NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

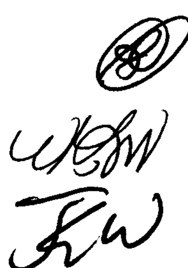
FIRST CIRCUIT

2009 KA 0454

STATE OF LOUISIANA

VERSUS

ALBERT NORMAN PIERRE, SR.



Judgment Rendered: September 11, 2009

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On Appeal from the 32nd Judicial District Court
In and For the Parish of Terrebonne
Trial Court No. 503,180

Honorable Randall L. Bethancourt, Judge Presiding

* * * * * * * * * *

Joseph L. Waitz, Jr. District Attorney Houma, Louisiana	Counsel for Appellee State of Louisiana
Bertha Moseley Hillman Thibodaux, Louisiana	Counsel for Defendant/Appellant Albert Norman Pierre, Sr.

* * * * * * * * * *

BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

HUGHES, J.

Defendant, Albert Norman Pierre, Sr., was charged by grand jury indictment with one count of aggravated rape, a violation of LSA-R.S. 14:42(A)(4). Defendant entered a plea of not guilty and was tried before a jury. The jury determined the defendant was guilty as charged. The trial court sentenced the defendant to a term of life imprisonment at hard labor without benefit of probation, parole, or suspension of sentence.

Defendant appeals, and in his assignments of error contends that the trial court erred in: (1) overruling the defendant's objection to expert witness testimony that exceeded the limitations on expert witness testimony; (2) allowing the State to voir dire potential jurors and in giving a special jury instruction on the issue of why an expert opinion was not solicited as to the guilt or innocence of the defendant; and (3) allowing Detective Cher Pitre[1] to testify regarding the phenomenon of grooming. After a careful review of the record presented to this court on appeal, we affirm the defendant's conviction and sentence.

FACTS

C.C. was born on April 1, 1994, the biological child of Monique Champagne and Todd Crews.[2] When C.C. was approximately two weeks old, Paula Martinez, an aunt of Todd Crews, became C.C.'s guardian.[3]

C.C. continued to live with Martinez until she was approximately six years old. At that time, Martinez decided to allow Gayle Aucoin, C.C.'s paternal

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[1] In his appellate brief, defendant refers to this witness as Detective "Dawn" Pitre, but the record reflects that her name is "Cher" Pitre.

[2] Even though the trial transcript spells this last name as "Krews" and the appellate briefs spell it as "Krewes," the correct spelling is "Crews," as indicated in Defense Exhibit No. 1, which is a document executed by Paula Martinez, entitled "**PROVISIONAL CUSTODY BY MANDATE**," giving provisional custody of C.C. to her father and stepmother, "Todd and Angela Crews." Todd and Angela Crews signed this document and spelled their last name as "Crews." Accordingly, the spelling "Crews" will be used herein.

[3] In 1997 Todd Crews was the subject of an investigation involving sexual misconduct with minors by the Terrebonne Parish Sheriff's Department. Crews was eventually convicted and imprisoned for sexual misconduct. During the investigation, C.C.'s mother took her to the Terrebonne Parish Sheriff's Office claiming Crews had molested C.C. However, when C.C. was questioned whether anyone had directed her to say Crews acted in a certain manner, she laid down in the fetal position on the floor and would not answer. Based on C.C.'s behavior, the investigating officer, Detective Cher Pitre, concluded that C.C. had been coached into making a false allegation, and no charges were filed against Crews over this allegation.

grandmother and Martinez's sister, an opportunity to care for C.C. C.C. moved in with Aucoin, who shared a trailer with the defendant on Shrimper's Row in Dulac. Aucoin and the defendant were not married.

According to C.C., the trailer was a two-bedroom trailer, but one of the bedrooms was for "storage," so she slept in the same bed as Aucoin and the defendant. C.C. stated that oftentimes Aucoin would complain of back problems and leave the bedroom in order to sleep on the sofa in the living room. During these times, the defendant would touch C.C. on her breasts and vaginal area on top of her clothing. As C.C. grew older, the defendant's actions became more frequent and the touching progressed to where the defendant would place his hands underneath C.C.'s clothing.

After approximately two years of living in the trailer, Aucoin, the defendant, and C.C. moved to a residence also located on Shrimper's Row. According to C.C., when she was approximately eight years old, the defendant escalated his sexual activity toward her and began putting his mouth on her vagina. C.C. testified that the defendant did this approximately three to four times a week and it made her feel "disgusting." C.C. stated that the defendant told her he was "teaching" her.

When C.C. was approximately eleven years old, the defendant began vaginally raping her. C.C. testified that she felt the defendant put his penis inside of her vagina. According to C.C., these rapes would often occur when she was alone with the defendant on fishing trips or in the back of his truck.

C.C. testified that she was afraid to tell anyone what the defendant was doing because he had threatened to hit her with things. C.C. described how, during the time she lived with the defendant, he became increasingly possessive and reluctant to allow her to visit her father, Martinez, or other friends. C.C. further said that when she asked the defendant for money, he would give her $100.00 at a

time. C.C. testified that the defendant bought her expensive gifts, usually given in close temporal proximity to the episodes of sexual activity. C.C. stated that she felt as if the defendant were giving her these things to keep her quiet. C.C. explained that sometimes she would give Aucoin some of the money the defendant would give her, but Aucoin never asked where it came from, despite the fact that C.C. did not have a job.

C.C. testified that as she got older, she would tell the defendant to stop the sexual activity, and would even push against him, but was reluctant to resist too much because she feared a physical confrontation with the defendant. Because she wanted the abuse to stop and wanted to change schools, C.C. decided in the fall of 2006 to live with her father, Todd Crews, and her stepmother, Angela Crews.

On Sunday, October 1, 2006, while C.C. was at her father's residence, the defendant called to complain that C.C. was there. Angela Crews had placed the defendant on speakerphone and C.C. heard the defendant state that he did not want her to live there because Todd was a child molester. At that point, C.C. blurted out, "You have the room to talk." When the call ended, Angela questioned C.C. about whether the defendant had ever done anything to her. C.C. initially did not respond, but a short time later admitted to Austin Neil, her younger step-brother, that the defendant had been abusing her. Austin relayed the information to his mother, Angela Crews, and C.C. finally revealed what the defendant had been doing for the previous six years.

The following day, Todd and Angela Crews took C.C. to the Terrebonne Parish Sheriff's Department to report the allegations. C.C. provided a videotaped statement to Dawn Buquet, a forensic interviewer and investigator employed by the district attorney's office and assigned to the Terrebonne Parish Children's Advocacy Center, wherein she described the acts the defendant had committed. Later that day, Detective Pitre and Detective Joey Quinn arrived at the defendant's

residence. Defendant immediately told the officers that he knew why they were there and claimed Aucoin was "trying to put a molestation charge on him" regarding C.C. Detective Pitre testified that the defendant never alleged C.C. had fabricated the abuse complaint in an effort to live with her father.

C.C. testified that following the defendant's arrest, she began to cut her wrists because the physical pain produced by this act relieved the emotional stress she was experiencing. C.C. admitted that at the time she wanted to die.

Dana Davis was accepted as an expert clinical social worker and psychotherapist. Davis testified she is affiliated with the Terrebonne Parish Children's Advocacy Center. Davis testified that she first saw C.C. on October 17, 2006, and treated her at least once a month for the following eighteen months. Davis described how during the course of her counseling of C.C., she observed cut marks on C.C.'s arms that were indicative of suicidal ideation and recommended that C.C. be hospitalized at Children's Hospital in New Orleans. C.C. was treated for two weeks as an inpatient at Children's Hospital. At trial, C.C. indicated she no longer thought about suicide.

The State also introduced testimony from Martinez, who corroborated C.C.'s testimony that the defendant became very possessive of C.C. and would not allow her to spend extended periods of time visiting either her or C.C.'s father. As a result, Martinez admitted that sometimes she allowed C.C. to visit her father without informing Aucoin or the defendant of C.C.'s whereabouts.

The defense presented testimony from Aucoin. According to Aucoin, C.C. never slept in the same bed as the defendant, and she claimed C.C. had a bed worth $5,000.00 in her bedroom.[4] Aucoin claimed that the good relationship she enjoyed with C.C. changed when C.C. was about ten years old. According to Aucoin, C.C. began to beat her and pull her hair when she did not get her way, and she also

[4] Defendant also presented testimony from his son, Albert Pierre, Jr., and Katey Aucoin, a niece of his girlfriend, that C.C. had her own bed in her own bedroom while she lived at his residence.

resented being disciplined. Aucoin acknowledged that the defendant did not trust C.C.'s father because of his past criminal history. Aucoin claimed that as C.C. grew older she hesitated to allow C.C. to visit Martinez, because Martinez would allow C.C. to do "what she wanted to do." Aucoin denied seeing any behavior on C.C.'s part that would lead her to suspect the defendant was abusing her. On cross-examination, Aucoin acknowledged that she and the defendant shared joint ownership of the residence on Shrimper's Row, and that she did not think she could meet the mortgage payments without the defendant's financial contributions, but that she would "find a way."

Defendant testified that C.C. always slept in her own room in her own bed and never slept with him. According to the defendant, when C.C. was around ten years old, she began hitting her grandmother and would not listen to them. Defendant claimed C.C. was very jealous of other children.

Defendant denied engaging in any sexual behavior with C.C. and acknowledged that on the same day C.C. reported her allegations against him to the police, he had spoken with Cheryl Carter, an assistant district attorney, regarding C.C.'s ungovernable behavior and what steps were available to him.

FIRST ASSIGNMENT OF ERROR

In the defendant's first assignment of error, he contends the trial court erred in overruling his objection to expert witness testimony, which he claims exceeded the limitations on expert testimony. Defendant presents three arguments in support of this assignment of error: (1) that the State misstated the law in questioning the expert witness, (2) that the trial court erred in allowing the expert witness to "introduce" pictures drawn by the child in order to bolster the child's credibility, and (3) that the State elicited testimony on the child's credibility from the expert witness during testimony concerning psychological treatment of the child.

Alleged Misstatement of Law During Direct Examination of Expert Witness

In this portion of the argument, the defendant contends that the prosecutor misstated the law during the direct examination of Dana Davis, who had been qualified as an expert in clinical social work and psychotherapy. During the colloquy in which the prosecutor questioned Davis about what type of testimony was allowed to be taken from witnesses such as her, the prosecutor stated:

> Are you aware, and I am instructing you that you are not allowed to give any opinion as to whether or not you believe the child, as to whether or not the child's symptoms are consistent with child sexual abuse, whether or not the abuse actually occurred? None of that takes away your right as a human being, as a therapist, to maybe hold those opinions, but you can't express them here.

Defendant contends that this statement by the prosecutor is a misstatement of law because experts have never been allowed to testify on the ultimate issue of guilt or innocence in a criminal trial. Defendant argues that this particular statement was highly prejudicial and constitutes reversible error.

As the transcript reflects, there was no contemporaneous objection lodged by defense counsel to this alleged misstatement of the law. An irregularity or error cannot be availed of after verdict unless it was objected to at the time of the occurrence. LSA-C.E. art. 103(A)(1);[5] LSA-C.Cr.P. art. 841(A).[6] Thus, defense counsel's failure to object to the prosecutor's comment bars consideration of this issue.

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[5] Louisiana Code of Evidence article 103 provides, in pertinent part:

Art. 103. Rulings on evidence

A. Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Ruling admitting evidence. When the ruling is one admitting evidence, a timely objection or motion to admonish the jury to limit or disregard appears of record, stating the specific ground of objection; or

(2) Ruling excluding evidence. When the ruling is one excluding evidence, the substance of the evidence was made known to the court by counsel.

[6] Louisiana Code of Criminal Procedure article 841 provides, in pertinent part:

Art. 841. Bill of exceptions unnecessary; objections required

A. An irregularity or error cannot be availed of after verdict unless it was objected to at the time of occurrence. A bill of exceptions to rulings or orders is unnecessary. It is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take, or of his objections to the action of the court, and the grounds therefor.

Introduction of Drawings

In this portion of the assignment of error, the defendant argues that the trial court erred in allowing the introduction of pictures drawn by C.C. during therapy sessions in an attempt to bolster C.C.'s credibility. Our review of the transcript reveals that during Davis's testimony regarding the drawings made by C.C., there was no objection by defense counsel. Moreover, we note that the transcript reflects that these drawings (State Exhibits 6, 7, and 8) were actually introduced during the testimony of C.C. with no objection from defense counsel.[7]

An evidentiary issue is not preserved for appellate review, unless a contemporaneous objection to the evidence was entered. See LSA-C.E. art. 103(A)(1); LSA-C.Cr.P. art. 841(A). Accordingly, this portion of the assignment of error has not been preserved for appellate review.

Testimony by Expert Regarding Treatment of Victim

In the final argument under this assignment of error, the defendant contends that the State elicited testimony from Davis that improperly bolstered the credibility of C.C. The following exchange took place between the prosecutor and Davis addressing C.C.'s April 2008 hospitalization and treatment at the Psychiatric Center at Children's Hospital in New Orleans:

> [PROSECUTOR]: To your knowledge would the psychiatric hospital - the psychiatric ward at Children's be aware that you would be the contact therapist here?
>
> [WITNESS]: Yes.
>
> [PROSECUTOR]: Did you ever receive any request or contact from them about her treatment while she was at Children's?
>
> [WITNESS]: Yes.
>
> [PROSECUTOR]: Okay.
>
> [WITNESS]: Very shortly after her admission.

[7] At the time each one of these three drawings was introduced into evidence defense counsel stated, "No objection, Judge."

> [PROSECUTOR]: If a child would be in your care, and then would be transferred to another facility, and suddenly that child in that facility begins to recant, deviate significantly or manifest some behavior that is totally inconsistent with the treatment so far, would it be an ethical obligation for them to contact you and say wait a minute, we're not seeing what we were told we were going to see?

Following this question, an objection was urged by defense counsel and argument thereon was conducted outside the presence of the jury. Thereafter, the trial court ruled that testimony about treatment facts was admissible. The prosecutor then reiterated his question as follows:

> [PROSECUTOR]: Ms. Davis, I believe where we left off, and I'm about finished, is that while [C.C.] was at Children's Hospital in New Orleans, you never received any contact from Children's Hospital in New Orleans indicating to you whether or not there was any substantial issue with [C.C.], vis-à-vis the stories that she had related to the police and to us?
>
> [WITNESS]: No.

Defendant maintains that such testimony is contrary to the holding of **State v. Chauvin,** 2002-1188 (La. 5/20/03), 846 So.2d 697, and was not relevant. Defense counsel argued to the trial court that the prosecutor was intertwining facts relevant to the specific case and C.C.'s treatment, such as asking specific questions about C.C., then questioning Davis regarding her expert opinion with regard to the generalities of treating children who had been sexually abused. Defense counsel also argues such an approach violated the prohibition set forth in **State v. Chauvin** of using expert opinion testimony to bolster the credibility of a child witness.

The trial court ruled that **State v. Chauvin** allows an expert such as Davis to testify as to facts, but that opinion testimony from such experts concerning their diagnosis cannot be used to prove the sexual abuse occurred. The trial court stated that the prosecutor had not asked such a question that would allow Davis's opinion to be used as substantive evidence that abuse occurred.

We agree. The questions posed to Davis by the prosecutor addressed the factual issue of whether C.C. had ever recanted, changed her story, or provided

conflicting reports of what had been previously reported. None of Davis's answers can be construed as opinion testimony. Merely because Davis's answers concerned factual events that supported C.C.'s credibility does not make such testimony violative of the prohibitions discussed in **State v. Chauvin**. The issue addressed by **State v. Chauvin** was whether an expert's opinion of a diagnosis could be used as *substantive evidence* of the defendant's guilt.

This assignment of error is without merit.

SECOND ASSIGNMENT OF ERROR

In the defendant's second assignment of error, he contends that the trial court erred in allowing the State to voir dire potential jurors and in allowing a special jury instruction on the issue of why an expert opinion was not solicited as to his guilt or innocence.

Voir Dire

During voir dire, the prosecutor addressed the issue of expert testimony and explained as follows:

> You would normally expect then that expert to be able to give an opinion, right? So if I'm on a jury and this person interviews this child, who works with this child and sees this child, I'm on a jury, I'm waiting for the million dollar question, which is what? You believe the child? Do you think that the child's symptoms are related to some sort of trauma? Yes. And do you think that trauma could be child sexual abuse? Yes. I mean these are questions that an average juror would expect me to ask, right? I mean, let's face it, why else would she be here as an expert if she wasn't going to give an opinion?
>
> Under Louisiana law, whether you agree with this or not is irrelevant, we can talk about it. The Louisiana Supreme Court has said the State, nor the Defense, is allowed to ask those questions. I cannot, I am prohibited, you are prohibited, the Court is prohibited from asking those three questions - Do you believe the child? Do you believe that the child's symptoms are consistent with child sexual abuse? Do you believe that the child's behavior is indicative of child sexual abuse? Yes, yes, yes, which translates into [sic] my opinion is is [sic] that the child was sexually abuse[d], right? The Supreme Court has said that cuts too close to the issue of alternate guilt, and that's the function of the jury. Okay.

> Now, that is the role of the jury in a child sexual abuse case, okay. You will not be allowed, nor will I be allowed, nor will Mr. Stewart be allowed, nor will the Court be allowed to ask those magic questions. The therapist can talk about the treatment, and you know, this, that, and the other, very general, very broad brush type of things. Okay.

The record reflects that during voir dire of a second and third panel, the prosecutor made similar statements to the potential jurors, stating specifically that he was unable to ask an expert whether the child's symptoms were consistent with children who had been sexually abused. During this explanation, the prosecutor again posed questions to which he answered, "Yes." Defendant maintains that such a tactic is highly prejudicial because it implies that if the expert were questioned, she would in fact answer, "Yes."

We have reviewed the transcript of the voir dire and at the outset note that there was never an objection by defense counsel to these explanations. Because the defendant failed to contemporaneously object to the basis of the argument now presented on appeal, this claim was not preserved for appellate review; thus, the defendant may not raise it on appeal. See LSA-C.Cr.P. art. 841(A); **State v. Rogers**, 98-2501, p. 9 (La. App. 1 Cir. 9/24/99), 757 So.2d 655, 661, writ denied, 99-3526 (La. 6/16/00), 764 So.2d 962. Accordingly, this portion of the assignment of error has not been preserved for appellate review.

Jury Instruction

The State requested a special jury instruction on expert testimony in sexual abuse cases. The State also requested that it be allowed to address this issue on voir dire. Both motions were granted by the trial court. Specifically, the defendant takes issue with the following portion of the jury instructions:

> In a case like this one, a mental health expert may not give an opinion that addresses a diagnosis of child sexual abuse. In particular, the law prohibits an expert from giving his or her opinion as to whether he or she believed the child; as to whether sexual abuse occurred; and as to whether the child's symptoms are consistent with a diagnosis of sexual abuse.

Defendant contends that the instruction is a misstatement of the law because expert witnesses are allowed to testify as to whether or not children's symptoms are consistent with the diagnosis of child sexual abuse.

Louisiana Code of Criminal Procedure article 807 provides in pertinent part that:

> A requested special charge shall be given by the court if it does not require qualification, limitation, or explanation, and if it is wholly correct and pertinent. It need not be given if it is included in the general charge or in another special charge to be given.

In requesting such a jury charge, the State was attempting to comply with **State v. Chauvin**, and provide the jury with an explanation of why the expert could not be questioned regarding whether she believed the child's allegations of sexual abuse. Defendant argues that this is a misstatement of law because expert witnesses are allowed to testify as to whether a child's symptoms are consistent with child sexual abuse. We disagree.

In **State v. Chauvin**, the State sought to use the expert testimony of a licensed clinical social worker to establish the victim's clinical symptoms were consistent with a sexual abuse victim, or stated differently, to use the expert's testimony as substantive evidence that the sexual abuse had occurred. **State v. Chauvin**, 2002-1188 at p. 3, 846 So.2d at 699. The exact question posed to the expert witness in **State v. Chauvin** was: "The clinical findings, both subjective and objective, that you observed in regard to [the victim] when you treated her for these problems, were those consistent with a child who had been sexually abused?" The expert witness replied, "Yes, the symptoms were that of post-traumatic stress." **State v. Chauvin,** 2002-1188 at p. 4, 846 So.2d at 700.

The **State v. Chauvin** court then went on to examine the issue of whether allowing the expert's diagnosis of the victim's post-traumatic stress disorder on the State's case-in-chief was proper for the specific purpose of showing the victim's

symptoms and/or her diagnosis were consistent with a child who had been sexually abused. In examining this issue, the **State v. Chauvin** court noted that there was no evidence that the trial court performed its "gatekeeping" function to determine whether the expert's testimony was both relevant and reliable as substantive proof that sexual abuse had occurred. The **State v. Chauvin** court determined that because causes other than sexual abuse may trigger post-traumatic stress disorder, the traumatic event being unable to be verified objectively, its occurrence must necessarily be assumed -- a diagnosis of post-traumatic stress disorder does not reliably prove the nature of the stressor. **State v. Chauvin,** 2002-1188 at p. 14, 846 So.2d at 707.

The **State v. Chauvin** court specifically stated that expert testimony of general characteristics that would explain delays in reporting, recantations, and omissions of details is admissible. However, such evidence should be admissible only for the limited purpose of explaining, in general terms, certain reactions of a child to abuse that would be used to attack the victim/witness's credibility. **State v. Chauvin**, 2002-1188 at pp. 17-18, 846 So.2d at 708-9.

In the present case, it is apparent that the jury instruction at issue explained why the expert witness could not provide an opinion that would substantively prove C.C. had been sexually abused. This instruction was an accurate statement of the applicable law. Accordingly, this assignment of error is without merit.

THIRD ASSIGNMENT OF ERROR

In his third assignment of error, the defendant argues that the trial court erred in allowing Detective Pitre to testify regarding the phenomenon of "grooming." Defendant argues this is an impermissible opinion given by a lay witness and requires reversal of the defendant's conviction.

During direct examination of Detective Pitre, the following exchange occurred:

> [PROSECUTOR]: ... And the time frame that this occurred, these acts of molestation, can you give us an age, from what age to what age?
>
> [WITNESS]: For the molestation?
>
> [PROSECUTOR]: Yes.
>
> [WITNESS]: She's saying right at six, between six and seven.
>
> [PROSECUTOR]: Until?
>
> [WITNESS]: Twelve years old.
>
> [PROSECUTOR]: And is that consistent with the family's history of when she moved in with the defendant?
>
> [WITNESS]: Yes, sir, because he was grooming her at that time.
>
> [REPORTER]: Yes, sir, what?
>
> [WITNESS]: He was grooming her at that time.
>
> [PROSECUTOR]: What do you mean by that?
>
> [WITNESS]: Grooming? Where-
>
> [DEFENSE COUNSEL]: Judge, I'm going to object to what I think she's about to say.
> (r. 547)

The transcript indicates defense counsel objected because Pitre was about to provide an opinion of what she believed the defendant's actions were and what was taking place. Defense counsel argued that Pitre had not been qualified as an expert to make such a determination. The trial court ruled that Detective Pitre could testify regarding grooming if it was within her expertise and a proper foundation had been laid. The trial court then offered to admonish the jury not to take Detective Pitre's statement as opinion. Defense counsel only submitted his objection for a ruling and ignored the trial court's offer of issuing an admonition. The prosecutor indicated he would continue questioning Detective Pitre regarding what grooming is, but would not solicit an opinion. Defense counsel objected to any further references to grooming.

Following the ruling by the trial court that Detective Pitre could be questioned about "grooming," the prosecutor asked Detective Pitre if she was familiar with the phenomenon of grooming based on her training and experience as an investigator of child sexual abuse cases. Detective Pitre indicated that she was, and then she explained the phenomenon as slowly coming around to a child, buying them gifts, becoming friends, and soothing them when another adult disciplines them. Detective Pitre testified that she had seen this phenomenon borne out in her experience as an investigator. Detective Pitre further testified that she was able to corroborate from different family sources that the defendant bought gifts for C.C., including a laptop computer and an expensive pageant dress.

Defendant argues that an opinion that the defendant groomed C.C., followed by testimony that grooming is prevalent in child sexual abuse cases and then giving specific examples of incidents where the defendant has groomed the child, constitutes an opinion on the guilt of the defendant by a lay witness.

We note that the witness's initial response that the defendant was grooming the victim was not responsive to the question posed by the prosecutor. Rather, the prosecutor was questioning Detective Pitre regarding the time frame of the abuse when Detective Pitre made the statement at issue. During the discussion outside the jury's presence, the trial court offered to admonish the jury to disregard the comment, but the defense counsel refused to address the trial court's offer and insisted his objection and request that no other references be made to grooming required a ruling.

Louisiana Code of Evidence article 704 states:

> 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.

The limitations on the testimony of non-expert witnesses, such as Detective Pitre, are found in LSA-C.E. art. 701, which states:

> If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are:
>
> 1) Rationally based on the perception of the witness; and
>
> 2) Helpful to a clear understanding of his testimony or the determination of a fact in issue.

Generally, a lay witness can only testify to the facts within his knowledge and not to impressions or opinions. However, a witness is permitted to draw reasonable inferences from his personal observations. **State v. Alexander**, 430 So.2d 621, 624 (La. 1983); **State v. Martin**, 607 So.2d 775, 784 (La. App. 1 Cir. 1992). See also **State v. LeBlanc**, 2005-0885, p. 7 (La. App. 1 Cir. 2/10/06), 928 So.2d 599, 603. Where the subject of the testimony is such that any person of experience may make a natural inference from observed facts, a lay witness may testify as to such inferences, provided he also states the observed facts. **State v. Casey**, 99-0023, p. 12 (La. 1/26/00), 775 So.2d 1022, 1033, cert. denied, 531 U.S. 840, 121 S.Ct. 104, 148 L.Ed.2d 62 (2000); **State v. LeBlanc**, 2005-0885 at p. 7, 928 So.2d at 603. A reviewing court must ask two pertinent questions to determine whether the trial court properly allowed lay opinion testimony: (1) was the testimony speculative opinion evidence or simply a recitation of or inferences from fact based upon the witness's observations, and (2) if erroneously admitted, was the testimony so prejudicial to the defense as to constitute reversible error. **State v. Casey**, 99-0023 at p. 12, 775 So.2d at 1033; **State v. Alexander**, 430 So.2d at 624; **State v. LeBlanc**, 2005-0885 at pp. 7-8, 928 So.2d at 603.

The prohibition against expressing an opinion as to guilt or innocence is only applicable to an expert witness. LSA-C.E. art. 704. See also **State v. Hubbard**, 97-916, p. 16 (La. App. 5 Cir. 1/27/98), 708 So.2d 1099, 1106, writ

denied, 98-0643 (La. 8/28/98), 723 So.2d 415 (holding that LSA-C.E. art. 704 was inapplicable regarding testimony of a detective not called as an expert witness). Based on the plain language of LSA-C.E. art. 704, general opinion testimony that is otherwise admissible is not to be excluded solely because it embraces an ultimate issue of fact. The testimony in question was based on Detective Pitre's experience in investigating sexual abuse cases involving children. Detective Pitre further testified to the facts developed in the investigation, i.e., the gifts the defendant provided to C.C. As the testimony in question was rationally based on Detective Pitre's inferences from her personal knowledge of the investigation and was helpful to determine a fact in issue (the defendant's providing of gifts to C.C. to obtain her silence regarding the abuse); arguably, the testimony was admissible.

Nonetheless, we find that any error in admitting the testimony in question was harmless beyond a reasonable doubt. The evidence supports the verdict herein. Moreover, the testimony in question was cumulative, in that C.C. herself and other witnesses all testified to the defendant's actions of providing her with money and expensive gifts during the time frame when the abuse occurred. Based on our review of the record, we find that the verdict rendered in this trial was surely unattributable to any error in the admission of the testimony in question. See **State v. Code**, 627 So.2d 1373, 1384-85 (La. 1993), cert. denied, 511 U.S. 1100, 114 S.Ct. 1870, 128 L.Ed.2d 490 (1994) (*citing* **Sullivan v. Louisiana**, 508 U.S. 275, 279, 113 S.Ct. 2078, 2081, 124 L.Ed.2d 182 (1993)). See also LSA-C.C.P. art. 921. Accordingly, this assignment of error lacks merit.

CONVICTION AND SENTENCE AFFIRMED.