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State v. Chauvin: Determining the Admissibility of a Post-Traumatic Stress Syndrome Diagnosis as Substantive Evidence of Sexual Abuse

Thirty-four-year-old John Amos Chauvin (Chauvin) was accused of sexually molesting his fiancée's niece and her niece's friend in June of 1999.¹ Fifteen year-old A.C.² testified that she was visiting her friend A.L.'s home on Father's Day when Chauvin sexually molested her.³ Fourteen-year-old A.L. claimed that later that same day Chauvin put his tongue in her mouth when kissing her goodbye.⁴ The alleged incidents were reported four days later to the Terrebonne Parish Sheriff's Department by A.C.'s older sister, in whom the two girls confided.⁵ Chauvin was later convicted in Louisiana District Court for the Parish of Terrebonne on two counts of indecent behavior with juveniles.⁶

At the trial, the State sought to introduce the testimony of a clinical social worker who had treated one of the girls for Post-Traumatic Stress Syndrome (PTSD).⁷ Because the social worker's expert opinion indicated that A.C.'s PTSD symptoms were consistent with those of a sexual abuse victim, the State introduced the testimony as substantive evidence that A.C. had in fact been sexually abused.⁸ Despite the defendant's objection, the trial court allowed the State to introduce the social worker's testimony without holding a hearing to determine whether the expert's testimony was scientifically reliable, and thus admissible, under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*⁹ Finding that the trial court had erroneously failed to hold a *Daubert* hearing, the Louisiana First Circuit Court of Appeal reversed the convictions and remanded the matter for a new trial.¹⁰ The Supreme Court of Louisiana *held* that an expert's

1. *State v. Chauvin*, 846 So. 2d 697, 698-99 (La. 2003).

2. The Louisiana Supreme Court Rules require the identification of the victims by their initials for the protection of their anonymity. *Id.* at 698 n.3 (citing La. Sup. Ct. Rule XXXII § 3).

3. *Id.* at 699.

4. *Id.*

5. *Id.*

6. *Id.* at 700.

7. *Id.* at 699.

8. *Id.*

9. *Id.*

10. *Id.* at 700.

diagnosis of PTSD, when used to prove that sexual abuse has occurred, is not scientifically reliable under *Daubert*, and therefore is inadmissible. *State v. Chauvin*, 846 So. 2d 697, 709 (La. 2003).

The admissibility of expert testimony in Louisiana courts is governed by article 702 of the Louisiana Code of Evidence, which is substantially similar to its federal correlate, Federal Rule of Evidence 702.¹¹ In *Daubert*, the United States Supreme Court held that Federal Rule of Evidence 702 requires the trial court to “ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable.”¹² The *Daubert* Court set forth four “general observations” that the trial court should make when determining whether scientific testimony is sufficiently reliable, including: (1) whether the theory has been published or subjected to peer review, (2) the theory’s error rate, (3) the testability of the theory, and (4) whether the theory is generally accepted in the scientific community.¹³ *Daubert* also counsels trial judges to attend to other evidentiary rules when deciding the admissibility of expert testimony.¹⁴ Specifically, *Daubert* requires that the trial judge apply Federal Rule of Evidence 403 to determine whether the probative value of expert testimony is outweighed by “the danger of unfair prejudice, confusion of the issues, or misleading the jury.”¹⁵

11. *State v. Foret*, 628 So. 2d 1116, 1121 (La. 1993). Rule 702 provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, 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 (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

FED. R. EVID. 702. Louisiana’s corresponding rule reads: “If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” LA. CODE EVID. ANN. art. 702 (West 2004).

12. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589 (1993). Prior to the Court’s ruling in *Daubert*, the test for the admissibility of expert testimony under Federal Rule of Evidence 702 required “general acceptance” among the scientific community of the scientific technique at issue. *Foret*, 628 So. 2d at 1122-23.

13. *Foret*, 628 So. 2d at 1122 (quoting *Daubert*, 509 U.S. at 593-94).

14. *Daubert*, 509 U.S. at 595.

15. *Id.* (quoting FED. R. EVID. 403). Federal Rule of Evidence 403 provides in full, “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” FED. R. EVID. 403.

In *State v. Foret*, the Louisiana Supreme Court adopted the *Daubert* ruling, holding that scientific evidence must “rise to a threshold level of reliability” to be admissible under article 702 of the Louisiana Code of Evidence.¹⁶ In addition, the *Foret* court embraced the “observations” that *Daubert* provided.¹⁷ The *Foret* court also noted that *State v. Catanese*, a prior Louisiana decision, requires the use of a balancing test that weighs the probative value of scientific evidence against its potential for prejudice and confusion of the issues.¹⁸

PTSD generally satisfies the *Daubert* admissibility standard because it is testable, published, and recognized within the scientific community.¹⁹ PTSD has been recognized by the American Psychiatric Association as a diagnosable anxiety disorder since its introduction into the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) in 1983.²⁰

At least one scholar maintains that because PTSD generally satisfies the *Daubert* standard, it should be admissible “whenever mental state or injury is at issue.”²¹ Other commentators have found that PTSD, though generally reliable to diagnose trauma, is unreliable when used to diagnose sexual abuse.²² These authors cite research indicating that PTSD is too narrow a diagnosis for sexual abuse victims, who often suffer from a greater range of symptoms than other PTSD patients.²³ Other critics purport that PTSD symptoms are often seen in otherwise psychologically healthy individuals, and thus are not a reliable indicator of abnormality.²⁴ Still another concern is that PTSD is known to result from a variety of stressors, including, but not limited to, sexual assault.²⁵

16. *Foret*, 628 So. 2d at 1123.

17. *Id.*

18. *Id.* at 1123 n.6; *see also* *State v. Catanese*, 368 So. 2d 975, 979-81 (La. 1979) (holding that the probative value of polygraph evidence is outweighed by the potential for prejudice, waste of time, and misleading the jury).

19. Edgar Garcia-Rill & Erica Beecher-Monas, *Gatekeeping Stress: The Science and Admissibility of Post-Traumatic Stress Disorder*, 24 U. ARK. LITTLE ROCK L. REV. 9, 29-30 (2001).

20. *State v. Chauvin*, 846 So. 2d 697, 704 (La. 2003) (citing 1 E.B. MYERS, EVIDENCE IN CHILD ABUSE AND NEGLECT CASES § 5.3, 423 n.75 (3d ed. 1997) (citation omitted)).

21. Garcia-Rill & Beecher-Monas, *supra* note 19, at 10.

22. Lisa R. Askowitz & Michael H. Graham, *The Reliability of Expert Psychological Testimony in Child Sexual Abuse Prosecutions*, 15 CARDOZO L. REV. 2027, 2047 (1994).

23. *Id.*

24. *Id.* at 2048.

25. Jane Campbell Moriarty, *Wonders of the Invisible World: Prosecutorial Syndrome and Profile Evidence in the Salem Witchcraft Trials*, 26 VT. L. REV. 43, 96 (2001).

One particularly complicating factor is the unclear distinction between PTSD, Rape Trauma Syndrome (RTS), and Child Sexual Abuse Accommodation Syndrome (CSAAS).²⁶ Many commentators and courts discuss the syndromes interchangeably.²⁷ Such overlap may be improper, as PTSD is a diagnosable anxiety disorder resulting from an array of traumatic stressors, while RTS and CSAAS are merely “descriptions of behavior” that follow *specific* traumatic events.²⁸ Whereas PTSD has been included in the DSM-IV since 1980, the other two syndromes are not included in this reference.²⁹ Also unlike PTSD, the other syndromes are insufficiently tested and have high error rates.³⁰ Some commentators argue that because the syndromes are confused, PTSD testimony is often inappropriately excluded in the courtroom.³¹

The federal courts have not settled on a uniform approach to the admissibility of a PTSD diagnosis as substantive evidence of sexual abuse.³² Although the United States Supreme Court has not ruled on the admissibility of PTSD testimony in sexual abuse cases, one federal circuit court has held that PTSD testimony is admissible as substantive evidence of sexual assault.³³ In *S.M. v. J.K.*, the United States Court of Appeals for the Ninth Circuit upheld the plaintiff’s use

26. Arthur H. Garrison, *Rape Trauma Syndrome: A Review of a Behavioral Science Theory and Its Admissibility in Criminal Trials*, 23 AM. J. TRIAL ADVOC. 591, 640 (2000). Rape Trauma Syndrome describes the specific traumatic reactions suffered by rape victims. *Id.* at 601. Similarly, Child Sexual Abuse Accommodation Syndrome seeks to “provide a ‘common language’” to describe the specific reactions that a child has to sexual abuse. Askowitz, *supra* note 22, at 2038 (citing Ronald C. Summit, *The Child Sexual Abuse Accommodation Syndrome*, 7 CHILD ABUSE & NEGLECT 177, 186-87 (1983)).

27. Garrison, *supra* note 26, at 640; *see, e.g.*, *Hutton v. State*, 663 A.2d 1289, 1294 (Md. 1995) (“PTSD is sometimes defined in terms of the stressor which caused it. Accordingly, when the stressor is rape, the term “rape trauma syndrome . . . is sometimes used.”)

28. Garrison, *supra* note 26, at 640.

29. Garcia-Rill & Beecher-Monas, *supra* note 19, at 30.

30. *Id.*

31. *Id.* at 31 (citing Sue Osthoff, *Preface to Janet Parrish, Trend Analysis: Expert Testimony on Battering and Its Effects in Criminal Cases*, 11 WIS. WOMEN’S L.J. 75, 84 (1996)).

32. Because the Louisiana evidentiary rule at issue is substantially similar to its federal correlate, both federal and other states’ case law is applicable to its interpretation. *State v. Foret*, 628 So. 2d 1116, 1121 (La. 1993). An examination of federal and other states’ case law is also relevant, as the question of admissibility raised in *Chauvin* is one of first impression in Louisiana.

33. *S.M. v. J.K.*, 262 F.3d 914, 920-22 (9th Cir. 2001); *see also Isely v. Capuchin Province*, 877 F. Supp. 1055, 1067 (E.D. Mich. 1995) (holding in a civil matter that an expert witness may testify that plaintiff suffers from PTSD though she may not testify that she believes plaintiff was sexually abused).

of a PTSD diagnosis as proof that she had been sexually assaulted.³⁴ The defendant objected to the testimony, claiming that the expert's opinion was scientifically unreliable and that it improperly substantiated the plaintiff's credibility.³⁵ The trial judge overruled the defendant's objections to the testimony, finding that the objections related to the weight of the testimony rather than to its admissibility.³⁶ The Ninth Circuit affirmed, noting that *Daubert* suggests that "shaky but admissible evidence" can be appropriately attacked through cross-examination, thoughtful jury instruction, and contradictory evidence.³⁷

Conversely, the United States District Court for the Eastern District of Virginia held in *Spencer v. General Electric Co.* that a PTSD diagnosis cannot be introduced to prove damages resulting from an alleged rape in a civil suit.³⁸ The *Spencer* court held that the expert's testimony usurped the jury's function of assessing the credibility of the plaintiff.³⁹ The court also held that the probative value of PTSD evidence offered as proof of rape was outweighed by its potentially prejudicial effect, finding that the expert's testimony "constitutes an opinion as to the guilt of the defendant."⁴⁰

State jurisprudence is also sharply divided on this issue. Although many state courts allow expert PTSD testimony as substantive proof of sexual abuse, the majority of state supreme courts have refused to allow such testimony.⁴¹ In *Alberico v. State*, a leading case supporting the substantive use of PTSD testimony, the Supreme Court of New Mexico unequivocally held PTSD testimony admissible to show that an alleged victim's behavior is consistent with sexual abuse.⁴² As a threshold question, the *Alberico* court analyzed whether PTSD is a scientifically valid theory.⁴³ Noting PTSD's

34. *S.M.*, 262 F.3d at 920-22.

35. *Id.* at 920.

36. *Id.*

37. *Id.* at 921-22 (citing *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 596 (1993)).

38. *Spencer v. Gen. Elec. Co.*, 688 F. Supp. 1072, 1076-78 (E.D. Va. 1988) (applying the pre-*Daubert* admissibility test).

39. *Id.* at 1076-77.

40. *Id.* at 1077.

41. *Hutton v. State*, 663 A.2d 1289, 1295 (Md. 1995). For cases holding that PTSD evidence is admissible as substantive evidence of sexual abuse, see *State v. Alberico*, 861 P.2d 192 (N.M. 1993), and *State v. Florczak*, 882 P.2d 199 (Wash. Ct. App. 1994). To compare cases refusing to allow evidence of a PTSD diagnosis as proof that sexual abuse occurred, see *Hutton v. State*, 663 A.2d 1289 (Md. 1995); *Commonwealth v. Hudson*, 631 N.E.2d 50 (Mass. 1994); *State v. Cressy*, 628 A.2d 696 (N.H. 1993); and *State v. Hall*, 412 S.E.2d 883 (N.C. 1992).

42. 861 P.2d at 213-14.

43. *Id.* at 206.

placement in the DSM-IV and finding that PTSD is “grounded in basic behavioral psychology,” the court determined that PTSD is, in fact, scientifically reliable.⁴⁴ Next, the court discussed whether PTSD evidence is probative, that is, it “reliably and accurately proves what it purports to prove” and will “assist the trier of fact.”⁴⁵ The court found that because a person diagnosed with PTSD *might* have suffered sexual abuse, PTSD “has a tendency to prove” sexual abuse.⁴⁶ Finally, the court ultimately determined that the potential prejudice associated with the PTSD diagnosis does not outweigh its probative value, despite the fact that the diagnosis is often based on the victim’s own reports of abuse; the court held that effective cross-examination eliminates any prejudice caused by the clinician’s reliance on the victim.⁴⁷

Conversely, in *Hutton v. State*, Maryland’s highest court held that PTSD testimony is inadmissible when introduced to show that an alleged victim’s behavior is consistent with sexual abuse.⁴⁸ After reviewing the jurisprudence of several states, the *Hutton* court found that PTSD was inadmissible as substantive proof of sexual abuse because it is scientifically unreliable and misleading to the jury.⁴⁹ The court observed that the first criterion of a PTSD diagnosis is the actual occurrence of a traumatic stressor.⁵⁰ In determining whether a traumatic stressor has occurred, the diagnosing clinician often relies on the victim’s own report.⁵¹ Thus, when the existence of a stressor has not yet been definitively established, the existence of the stressor, and thus the veracity of the victim, must be assumed by the clinician.⁵² As a result, the court found that PTSD is not a scientifically reliable means of proving that sexual abuse is the cause of an alleged victim’s symptoms.⁵³ The court held that expert testimony that necessarily relies on the credibility of the victim usurps the jury’s function to

44. *Id.* at 208-09. The court’s finding of reliability was also bolstered by the experts’ testimony that they could determine the specific cause of the disorder by a patient’s specific PTSD symptoms. *Id.* at 209.

45. *Id.* at 206.

46. *Id.* at 209. The court also took into consideration the experts’ claim that they could, in fact, determine the specific cause of the victim’s PTSD. *Id.*

47. *Id.* at 210.

48. *Hutton v. State*, 663 A.2d 1289, 1301 (Md. 1995).

49. *Id.* at 1295, 1300.

50. *Id.* at 1299. Criterion A of the diagnostic criteria begins by stating, “The person has been exposed to a traumatic event. . . .” AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 427 (4th ed. 1994).

51. *Hutton*, 663 A.2d at 1300.

52. *Id.* at 1295.

53. *Id.*

independently determine the victim's credibility.⁵⁴ Thus, the court held that expert testimony that a victim's PTSD diagnosis is consistent with sexual abuse is inadmissible.⁵⁵ The court also held, however, that a diagnosis of PTSD is admissible when introduced to explain why an alleged victim's behavior is apparently *inconsistent* with the claim of sexual abuse.⁵⁶

In the noted case, the Louisiana Supreme Court reviewed both scholarly opinion and case law before embracing the Maryland court's reasoning in *Hutton* and holding that PTSD evidence is inadmissible when introduced as substantive proof of sexual abuse.⁵⁷ Also relying on *Hutton*, the *Chauvin* court opined that PTSD evidence should be admissible only when offered for the purpose of *explaining* the behavior of a sexual abuse victim.⁵⁸

The court looked first to academic literature discussing the use of PTSD evidence in sexual abuse cases.⁵⁹ The court began its discussion by noting the competing policy concerns at stake in child sexual abuse cases: the concern that child sexual abuse cases are difficult by nature to try must be balanced against the fact that expert testimony may be unduly prejudicial to the accused.⁶⁰ The court then discussed the manner in which the academic community views the scientific reliability and consequent admissibility of PTSD evidence.⁶¹ The court concluded that PTSD is sufficiently well established in the scientific community to *generally* be an acceptable topic of expert testimony,⁶² but further determined that because PTSD may be caused by psychological stressors other than sexual abuse, it is merely a

54. *Id.* at 1300.

55. *Id.* at 1301.

56. *Id.* Children who are sexually abused often hesitate to report their experience to adults. John E.B. Myers et al., *Expert Testimony in Child Sexual Abuse Litigation*, 68 NEB. L. REV. 1, 86-87 (1989). Once a child does report abuse, the account may be inaccurate as a result of the child's insecurity and embarrassment. *Id.* at 87. Expert testimony has often been allowed to explain that such behavior is not necessarily inconsistent with sexual abuse. See *People v. Taylor*, 552 N.E.2d 131, 137 (1990) (collecting case law allowing expert testimony to explain victim behavior).

57. *State v. Chauvin*, 846 So. 2d 697, 709 (La. 2003).

58. *Id.*

59. *Id.* at 702-04.

60. *Id.* at 702-03 (citing Dara Loren Steele, Note, *Expert Testimony: Seeking an Appropriate Admissibility Standard for Behavioral Science in Child Sexual Abuse Prosecutions*, 48 DUKE L.J. 933, 938 (1999)).

61. *Chauvin*, 846 So. 2d at 703-04.

62. *Id.* at 704. The court did not provide any reasoning for this conclusion other than a recitation of the diagnostic criteria of the disorder provided in the fourth edition of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*.

“therapeutic tool,” not intended to specifically identify instances of sexual abuse.⁶³

Turning to an overview of relevant case law, the court noted cursorily that Louisiana appellate courts have repeatedly held PTSD evidence to be admissible in various capacities other than substantive proof of sexual abuse.⁶⁴ Reviewing other states’ law, the court found that although most states allow PTSD testimony to be introduced to explain the unusual behavior of a sexual abuse victim, many do not allow PTSD evidence to be introduced as substantive proof of sexual abuse.⁶⁵ Finally, the court quoted extensively from the Maryland Supreme Court’s decision in *Hutton*, discussed above.⁶⁶

After a review of relevant authority, the court provided two concerns underlying its holding.⁶⁷ First, the Louisiana Supreme Court reasoned that because psychological stressors besides sexual abuse may cause PTSD, expert testimony regarding PTSD does not reliably prove the fact of abuse.⁶⁸ The court noted that the DSM-IV itself cautions “[n]onclinical decision makers” that a diagnosis of PTSD does not necessarily identify the *cause* of the diagnosis.⁶⁹ Secondly, the court expressed concern that such scientifically unreliable testimony would unduly prejudice the jury, who would consider this testimony from an expert to be a “medical conclusion.”⁷⁰

Finally, the court referred to its decision in *State v. Foret*, in which it held that CSAAS testimony was not scientifically valid under *Daubert* when used as substantive evidence of sexual abuse.⁷¹ The court reasoned that because the diagnosis of PTSD is a broader, more universal diagnosis than CSAAS, it can be no more reliable for evidentiary purposes than a CSAAS diagnosis.⁷² The court thus placed the same evidentiary constraints on PTSD in *Chauvin* as it

63. *Id.* (citing Askowitz & Graham, *supra* note 22, at 2046).

64. *Id.* at 704-05 (citing *G.N.S. v. S.B.S.*, 796 So. 2d 739 (La. Ct. App. 2d Cir. 2001); *State ex rel. B.J.*, 767 So. 2d 869 (La. Ct. App. 1st Cir. 2000); *State v. Adkins*, 721 So. 2d 1090 (La. Ct. App. 2d Cir. 1998); *State v. Bosley*, 691 So. 2d 347 (La. Ct. App. 2d Cir. 1997); *Held v. State Farm Ins. Co.*, 610 So. 2d 1017 (La. Ct. App. 1st Cir. 1992)). The admissibility of PTSD testimony as substantive proof of sexual abuse is a novel issue in Louisiana.

65. *Id.* at 705.

66. *Id.* at 706-07 (citing *Hutton v. State*, 663 A.2d 1289, 1294-95 (Md. 1995)).

67. *Id.* at 707.

68. *Id.*

69. *Id.* (quoting AM. PSYCHIATRIC ASS’N, *supra* note 50).

70. *Id.*

71. *Id.* at 707-08 (citing *State v. Foret*, 628 So. 2d 1116, 1127 (La. 1993)).

72. *Id.* at 708.

placed on CSAAS in *Foret*, limiting its admissibility to explain the unusual behavior of a sexual abuse victim.⁷³

In his dissenting opinion, Justice Weimer opined that the trial court did not err in admitting the social worker's testimony that the victim's PTSD symptoms were consistent with sexual abuse.⁷⁴ Justice Weimer noted that the expert at all times observed the DSM-IV's warning that a diagnosis of PTSD does not necessarily implicate any specific stressor as the cause.⁷⁵ He reiterated that the expert's testimony was limited to the observation that the victim suffered from PTSD and that her symptoms were consistent with having been sexually abused.⁷⁶ At no time did the expert state that the alleged sexual abuse was the cause of the PTSD symptoms the victim exhibited.⁷⁷ Thus, the dissent argued that because the expert did not specifically testify as to the credibility of the victim, the testimony should have been admissible.⁷⁸

Although the majority correctly determined that PTSD evidence offered as substantive evidence of sexual abuse is inadmissible, its analysis merely contributes to the confusion of divided opinion surrounding this issue. The crux of the majority's holding is its finding that because PTSD was designed to be a "therapeutic tool," PTSD diagnoses are unreliable to determine whether a given patient has suffered from sexual abuse.⁷⁹ The notion that PTSD is a mere "therapeutic tool" derives from the diagnostic criteria of PTSD listed in the DSM-IV.⁸⁰ According to the DSM-IV, the PTSD diagnosis requires, before all else, exposure to a traumatic event.⁸¹ When the traumatic event itself is in question, as is often the case in a sexual abuse trial, any PTSD diagnosis must necessarily be based either on an assumption that a traumatic event has occurred or on the clinician's reliance on the victim's word.⁸² Because the diagnosis, based on an assumed stressor, purports to verify the occurrence of the stressor, the

73. *Id.* at 709.

74. *Id.* (Weimer, J., dissenting).

75. *Id.* (Weimer, J., dissenting).

76. *Id.* (Weimer, J., dissenting).

77. *Id.* (Weimer, J., dissenting).

78. *Id.* (Weimer, J., dissenting).

79. *Id.* at 707. The court also based its holding in its comparison of PTSD to CSAAS. *Id.* at 708. However, such comparison was inappropriate in light of findings that PTSD evidence is scientifically reliable, while other "syndrome evidence" is not. Garcia-Rill & Beecher-Monas, *supra* note 19, at 30.

80. *See* Askowitz & Graham, *supra* note 22, at 2046 & n.91.

81. AM. PSYCHIATRIC ASS'N, *supra* note 50.

82. *See* Askowitz & Graham, *supra* note 22, at 2046 (explaining that "PTSD assumes the presence of a stressor and then attaches a diagnosis to the child's reactions to it").

argument that the diagnosis of PTSD implies the occurrence of sexual abuse is somewhat circular.

However, the Louisiana Supreme Court incorrectly held that this circular reasoning prevented the PTSD diagnosis from satisfying *Daubert's* requirement of reliability. *Daubert* requires that a scientific methodology, to be reliable, must be tested, published, generally accepted, and low in error.⁸³ It is virtually undisputed that the diagnosis of PTSD satisfies all of these criteria.⁸⁴ The PTSD diagnosis is inadmissible, not because it is unreliable, but rather because when introduced as substantive evidence of sexual abuse, it fails the balancing test required in federal courts by Federal Rule of Evidence 403 and in Louisiana by *State v. Catanese*.⁸⁵

The balancing test requires that the trial judge ascertain whether the testimony's probative value is outweighed by its potential for prejudice, confusion of the issues, or unnecessary delay or waste of time.⁸⁶ When used as substantive evidence that sexual abuse has occurred, PTSD has very low probative value. As discussed above, a PTSD diagnosis often either assumes the occurrence of a traumatic event or relies upon the credibility of the victim. In either case the diagnosis of PTSD does little to help the jury conclude whether sexual abuse actually occurred; in the first instance the jury must assume the commission of a crime, and, in the second, the jury is merely asked to believe the testimony of the victim. Some probative value arises from the presence of the symptoms associated with the diagnosis, such as nightmares, irritability, and difficulty concentrating. These symptoms may increase the probability that some traumatic event, possibly sexual abuse, has occurred. However, as noted above, some research indicates that many of the symptoms of PTSD are actually experienced by individuals who have not experienced trauma.⁸⁷ If this research is accurate, then the symptoms of PTSD have very little tendency to prove the occurrence of any trauma, including sexual abuse.

The modest probative value associated with a PTSD diagnosis offered as proof of sexual abuse is severely outweighed by its

83. Garcia-Rill & Beecher-Monas, *supra* note 19, at 29.

84. *Id.* at 30.

85. See *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 595 (1993) (holding that the trial judge assessing the admissibility of expert testimony must apply Federal Rule of Evidence 403 in addition to Federal Rule of Evidence 702); see also *State v. Catanese*, 368 So. 2d 975, 979-81 (La. 1979) (requiring that the probative value of scientific evidence is not outweighed by the potential for prejudice, waste of time, or misleading the jury).

86. FED. R. EVID. 403; see also *Catanese*, 368 So. 2d at 979-81.

87. See Askowitz & Graham, *supra* note 22, at 2048.

potential for confusion of the issues and unnecessary delay or waste of time. Although in the noted case the Louisiana Supreme Court refused to allow PTSD testimony on the ground that it would unduly prejudice the jury, expert testimony regarding mental health is considered “‘the least over-awing’ of the different types of expert testimony ‘because jurors have some innate knowledge of human behavior.’”⁸⁸ Thus, juror prejudice is not as serious a threat as many courts imagine. Rather, the primary hazard stems from *Daubert*’s notion that “[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.”⁸⁹ Courts that allow experts to testify that a victim suffers from PTSD and that the symptoms of PTSD are consistent with sexual abuse invite the defense to debunk this testimony by eliciting from the expert the basis of his or her testimony. The expert’s disclosure on cross-examination that the diagnosis is based, at the very least, on the word of the child victim will either needlessly confuse the jury as to the validity of the testimony, or will merely waste an astute jury’s time.⁹⁰

The Louisiana Supreme Court correctly held that PTSD evidence is inadmissible when offered as substantive proof of sexual abuse. However, it erred by basing its holding on the grounds that PTSD fails to meet the *Daubert* standard of reliability. Instead, the court should have conducted a Rule 403 balancing test to determine the relative strength of the expert testimony’s probative value in light of its potential for confusion and waste of time.

Missy Thornton

88. See *id.* at 2096 (quoting Charles Bleil, *Evidence of Syndromes: No Need for a “Better Mousetrap,”* 32 S. TEX. L.J. 37, 66 (1990)).

89. *Daubert*, 509 U.S. at 596.

90. The potential for confusion is increased when the court allows PTSD testimony to be introduced as substantive proof of sexual abuse but not as evidence that the victim is telling the truth, as the Supreme Court of New Mexico allowed in *Alberico*. See *State v. Alberico*, 861 P.2d 192, 210-11 (N.M. 1993) (holding that PTSD evidence is inadmissible to prove that the victim is telling the truth).