NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2018 KA 0046

STATE OF LOUISIANA

VERSUS

LANCE GRANDISON

Judgment Rendered: NOV 05 2018

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Appealed from the
22nd Judicial District Court
In and for the Parish of Washington
State of Louisiana
Case No. 16-CR6-133262

The Honorable William J. Knight, Judge Presiding

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BEFORE: GUIDRY, THERIOT, AND PENZATO, JJ.

THERIOT, J.

The defendant, Lance J. Grandison, was charged by grand jury indictment with aggravated rape, in violation of La. R.S. 14:42(A)(4), and pled not guilty.[1] After a trial by jury, the defendant was found guilty as charged. The trial court denied the defendant's motion for post-verdict judgment of acquittal and motion for new trial. The defendant was sentenced to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. The trial court denied the defendant's motion to reconsider sentence. The defendant now appeals, assigning error to the sufficiency of the evidence to support the conviction, and to the admission of expert testimony that allegedly invaded the province of the jury. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF FACTS

In February of 2016, a sexual abuse complaint involving a then ten-year-old[2] female, D.C. (the victim)[3] was assigned to Detective Raymond Myers of the Washington Parish Sheriff's Office. On February 18, 2016, Detective Myers attended the prearranged interview at the Children's Advocacy Center (C.A.C.). During the C.A.C. interview, D.C. detailed an incident involving the defendant that she indicated occurred when she was five years old and living in a gray house with her mother, siblings, and the defendant.[4] She referred to the defendant as "Lance," her "old Daddy,"

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[1] We note that the title of La. R.S. 14:42 was amended to "first degree rape" by 2015 La. Acts No. 184, § 1 and 2015 La. Acts No. 256, § 1, but these amendments did not materially alter the substance of the provision. Because the instant offense took place prior to August 1, 2015, herein we reference the previous title. See La. R.S. 14:42(E).

[2] Based on the discrepancies in the record, D.C.'s date of birth is the fourth day of September or November of 2005.

[3] In the instant case, we reference the child victim and her immediate family by initials only. See La. R.S. 46:1844(W).

[4] Based on the date of birth provided by D.C.'s mother at trial, D.C. would have been five years old from November 4, 2010 to November 4, 2011. The grand jury indictment indicates that the offense occurred between February 1, 2011, and May 31, 2011.

noting that her mother had remarried and that she, at that time, had a "new Daddy." She noted that her new father was nice, while the defendant was not nice.

During the incident, D.C.'s siblings were asleep and her mother was at work. D.C. could not recall if it was day or night, but indicated that she was in her bed sleeping when the defendant called out her name and told her to come into her parents' bedroom and get on the bed. The victim indicated that although she told the defendant "no," he "made her" get on the bed and got on top of her. She immediately began crying as the defendant held her hands down to prevent her from moving. She told the defendant to stop, but he refused and told her to shut up. D.C. further stated that the defendant told her that if she told her mother about the incident, he would kill her mother.

D.C. stated that she saw a "black thing" on the defendant's body, as he got on top of her and used the "black thing" to touch her "business." The victim indicated that she felt pain as the "black thing" went inside of her body. During the interview, the victim was given anatomical drawings which she used to identify the location of the defendant's "black thing" as well as the location of her "business." She stated that the defendant "took it out" when her mother came back home from work. At that point, the defendant told her to go back to her room and get back into her bed.

D.C. stated that she wanted to tell her mother what happened, but did not do so because she did not want her mother to get killed. She indicated that after the incident, her "business" was hurting a lot, but the pain later went away. D.C. stated that she did not tell her mother about the incident until the month of the interview. She denied that the defendant ever touched her anywhere else or made her touch him anywhere. She further indicated that the described incident occurred once.

ASSIGNMENT OF ERROR NUMBER ONE

In assignment of error number one, the defendant argues that the evidence was insufficient to support the aggravated rape conviction. The defendant argues that the conviction is based solely on the rehearsed testimony of an eleven-year-old child recalling an incident that allegedly occurred when she was five years old. He contends that there is no physical evidence in this case, and that the victim's testimony and statements are internally contradictory and irreconcilable.

The defendant contends that while the victim claimed that she was screaming during the incident, her siblings did not wake up. He further contends that no one saw the dark red marks that the victim claimed were on her hands, mouth, and vaginal area. He notes that the victim could not recall why she believed the defendant would kill her mother. The defendant further contends that the victim was confused as to when and how often she saw the defendant after the defendant and her mother separated. The defendant also argues that the scenario presented, that the rape began after the victim's mother exited the home and was discontinued when she reentered to retrieve the keys that she had forgotten inside, does not consist of a reasonable amount of time for the offense to have occurred. Furthermore, the defendant argues that the testimony by Victoria Penton, a licensed counselor, indicated that the victim's testimony was unreliably rehearsed.

When issues are raised on appeal contesting the sufficiency of the evidence and alleging one or more trial errors, the reviewing court should first determine the sufficiency of the evidence. The reason for reviewing sufficiency first is that the accused may be entitled to an acquittal under **Hudson v. Louisiana**, 450 U.S. 40, 43, 101 S.Ct. 970, 972, 67 L.Ed.2d 30

(1981), if a rational trier of fact, viewing the evidence in accordance with **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979), in the light most favorable to the prosecution, could not reasonably conclude that all of the essential elements of the offense have been proven beyond a reasonable doubt. When the entirety of the evidence is insufficient to support the conviction, the accused must be discharged as to that crime, and any discussion of trial error issues as to that crime would be pure dicta since those issues are moot.

However, when the entirety of the evidence is sufficient to support the conviction, the accused is not entitled to an acquittal, and the reviewing court must then consider the other assignments of error to determine whether the accused is entitled to a new trial. If the reviewing court determines that there has been trial error (which was not harmless) in cases in which the entirety of the evidence was sufficient to support the conviction, then the accused will be granted a new trial, but is not entitled to an acquittal. See **State v. Hearold**, 603 So.2d 731, 734 (La. 1992).

A conviction based on insufficient evidence cannot stand as it violates Due Process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. The constitutional standard for testing the sufficiency of the evidence, as enunciated in **Jackson v. Virginia**, requires that a conviction be based on proof sufficient for any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, to find the essential elements of the crime beyond a reasonable doubt. See La. Code Crim. P. art. 821(B); **State v. Ordodi**, 2006-0207 (La. 11/29/06), 946 So.2d 654, 660.

In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, which states in part, "assuming every fact to be proved that the evidence tends to prove," every reasonable

hypothesis of innocence is excluded. La. R.S. 15:438. **State v. Wright**, 98-0601 (La. App. 1st Cir. 2/19/99), 730 So.2d 485, 486, writs denied, 99-0802 (La. 10/29/99), 748 So.2d 1157 & 2000-0895 (La. 11/17/00), 773 So.2d 732. When a case involves circumstantial evidence and the trier of fact reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. **State v. Moten**, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987).

La. R.S. 14:42(A)(4) specifically defines the crime of aggravated rape as a rape committed where the anal, oral, or vaginal sexual intercourse is deemed to be without lawful consent of the victim because it is committed when the victim is under the age of thirteen years. The testimony of the victim alone can be sufficient to establish the elements of a sexual offense, even where the State does not introduce medical, scientific, or physical evidence to prove the commission of the offense. **State v. James**, 2002-2079 (La. App. 1st Cir. 5/9/03), 849 So.2d 574, 581.

D.C. was eleven years old at the time of the trial on August 9, 2017. She testified that she lived with her mom, dad (her stepfather at that time), and two sisters, who were nine and seven years of age at the time of the trial. D.C. recalled her mother's previous marriage with the defendant and further recalled living with the defendant when she was five years old. She considered the defendant her father at that time. While D.C. was sleeping in the bedroom that she shared with her sisters, the defendant told her to come into the bedroom that he shared with her mother. D.C. was wearing a t-shirt and underwear at the time.

D.C. complied, and as she stood at the bedroom door, the defendant told her that he would kill her mother if she told anyone. The defendant shut

and locked the bedroom door and placed D.C. on the bed. He used one hand to hold down both of D.C.'s hands together above her head, and covered her mouth with his other hand, as she tried to scream for her mother. The defendant then got on top of D.C. and "started going up and down." D.C. confirmed that the defendant was touching her body at that point.

When asked to name the part of her body that the defendant was touching, she testified, "My business." She specifically stated that the defendant put his private part inside of her "business," the area that she urinates from when she uses the bathroom. She confirmed that the defendant was moving up and down while his private part was inside of her "business." D.C. testified that the defendant then took her off of the bed and told her to get on her knees, adding, "He put his business in my mouth." She further described the defendant's "business" as his "[p]rivate part." She stated that he kept taking "it" in and out of her mouth. D.C. was unsure as to the duration of the acts. She stated that her mother was at work when the incident occurred. She stated that the defendant stopped when he heard her mother knocking on the door because she forgot her keys.[5] At that point, the defendant told D.C. to get up and go back to her room.

As D.C. testified, instead of returning directly to her bedroom she went to the bathroom first. When asked what she did in the bathroom, she stated, "Checked myself." She observed red marks on her hands, mouth, and "business" and was experiencing pain. D.C. stated that the defendant's actions made her feel sad. She did not tell her mother at that point. She testified that the marks were gone the next day and the pain lessened. She further indicated that the defendant discontinued living there after the

[5] D.C. later, on cross-examination, seemed uncertain as to whether or not her mother had forgotten her keys. She stated that she did not know why she initially came to that conclusion but was certain that her mother was knocking on the door when the defendant stopped. She subsequently saw her mother inside of the house but did not speak with her. She complied with the defendant's instructions to go back to her bedroom after leaving the bathroom.

incident. She stated that the defendant was not there when she woke up the next morning, and that she did not see him again for an uncertain amount of time.

However, D.C. recalled seeing the defendant at the State Park when she was ten years old or younger and disclosed the incident to her mother at ten years old. D.C. explained that she did not previously disclose the incident because she believed the defendant when he threatened to kill her mother if she did so. D.C. confirmed that she witnessed a previous incident between the defendant and her mother, specifically recalling the defendant pushing a knife through a door while her mother was in the room on the opposite side of the door. She denied that the defendant approached her mother with the knife during the prior incident. When D.C. finally disclosed the instant offense to her mother, she began crying as she stated that the defendant raped her. D.C. confirmed that while her mother had told her what the word "rape" meant some time before the disclosure, her mother (nor anyone else) did not suggest to her that the defendant had raped her. D.C. was still undergoing counseling by the time of the trial.

G.M. (D.C. mother), a certified nursing assistant, regularly worked two jobs. G.M. met the defendant in 2006 through her use of an online dating website, and they began living together that same year.[6] They began living in the gray house around March of 2010, when D.C. was five years old, until the defendant left in May of 2011. In the interim, they were married on February 5, 2011. G.M. described their relationship as abusive, and stated that she lacked self-esteem and only married the defendant

[6] G.M. only had one child, D.C., when she first met the defendant. While living with the defendant, she had two additional children that were not fathered by the defendant.

because she was afraid that she would not find anyone else to accept her and her children.

G.M. noted that the relationship included physical abuse, as they would routinely hit each other. She further stated that the defendant would often pressure her to have sex with him. G.M. further explained that her sex life with the defendant was not healthy and noted that the defendant heavily viewed internet pornographic material. She specifically stated that she was often "kind of like forced into doing it," adding that the defendant would sometimes hold her down and hold her hands down, and that she would cry a lot during intercourse.

G.M. also described the incident wherein the defendant chased her while he was armed with a knife. She confirmed that D.C. witnessed the incident, and stated that D.C. would cry during altercations involving G.M. and the defendant. As to the defendant's relationship with her daughters, G.M. stated that he was a good father who would take care of her children while she worked at night. When the defendant ended the relationship in May of 2011, he left her one-hundred dollars and a note indicating that he was leaving because G.M. was preventing him from spending time with his daughter from another relationship. G.M. denied ever preventing the defendant from visiting his daughter.

D.C. made the disclosure to G.M. in February of 2016, at which point her grades in school were suffering. This was the first and only disclosure of such a nature made by D.C. G.M. testified that she first had a conversation with D.C. when she was "small" (at approximately two years of age) regarding good/bad touch, simply explaining that no one should be touching her private areas. G.M. also confirmed that she often had to knock on the door when returning home in order to have the defendant or one of her

children remove the chain lock from the door. Within two days of the disclosure, G.M. took D.C. to the police station.[7]

Victoria Penton, a licensed professional counselor, serving as the counselor for Washington Parish, was accepted at trial as an expert in the field of licensed professional counseling. Penton counseled D.C. from April of 2016 to July of 2017, consisting of play therapy, using projective techniques designed to build a general relationship of trust, before ultimately progressing to trauma focused cognitive behavioral therapy. Penton described the progress as slow, noting that it took a while to establish a foundation of trust with D.C., and that D.C. had difficulty understanding emotions and knowing which emotions were appropriate for certain situations.

On September 21, 2016, D.C. reported that she was feeling very happy because "the 'bad guy got locked up'." She reported that the bad guy was the person who abused her, further reporting that she did not feel afraid anymore because the bad guy could no longer hurt her mother. At that time the therapy sessions became trauma focused, allowing D.C. to develop a trauma narrative and coping skills. Trauma narrative development techniques included training the victim to describe in writing actual events in a chronological manner, divided by chapters detailing aspects of her life before the abuse, detailing the actual events of the abuse, and details of her life after the abuse.[8]

After D.C. wrote her trauma narrative, Penton repeatedly went over the narrative with het. In doing so, Penton's goal was to help D.C. become

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[7] G.M. confirmed that at the time of the trial, the victim was taking depression medication and had been previously diagnosed with Attention Deficit Disorder.

[8] Portions of D.C.'s trauma narrative, consistent with her trial testimony, were read to the jury. The narrative in its entirety was admitted for record purposes only.

desensitized to the details of the abuse by processing what actually happened in order to eventually become healed of the overwhelming emotions of the abuse. Penton denied being suggestive or providing answers to D.C., further indicating that there were no signs that D.C. was ever coached in developing her narrative.

Dr. Jamie Jackson, a child abuse pediatric attendant at the Audrey Hepburn Care Center of the Children's Hospital in New Orleans, was accepted at trial as an expert in the field of child abuse pediatrics. Dr. Jackson examined the victim on March 8, 2016. D.C.'s physical examination fell into the category of normal with minor discharge, and she tested negative for sexually transmitted diseases. Dr. Jackson explained why a victim might have "[d]elayed disclosure" of abuse, including such factors as naivety, confusion, embarrassment, shame, fear and self-guilt. She added that in a majority of the cases, when sexual abuse is happening to a child, it is with someone who has access to the child and who knows the child and the family well. Dr. Jackson further described the concept of disclosure as a process, noting that in some cases children make disclosures by making small revelations over a period of time. Dr. Jackson further explained that in the majority of sexual abuse claims the examinations are normal or nonspecific. She noted that the hymen, the opening of the vagina, is open from birth. She further noted that penetrating trauma was rare and that even in cases where such trauma occurs, the area heals very quickly.

The defendant testified that he helped take care of G.M.'s children between November of 2006 to May of 2011, when the relationship ended and he moved out of the home that they were sharing at the time.[9] Prior to moving out he would sometimes feed, bathe, and dress D.C. The defendant

[9] The defendant testified that his criminal history included convictions of domestic abuse battery and simple battery. The domestic abuse battery conviction involved the mother of his oldest child.

denied ever having any violent altercations with G.M. and denied any incident involving him brandishing or putting a knife through a door. He testified that he and G.M. argued a lot but they did not fight, stating, "I have never put hands on her." The defendant also denied that he ever had to coax G.M. into having sexual relations with him, though he stated the following, "... I did want her to be open more sexually." The defendant further denied ever vaginally or orally raping D.C., specifically denying that he ever engaged in such acts with her.

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. Moreover, where there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. **State v. Richardson**, 459 So.2d 31, 38 (La. App. 1st Cir. 1984). The trier of fact's determination of the weight to be given evidence is not subject to appellate review. An appellate court will not reweigh the evidence to overturn a fact finder's determination of guilt. **State v. Taylor**, 97–2261 (La. App. 1st Cir. 9/25/98), 721 So.2d 929, 932. Further, a reviewing court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the fact finder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. See **State v. Calloway**, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam). A court of appeal impinges on a fact finder's discretion beyond the extent necessary to guarantee the fundamental protection of due process of law in accepting a hypothesis of innocence that was not unreasonably rejected by the fact finder. See **State v. Mire**, 2014-2295 (La. 1/27/16), ___ So.3d ___, ___, 2016 WL 314814 (per curiam).

Herein, the verdict returned indicates the trier of fact found D.C. credible. The youthful victim described acts of vaginal and oral sexual intercourse being forced upon her by the defendant. D.C.'s accounts were largely consistent, and there is no evidence of her being coaxed or coached into making the disclosures. In reviewing the evidence, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See **Ordodi**, 946 So.2d at 662. Viewing the evidence in the light most favorable to the prosecution, we find that a rational trier of fact could have found the essential elements of the offense of aggravated rape were proven beyond a reasonable doubt. We find no merit in assignment of error number one.

ASSIGNMENT OF ERROR NUMBER TWO

In assignment of error number two, the defendant argues that Dr. Jackson overstepped the bounds of acceptable testimony when she stated that her diagnosis of D.C. was child sexual abuse. The defendant maintains that the expert witness must seek to demonstrate or explain in general terms the behavioral characteristics of child abuse victims in disclosing alleged incidents, without giving testimony directly concerning the particular victim's credibility. The defendant argues that the State introduced expert testimony for the purpose of substantively proving that sexual abuse occurred. The defendant contends that this case is factually similar to **State v. Foret**, 628 So.2d 1116 (La. 1993), wherein the conviction was overturned due to the Court's finding that expert testimony improperly bolstered the child's credibility.

The defendant argues that the instant case is distinguishable from **State v. Griffin**, 2015-1765 (La. App. 1st Cir. 4/27/16), 2016 WL 2840309 (unpublished), wherein this court held that the expert did not affirmatively

state that the victim had been sexually abused. The defendant contends that in this case the expert based most of her opinion upon the level of detail of D.C.'s description of sexual abuse. He claims that Dr. Jackson concluded that in her expert opinion, D.C. was telling the truth as to whether abuse occurred. Contending that the State's case was largely based upon D.C.'s testimony, the defendant argues that the inadmissible expert testimony unduly bolstered D.C.'s testimony. Thus, the defendant concludes that the admission of the testimony at issue did not constitute harmless error.

It is well-settled that defense counsel must state the basis for an objection when it is made, pointing out the specific error to the trial court. The grounds for objection must be sufficiently brought to the court's attention to allow it the opportunity to make the proper ruling and prevent or cure any error. See La. Code Evid. art. 103(A)(1); La. Code Crim. P. art. 841; **State v. Trahan**, 93-1116 (La. App. 1st Cir. 5/20/94), 637 So.2d 694, 704. When a defendant fails to object to an issue at trial, he is precluded from urging the issue on appeal. See **State v. Leblanc**, 618 So.2d 949, 958-59 (La. App. 1st Cir. 1993), writ denied, 679 So.2d 1372 (La. 10/4/96). In the instant case, while the defendant objected on the grounds of repetition, the defendant did not object to Dr. Jackson's testimony on the grounds that it related to an ultimate issue to be determined by the jury. Thus, he is barred from raising this issue on appeal. La. Code Crim. P. art. 841; **Trahan**, supra. See also **Leblanc**, supra. However, out of an abundance of caution, we will address this issue.

Louisiana Code of Evidence article 702 provides, "A witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise if ... [t]he expert's

scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue."

Notably, the supreme court has placed limitations on this codal provision in that, "[e]xpert testimony, while not limited to matters of science, art or skill, cannot invade the field of common knowledge, experience and education of men." **State v. Young**, 2009–1177 (La. 4/5/10), 35 So.3d 1042, 1046-47, cert. denied, 562 U.S. 1044, 131 S.Ct. 597, 178 L.Ed.2d 434 (2010). Testimony in the form of an opinion or inference otherwise admissible is not to be excluded solely because it embraces an ultimate issue to be decided by the trier of fact. However, in a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused. La. Code Evid. art. 704.

Expert testimony can assist a trier of fact in understanding the significance of a child-witness's demeanor, inconsistent reports, delayed disclosure, reluctance to testify, and recantation. An expert witness can explain to jurors that a child-witness's seemingly abnormal behavior—delayed reporting, inconsistent statements, and recantation—is in fact normal for children who have been sexually abused and can also dispel inaccurate perceptions held by jurors, allowing them to better assess a child-witness's testimony. Expert testimony becomes problematic when it infringes upon other interests: for example, when it is unduly prejudicial, when it invades the province of the jury, when it bolsters a child-witness's testimony, or when it leads to a "battle of the experts." **State v. Chauvin**, 2002-1188 (La. 5/20/03), 846 So.2d 697, 702-03 (citations omitted).

In **Foret**, the defendant had been charged with molestation of a juvenile, but was found guilty of attempted molestation of a juvenile. **Foret**, 628 So.2d at 1117. At trial, the State presented testimony from Dr. William

Janzen, Ph.D., who qualified as an expert in the field of psychology with expertise in child sexual abuse. **Id.** at 1118. Dr. Janzen testified that he interviewed the victim on three separate occasions and concluded, in his expert opinion, she was telling the truth about being the victim of sexual abuse. **Id.** at 1119.

As the basis for this opinion, Dr. Janzen relied upon factors present in Child Sexual Abuse Accommodation Syndrome ("CSAAS"). **Id.** at 1123-24. Notably, Dr. Janzen described specific details of the allegations made by the victim and, with the court's permission, named the defendant as the person whom the victim identified as her abuser. **Id.** at 1119. Dr. Janzen stated, "[t]he details that [the victim] gave me are consistent with the dynamics of sexual abuse and so my conclusion would, therefore, be that she has been sexually abused and should be in counseling to help her cope with that." **Id.** at 1120. Subsequently, Dr. Janzen summed up his testimony by stating that, given the details related to him by the victim and considering the various dynamics of sexual abuse, his only conclusion was that the victim had been sexually abused. **Id.**

The supreme court in **Foret** found that Dr. Janzen's CSAAS-based testimony was of "highly questionable scientific validity," and failed to unequivocally pass the threshold test of scientific reliability set forth in **Daubert v. Merrell Dow Pharmaceuticals, Inc.**, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). **Id.** at 1127. The court further determined that the use of CSAAS-based testimony for the purpose of bolstering a witness's credibility created a risk of prejudice that outweighed the evidence's questionable probative value, and thus, such opinion testimony as a determinant of the victim's credibility was not admissible. **Id.** at 1129.

The **Foret** court did note that this sort of expert testimony must focus on why "superficially bizarre" reactions such as delayed reporting take place in some cases. **Id.** at 1130. Such opinion testimony must seek to demonstrate or explain in general terms the behavioral characteristics of child abuse victims in disclosing alleged incidents without giving testimony directly concerning the particular victim's credibility. **Id.** If the testimony is limited in this way, then it is of assistance to the jury in evaluating the psychological dynamics and resulting behavior patterns of alleged victims of child abuse, where the child's behavior is not within the common experience of the average juror. **Id.**

In **Griffin**, the State offered Anne Troy, a nurse practitioner, as an expert in child maltreatment and child abuse. Troy examined the victim at the Audrey Hepburn Care Center. As part of her examination, Troy took a medical history report from the victim. As part of the medical history report, the victim described to Troy the precise types of sexual abuse she had suffered. Following the presentation of the recorded medical history report, the State asked Troy whether she had the opportunity to view the victim's C.A.C. interview, which had previously been introduced at trial. Troy replied that she had and that there was nothing about the medical history that was inconsistent with that interview.

Next, the State asked Troy (over the defendant's objection), whether the history related by the victim was "consistent with a child who has been sexually abused." Troy replied that the history was consistent with sexual abuse, explaining that the victim therein was clear, detailed, spontaneous and consistent, noting that she continued to give the same history. Troy reported that the victim had a normal exam, which she described as common in cases of child sexual abuse because children heal very quickly and may tend to

delay disclosure. Therefore, she did not find it inconsistent with a report of sexual abuse not to find physical trauma. She conceded that there were no definitive findings of sexual abuse. This court found that Troy's testimony was properly admitted.

In the instant case, a review of Dr. Jackson's expert testimony reveals that it was certainly not "tantamount to an opinion that the defendant was guilty of the crime charged." **State v. Wheeler**, 416 So.2d 78, 81 (La. 1982). Viewed under the variables set forth above, we do not find that the expert testimony should have been excluded under La. C.E. art. 704. As this court found in **Griffin**, the expert testimony in this case regarding the victim's normal physical exam served to demonstrate that victims of child sexual abuse often do not present signs of physical trauma from the abuse. Dr. Jackson explained to the jury the concept of delayed reporting in general terms, as sanctioned in **Foret**. See **Foret**, 628 So.2d at 1130. Thus, Dr. Jackson's testimony assisted the jury in understanding "superficially bizarre" circumstances in the instant case. See **Foret**, 628 So.2d at 1130.

While the defendant claims on appeal that Dr. Jackson concluded that D.C. was telling the truth as to whether abuse occurred, as noted by the State, this is not an accurate description of Dr. Jackson's testimony. As in **Griffin**, herein the expert witness did not affirmatively state that D.C. had been sexually abused or that she was being truthful. Specifically, Dr. Jackson stated that her diagnosis of child sexual abuse was solely based on the child history provided by the victim.

In regard to her diagnosis, Dr. Jackson further explained, "...when a child presents, or anyone presents, with a headache and someone tells them that they have a headache and they have pain, we don't question them by saying, 'Now, you don't really have a headache, do you?'" Thus, the

diagnosis would be headache in such a case without any evaluation as to the truth of the claim. Further, Dr. Jackson declined to opine when specifically asked, "Do you know if [D.C.] in this case absolutely told you the truth?" In response, Dr. Jackson assertively stated, "No one can speak to the veracity of someone's statement. I'm not a lie detector. No one would be able to say."

We find that Dr. Jackson's testimony was within the limits of **Daubert**, **Foret**, and **Chauvin**, and it assisted the trier of fact in understanding D.C.'s lack of physical evidence of abuse and her delayed disclosure of the abuse. Thus, after reviewing the record, we conclude that Dr. Jackson did not present expert testimony expressing an opinion as to whether or not this defendant was guilty. Accordingly, assignment of error number two lacks merit.

CONVICTION AND SENTENCE AFFIRMED.