STATE OF LOUISIANA

VERSUS

WILLARD ANTHONY

NO. 17-KA-372

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

ON REMAND FROM THE LOUISIANA SUPREME COURT
ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 15-2842, DIVISION "I"
HONORABLE NANCY A. MILLER, JUDGE PRESIDING

December 30, 2020

STEPHEN J. WINDHORST
JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Robert A. Chaisson, and Stephen J. Windhorst

CONVICTIONS AFFIRMED; SENTENCES ON ALL COUNTS EXCEPT COUNT SIX ARE AFFIRMED; SENTENCE ON COUNT SIX VACATED AND REMANDED FOR RESENTENCING; REMANDED

SJW
RAC

WICKER, J., DISSENTS WITH REASONS

FHW

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WINDHORST, J.

This matter is before this Court on remand from the Louisiana Supreme Court. In our earlier decision, State v. Anthony, 17-372 (La. App. 5 Cir. 02/20/19), 266 So.3d 415, 430, this Court vacated defendant's convictions and sentences on all counts and remanded the matter for a new trial. In Anthony, supra, defendant's first assignment of error challenged several portions of the testimony given by the screening prosecutor, Thomas Block. He contended that Mr. Block's testimony denied him a right to a fair trial, the presumption of innocence, and the right to confront the actual evidence against him. Id. at 421. This Court found that the trial court erred by allowing Mr. Block to testify beyond what was necessary to rebut the defense's implication that a State's witness was given a "deal" in exchange for her testimony. Id. at 429. We further found that the alleged errors in Mr. Block's testimony were structural errors affecting the framework of the trial that violated defendant's right to a fair trial and presumption of innocence and to which harmless error standards could not be applied. Id. at 430.

Upon review, the Supreme Court granted certiorari in part, holding "While we presently express no opinion on whether the testimony of the screening prosecutor contained errors, we find that any such defects were not structural in nature and would instead constitute trial errors subject to a harmless error analysis." State v. Anthony, 19-476 (La. 06/26/19), 275 So.3d 869, 869 (*per curiam*). The Supreme Court vacated this Court's decision and remanded the matter to this Court for a determination of whether the guilty verdicts rendered in defendant's trial were surely unattributable to the alleged errors in Mr. Block's testimony, and if necessary, to address the pretermitted assignments of error. Id. at 869-870.

For the reasons that follow, defendant's convictions are affirmed, his sentences on all counts except count six are affirmed, his sentence on count six is vacated and remanded for resentencing, and this case is remanded with instructions.

STATEMENT OF THE CASE

Defendant, Willard Anthony, was convicted by a jury of aggravated rape (counts one and two), human trafficking (count three), second degree battery (count six), aggravated battery (count seven), sexual battery (count eight), and felon in possession of a firearm (count ten).[1] The trial court sentenced defendant to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence for each count of aggravated rape (counts one and two), to twenty years imprisonment at hard labor for human trafficking (count three), to ten years imprisonment at hard labor for second degree battery (count six), to ten years imprisonment at hard labor for aggravated battery (count seven), to ten years imprisonment at hard labor without benefit of probation, parole, or suspension of sentence for sexual battery (count eight), and to twenty years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence for felon in possession of a firearm (count ten). The trial court ordered all sentences to run concurrently. Defendant appealed his convictions and sentences.

FACTS [2]

C.W.[3] testified that in April 2015, she was addicted to drugs and "not living a good lifestyle." In order to make money, she was working as a prostitute in Florida, where she first met defendant at a motel in Pensacola. He invited her back to his room, where there were three other women who were also prostitutes. C.W. described that they were all hanging out and drinking, and at some point, defendant,

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[1] One count of human trafficking (count four) was dismissed by the State during trial.

[2] The facts were taken directly from this Court's opinion on original appeal. See State v. Anthony, 17-372 (La. App. 5 Cir. 02/20/19), 266 So.3d 415, 418-421.

[3] To observe the principle of protecting minor victims and victims of sex offenses set forth in La. R.S. 46:1844 W, the victim will be identified by initials only.

who always kept a gun on him, started "acting really paranoid," picked her up, and "body slammed [her]." C.W. remembered going to sleep at the end of the bed that night but waking up the next day in a car not knowing how she got there. She questioned defendant, who was driving, and he told her they were in New Orleans. C.W. expressed that she wanted to go back to Pensacola, but defendant pointed a gun at her and told her that she was "part of [his] family now."

C.W. stated that after they arrived at a hotel in New Orleans, co-defendant, Pierre Braddy, posted pictures of her and the other women online in order to get clients. The next day, they went to a hotel in Jefferson Parish. C.W. had a solo client appointment so everyone else waited in the car in the parking lot. C.W. testified that she wanted to get away, so she asked the "john" to help her escape. She told defendant that she wanted to leave with the john to make more money, but he said she could not go. C.W. told defendant she was going to tell the client goodbye, but instead, she got in his car and told him to "just go." C.W. and the client pulled out on the highway, but defendant pulled up next to them and pointed his gun at them. C.W. jumped out of the car and started to run, but defendant caught up with her and pulled her back into the car he was driving. C.W. testified that the "girls" started hitting her in the car. Defendant beat her with a belt in the hotel parking lot, at one point strangling her, and she lost consciousness.

When they got back to the hotel room, C.W. took a shower because she was bleeding, but defendant came in and continued to beat her. Defendant continued to verbally antagonize her and hit her with various objects, including his gun. C.W. also testified that defendant made the other girls hit her. She further testified that at the request of defendant, who was armed with a gun, Braddy urinated on her, put his penis in her mouth, and made her swallow the urine. After a while, defendant directed Braddy and the other girls to go to Walmart to buy makeup for C.W. so she could continue to make money.

C.W. testified that while she and defendant were alone in the hotel room, he told her various things that would happen to her if she ever tried to run again. Then, he "forced himself" on her and also inserted his gun into her vagina.

At some point later, Detective Steven Abadie arrived in connection with his investigation, and he was initially undercover as a client. C.W. eventually learned that Detective Abadie was with the police and he took her to the hospital. She was later brought to the Jefferson Parish Correctional Center.

Steven Abadie testified that he was working as a detective with the Jefferson Parish Sheriff's Office Vice Squad in April of 2015. He explained that he investigated prostitution or prostitution-related activities, including human trafficking, and he would go undercover. Detective Abadie went undercover on April 13, 2015, and arranged a "date" with a prostitute at the Sun Suites Inn on Manhattan Boulevard. When he arrived at the hotel room, he encountered Nadia Lee and Brittany Grisby, lying on one of the beds. Detective Abadie also saw C.W., who "was sitting...on her knees and...she was beat." He testified that he had "never seen somebody beat like this," so he knew "there was a pimp involved." He elaborated that her entire face was swollen, with one eye completely shut and a large laceration over her left eye, and she was "black and blue from head to toe." After Detective Abadie exchanged money with Ms. Lee for a "date," he said the code word and the covering officers came in shortly thereafter.

Detective Abadie brought C.W. to the hospital due to her significant injuries. She disclosed to him how she received her injuries, and based on that, he felt the need to investigate crimes other than prostitution, namely aggravated rape, human trafficking, aggravated battery, and second degree battery.

Nadia Lee testified that she met defendant and Braddy in April 2015 at a hotel in Alabama, and she agreed to travel with them to Florida. She explained that she did not initially know that defendant was a pimp. However, Ms. Lee realized soon

after they arrived in Florida that he was a pimp. She testified that they used defendant's phone to set up calls, and he made sure the appointments were set up and that the girls would get to and from where they were working. She stated that defendant decided how much money she would charge for each client and "all the money had to go to [defendant]."

Ms. Lee testified that she first met C.W. one night when C.W. mistakenly knocked on their hotel room door, looking for a "john," and defendant invited her in. According to Ms. Lee, defendant indicated that he wanted C.W. to stay and, after a while, C.W. agreed to stay with them. However, shortly thereafter, defendant started treating C.W. very badly, "like beating her up and choke slamming her." Ms. Lee described that early the next morning, they were leaving the hotel, and she told C.W. that she could come with them or stay in the room. C.W. left with them. The group left in two cars, drove to New Orleans, and started receiving clients at a hotel. After they were "caught" by the police at the New Orleans hotel, they relocated to the Sun Suites Inn on the westbank of Jefferson Parish.

Ms. Lee stated that at some point, C.W. had a "date," and everyone else stayed in the car. When it was over, C.W. came down to the car and told defendant that the client wanted to take her to a bar for some drinks, but defendant told her no. Ms. Lee stated that C.W. walked back to the client, got in his car, and they drove off. Ms. Lee described that they chased after them until they caught up with them. Defendant rolled down his window, pointed his gun at the client's car, and told him to let C.W. out of the car. C.W. exited the car and started running away, but defendant caught her. Ms. Lee and Ms. Grisby started hitting C.W. while she was in the car. Ms. Lee stated that in the parking lot of the hotel, defendant started beating C.W. with his belt.

According to Ms. Lee, once they all returned to the hotel room, defendant was angry and told the women to beat C.W. After they took turns hitting her, defendant

continued to beat C.W. with a phone receiver and threw a chair at her. Ms. Lee stated that C.W. was bleeding, and defendant told her to lick the blood off of the floor. After this, Braddy, at the direction of defendant, urinated in C.W.'s mouth and on her face. After all this, C.W. looked "unrecognizable" because of how swollen she was by then. Defendant told the other girls to go to the store to get C.W. some makeup for her face "because she was still going to work." The women left for the store with Braddy, leaving defendant and C.W. in the hotel room for about thirty minutes until they returned. Thereafter, Detective Abadie and other officers arrived in connection with the undercover operation, and they were all arrested.

On cross-examination, defense counsel alluded to an alleged deal between Ms. Lee and the State in exchange for her testimony.[4] While Ms. Lee denied that she received any sort of "deal" from the State in exchange for her testimony, she acknowledged that she had not been charged with any offenses in this matter.

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[4] During Ms. Lee's cross-examination, the following exchange occurred:

Q: Okay and when this case is over...when the jury makes a decision based, based part, part on your testimony at this point, what do you expect to happen to you?
A: I do not know. In regards to what?
Q: Well, let me see. There's prostitution, at least two situations...[w]hat's to happen to you with respect to the prostitution charges, both of those?
A: I mean, if I have to deal with them, then I have to deal with them, my past so.
Q: What is to happen to you with respect to the cocaine you had?
A: I have to deal with it.
Q: I see. And, and what is to happen to you with respect to the armed robbery?
A: I'm, actually, in the motions of working on that now.

* * *

Q: And, and I think a fair question to you is: You certainly expect the District Attorney's Office to help you with all that, correct?
A: No.
Q: You don't?
A: No.
Q: Think about it. You—
A: They told me they didn't, no.
Q: They don't—they talked about that with your lawyer. Do you know what they told your lawyer?

* * *

A: I'm assuming the same thing they told me.
Q: What's that?
A: Was that they would, they would tell them facts but that's it, that they couldn't help me in any way and they didn't have a personal opinion on what should happen to me.

* * *

Q: All this time your lawyer hasn't told you what the penalties [for possession of cocaine, two counts of prostitution, for a principal in an armed robbery in Florida] are? Come on. Are you telling them the truth?
A: Yeah.

Defendant testified in his own defense. He testified that C.W. came willingly with them to New Orleans in order to make more money working as a prostitute. He similarly testified that C.W., Ms. Lee, and the other women were working as prostitutes at a hotel in Jefferson Parish, but he denied being a pimp. Regarding the incident where C.W. tried to leave in a car with a client, defendant testified that C.W. told him she wanted to go to make more money, but she was moving quickly and he did not know if she was being kidnapped. Defendant admitted that he pursued them and pulled a gun on them. Defendant also testified that once C.W. got out of the client's car, she started running, but he did not know what she was running from. Defendant testified that once they caught her, Ms. Lee and Ms. Grisby started to beat C.W. in the parking lot. Defendant denied hitting C.W. with a gun or putting a gun in C.W.'s mouth. He also denied "doing anything" with C.W. while he was alone with her in the room while the others were at Walmart, but he stated that he did have consensual sex with C.W. one morning. Defendant testified that C.W had multiple opportunities to leave, could have left at any time, and was not forced or coerced into staying with them.

Dr. Mark Perlin, the Chief Executive and Scientific Officer of Cybergenetics, a company that assesses genetic data, was qualified as an expert in the field of interpretation of DNA mixtures and their matched statistics. He analyzed the DNA mixture from a swab taken from the interior of the gun recovered in this case. He was able to conclude that neither C.W., nor defendant, nor Braddy could be excluded as contributors. He further concluded that a match between the swab of the gun and C.W. was 1.17 million times "more probable than a coincidental match" to an unrelated Caucasian person; that the match between the firearm and defendant was 1.59 thousand times "more probable than a coincidental match to an unrelated African American person"; and that a match between the firearm and Braddy was

63.2 trillion times "more probable than a coincidental match to an unrelated African American person."

The jury also heard testimony from the screening prosecutor for this case, Assistant District Attorney Thomas Block. Mr. Block testified that he did not offer Ms. Lee a deal in exchange for her testimony in this matter.

DISCUSSION

In his first assignment of error, defendant argues that the State's case for human trafficking, aggravated rape, aggravated battery, and sexual battery rested heavily on the testimony of C.W. and Ms. Lee, both of whom posed significant credibility problems. Defendant argues that in order to compensate for this, the State presented the testimony of screening prosecutor, Mr. Block, who presented the case to the grand jury. Defendant claims that instead of providing brief testimony to establish that Ms. Lee had not been offered a deal in exchange for her testimony, Mr. Block testified extensively about "his own opinions about the merits of the case." He argues that given the credibility issues with the eyewitnesses and the weight the jurors would have naturally given a prosecutor, Mr. Block's testimony was critical to the prosecution's ability to carry its burden of proof. He maintains that the admission of this testimony denied him the right to a fair trial, the presumption of innocence, and to confront the evidence against him. Defendant argues that despite his repeated objections and motions for mistrial during Mr. Block's testimony and closing arguments, the trial judge permitted Mr. Block's testimony in which he "vouched for the credibility of Ms. Lee" and C.W., offered improper legal opinions about the merits of the case, and expressed his belief that defendant was guilty. He further contends that the prosecutor, in closing arguments, emphasized the improperly admitted testimony of Mr. Block and further argues the prosecutor referred to his own personal opinion.

As previously stated, this matter is on remand from the Louisiana Supreme Court after it found this Court erred in vacating defendant's convictions and sentences based upon this assignment of error in which this Court concluded that the testimony of the screening prosecutor contained structural errors affecting the framework of the trial to which a harmless error standard would not apply. The Supreme Court found that any such defects were not structural in nature and would instead constitute trial errors subject to a harmless error analysis. Anthony, 275 So.3d at 869. The Supreme Court vacated this Court's ruling and remanded the matter to this Court "for a determination of whether [the] guilty verdicts actually rendered in this trial were surely unattributable to the alleged errors in Mr. Block's testimony."

The Louisiana Supreme Court has adopted the federal test for harmless error announced in Chapman v. California, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967), as refined by Sullivan v. Louisiana, 508 U.S. 275, 113 S.Ct. 2078, 124 L.Ed.2d 182 (1993), which asks whether the guilty verdict rendered in this trial was surely unattributable to the error. State v. Thompson, 15-886 (La. 9/18/17), 233 So.3d 529, 561.

Based on a review of the record, we find any error in admitting the screening prosecutor's testimony was not so prejudicial as to warrant a reversal of defendant's convictions. The evidence at trial supports defendant's convictions, even excluding Mr. Block's testimony, for the following reasons.

Harmless Error Analysis

Felon in possession of a firearm (count ten) and second degree battery (count six)**:**

Initially, we note that defendant testified and admitted that he was guilty of (1) felon in possession of a firearm (count ten), and (2) second degree battery (count six). Defendant testified that during the time frame referenced in the indictment he was in possession of a firearm, he had two previous felony convictions, and was

therefore guilty of the charge of felon in possession of a firearm. He also admitted that he "participated in actions in which [C.W.] was struck with such force that she sustained serious bodily injury, including an orbital fracture to her face and contusions all over her body." Defendant testified that he was one of the individuals who inflicted those injuries to C.W. and therefore, admitted he was guilty of second degree battery. In addition to these admissions by the defendant during his sworn testimony, the jury heard and saw testimony and other evidence discussed hereafter which supported convictions for counts ten and six.

Accordingly, we conclude that the guilty verdicts for felon in possession of a firearm and second degree battery were surely unattributable to any alleged error in admitting Mr. Block's testimony and the testimony did not prejudice the defendant so as to warrant a reversal of these convictions.

Aggravated rape (counts one and two), Human trafficking (count three), Aggravated battery (count seven) and Sexual battery (count eight)**:**

Upon further review as to defendant's convictions for aggravated rape, human trafficking, aggravated battery, and sexual battery, we find any error in admitting the screening prosecutor's testimony was not so prejudicial as to warrant a reversal of these convictions.

As to defendant's charge for human trafficking, although C.W. admitted at trial that she was addicted to drugs and was working as a prostitute in Florida when she met defendant, she testified that she did not want to go to New Orleans. She testified that defendant pointed a gun at her and told her ". . . you are part of my family now." C.W. testified that she understood this to mean that she was now "working for" defendant. Conversely, Ms. Lee testified that C.W. was given a choice as to whether to come to New Orleans with them or stay in the hotel room. Even though C.W. and Ms. Lee's testimonies differ as to whether C.W. went with defendant voluntarily from Florida to Louisiana, once in Louisiana, the undisputed

testimony established that C.W. attempted to escape from defendant. Testimony at trial from C.W., Ms. Lee, and defendant confirmed that C.W. told defendant that the "john" wanted to take her to a bar for a drink; however, defendant told her that she could not go with the "john." When C.W. attempted to leave with the "john," defendant chased her down, threatened her at gunpoint, informing her "you ain't going home," and later beat her until she was unrecognizable. C.W. testified that she informed Sergeant Locascio that "two pimps" were involved (defendant and co-defendant), defendant forced her to sleep with "johns" in New Orleans, and defendant took any money she received from the "johns."

As to the aggravated rape, aggravated battery, and sexual battery, C.W. further testified that at defendant's request, the co-defendant approached her and "started to pee on me," he put his penis into her mouth, urinated in her mouth and that she was forced to swallow the urine. C.W. testified that defendant and the other individuals with them beat her. She testified that the other individuals then left to go to Walmart and she was left alone with defendant in the hotel. She further testified that defendant "had sex with me" even though she did not want to have sex with him. She testified that he "forced himself" on her. C.W. testified that she was raped by defendant, to where and when she was raped, and that defendant was armed with a gun at the time of the rape. C.W. further testified that defendant placed his gun inside of her mouth, inside her vagina, and that he hit her with his gun.

Defendant testified that he chased after C.W. because he was concerned with her safety. He testified that C.W. told him that she was going "back up to the hotel room" so he thought she was being kidnapped when she left with the "john." However, defendant admitted that the "john" did not "drag" C.W. into the car, rather C.W. "went through the window in a hastily [*sic*] manner." Defendant testified that he "pulled out a gun" on the "john" during the chase because he thought the "john" was "doing something to [C.W.]." Defendant also admitted that he posted Backpage

ads with pictures of the prostitutes in this case, including C.W., knowing the prostitutes would receive phone calls to his phone number for him to arrange "dates." Defendant further admitted to owning a gun, pointing the gun at C.W., hitting C.W. with such force that she sustained serious bodily injury, and throwing a coat hanger and a chair at C.W. Defendant also confirmed that he made the statement that he "wished he could piss on [C.W.]" and that he was alone in the hotel room with C.W.

Considering the above testimony, the record shows that there was sufficient evidence to support defendant's convictions for aggravated rape, human trafficking, aggravated battery, and sexual battery. In addition to the above evidence, there was physical evidence and testimony from additional witnesses that corroborated C.W.'s testimony. In particular, DNA obtained from C.W.'s vaginal swab had a sperm fraction, from which the DNA profile of defendant could not be excluded as a contributor. Also, DNA evidence obtained from inside the barrel of defendant's gun which C.W. testified was used in the commission of the rape, was connected to C.W. and to defendant in that neither could be excluded as contributors. A Walmart receipt and video footage from Walmart confirmed the testimony that C.W. and defendant were left alone in the hotel room at the time C.W. testified defendant raped her.

The examining nurse at the hospital, Ms. Clark-Solivan, testified and C.W.'s medical records showed that C.W. made statements that she had been vaginally penetrated with a "penis and a gun," and that she had significant bruising to her face. Ms. Clark-Solivan testified that her findings were consistent with C.W.'s recitation of facts of what happened to her, which was that C.W. was "being held against her will in a hotel room and that she was beaten and assaulted by several people in the room." C.W.'s medical records also contained a statement from C.W. that at defendant's request, the co-defendant placed his penis inside her mouth and urinated in it. Detective Abadie testified that C.W. was so badly beaten, that he "had never

seen somebody beat like this," which is how he knew a pimp was involved. Sergeant Locascio testified that C.W.'s medical records contained clear statements that she was sexually assaulted. Ms. Lee further corroborated C.W.'s testimony, confirming that she saw defendant beat C.W. to the point that C.W. was "unrecognizable." Ms. Lee also recalled defendant instructing co-defendant to urinate on C.W., which he did, urinating in her mouth and on her face.

Additional evidence at trial established that defendant's cell phone was used to post "hundreds" of solicitation ads on Backpage.com, and text messages were found on his phone demonstrating communication between a pimp and his prostitute. The State introduced into evidence various incriminating letters written by defendant in jail after his arrest. During recorded telephone conversations of defendant while in jail, defendant spoke about "pimping out girls" and attempted to secure individuals to provide false testimony to ensure that Ms. Lee and C.W. "wouldn't show up for trial."

Even if errors occurred in admitting the testimony of Mr. Block, any error would be harmless considering the volume and strength of evidence introduced at trial in support of defendant's convictions. Accordingly, we find the guilty verdicts for aggravated rape, human trafficking, aggravated battery, and sexual battery were surely unattributable to any alleged error in admitting Mr. Block's testimony, and that the defendant was not so prejudiced by the testimony as to warrant a reversal of these convictions.

Given our finding as stated above, we now address the other assignments of error raised by defendant on appeal.

Pretermitted Assignments of Error

In his first assignment of error, defendant also alleges that the prosecutor made improper comments during closing argument. During closing arguments, the prosecutor made the following comments:

> Mr. Regan spent a good bit of time primarily with Nadia Lee on the stand to suggest, oh, there's some secret deals going on. There's a benefit; that's why they're coming in and lying. You heard Mr. Block testify on that subject matter. You understand why the charges were refused against Ms. Grisby and Ms. Lee. No back-room deals. I'll tell you I've tried more than 300 cases, I've tried more than 100 homicide cases —

Defense counsel objected arguing that comment was improper because it was the prosecutor's "personal opinion based on his trial work." The trial court overruled the objection finding that the comment was not based on the prosecutor's personal opinion.

The prosecutor continued "If I had made a deal with Nadia Lee…" at which time defense counsel objected stating "continuing objection on this point." The prosecutor continued:

> — there would have been no problem telling you about it and letting you judge it because that's what prosecutors have to do in many many cases. And then you're going to evaluate that witness's credibility in the exact same way as any other witness but simply factor in the fact that they got a deal. And it'll be part of the package you're considering deciding whether they're telling you the truth. I lose no sleep at all any night ever about coming in and having that discussion with folks like you. There are no deals here. There's no motivation —

Defense counsel objected again and the trial court called the parties to a bench conference. Defense counsel argued that the prosecutor's "personal opinion" should not be allowed. Overruling the objection, the trial court found again that the prosecutor was not commenting on his personal opinion; rather, the State was only commenting as to the practice in which deals are made with the State. The trial court stated "They're simply defending their position." Defense counsel moved for a mistrial, which the trial court denied.

Pursuant to La. C.Cr.P. art. 774, argument at trial shall be confined to evidence admitted, to the lack of evidence, to conclusions of fact that the State or defendant may draw therefrom, and to the law applicable to the case. Closing arguments shall not appeal to prejudice. Id. The State's rebuttal argument shall be confined to

answering the argument of the defendant. Id. However, prosecutors may not resort to personal experience or turn their arguments into a plebiscite on crime. State v. Robertson, 08-297 (La. App. 5 Cir. 10/28/08), 995 So.2d 650, 659, writ denied, 08-2962 (La. 10/9/09), 18 So.3d 1279 (citing State v. Williams, 96-1023 (La. 01/21/98), 708 So.2d 703, 716, cert. denied, 525 U.S. 838, 119 S.Ct. 99, 142 L.Ed.2d 79 (1998)).

While the trial judge has broad discretion in controlling the scope of closing arguments, prosecutors enjoy wide latitude in choosing closing argument tactics. State v. Brumfield, 96-2667 (La. 10/20/98), 737 So.2d 660, 666, cert denied, 526 U.S. 1025, 119 S.Ct. 1267, 143 L.Ed.2d 362 (1999). Nevertheless, even where a prosecutor exceeds his wide latitude, the reviewing court will not reverse a conviction unless thoroughly convinced that the argument influenced the jury and contributed to the guilty verdict. State v. Taylor, 07-93 (La. App. 5 Cir. 11/27/07), 973 So.2d 83, 103, writ denied, 07-2454 (La. 05/09/08), 980 So.2d 688. In making its determination, the appellate court should give credit to the good sense and fair-mindedness of the jury that has seen the evidence and heard the argument and has been instructed that the arguments of counsel are not evidence. Id.

Contrary to defendant's assertion, it does not appear that the prosecutor was stating his personal opinion, but was responding to attacks defense counsel made on the credibility of the State's witnesses, Ms. Lee in particular, regarding an alleged deal with the State in exchange for her testimony.[5] Based upon the foregoing, we

[5] See State v. Rubbicco, 550 So.2d 219 (La. App. 4 Cir. 1989), writ denied, 556 So.2d 1258 (1990), where the prosecutor's remarks were intended to rebut the effect of defense counsel's closing argument that two State witnesses' testimony should be disregarded because the State had granted them immunity to testify. The trial court found that the remarks were arguably within the scope of La. C.Cr.P. art. 774. Nevertheless, the court found that the remarks did not fall within the specific grounds for a mistrial under La. C.Cr.P. art. 770 even if the remarks were improper. The trial court also found that the comments did not amount to prejudicial conduct that would make it impossible for the defendant to obtain a fair trial, mandating a mistrial under La. C.Cr.P. art. 775. The trial court found that because the evidence of the defendant's guilt was so overwhelming, that when the remarks were considered in context, the jury could not have been influenced by the remarks and could not have contributed it to their verdict.

find that the trial court did not abuse its wide discretion in overruling defendant's objections regarding the prosecutor's comments in closing arguments.

In his second assignment of error, defendant argues that the victim in this case, C.W., was arrested on a material witness warrant and "brought to jail so that the State could secure her testimony." Defendant contends that not only did the State have to arrest C.W., they provided her with drug treatment services in two separate facilities as well as housing at a hotel in advance of her testimony. Defendant states that C.W. left the first facility with someone who was a suspected pimp and was subsequently arrested for another offense at the hotel. Defendant contends that this information was provided to the defense at the start of the trial in the State's Notice Regarding Witness; however, the trial judge ruled that "none of this information could be presented by the defense at trial purportedly because it was related to an 'arrest.'" Defendant argues that this ruling infringed upon his right to confront the witness against him and deprived the jurors of critical information needed to assess C.W.'s credibility, entitling him to a new trial. Defendant also contends that pursuant to the Code of Evidence, he was entitled to attack C.W.'s credibility through the use of this evidence.

In particular, defendant contends that C.W.'s lack of cooperation with the prosecution was relevant to her credibility and the State's proof of aggravated rape. He suggests that regardless of her reasons for being uncooperative (either that she did not want to testify or that her drug problems were too severe), the jury should have been informed of the material witness warrant and the circumstances surrounding it. He argues that if the jurors had known that she had attempted to avoid testifying, it would have corroborated the defense theory that C.W. falsely accused defendant of rape. He also argues that if the jury knew that C.W. had been provided access to drug treatment facilities, hotel, food, and clothing, it could have determined if that assistance constituted "favorable treatment" from which the jurors

could infer a motive to lie. Defendant further contends that C.W.'s continued engagement in prostitution and other criminal activities after her arrest and before trial was relevant to challenge the State's proof of human trafficking.

On December 7, 2016, the State filed a Notice Regarding Witness, notifying defendant of the actions undertaken by the State to ensure the safety of a known witness, the victim, C.W, and two other witnesses. In the notice, the State contended that defendant, along with a co-defendant, Michael Cheatteam, were arrested and charged with conspiracy to obstruct justice based upon the content of intercepted electronic communications between defendant and Mr. Cheatteam. During the discussion, two victims and a third potential victim, including C.W., were identified to Mr. Cheatteam and defendant requested that Mr. Cheatteam "take some action" regarding the victims in this case. To ensure their safety, the State located two witnesses. However, they were unable to locate C.W. She was finally located and was placed in a facility to receive treatment for addiction issues. The notice provided that C.W. left the facility under circumstances where the State was "concerned that she would not or could not appear in court for trial testimony." The State therefore sought and obtained a material witness warrant, and C.W. was taken into custody and ultimately placed in a drug treatment facility where she remained until she required an emergency appendectomy. As the drug treatment facility would not allow her to return until thirty days from her discharge from the hospital, she was housed at a hotel until the State could make alternative arrangements. The notice further provided that while staying at the hotel, C.W. was arrested by local law enforcement on "misdemeanor charges that arose at the hotel" and had remained in custody since then.[6]

[6] Prior to this notice being filed, a discussion was held on the record regarding C.W.'s whereabouts and the need to ensure her safety.

Defense counsel never objected to the admission of this evidence on the Confrontation Clause basis he now raises for the first time on appeal. Defense counsel did not request permission to cross-examine C.W. about her alleged lack of cooperation or alleged favorable treatment by the State. To preserve the right to seek appellate review of an alleged trial court error, a party must state an objection contemporaneously with the occurrence of the alleged error as well as the grounds for that objection. See La. C.Cr.P. art. 841; State v. Smith, 11-638 (La. App. 5 Cir. 03/13/12), 90 So.3d 1114. In failing to object at trial, defendant waived the issue for appellate review. See State v. Draughn, 05-1825 (La. 01/17/07), 950 So.2d 583, 620-21, cert. denied, 552 U.S. 1012, 128 S.Ct. 537, 169 L.Ed.2d 377 (2007); State v. Davis, 06-402 (La. App. 5 Cir. 11/28/06), 947 So.2d 48, 58-59, writ denied, 07-0003 (La. 09/14/07), 963 So.2d 996. Accordingly, defendant has waived review of this alleged error on this basis. La. C.Cr.P. art. 841.

La. C.Cr.P. art. 841 A provides that an irregularity or error cannot be availed of after verdict unless it was objected to at the time of occurrence. Further, a defendant is limited to the grounds for objection that he articulated in the trial court, and a new basis for the objection may not be raised for the first time on appeal. State v. Taylor, 04-346 (La. App. 5 Cir. 10/26/04), 887 So.2d 589, 594. See also State v. Jackson, 04-1388 (La. App. 5 Cir. 05/31/05), 904 So.2d 907, 911, writ denied, 05-1740 (La. 02/10/06), 924 So.2d 162; State v. Favors, 09-1034 (La. App. 5 Cir. 06/29/10), 43 So.3d 253, 261, writ denied, 10-1761 (La. 02/4/11), 57 So.3d 309; State v. Smith, 39,698 (La. App. 2 Cir. 6/29/05), 907 So.2d 192, 199.

Based on the record, defense counsel acquiesced in the trial court's ruling excluding evidence surrounding the circumstances of C.W.'s material witness warrant, including her arrest. Defense counsel did not refer to any instances in which he objected to not being allowed to question C.W. on these issues. Defendant's objections during trial were related to questions regarding C.W.'s "lifestyle" and her

prior criminal history, including prior arrests, convictions, and prior drug rehabilitation. More significant than acquiescence is that defendant did not provide grounds for an objection regarding this issue, nor did he offer a proffer regarding the alleged excluded testimony. To properly preserve an objection for appeal, grounds therefor must be stated contemporaneously during the trial so that opposing counsel can respond, and so that if the objection is meritorious, the trial judge may be given an opportunity to take corrective action. State v. Benoit, 17-187 (La. App. 5 Cir. 12/29/17), 237 So.3d 1214, 1219; State v. Reed, 15-550 (La. App. 5 Cir. 01/27/16), 185 So.3d 206; State v. Griffin, 14-450 (La. App. 5 Cir. 12/16/14), 167 So.3d 31, 43; State v. Lyons, 13-564 (La. App. 5 Cir. 01/31/14), 134 So.3d 36, 40. Furthermore, objecting counsel may and should proffer the excluded evidence or a summary thereof so that the appellate court can better assess admissibility of evidence of excluded evidence. La. C.E. art. 103; State v. Magee, 11-574 (La. 09/28/12), 103 So.3d 285, 326 certiorari denied, 134 S.Ct. 56, 571 U.S. 830, 187 L.Ed.2d 49; State v. Snyder, 12-896 (La. App. 5 Cir. 10/09/13), 128 So.3d 370, 382-383; State v. Massey, 11-358 (La. App. 5 Cir. 03/27/12), 97 So.3d 13, 28, writ denied, 12-993 (La. 09/21/12), 98 So.3d 332.

In Magee, the Supreme Court stated:

> Louisiana's Code of Evidence provides: "Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and ... [w]hen the ruling is one excluding evidence, the substance of the evidence was made known to the court by counsel." La. C.E. art. 103(A)(2). **Thus, in order to preserve for review an alleged error in a ruling excluding evidence, counsel must make known to the court the substance of the excluded testimony.** This can be effected by proffer, either in the form of a complete record of the excluded testimony or a statement describing what the party expects to establish by the excluded evidence. State v. Magee, 11-574 (La. 09/28/12), 103 So.3d 285, 326 certiorari denied, 134 S.Ct. 56, 571 U.S. 830, 187 L.Ed.2d 49. [Emphasis added.]

For these reasons, we conclude that defendant did not properly preserve this issue for appeal.

Nevertheless, had this issue been preserved for appeal, the error claimed on the part of the trial court for having precluded defendant from cross-examining C.W. on the credibility issues, now raised for the first time on appeal, is unsupported by the record. C.W. was arrested on a material witness warrant to "ensure her safety." Her safety was in question based upon electronic communications between defendant and Mr. Cheatteam requesting Mr. Cheatteam to "take some action" against C.W. The concern for C.W.'s safety coupled with her drug addiction made her appearance in court for trial uncertain. Once arrested, C.W. was moved from the jail to a drug treatment facility because defendant was housed in the same jail and because of her drug addiction. After undergoing an emergency surgery, policy regulations at the drug treatment facility precluded her immediate return and therefore, the State transferred C.W. to a hotel pending alternate placement.

The material witness warrant was not executed based on C.W.'s alleged lack of cooperation; rather it was issued because the State had what appears to have been a legitimate concern for her safety. The record is also void of any indication that C.W.'s testimony was influenced by the alleged favorable treatment. C.W.'s testimony about defendant's actions in committing the offenses charged was consistent with the statements she made to medical professionals and the police, which occurred prior to the material witness warrant and arrest. A trial judge's determination regarding the relevance and admissibility of evidence will not be overturned on appeal absent a clear abuse of discretion. State v. Sandoval, 02-230 (La. App. 5 Cir. 02/25/03), 841 So.2d 977, 985, writ denied, 03-853 (La. 10/03/03), 855 So.2d 308. Defendant failed to demonstrate the trial court abused its discretion regarding the material witness warrant.[7]

[7] Errors involving confrontation and cross-examination are subject to a harmless error analysis. State v. Marcelin, 12-0645 (La. App. 4 Cir. 05/22/13), 116 So.3d 928, 935, writ denied, 13-1485 (La. 01/10/14), 130 So.3d 321, cert. denied, 572 U.S. 1093, 134 S.Ct. 1951, 188 L.Ed.2d 971 (2014). In determining harmless error it is "not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in the trial was surely unattributable to the error." Sullivan, supra. For the reasons previously discussed in defendant's first assignment, any alleged error

In his third assignment of error, defendant contends that his sentence on count six, second degree battery is illegal as he was sentenced to ten years. He contends that at the time of the offense, the maximum sentence allowed for second degree battery was eight years.

The trial court sentenced defendant on count six, second degree battery, to ten years at hard labor. However, at the time of the offense, La. R.S. 14:34.1 provided that "[w]hoever commits the crime of second degree battery shall be fined not more than two thousand dollars or imprisoned, with or without hard labor, for not more than eight years, or both." Defendant's sentence on count six is illegally harsh because it is beyond the maximum allowed by law.

Pursuant to La. C.Cr.P. art. 882, an appellate court can correct an illegal sentence at any time. An appellate court is authorized to correct an illegal sentence when the exercise of sentencing discretion is not involved. State v. Durapau, 01-511 (La. App. 5 Cir. 10/30/01), 800 So.2d 1052, 1054; State v. Ross, 09-431(La. App. 5 Cir. 11/24/09), 28 So.3d 475. Here, sentencing discretion is involved; therefore, we vacate the ten-year sentence for second degree battery on count six and remand the matter to the trial court for resentencing pursuant to the statute. See State v. Lampton, 17-489 (La. App. 5 Cir. 05/23/18), 249 So.3d 235, 243; Ross, 2 So.3d at 489-90.

In his supplemental assignment of error, defendant asserts that recently in Ramos v. Louisiana, 590 U.S. —, 140 S.Ct. 1390, 206 L.Ed.2d 583, (2020), the United States Supreme Court found that a non-unanimous verdict for a serious offense is unconstitutional. He contends that based on Ramos, he is entitled to a new trial because the jurors were unconstitutionally instructed that their verdict only

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regarding cross-examination testimony of C.W. on the material witness warrant was harmless as other evidence at trial corroborated C.W.'s testimony and therefore did not affect the substantial rights of defendant. Accordingly, we find the guilty verdicts were surely unattributable to any error that may have occurred based on the trial court's ruling excluding evidence regarding C.W.'s material witness warrant.

required the agreement of ten jurors to find defendant guilty. He also contends that he is entitled to a new trial, notwithstanding the fact that the verdicts in his case were unanimous, because the non-unanimous jury instruction given to his jury constituted a structural error in the same way that Louisiana's unconstitutional jury instruction regarding the State's burden of proof constituted a structural error.

Non-unanimous verdicts were previously allowed under La. Const. Art. I, §17 and La. C.Cr.P. art. 782, and the circumstances of this case. The constitutionality of the statutes was previously addressed by many courts, all of which rejected the argument. See Apodaca v. Oregon, 406 U.S. 404, 92 S.Ct. 1628, 32 L.Ed.2d 184 (1972); State v. Bertrand, 08-2215, 08-2311 (La. 03/17/09), 6 So.3d 738, 742-43; State v. Brooks, 12-226 (La. App. 5 Cir. 10/30/12), 103 So.3d 608, 613-14, writ denied, 12-2478 (La. 04/19/13), 111 So.3d 1030.

However, recently the United States Supreme Court in Ramos, found that the Sixth Amendment right to a jury trial, as incorporated against the States by the Fourteenth Amendment, requires a unanimous verdict to convict a defendant of a serious offense.[8] Ramos, 140 S.Ct. at 1397.

In Ramos, the Supreme Court held that non-unanimous convictions should be reversed. In this case, the record shows that defendant was unanimously convicted on all counts, and thus, we find Ramos is not applicable in this case.[9] We further find that the jury instruction regarding non-unanimous verdicts is not a structural error since the instruction was in accordance with the law in Louisiana at the time of the trial, and it is not one of the six limited classes of cases where structural error

[8] For purposes of the Sixth Amendment, federal law defines petty offenses as offenses subject to imprisonment of six months or less, and serious offenses as offenses subject to imprisonment over six months. The Sixth Amendment's right to a jury trial only attaches to serious offenses. See generally Lewis v. United States, 518 U.S. 322, 327-28, 116 S.Ct. 2163, 135 L.Ed.2d 590 (1996); Hill v. Louisiana, 2013 WL 486691 (E.D. La. 2013).

[9] Defendant does not have standing to challenge the constitutionality of his verdicts because he was convicted by a unanimous jury on all counts. See State v. Saulny, 16-734 (La. App. 5 Cir. 05/17/17), 220 So.3d 871, 879, writ denied, 17-1032 (La. 04/16/18), 240 So.3d 923.

has been found. See State v. Langley, 06-1041 (La. 05/22/07), 958 So.2d 1160, 1164, cert. denied, 552 U.S. 1007, 128 S.Ct. 493, 169 L.Ed.2d 368 (2007).

ERRORS PATENT DISCUSSION

The record was reviewed for errors patent, according to the mandates of La. C.Cr.P. art. 920; State v. Oliveaux, 312 So.2d 337 (La. 1975); and State v. Weiland, 556 So.2d 175 (La. App. 5 Cir. 1990). The following errors patent require corrective action.

First, the trial court failed to inform defendant of the sex offender registration requirements in accordance with La. R.S. 15:540, *et seq*. Defendant's convictions of aggravated rape, human trafficking involving commercial sexual activity, and sexual battery, violations of La. R.S. 14:42, La. R.S. 14:46.2 and La. R.S. 14:43.1, respectively, are defined as sex offenses under La. R.S. 15:541(24). La. R.S. 15:542 outlines the mandatory registration requirements for sex offenders. La. R.S. 15:543 A requires the trial court to notify a defendant charged with a sex offense in writing of the registration requirements of La. R.S. 15:542.

Failure to provide this notification, even where a life sentence has been imposed, is an error patent warranting remand for written notification. See State v. Banks, 17-358 (La. App. 5 Cir. 03/14/18), 241 So.3d 1240, 1251, writ denied, 18-0586 (La. 3/25/19), 267 So.3d 599, cert. denied, — U.S. —, 140 S.Ct. 268, 205 L.Ed.2d 140 (2019). Accordingly, we remand this case with instructions to the trial court to inform defendant of the registration requirements for sex offenders by sending appropriate written notice to defendant, within ten days of this Court's opinion and to file written proof in the record that defendant received such notice. See State v. Starr, 08-341 (La. App. 5 Cir. 11/25/08), 2 So.3d 451, 460-61, writ denied, 08-2991 (La. 09/18/09), 17 So.3d 384.

Secondly, there are several discrepancies between the transcript and the original Louisiana Uniform Commitment Order (UCO). Generally, when the

transcript and minutes are inconsistent, the transcript prevails. State v. Lynch, 441 So.2d 732, 734 (La. 1983). The UCO indicates that the offense date was April 12, 2014; however, the record reflects that the offenses occurred on multiple dates: Counts one, two, six, seven, and eight occurred on or about April 12, 2015; count three occurred on or between April 11, 2015 and April 13, 2015; and count ten occurred on or between April 11, 2015 through April 12, 2015. Accordingly, we remand the matter for correction of the UCO to reflect the correct offense dates and direct the Clerk of Court for the 24th Judicial District Court to transmit the original of the corrected UCO to the appropriate authorities in accordance with La. C.Cr.P. art. 892 B(2) and the Department of Corrections' legal department. See State v. Long, 12-184 (La. App. 5 Cir. 12/11/12), 106 So.3d 1136, 1142 (citing La. C.Cr.P. art. 892 B(2)).

Also, the sentencing minute entry/commitment designates defendant's convictions as crimes of violence. The sentencing transcript shows that the trial court did not state that defendant was convicted of a crime of violence. Generally, when there is a discrepancy between the minute entries and the transcript, the transcript must prevail. State v. Collins, 07-0310 (La. 10/12/07), 966 So.2d 534, 535 (citing Lynch, supra). However, the Louisiana Code of Criminal Procedure designates that certain crimes "shall always be designated by the court in the minutes as crimes of violence," including "(5) aggravated or first degree rape ... (8) sexual battery ... [and] (26) human trafficking." La. C.Cr.P. art. 890.3 C. Therefore, some of defendant's convictions must be designated as crimes of violence in the trial court minutes. See State v. Holloway, 15-1233 (La. 10/19/16), 217 So.3d 343, 346 n.3. However, the sentencing minute entry does not state which convictions are designated as crimes of violence; therefore, we remand the matter for correction of the sentencing minute entry to designate specifically which convictions are crimes of violence. See State v. Parnell, 17-550 (La. App. 5 Cir. 05/16/18), 247 So.3d 1116.

DECREE

For the reasons stated above, defendant's convictions are affirmed, his sentences on all counts except count six are affirmed. His sentence on count six is vacated, and this case is remanded for resentencing, and with other instructions.

CONVICTIONS AFFIRMED; SENTENCES ON ALL COUNTS EXCEPT COUNT SIX ARE AFFIRMED; SENTENCE ON COUNT SIX VACATED AND REMANDED FOR RESENTENCING; REMANDED

STATE OF LOUISIANA	NO. 17-KA-372
VERSUS	FIFTH CIRCUIT
WILLARD ANTHONY	COURT OF APPEAL
	STATE OF LOUISIANA

WICKER, J., DISSENTS WITH REASONS

While this case involves a horrific series of events sufficient to disrupt the usual measured professional approach of even seasoned jurists and prosecutors, and I am loath to do so, I must respectfully dissent in part. As Defendant admitted on the witness stand and concedes on appeal that he committed a second degree battery upon C.W., as charged in indictment count six, and that he was also a felon in possession of a firearm, as charged in indictment count ten, I agree with the majority in affirming Defendant's convictions as to those two counts. However, I cannot agree that the jury's verdict as to the remaining counts was surely not attributable to the improper testimony of Assistant District Attorney Thomas Block.

During his testimony at trial, Mr. Block (1) usurped the exclusive province of the trial judge to instruct the jury as to the law it must apply to the facts as it finds them; (2) usurped the exclusive province of the jury to weigh the evidence, including the credibility of all witnesses, and to arrive at the facts necessary to determine whether the Defendant is guilty beyond a reasonable doubt of the offenses with which he is charged; (3) testified concerning evidence the State received from Brittany Grisby, a witness who did not testify at trial, evidence the jury did not otherwise hear; (4) bolstered the credibility of State's witnesses; and (5) gave an opinion as to the ultimate issue of fact: the Defendant's guilt beyond a reasonable doubt. Therefore, because I cannot agree that the jury's verdict to all counts was surely not

attributable to his improper testimony, I cannot agree that his testimony, improperly given, was harmless error. I would reverse Defendant's convictions as to the remaining counts and remand this matter for a new trial.

The State's case was built on the testimony of three female witnesses: the victim C.W., Nadia Lee, and Brittany Grisby; Ms. Grisby did not testify at trial. All three women had credibility issues. On the same night that C.W. was taken to the hospital with serious injuries—inflicted, at least in part, by Ms. Lee and Ms. Grisby—the two women were also arrested for prostitution and drug-related offenses. C.W. had a history of drug use and criminal activity, including prostitution, as well as a history of mental health issues. Ms. Lee took responsibility for the narcotics found in the hotel room on the night of her arrest, and she testified that the group, including C.W., voluntarily participated in recreational drug use. When defense counsel insinuated, during his cross-examination of Ms. Lee, that she had received favorable treatment from the State in exchange for her testimony, Ms. Lee acknowledged that she had not been charged in relation to the events from which this matter arose, including her participation in the beating that rendered C.W. "unrecognizable."

The State posits that it called Mr. Block during its case in chief to rebut the insinuation that Ms. Lee had been given favorable treatment or some sort of deal, and to explain the bases for his assessment that Ms. Lee and Ms. Grisby should not be charged with a crime.[1] Over 70 pages of trial transcript was devoted to Mr. Block's testimony, which drew more than

[1] *See supra,* note 4. (majority opinion).

twelve objections and four motions for mistrial from the defense. Accordingly, I begin with a thorough review of Mr. Block's trial testimony.

To explain the process and the method for determining when charges are brought, Mr. Block began by explaining the grand jury process and how his office decides to charge individuals with a crime following their arrest. He testified, "As a prosecutor, we have to make sure that there is proof beyond a reasonable doubt that the person charged, actually, violated a criminal statute." He acknowledged that neither the grand jury opinion nor his "personal opinion as to whether or not someone should be charged with a crime is []relevant to a jury's determination as to whether or not someone is guilty of a crime." But then, through very skillful questioning by the prosecutor, concerning only the grand jury process *in general* and not the grand jury in this particular matter, Mr. Block testified that he had an obligation not to present what he believed to be perjured testimony to a grand jury.

Defense counsel lodged his first objection—"with respect to the witness testifying as to his belief of the credibility or lack of credibility of the witness that testifies before the grand jury ... I don't think it's relevant." The State responded that it was only addressing questions of an earlier witness and "earlier comments during jury selection" where defendant "spoke to the subject matter of a grand jury," and the objection was overruled. The objection, however, continued into a bench conference, where defendant continued to argue that Mr. Block was "endorsing the testimony of this witness because he believes she was telling the truth." The trial court overruled the objection again, and defendant moved for a mistrial; which was denied.

The prosecutor continued questioning Mr. Block about his obligation to make a full and fair presentation of accurate information to the grand jurors, and Mr. Block stated,

> Yes. In fact, the only evidence that I present to a grand jury would be evidence that would be legally admissible in a court of law. I have a responsibility based upon my oath that I have taken to be an Assistant District Attorney as well as an officer of the Court and I take my job very seriously.[2]

Mr. Block was then asked how he handled the screening process when multiple individuals are arrested and one is facing potential life imprisonment while others are facing less serious charges; defense counsel objected again, arguing that "the issue involves grand jury secrecy;" the objection was overruled by the trial court, who pointed out that the question did not relate to grand juries.

Mr. Block then testified that he screened the charges against the individuals arrested in this matter and presented the indictment of defendant and Pierre Braddy[3] to the grand jury, but filed no charges against either Ms. Grisby or Ms. Lee. The State, over Defendant's "ongoing objection", went on to ask Mr. Block what steps he would take if he believed it was not appropriate to file charges against someone. Mr. Block testified,

> you have to meet the elements of the offense in order to charge the person and each and every element of the offense must be met beyond a reasonable doubt and to the satisfaction of the trier of fact . . . If the evidence shows that the elements are not there or if there is some other legal impediment to filing charges, such as a statute . . . which would give an affirmative or valid defense to a particular crime, then I have a

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[2] Within this statement, Mr. Block inaccurately instructs the jury on both the law and the usual practice in Louisiana grand jury proceedings. Hearsay evidence is admissible during grand jury proceedings. *See* La. C.E. art. 1101(C)(6); *Molaison v. Lukinovich*, 13-781 (La. App. 5 Cir. 5/28/14), 142 So.3d 342, 352, *writ denied,* 14-1355 (La. 9/26/14), 149 So.3d 270 ("the rules of evidence that apply to trials do not apply in grand jury proceedings"). Furthermore, in the state of Louisiana the common and usual practice in state grand jury proceedings is to call the investigating detective to the grand jury to give the gist and details of the investigation to the grand jury members, usually including hearsay testimony of what witnesses not called to the grand jury said.

[3] Mr. Braddy's and Defendant's trials were severed and Defendant was tried first.

> responsibility and an obligation not to charge someone with a crime.[4]

The exchange below followed:

> State: Assuming for the moment that this jury has heard sufficient information to persuade them that Nadia Lee committed one or more crimes, including prostitution and battery here in Jefferson Parish, would that information that they are aware of be something that you were aware of when you screened the case?
>
> Mr. Block: Yes, I was aware. I had police reports and I had interviews that the detectives had done with both of the ladies, Ms. Grisby and Ms. Lee, that I was aware of. And based upon the totality of the circumstances as it relates to—

Defense counsel objected to the hearsay nature of this testimony, but was overruled. Mr. Block continued:

> Based upon the actions of Willard Anthony, in particular, there is an affirmative defense to the "crimes" quote, unquote—I'll put a quote around "those crimes"—committed by say for instance, Nadia Lee, she has an affirmative defense to the charges of prostitution or say crime against nature insofar as she was a victim of human trafficking as a result of his actions, Willard Anthony's actions.

Defendant then lodged another "ongoing objection."

Mr. Block continued to instruct the jury on the law of human trafficking, reciting the Louisiana Code of Criminal Procedure,

> I think 851, Subsection 6, which states that if a person is the victim of human trafficking and they committed one of those offenses that I just mentioned, prostitution for instance, while a victim of human trafficking, then they get a new trial so there's, actually, an affirmative defense.
>
> And the reason they did that, the Legislature did that and they did this in 2014 is they understand the victimization and the abuse that victims have to endure at the hands of their pimp's physical, emotional, psychological abuse and they

[4] The jury was not informed that the grand jury is not required to hear the defense's evidence or that, to return an indictment, the grand jury need only find that probable cause exists to think that a person committed a crime and should stand trial. *See* La. C.Cr.P. art. 442; *State v. Qualls*, 377 So.2d 293, 296 (La.1979); *Kaley v. United States*, 571 U.S. 320, 328; 134 S.Ct. 1090, 1097–98; 188 L.Ed.2d 46 (2014).

> understand that although they may have committed a crime, they did it at the behest of the pimp.

Defendant lodged another objection, arguing that Mr. Block was "giving an opinion as to the credibility of Ms. Lee," which the trial court overruled, finding that it did not "believe he's giving an opinion." Defense counsel continued objecting "to hearsay" and to Mr. Block "testify[ing] personally, his personal opinion based on this," arguing that it was reversible error. The trial court again responded, opining that it did not believe Mr. Block had done that, but the court asked the State to ask a question to prevent a narrative. The State responded, explaining to the court that Mr. Block was testifying to "explain all the reasons why Ms. Lee and Ms. Grisby were not charged and that none of them had to do with giving either one of them a deal." Defense counsel moved again for a mistrial, which the trial court again denied.

Mr. Block continued on to explain that the law not only provided affirmative defenses to victims of human trafficking, but also

> Article 412.3 of the Louisiana Code of Evidence says that if a person who is committing a crime makes an inculpatory statement. . . to a law enforcement officer. . . and that that (*sic*) person is also a victim of human trafficking and the incident occurred during the perpetration of a human trafficking, then that statement that they gave, that inculpatory statement would, is not admissible against them.

Further, Mr. Block informed the jury of the reason for the rule of evidence,

> People that are victims of this type of behavior, they, they, first of all, don't want to testify against their pimp because they know what will happen if they testify against him and also by their own human nature, they don't want to say anything that's going to get them in trouble. So the Legislature recognized that and as a result, enacted a law which affords them protection and that is something also that I have to take into consideration.[5]

[5] Defense counsel did not re-assert his ongoing objection following the statements explaining the Code of Evidence.

Mr. Block then continued to explain why charges were not filed against either Ms. Lee or Ms. Grisby for the second degree battery against C.W.:

> the second degree batteries that both ladies were facing, although they struck the victim, [C.W.], they did so because they were told to do so by Willard Anthony and they recognized that if they did not comply with his demands to beat [C.W.] after he had already beaten her, that they themselves would have sustained beatings.

When Mr. Block next began to elaborate that when he made the determination not to charge the other women, he had "already gone with Detective Abadie on May the 27th and driven from Gretna down to Pensacola and met with [C.W.] for several hours and interviewed her myself and was told by [C.W.] that, yes, although Ms. Grisby and Ms. Lee struck--," Defense counsel objected again on hearsay, but also argued in a bench conference, "he is saying he found her to be credible ... he's commenting that with all of his experience he found her to be a credible-honest witness." The court responded that she did not believe Mr. Block said that, with defense counsel responding,

> he can't sit here and comment on a witness' credibility before she's testified. . . You can't, you can't support a witness like this. It's up to the jury to make that decision, not this man. We're into grand jury proceedings which are secret-confidential matters, at this point, which we're in an area that causes concern about due process. I note an objection. He shouldn't' be able to comment on the credibility of a witness. He's already commented on the credibility of at least two of the women, at this point, and based on their credibility, he's not accepted the charges. He's about to comment on [C.W.'s] credibility.

The court disagreed:

> That's not at all what he said. What he said was his factors or his reasoning to not accepting these charges was the affirmative defenses. That's what he's testified to, the affirmative defenses. He's not getting into any grand jury testimony aside from in general how the grand jury works. He's not talked about any of these proceedings in the grand jury.

> Right now, we're not even talking about the grand jury. We're talking about Ms. Nadia Lee's and [C.W.'s] charges and the reason why they were refused, which was discussed extensively in your cross-examination of Ms. Lee, that there was some prosecutor misconduct in promising her testimony in exchange for a reduction of the charges or a dismissal of the charges.
>
> Based upon all of that, the Court believes that this is not hearsay. It is offered not for the truth of the matter but to explain what occurred next.

Defendant moved for a mistrial again, which the trial court again denied.

The State then asked Mr. Block, "What information did you develop during your interview with [C.W.] that persuaded you that it was a correct decision not to charge Nadia Lee or Brittany Grisby in connection with the battery?" Mr. Block responded,

> that she was---she being [C.W.]---was aware that the only reasons Ms. Grisby and Ms. Lee participated in the battery upon her were as a result of orders by this defendant, Willard Anthony, instructing them to beat her and that if they did not comply with his demands, [C.W.] believed that they would have been beaten as well.

As to his decision not to charge the women with possession of cocaine, Mr. Block testified,

> We know or I knew based upon the investigation that the defendants, Pierre Braddy and Willard Anthony, were using drugs as a means to get the three ladies or the three female victims to commit the crimes for them as it relates to the human trafficking. That was just one of the things that they used to gain control over the females so I did not believe that it was an appropriate charge to charge either one of those three individuals with the cocaine that was located in the room.[6]

Mr. Block then reaffirmed that he did not offer Ms. Lee a deal in return for her testimony, stating,

> In fact, to the contrary. I have a responsibility as I mentioned to you before and an obligation as an officer of the Court and a representative of the people of Jefferson Parish and the State of

[6] Defense counsel did not specifically renew his objection following this statement.

> Louisiana not to just charge someone with an offense that cannot be proved under the law or beyond a reasonable doubt.

He explained that Sergeant Locascio took Ms. Lee to a shelter, but not to curry favor with her:

> She's a victim. In no uncertain terms, she's a human being. She deserves respect. She deserves protection under the law.
>
> Morally, I don't believe that it would have been right. I know Detective Sergeant Locascio agreed with me. To turn her back out onto the street to do what? She wanted to get help to get out of the lifestyle that she found herself in, that Willard Anthony took advantage of and perpetuated.
>
> And there was no—other than if you want to say we did the right thing, there was no expectation of a promise or a reward. Ultimately, she was going to have to come before you, ladies and gentlemen, and tell her story and then it would be up to you to determine whether or not you believed her.

Defense counsel renewed his "ongoing objection."

On cross-examination, the State's objections were sustained when Defense counsel questioned whether C.W. or the other women had testified before the grand jury and whether the grand jury witnesses were subject to cross-examination. When asked whether Mr. Block presented hearsay to the grand jury and whether a judge was present at the proceedings, the trial judge again sustained the State's objections and informed defense counsel that she would "sustain the objection to all questions regarding the grand jury in this particular case." In a bench conference, the defense argued that, because of the logical implications of Mr. Block's testimony, the jury needed to understand that the witnesses Mr. Block talked about might not have appeared before the grand jury and did not have their credibility assessed by the grand jury. He argued that Mr. Block was asserting his

personal opinion, repeatedly and extensively suggesting to the jury that he believed the women that he referenced were telling the truth.[7]

The trial court ruled:

> I disagree with your interpretation of his testimony. He has never vouched for their personal credibility. He has testified as to what he has done regarding the screening process and the affirmative defenses available to these women which went into his determination whether or not to accept charges or not accept charges.
>
> To defeat the cross-examination of Ms. Lee wherein it was implied that there was some deal made with Ms. Lee for an exchange for her testimony, I am, again, going to tell you I will continue to sustain any objection and I am ordering you, at this point, to no longer ask questions about this particular grand jury.

Defendant again moved for a mistrial, which was denied, and cross-examination of Mr. Block continued. Mr. Block made several other statements referring to all three women as "victims;" stating that the physical evidence and testimony of the other witnesses, including Ms. Lee and Ms. Grisby, corroborated the victim's account; and attributing certain actions to Defendant as if the facts were within Mr. Block's personal knowledge.

For instance, Defense counsel referred to two encounters [C.W.] had with police while in New Orleans before she allegedly tried to escape Defendant and asked Mr. Block if he knew anything about [C.W.]'s opportunity and failure to seek help. Mr. Block replied, "I do. I know that Willard Anthony assaulted her with a handgun; threatened to kill her; beat her; strangled her; choked her to the point of unconsciousness. Yeah, I know that she was afraid to come forward." Mr. Block also testified that he questioned [C.W.] about her failure to come forward and seek help earlier, stating,

> she explained to me to my satisfaction why she felt that she would not, it would not be in her best interest. Let's just say, it

[7] At this point, defense counsel requested the transcript of the grand jury proceeding to determine whether the witnesses Mr. Block testified about spoke before the grand jury. The trial court denied the request.

> would not be in her best interest based upon the treatment that she had endured at the hands of Willard Anthony and Pierre Braddy.

He continued that her testimony was corroborated by the testimony of Ms. Lee and Ms. Grisby. While defense counsel did not object to Mr. Block's thrusting broad and non-responsive opinions on the Defendant's guilt into his responses to his questions on cross-examination, this testimony came after defense counsel had stated an ongoing objection to Mr. Block's statements of this type.

On redirect, Mr. Block testified that there was consistency between what Ms. Grisby and Ms. Lee said in their interviews, with the Defendant objecting "to commenting on testimony we haven't heard." The trial court directed the State to rephrase its question. Mr. Block, however, again testified that he did not charge Ms. Lee and Ms. Grisby because their statements were consistent. He further testified that, although the statutory period for filing charges against Ms. Lee and Ms. Grisby had not elapsed, he would never file charges against them:

> I believe that they have an affirmative defense. I believe that they were victims of Willard Anthony and Pierre Braddy on a human trafficking, sex trafficking enterprise. I believe that they were witnesses to the crimes that this defendant before you stands accused of. I would never in good conscience bring charges against them for the reasons I have stated to you, ladies and gentlemen, today.[8]

Mr. Block also stated that if Ms. Lee or Ms. Grisby refused to testify or made themselves unavailable, he would not file charges against them but would seek material witness warrants. He indicated that if he were not able to locate "one of these people" and if they never came to testify, he would

[8] Again, defense counsel did not specifically object to these statements, but had stated an ongoing objection.

not "turn around and prosecute them" as that would be "vindictive prosecution." Defendant objected—asking if he was "suggesting someone's not coming to trial," which was overruled.

Thereafter, Mr. Block finished his answer:

> I have a responsibility and obligation as an officer of the Court when I was sworn in in 1993 as a lawyer and then sworn in as a prosecutor to prosecute in good faith pursuant to the laws in the State of Louisiana and take only those cases that we can prove beyond a reasonable doubt, a good faith prosecution, not a bad faith or an (*sic*) vindictive prosecution which is what that would be. I would never do that.

The State next asked again whether Mr. Block would charge Ms. Lee, who had already testified, and whether Mr. Block would charge Ms. Grisby if she failed to testify, to which Mr. Block replied, "I would not do that and no for the reasons I've stated. They are victims of sex trafficking. There are affirmative defenses under the code, as well as under the Code of Evidence as to why they cannot be prosecuted. They're victims." Mr. Block's testimony finished without objection.[9] As stated above, Mr. Block's testimony, given during the State's case in chief, went on for more than 70 pages.

Turning first to the issue of prosecutorial testimony at trial, the Louisiana Supreme Court recognizes that the "danger inherent in allowing the prosecuting attorney to assume the role of witness is that the jury might give inordinate weight to his testimony. *State v. Miller*, 391 So.2d 1159, 1162–63 (La.1980) (citing *Robinson v. United States*, 32 F.2d 505, 510 (8th Cir. 1928)). Therefore, although the prosecutor may be a competent witness,

[9] Later, during the testimony of Sergeant Locascio, the defense objected to the introduction of letters purportedly written by Defendant. The court ruled that the witness "is not going to be able to testify to the ultimate fact that the jury will have to determine whether or not this is one in the same handwriting as those items that were identified by the handwriting examiner." Defense counsel agreed with the ruling but argued that he was "making the same objection with respect to Mr. Block telling the jury that he thought he was guilty."

numerous jurisdictions permit the prosecutor to assume the dual role of witness and advocate only under "extraordinary circumstances." *Id.* (*citing* Annot., Prosecuting Attorney as a Witness in Criminal Case, 54 A.L.R.2d 100 (1974)). In fact, "The general rule, governing all lawyers, prohibits testimony by attorneys who are engaged in the trial of the case, (Code of Professional Responsibility, DR 5-101(B), 102) except in isolated circumstances. Even stronger reasons weigh against testimony by a prosecutor." *Id.* at 1163.

While in this case, Mr. Block was not the attorney trying the case for the State, through his own testimony, explaining the grand jury process as well as District Attorney's office investigative, screening, and prosecutorial process in this case, Mr. Block explained to the jury just how important his prosecutorial role was in the instant matter. He testified that he was the prosecutor charged with investigating the case, traveling to Florida to interview C.W., and reviewing statements given by witnesses, including both Ms. Lee and Ms. Grisby. He explained he was the prosecutor who presented the case to the grand jury, testifying that he was the prosecutor who first presented witnesses and then the indictments of Defendant and Pierre Braddy to the grand jury. Further, Mr. Block testified that he did so only after he had satisfied himself as to their guilt beyond a reasonable doubt. In this case, in my opinion, Mr. Block testified as one of the Defendant's prosecuting attorneys. This fact alone renders Mr. Block's testimony suspect.

The trial judge alone may instruct the jury as to the law to be applied in the case. *See, e.g., Parish of Jefferson v. Housing Authority of Jefferson Parish*, 17-272 (La. App. 5 Cir. 12/13/17), 234 So.3d 207, 212.

Nevertheless, during the course of his testimony, Mr. Block repeatedly, and over defense objections and motions for mistrial, instructed the jury on the law as it applied to this case. Explaining first:

> …the only evidence that I present to a grand jury would be evidence that would be legally admissible in a court of law. I have a responsibility based upon my oath that I have taken to be an Assistant District Attorney as well as an officer of the Court and I take my job very seriously.

Regarding the evidence necessary to present a bill of indictment against an individual to the grand jury, he testified:

> you have to meet the elements of the offense in order to charge the person and each and every element of the offense must be met beyond a reasonable doubt and to the satisfaction of the trier of fact . . . If the evidence shows that the elements are not there or if there is some other legal impediment to filing charges, such as a statute . . . which would give an affirmative or valid defense to a particular crime, then I have a responsibility and an obligation not to charge someone with a crime.

Addressing the State's decision not to charge key witnesses, C.W., Ms. Lee, or Ms Gisby with prostitution, drug possession, or battery, Mr. Block again instructed the jury upon the law over the defense's objection:

> Based upon the actions of Willard Anthony, in particular, there is an affirmative defense to the "crimes" quote, unquote—I'll put a quote around "those crimes"—committed by say for instance, Nadia Lee, she has an affirmative defense to the charges of prostitution or say crime against nature insofar as she was a victim of human trafficking as a result of his actions, Willard Anthony's actions.

He thereafter opined as to the Legislative History upon which Louisiana Code of Criminal Procedure art. 851(6), providing that a victim of human trafficking who is convicted of a crime during the course of human trafficking is entitled to a new trial.

He also instructed the jury on and Louisiana Code of Evidence art. 412.3, specific to victims of human trafficking:

> if a person who is committing a crime makes an inculpatory statement. . . to a law enforcement officer. . . and that that (*sic*) person is also a victim of human trafficking and the incident occurred during the perpetration of a human trafficking, then that statement that they gave, that inculpatory statement would, is not admissible against them.

He again opined as to the Louisiana Legislature's rationale for passing that evidentiary rule.

> they don't want to say anything that's going to get them in trouble [with their pimp or with law enforcement]. So the Legislature recognized that and as a result, enacted a law which affords them protection and that is something also that I have to take into consideration.

Mr. Block also opined as to the legal standard to which the State must adhere in charging an individual with a crime:

> I have a responsibility and obligation as an officer of the Court when I was sworn in in 1993 as a lawyer and then sworn in as a prosecutor to prosecute in good faith pursuant to the laws in the State of Louisiana and take only those cases that we can prove beyond a reasonable doubt, a good faith prosecution, not a bad faith or an (*sic*) vindictive prosecution which is what that would be. I would never do that.

Witnesses are typically prohibited from offering opinions on domestic, as opposed to foreign law, as the judge is an expert on the law and is charged with instructing the jury on the applicable law. *See, e.g. Parish of* Jefferson, 234 So.3d at 212; *Clesi, Inc. v. Quaglino*, 137 So.2d 500, 503 (La. App. 4 Cir. 1962). Furthermore, Mr. Block's testimony in this area constitutes expert opinion testimony, as only experts may give opinion testimony in areas of specialized knowledge. La. C.E. art. 702. However, Mr. Block was not qualified as an expert witness, and the State argues on appeal that Mr. Block was a lay witness assessing and explaining to the jury why the other witnesses were not charged with a crime. The testimony of a lay witness is limited to those opinions or inferences that are rationally based on the perception of the witness and are helpful to a clear understanding of

the testimony or the determination of a fact in issue. La. C.E. art. 701; *State v. Keller*, 09-403 (La. App. 5 Cir. 12/29/09), 30 So.3d 919, 930-31, *writ denied*, 10-267 (La. 9/17/10), 45 So.3d 1041.

Mr. Block, in his testimony, also usurped the jury's exclusive function to assess the credibility of each witness and to find the facts as it sees them based upon the evidence presented for its consideration. *See, e.g.*, *State v. J.E.*, 19-478 (La. App. 5 Cir. 9/2/20), 301 So.3d 1262, 1276.

As stated earlier, Mr. Block was called in the State's case in chief, ostensibly to rebut defense's insinuations in its cross examination of Nadia Lee that she had received favorable treatment by the state in exchange for her testimony. Mr. Block, however, also opined as to the credibility of both C.W., who had not yet testified, and Brittany Grisby, who never took the stand. While, prosecutors may be permitted to testify to bolster witnesses' credibility when the testimony is given "on rebuttal to counter specific attacks defense counsel made on the credibility of the government's witnesses," *State v. Bailey*, 12-1662 (La. App. 4 Cir. 10/23/13), 126 So.3d 702, 715 (citing *U.S. v. McCann,* 613 F.3d 486, 495 (5th Cir. 2010)), here, C.W. had not yet testified and Brittany Gisby never did. Basic rules of evidence also prohibit attacking a witness' credibility before the witness has been sworn and supporting a witness' credibility before it has been attacked. La. C.E. art. 607; *State v. Batiste*, 363 So.2d 639 (La. 1978).

Mr. Block testified that, in screening the potential charges against Ms. Lee, C.W., and Ms. Grisby for prostitution and drug use and, as to Ms. Lee and Ms. Grisby, the second degree battery of C.W., he did not charge them because he saw a legal impediment to charges as they had an affirmative defense: they were victims of human trafficking. Mr. Block testified that, in

deciding whether to charge the women, he reviewed police reports and police interviews from Ms. Lee and Ms. Grisby, and he went to Florida with Detective Abadie to interview C.W. He testified that, based upon that interview, it was his opinion that Ms. Lee and Ms. Grisby beat C.W. because, if they did not, Willard Anthony would beat them as well, stating

> she was---she being [C.W.]---was aware that the only reasons Ms. Grisby and Ms. Lee participated in the battery upon her were as a result of orders by this defendant, Willard Anthony, instructing them to beat her and that if they did not comply with his demands, [C.W.] believed that they would have been beaten as well.

As to Nadia Lee, Mr. Block testified:

> She's a victim. In no uncertain terms, she's a human being. She deserves respect. She deserves protection under the law.

Mr. Block repeatedly referred to the three women as "victims", and testified that the three women's statements were consistent, with Ms. Lee and, importantly, Ms. Grisby corroborating C.W.'s account. He repeatedly testified that, as victims, there was no circumstance under which he would charge them. Because he apparently found the statements of the women to be credible and consistent, Mr. Block attributed certain actions to Defendant as if those facts were in his personal knowledge, testifying,

> … I knew based upon the investigation that the defendants, Pierre Braddy and Willard Anthony, were using drugs as a means to get the three ladies or the three female victims to commit the crimes for them as it relates to the human trafficking,

and

> … I believe that they were victims of Willard Anthony and Pierre Braddy on a human trafficking, sex trafficking enterprise. I believe that they were witnesses to the crimes that this defendant before you stands accused of. I would never in good

> conscience bring charges against them for the reasons I have stated to you, ladies and gentlemen, today.

"[I]t has consistently been held to be reversible error for the prosecutor to express his belief in the guilt of the accused, or the credibility of a key witness, where doing so implies that he has additional knowledge or information about the case which has not been disclosed to the jury. *Id.* (citing *State v. Kaufman,* 304 So.2d 300, 307 (La. 1974); *State v. Harrison,* 367 So.2d 1 (La. 1979); *State v. Hamilton,* 356 So.2d 1360 (La.1978)). That is exactly what Mr. Block repeatedly and in great detail did in this case. While prosecutors are allowed to bolster witnesses' credibility when the comments are made "on rebuttal to counter specific attacks defense counsel made on the credibility of the government's witnesses," as stated above, in this case, Mr. Block vouched for the credibility of one witness who had not yet testified and another witness who never testified, and he basically testified that Defendant was not credible at all. *Bailey,*126 So.3d at 715 (citing *McCann,* 613 F.3d at 495).

Despite Mr. Block's assertion that it was the consistent testimony of three women that led him to the conclusion that all three were victims of human trafficking, both C.W. and Ms. Lee testified at trial that they were not forced to prostitute and that they did not consider themselves kidnapped. Furthermore, Ms. Lee's testimony contradicted C.W.'s in that Ms. Lee testified that C.W. was given a choice to either stay in the hotel in Florida or accompany the rest of the group to New Orleans.

As to the testimony that the Defendant used drugs as a means to get the three female victims to commit crimes for them, neither C.W. nor Ms. Lee testified to that fact. C.W. admitted to using drugs, and Ms. Lee testified that the group, including C.W., voluntarily participated in

recreational drug use. While Sergeant Locascio testified in two sentences or less that, in general, a certain type of pimp may look for girls who are on drugs or who like to party and "feed them drugs", Mr. Block informed the jury that he had conclusive proof from the investigation that the Defendant was using drugs to control the actions of the female victims. As none of the female witnesses testified to this information, it can hardly be said that Mr. Block based his conclusion on facts within evidence.

In response to cross-examination by defense counsel, asking whether Mr. Block knew why C.W. failed to take advantage of prior opportunities to seek help from police if she was being held captive, Mr. Block testified, "I do. I know that Willard Anthony assaulted her with a handgun; threatened to kill her; beat her; strangled her; choked her to the point of unconsciousness. Yeah, I know that she was afraid to come forward." This is but one example of Mr. Block—who, as a prosecutor, was surely aware of what constitutes improper commentary by an attorney or expert witness—taking every opportunity during cross-examination to insert broad opinions on the Defendant's guilt. Also, because Mr. Block was asked about C.W.'s encounters with police *prior to* the incident giving rise to this matter, the jury also could have believed that Mr. Block had evidence of mistreatment that was not introduced by prior testimony.

As to Mr. Block's testimony regarding Brittany Grisby, as discussed thoroughly above, Mr. Block testified that upon his review of Ms. Grisby's statements to investigators as well as C.W.'s comments about Ms. Grisby's actions during his interview with her in Florida, Ms. Grisby's version of events was consistent with those given by both C.W. and Ms. Lee. Mr. Block's testimony on this issue clearly lent further credibility to the testimony of both C.W. and Ms. Lee. For instance, Ms. Grisby was the only

witness who could have corroborated C.W.'s testimony that Defendant pulled a gun while in the car on the way from Pensacola to New Orleans and told her "you're part of my family now." Because of Mr. Block's testimony, the jury was left with the impression that Ms. Grisby's testimony would have confirmed C.W.'s testimony. Mr. Block himself, however, never interviewed Ms. Grisby. Therefore, Mr. Block based this testimony on what other people told him Ms. Grisby said to them – hearsay on hearsay. Even more importantly, since Ms. Grisby never testified at trial, this is evidence the jury heard only through Mr. Block, evidence it would not have otherwise heard. This alone necessitates reversal.

Furthermore, in great detail, Mr. Block basically vouched for the credibility of the State's entire case as presented. As stated above, he informed that jury that he had a duty to make sure the elements of the offense were met beyond a reasonable doubt before he presented witnesses, whose testimony he believed was not perjured, and legally admissible evidence to the grand jury. He failed to inform the jury that an indictment may stand even if returned on the basis of illegal evidence. *See* La. C.E. art. 1101(C)(6); La. C.Cr.P. art. 442. In fact, as discussed above, Mr. Block actively misinformed the jury as to the grand jury standard for indictment, which is probable cause, not guilt beyond a reasonable doubt, and also as to the rules of evidence, which do not apply to grand jury proceedings. *See* La. C.Cr.P. art. 442; *Qualls*, 377 So.2d at 296; *Kaley*, 571 U.S. at 328; La. C.E. art. 1101(C)(6); *Molaison*, 142 So.3d at 352. While he repeatedly emphasized his duty to ensure that every element of the offense was proved beyond a reasonable doubt when deciding whether to charge a person with a crime, Mr. Block never informed the jury that a grand jury may return an indictment upon finding that probable cause exists to think that the accused

committed a crime and should face trial. *See* La. C.Cr.P. art. 442; *Qualls*, 377 So.2d at 296; *Kaley*, 571 U.S. at 328.

In so testifying, Mr. Block led the jury to believe that a mini trial had occurred in the grand jury proceeding, in which the rules of evidence were followed, and the grand jury found the Defendant guilty. His testimony was excessive, informed the jury of evidence it would otherwise not have heard, misinformed the jury on the law, and led it to believe it was merely a rubber stamp on the actions already taken by the grand jury.

It is clearly exclusively within the purview of the jury to determine whether the State has carried its burden of proof as to the guilt of the Defendant as to each individual charge beyond a reasonable doubt. Furthermore, no expert in any case may opine as to an ultimate issue of fact. La. C.E. art. 704; *See, e.g., State v. Wheeler*, 416 So. 2d 78 (La. 1982); *State v. Montana*, 421 So. 2d 895 (La. 1982); *State v. White*, 450 So. 2d 648 (La. 1984). Even if Mr. Block had been qualified as an expert, and he was not, the law would still prohibit him from expressing an opinion on the ultimate guilt or innocence of the accused. *See, e.g., Wheeler,* 416 So.2d at 80-81. In *Wheeler*, the Louisiana Supreme Court found that reversible error resulted when a narcotics officer gave expert opinion testimony that the defendant was involved in the distribution of marijuana in response to a detailed hypothetical summarizing the facts as testified to by the arresting officers. 450 So.2d at 79, 81. The Court found that the improper introduction of such evidence was so prejudicial that reversal was required despite the fact that "there was abundant evidence of the defendant's guilt, and it is difficult to understand why the prosecutor thought it necessary to introduce and expert's opinion." *Id.* at 82. Finding that the expert's opinion was tantamount to

saying that the defendant was guilty of distribution of marijuana, the Court stated that the risk of reversible error increases the closer the witness comes to opining on the ultimate issue, particularly "when the witness expressing the opinion is one, such as a police officer, in whom jurors and the public repose great confidence and trust." *Id.* In my opinion, Mr. Block's position is one that commands the same or greater respect and trust from the members of the jurors and the public, and his testimony did not even enjoy the disguise of a hypothetical. It was a direct opinion on the guilt of the Defendant. Specifically, a prosecutor clearly may not opine to the jury that in his or her opinion the offender is guilty. *State v. Kaufman,* 304 So.2d 300 (La. 1974); *State v. Hamilton,* 356 So.2d 1360 (La. 1978). Nevertheless, as Justice Tate explained in *Kaufman,* ". . . the expression of such an opinion by the prosecutor is often held to be nonreversible, if it is apparent to the jury that it is expressly or impliedly *only* based on the evidence presented to the jury rather than on personal knowledge of facts outside the record." (Emphasis added). 304 So.2d at 307. But, as here, in cases in which the prosecutor not only expresses his personal opinion of the Defendant's guilt, but also implies that he is aware of facts outside of the evidence introduced at trial to bolster that opinion, the prosecutor's comments require that the conviction be reversed.

In the *Kauffman* case the Supreme Court reversed the defendant's conviction because the prosecutor both stated his personal belief that the defendant was guilty and implied that he was aware of facts outside the evidence, which justified his belief. In that case, the Supreme Court summarized the prosecutor's argument as follows:

> "I don't believe that Willie Holmes, a friend of Kaufman, confessed to robbery and murder, unless it was true" (objection made by defendant), then immediately a reference to Delores Williams as yet a third participant in the killing (objection), then, "Gentlemen, my argument, when I speak in a personal way, my argument is based on the evidence, and believe me, that's right, I personally feel from the evidence that I have a case; Otherwise, I wouldn't be here, because it's within my power to be here or not be here" (objection).
> . . .
> The ground of the objections essentially was that the prosecutor was expressing his personal opinion as to the defendant's guilt. (The defendant also points out that there is not a word of testimony that Holmes confessed to robbery and murder, so that such objected-to testimony was comment on evidence not before the jury.) *Id.*

Likewise, in *Hamilton* the prosecutor stated, in language strikingly similar to Mr. Block's:

> I wouldn't be spending my time here today nor your time nor the Court's time if I didn't believe in my case. I don't believe in bringing cases to juries that I don't believe in my witnesses and believe myself that they are telling the truth. I check out these stories by these witnesses, I check them out independently of what they tell the officers and independently of what they tell the deputies back on December 7th. I try to when I have cases like this involving lay witnesses, I try to independently corroborate their testimony to see if they are telling the truth before I bring a case to trial and I resent the attack on me coaching the witnesses. Certainly I coach I don't coach the witnesses, I talk to them about the case. I discuss the case with them to help them refresh their memory but I rely on them to tell me about it. I say, well tell me what happened. I don't coach the witnesses, I don't try to put words in their mouths."

The distinction between the *Hamilton* and *Kaufman* cases and this one is that, in each of those cases, the prosecutor made his or her statements during closing argument. The prosecutor was not under oath, and on each occasion the trial judge properly instructed the jury at the close of trial that they are the sole judges of what has been proven and that the arguments of counsel on either side were not evidence. Mr. Block's offense here is much

more egregious. He was a sworn witness. His testimony was evidence to be considered by the jury in its deliberations as per the judge's pre deliberations instructions to the jury. To reiterate just three of Mr. Block's many statements to the jury in which he both stated his personal opinion of the Defendant's guilt and implied that he was aware of information beyond the evidence which implicated the Defendant, in language strikingly similar to that which the Supreme Court found required reversal in the *Hamilton* and *Kaufman* cases, Mr. Block stated:

> Yes, I was aware. I had police reports and I had interviews that the detectives had done with both of the ladies, Ms. Grisby and Ms. Lee, that I was aware of. And based upon the totality of the circumstances as it relates to—

Defense counsel objected to the hearsay nature of this testimony, but was overruled. Mr. Block continued:

> Based upon the actions of Willard Anthony, in particular, there is an affirmative defense to the "crimes" quote, unquote—I'll put a quote around "those crimes"—committed by say for instance, Nadia Lee, she has an affirmative defense to the charges of prostitution or say crime against nature insofar as she was a victim of human trafficking as a result of his actions, Willard Anthony's actions;
>
> … I knew based upon the investigation that the defendants, Pierre Braddy and Willard Anthony, were using drugs as a means to get the three ladies or the three female victims to commit the crimes for them as it relates to the human trafficking;

and

> … I believe that they were victims of Willard Anthony and Pierre Braddy on a human trafficking, sex trafficking enterprise. I believe that they were witnesses to the crimes that this defendant before you stands accused of. I would never in good conscience bring charges against them for the reasons I have stated to you, ladies and gentlemen, today.

Mr. Block repeatedly informed the jury that it was his professional and moral obligation not to charge someone with a crime unless every element of the offense was proved beyond a reasonable doubt. Although he did so in the context of explaining why he refused charges against Ms. Lee and Ms. Grisby, Mr. Block was also informing the jury why he chose to prosecute the Defendant when he said,

> Well, first of all, charges, crimes, you have to meet the elements of the offense in order to charge the person and each and every element of the offense must be met beyond a reasonable doubt and to the satisfaction to the trier of fact which would be either the Judge or a jury. If the evidence shows that the elements are not there or if there is some other legal impediment to filing charges, such as a statute, the Code of Evidence, or the Code of Criminal Procedure which would give an affirmative or valid defense to a particular crime, then I have a responsibility and an obligation not to charge someone with a crime.

By this statement Mr. Block effectively informed the jury that he would not have brought charges against the Defendant unless he were firmly convinced of his guilt. However, this example merely introduces the rest of Mr. Block's testimony, wherein he continuously referred to the three women as "victims" of the Defendant and directly opined that the Defendant was guilty of the crimes for which he was accused.

The Supreme Court has expressly stated that the test for harmless error is not whether the jury would have convicted the Defendant in a trial without the error, but whether the jury's verdict in this case was *surely unattributable* to the error. Under *Chapman,* an appellate court must decide "whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction," and "the court must be able to declare a belief that [the error] was harmless beyond a reasonable doubt."

State v. Bell, 1999-3278 (La. 12/8/00), 776 So.2d 418, 421–22 *(citing Chapman,* 386 U.S. at 24, 87 S.Ct. 824).

Again, I recognize that this case involves a truly horrific series of events and I do not dissent to minimize the severity of the atrocities suffered by the women involved. However, I cannot agree that a prosecutor taking the stand and repeatedly telling the jury that his decision to press charges is *de facto* proof of guilt, while also implying that the grand jury's decision to indict was likewise a finding of guilt beyond a reasonable doubt, did not contribute to the jury's verdict in this case nor can I can consent to such behavior in a court of law. When Mr. Block told the jury that he would never bring charges against anyone without proof of guilt beyond a reasonable doubt, and when he definitively opined that "Willard Anthony" was guilty of doing x, y, and z, he gave the jury clear permission to find Defendant guilty, even if the jury did not find the State's evidence compelling enough, on its own, to convict. After Mr. Block's testimony, the jury was aware that additional witnesses and evidence existed to confirm Defendant's guilt, and they could trust the word of the grand jury prosecutor that he was guilty beyond a reasonable doubt.

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **DECEMBER 30, 2020** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

17-KA-372

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
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