regarding evidence of behaviors common in other abuse complainants should be limited in these cases. . . ." *Id.* Nevertheless, the phrase emphasized in the quotation above indicates that consistencies between the complainant's behavior and that of victims of sexual abuse are admissible whenever the complainant's credibility is attacked. This suggests that syndrome evidence will almost always be admissible because typically, a defendant's trial strategy depends upon attacking the complainant's credibility.[1] Thus, at first blush, *Peterson* seems to create limitations on the admissibility of expert testimony in child sexual abuse cases that are of no practical significance because the limitations do not apply when the complainant's credibility is attacked in any way, which happens in nearly every case.

However, in a footnote, the Supreme Court indicated that a general attack on the complainant's credibility would not open the door for the admission of all evidence relating to the consistencies between the complainant's behavior and that of victims of sexual abuse. *Id.* at 373-374, and n 13. The Court explained:

> Unless a defendant raises the issue of the particular child victim's postincident behavior or attacks the child's credibility,[n 13] an expert may not testify that the particular child victim's behavior is consistent with that of a sexually abused child. Such testimony would be improper because it comes too close to testifying that the particular child is a victim of sexual abuse.
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> [n13] The credibility of the victim is attacked when the defendant highlights behaviors exhibited by the victim that are also behaviors within CSAAS and alludes that

> the victim is incredible because of these behaviors. The scope of the testimony, however, is again limited to the behaviors at issue, and the expert may not testify about behavior manifestations that are not at issue. In other words, it does not matter how the behavior trait came into evidence. The expert may not proffer testimony of other behaviors unless the facts as they develop make the specific behavior relevant or if the defendant attacks the victim's credibility *based on the behavior*. [Emphasis added.]

Thus, not every attack on the complainant's credibility will result in the admission of evidence concerning CSAAS. Rather, if the defendant attacks the complainant's credibility based on a behavior that is explained by CSAAS, for example a delay in disclosure, the expert would be allowed to explain to the jury that the behavior at issue is consistent with that of a sexually abused child, but would not be allowed to testify about other behaviors that were not at issue.

This interpretation of *Peterson* is supported by the discussion applying the standard to the facts in that case and *People v Smith*, the companion case. The Court stated that the conduct of the trial in *Smith* "presents an almost perfect model for the limitations that must be set in allowing expert testimony into evidence in child sexual abuse cases." *Id.* at 381. In *Smith*, the complainant did not report sexual abuse for several years after it occurred. The court allowed expert testimony during the prosecution's case in chief on the significance of the complainant's delay in reporting. Although Smith did not directly attack the credibility of the victim, *id.* at 379, the Court held that the expert testimony was admissible. "[W]here there are common misperceptions regarding the behavior of the victim on which a jury may draw an incorrect inference, such as delayed reporting, the prosecutor may present limited expert testimony dealing solely with the misperception." *Id*. *Smith* illustrates the first holding stated by the Court in its summary, "an expert may testify in the prosecution's case in chief regarding typical and relevant symptoms of child abuse for the sole purpose of explaining a victim's specific behavior that might be incorrectly construed by the jury as inconsistent with that of an actual abuse victim . . . ." *Id.* at 352.

In contrast, *Peterson* illustrates what expert testimony is not allowed when the defendant does not argue that the complainant's behavior is inconsistent with that of a victim of child sexual abuse. The experts in *Peterson* "were allowed to make numerous references to the consistencies between the victim's behavior and the behavior of typical victims of child abuse." *Id.* at 376. One expert testified that the complainant's symptoms were consistent with those of a victim of child sexual abuse. Another testified that the behavior manifestations of the complainant were symptomatic of sexual abuse. A third testified that the complainant had posttraumatic stress syndrome. The Court concluded that this testimony was inadmissible "[b]ecause the defendant never argued that the victim's behavior was inconsistent with that of a typical victim of child sexual abuse . . . ." *Id.* at 376-377.

In the present case, expert testimony would have been admissible to explain certain behaviors of the complainant within CSAAS upon which defendant attacked the complainant's credibility. *Id.* at 374, n 13. For example, during cross-examination of the complainant, the defendant asked if the complainant ever told defendant to stop and if the complainant ever yelled or cried out. The complainant responded negatively to both questions. Expert testimony would have been admissible

regarding whether the failure to take action to stop the abuse was consistent with that of child sexual abuse victims.

However, Larson's testimony exceeded the permissible limits of expert testimony under *Peterson*. Larson described five "factors" and offered an opinion that the complainant "fits at least four factors." This suggested that the complainant was a likely victim of sexual abuse because he closely matched "the profile." However, CSAAS "is not intended as a diagnostic tool for detection of sexual abuse." *Beckley*, *supra* at 722. Larson should not have testified regarding CSAAS characteristics that were not at issue. *Peterson*, *supra* at 373, n 12. In response to the court's question, "did this child, [the complainant] act consistently with children who you have given therapy to who you believed to be sexually abused or who you were treating for sexual abuse?", Larson stated:

> Yes. In terms of the pattern of needing to feel safe and then - - and then [sic] disclosing what occurred. What - - what struck - - strikes me as different about [the complainant] is that he did not act out sexually what went on. I mean, he did not masturbate or, um, act towards others in a sexual manner. I am concerned that if he doesn't address the feelings that he may act that out in some way in the future, because he has denied feelings.

This testimony was not helpful to the jury to understand specific behaviors of the complainant that the jury might infer were inconsistent with sexual abuse. Rather, Larson's concern about the complainant's denial of his feelings clearly implies that she believed the complainant had in fact been sexually abused. Larson essentially vouched for the complainant's veracity. *Peterson*, *supra* at 352, 375-376. Defense counsel's attempt to suggest that the absence of acting out could indicate that the complainant was lying only provided a further opportunity for Larson to indicate her belief in the complainant's veracity.[2]

Although we conclude that Larson's testimony was improper in many respects, we deem the error harmless. The extent of the impermissible testimony in this case was no worse than that in *Peterson*, in which the majority of justices concluded the error was harmless. Although there is no physical evidence to lend support to the complainant's allegations, one doctor's testimony in *Peterson* that she found no physical evidence of abuse[3], *id.* at 377, was not an impediment to finding the error harmless. Larson's testimony that the complainant was not "acting out" as other victims of sexual abuse have may be seen as serving to question the complainant's credibility. The prosecution did not emphasize the improper aspects of Larson's testimony in his closing argument.[4] Although the court's instructions regarding the proper use of Larson's testimony did not fully convey how the consistencies between the complainant's behavior and that of the victims of sexual abuse were relevant, the court properly instructed the jury that the evidence could "not be used to show that the crime was committed or that the defendant committed it[, n]or can it be considered an opinion by Bonnie Larson that [the complainant] is telling the truth."[5] In light of the Supreme Court's willingness to deem the error in *Peterson* harmless, we conclude the error in this case was also harmless.

II.

Defendant argues that the fifteen-month delay between the time the victim first complained of sexual abuse and the time defendant was arrested denied defendant his right to a fair trial. Specifically, defendant alleges that he was denied an opportunity to present an alibi defense and to have the victim examined by a psychologist. We disagree. The threshold test of whether a delay between the offense and the arrest denied defendant due process is whether the defendant was prejudiced. *People v Reddish*, 181 Mich App 625, 627; 450 NW2d 16 (1989).

In this case, defendant presents no evidentiary or legal support for his claim that he was denied the opportunity to present an alibi. Defendant did not raise this issue before the trial court by moving to dismiss the charges on this basis. *People v Hernandez*, 84 Mich App 1, 19; 269 NW2d 322 (1978). On appeal, defendant merely relies on an affidavit of a witness, which supposedly was attached to his brief on appeal.[6] According to defendant, the affidavit states that defendant was in Chicago attending a car auction on one of the alleged dates the complainant was abused. Assuming that the affidavit exists and its contents are accurately described by defendant in his brief, we are not persuaded that defendant has demonstrated prejudice. Defendant had the opportunity to present his potential alibi theory to the jury. Notably, one witness for the defense testified that defendant often went to Chicago on business. In sum, the prearrest delay did not prevent defendant from presenting an alibi defense.

Additionally, we are not persuaded that the prearrest delay prejudiced defendant by denying him an opportunity to have a psychological examination of the complainant performed. In fact, defendant provides no reason why a psychological examination was necessary at the time the victim first came forward with his allegations of abuse. The complainant's credibility and veracity were attacked by defense counsel at trial without the need for a psychological examination, which is only ordered if there is a compelling reason to do so. See *People v Graham*, 173 Mich App 473, 478; 434 NW2d 165 (1988). Accordingly, having considered defendant's arguments, we conclude that defendant has failed to demonstrate that he was prejudiced by the fifteen-month delay in arrest.

III.

Defendant next argues that the prosecutor's improper questioning of his expert witness deprived defendant of his right to a fair trial. However, defendant failed to object to the prosecutor's alleged misconduct. Therefore, we find that this issue is not preserved for appellate review. *People v Stanaway*, 446 Mich 643, 686; 521 NW2d 557 (1994). Indeed, we believe that any prejudice resultant from the prosecutor's behavior could have been cured by the trial court's issuance of cautionary instructions. See *People v Leighty*, 161 Mich App 565, 575-577; 411 NW2d 778 (1987). We find that no manifest injustice will result from our failure to review defendant's claims of prosecutorial misconduct.

Defendant also argues that the prosecutor deliberately delayed arresting defendant, after the complainant initially filed his complaint. As a result of this prearrest delay, defendant argues that he was prejudiced by not having an adequate opportunity to defend himself. However, as stated above, defendant was not prejudiced by the prearrest delay. Defendant presents no evidence, either at trial or on appeal, that the prosecution *deliberately* delayed arresting defendant in order to strengthen its case

against defendant. As defendant's argument stands, it is pure conjecture. See *People v Hoffman*, 205 Mich App 1, 17; 518 NW2d 817 (1994). Thus, we find that no reversal is necessary as to this allegation of error.

IV.

Defendant next argues that he was denied the effective assistance of counsel for the various reasons set forth below. To establish a claim of ineffective assistance of counsel, the defendant must show that counsel's performance was deficient and that, under an objective standard of reasonableness, counsel was not functioning as the attorney whose assistance is guaranteed by the Sixth Amendment to the United States Constitution. Further, defendant must show that any deficiency was prejudicial to his case, e.g. that counsel's error may have affected the outcome at trial. *People v Pickens*, 446 Mich 298, 302-303, 312, 314; 521 NW2d 797 (1994).

Defendant first argues that trial counsel was ineffective for having failed to raise a motion to dismiss based upon the fifteen-month prearrest delay. However, as stated above, defendant has not established that he was prejudiced by the prearrest delay. Thus, even if counsel should have filed a motion to dismiss, defendant has not established that the failure to do so was prejudicial, e.g. that the motion would have been granted had it been made. Accordingly, defendant has not established ineffective assistance of counsel on this basis.

Defendant next argues that trial counsel was ineffective for failing to object to the prosecution's expert's testimony that the complainant fit the profile of a typical sexual abuse victim. However, in light of our holding that the error in the admission of the expert's testimony was harmless, we conclude that defendant has not established that he was prejudiced by counsel's failure to object.

Defendant next argues that defense counsel's question to the prosecution's expert about whether the complainant was "making up" allegations of abuse constituted ineffective assistance of counsel. We disagree. Defense counsel's questioning of the expert is a matter of trial strategy. It is well established that this Court will not second-guess trial counsel's strategy. The fact that the strategy may not have worked does not constitute ineffective assistance of counsel. *People v Barnett*, 163 Mich App 331, 338; 414 NW2d 378 (1987). In this case, defense counsel took a calculated risk by asking the expert what her personal opinion was as to whether the complainant could be "making up" the allegations of abuse. Had the expert testified that the complainant might have made up his allegations of abuse, defense counsel would be labeled skilled rather than ineffective. Therefore, because defendant's questioning of the expert was trial strategy, defense counsel was not ineffective.

Defendant next argues that defense counsel's failure to have a psychologist who actually examined defendant testify constituted ineffective assistance of counsel. Similarly, defendant argues that defense counsel's failure to call a potential alibi witness constituted ineffective assistance of counsel. We disagree. Defense counsel's decision to call witnesses to testify is also a matter of trial strategy. See *People v Fisher*, 87 Mich App 350, 358-359; 274 NW2d 788 (1978). We note that defense counsel had a medical expert testify on defendant's behalf. Thus, defense counsel's strategy to have only one

medical expert testify does not constitute ineffective assistance of counsel. Additionally, there is no evidence from the record that defense counsel failed to explore a potential alibi witness. In fact, defense counsel called a witness to testify as to defendant's alibi, e.g., defendant often went to Chicago on business. Consequently, we find that defense counsel was not ineffective as to this issue.

Lastly, defendant argues that during the impeachment of the complainant, defense counsel opened the door to allow defendant's assaultive conduct be introduced as evidence. However, the impeachment of the complainant was done as trial strategy. Although the impeachment resulted in unfavorable testimony being admitted regarding defendant, this Court should avoid second-guessing trial counsel's decisions. *Barnett, supra*, at 338. On the whole, we find that defense counsel's calculated decision to impeach the complainant was not objectively unreasonable conduct. In conclusion, counsel's assistance at trial was not ineffective.

V.

Defendant next argues that he is entitled to resentencing because offense variable (OV) 2 was misscored at twenty-five points, as opposed to zero points. Our review of scoring decisions is very limited, and they will be upheld if any evidence exists to support them. *People v Derbeck*, 202 Mich App 443, 449; 509 NW2d 534 (1993); *People v Johnson*, 202 Mich App 281, 288; 508 NW2d 509 (1993). The evidence in this case supports the trial court's score of twenty-five points. The complainant testified that defendant laughed quietly during the incidents of abuse. In addition, the complainant stated that defendant threatened him on many occasions. Thus, the record evidence supports the trial court's finding that defendant caused the complainant to suffer increased fear and anxiety during the offense. Notably, the complainant need not have testified that he was anxious or afraid in order for the trial judge to have found that terrorism existed. *People v Kreger*, 214 Mich App 549, 552; 543 NW2d 55 (1995). Consequently, we affirm the trial court's scoring of OV 2. In any event, the merit of defendant's argument is moot in light of the Supreme Court's recent decision in *People v Mitchell*, ___ Mich ___; ___ NW2d ___ (Docket Nos 118832; 121158, issued 3/25/97). According to *Mitchell*, the challenge does not state a cognizable claim for relief.

VI.

Lastly, defendant argues that the sentence of thirty to sixty years' imprisonment for the first-degree criminal sexual conduct conviction was disproportionate to the offense and the offender. We disagree. The recommended guidelines range for defendant's conviction was ten to twenty-five years' imprisonment. However, a sentencing court is allowed to depart from the guidelines range when the recommended range does not adequately reflect the seriousness of the offense or the characteristics of the offender. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). On the departure evaluation form, the trial court explained that the departure was warranted because (1) defendant "carried on a reign of terror" in the home for over three years and the number of encounters far exceeded the three charged incidents; (2) the nature of the attacks and the frequency "in conjunction with [defendant's] psychological profile show him to be a danger to his former family and to society in general with little hope of rehabilitation." Defendant does not contend that consideration of these

factors was inappropriate. Defendant does challenge the court's consideration of his "total lack of remorse," inasmuch as he has maintained his innocence. The court's comments regarding lack of remorse in this case are not different in substance from those in *People v Houston*, 448 Mich 312, 336-337; 532 NW2d 508 (1995), which the majority held were proper. *Id.* at 323. We believe that the deviation from the guidelines range was not an abuse of discretion. On the whole, defendant's sentence is proportionate to both the offense and the offender, and resentencing is not required.

Affirmed.

/s/ Maureen Pulte Reilly
/s/ Barbara B. MacKenzie
/s/ Brian K. Zahra

[1] See also, *id.* at 373, 374, 375.

[2] Larson's testimony brings to mind the warning in the lead opinion of *Beckley*:

> Given the abhorrence of the crime, it is inevitable that those who treat a child victim will have an emotional inclination toward protecting the child victim. The expert who treats a child victim may lose some objectivity concerning a particular case. Therefore to avoid the pitfall of the treating professional being inclined to give an opinion regarding whether the complaining witness had been sexually abused, we caution the trial court to carefully scrutinize the treating professional's ability to aid the trier of fact when exercising discretion in qualifying such an expert witness. [*Id.* at 729.]

[3] We note that another doctor testified that the complainant had a large vaginal opening for her age, her hymen was obliterated, and there was some irregularity of the fold surrounding her anal opening.

[4] The prosecutor stated:

> Bonnie Larson told you those things, too. That the way [the complainant] acted, the things that were going on in [the complainant's] head, are typical of sexually abused children. Sometimes they tell different stories. She even told you that sometimes they will recant it, they will take it right away, they will say it didn't happen. It doesn't mean it didn't happen. It just means that that child is going through what is a typical pattern for sexually abused children. It doesn't mean that they are unbelievable or that they shouldn't be believed.

[5] The court's instruction was as follows:

> You have heard Bonnie Larson's opinion about the behavior of sexually abused children.

> You should consider that evidence only for the limited purpose of deciding whether [the complainant's] acts and words after the alleged crime were consistent with those of sexually abused children.
>
> That evidence cannot be used to show that the crime charged here was committed or that the defendant committed it. Nor can it be considered an opinion by Bonnie Larson that [the complainant] is telling the truth.

[6] However, no affidavits were actually attached to defendant's brief on appeal.