

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No.2021-KK-01478

VS.

ANTHONY J. TIPTON

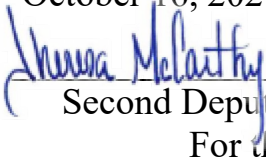
IN RE: State of Louisiana - Applicant Plaintiff; Applying For Supervisory Writ,
Parish of East Baton Rouge, 19th Judicial District Court Number(s) 06-16-0468,
Court of Appeal, First Circuit, Number(s) 2021 KW 1133;

October 16, 2021

Writ application granted. See per curiam.

JB
JLW
SJC
JTG
WJC
PDG

Supreme Court of Louisiana
October 16, 2021



Second Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2021-KK-01478

STATE OF LOUISIANA

VS.

ANTHONY J. TIPTON

On Supervisory Writ to the 19th Judicial District Court, Parish of East Baton
Rouge

PER CURIAM:

Writ granted. In a prosecution for sexual offense(s) committed against a child, expert testimony of general characteristics that would explain delays in reporting, inconsistent reports, omissions of details, reluctance to testify, demeanor, and recantations is generally admissible provided that it meets the requirements of the Code of Evidence and does not invade the jury's province of determining credibility or otherwise violate the prohibitions contained in *State v. Foret*, 628 So.2d 1116 (La. 1993); *State v. Chauvin*, 2002-1188 (La. 5/20/03), 846 So.2d 697. Here, the district court in a pretrial hearing found the expert to be qualified and that the underlying methodology is scientifically reliable under the *Daubert-Foret* standard. See generally *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). The district court also found that the expert's testimony on delayed reporting will be relevant at trial and that it satisfies La.C.E. art. 702(A)(1)–(3).

However, the district court ruled that the expert testimony on delayed reporting would not be admissible at trial because it did not satisfy La.C.E. art. 702(A)(4) (“The expert has reliably applied the principles and methods to the facts of the case”) because the expert had not interviewed the victim. The district court

erred. The fact that the expert did not personally examine the victim in this case does not detract from her expertise and ability to testify generally about delayed reporting. *Cf. State v. Thomas*, 2019-1027 (La. App. 1 Cir. 2/21/20), 297 So.3d 966; *State v. Torregano*, 03-1335 (La. App. 5 Cir. 5/11/04), 875 So.2d 842. The testimony presented at the pretrial hearing sufficed to pass the *Daubert-Foret* threshold. At trial, however, the admissibility of this testimony will be subject to reexamination in conjunction with the other testimony and evidence introduced, in light of which the balancing test provided in La.C.E. art. 403 can be applied. The State should proceed with care, mindful of the constraints imposed in *Foret* and *Chauvin*, to not permit expert testimony to impermissibly bolster witness credibility or invade the province of the jury. The matter is remanded to the district court for further proceedings consistent with the views expressed herein.

REMANDED