

Expert testimony regarding the characteristics commonly displayed by child victims of sexual abuse is admissible, even where expert has not examined victim. [In the Matter of C.Z.S.](15-2-3)

On May 28, 2015, the Beaumont Court of Appeals held that in an indecency with a child prosecution, expert who has not examined the child victim, may testify where their testimony would allow the jury to assess the credibility of the victim more fairly by explaining the emotional antecedents underlying the “typical” victim's behavior.

**Note:** Petition for Review filed with the Supreme Court (15-0487).

¶ 15-2-3. **In the Matter of C.Z.S.**, MEMORANDUM, No. 09-14-00480-CV, 2015 WL 3407250 (Tex.App.-Beaumont, May 28, 2015).

**Facts:** The State's petition alleged that C.Z.S. engaged in delinquent conduct by committing indecency with a child against R.S. R.S. testified that she wanted to play with C.Z.S. and C.Z.S. told her he would play if R.S. touched his private parts. R.S. testified that she touched C.Z.S.'s penis with her fingers. R.S.'s mother testified that R.S. told her different stories before she admitted that C.Z.S. had abused her. R.S. testified that she was initially untruthful because she thought she had done something wrong and did not want to get in trouble. She denied seeing anything “nasty” at her father's house and testified that no one told her what to say at trial.

Susan Odhiambo, a forensic interviewer, testified that when she interviewed R.S., R.S. initially denied any abuse. However, after Odhiambo asked R.S. if she had told her mother about being made to touch someone, R.S. told Odhiambo that C.Z.S. made her touch his “pee.” R.S.'s mother did not believe that C.Z.S. abused R.S., but she believed that R.S. saw something at her father's house and that her father had prompted R.S. to accuse C.Z.S. so as to clear himself from any wrongdoing. R.S.'s father testified that he had no reason to lie to the court or to encourage R.S. to lie. C.Z.S.'s mother testified that C.Z.S. told her, in a letter, that nothing physical occurred, but that he “maybe [he] said some-thing stupid[ ]” to R.S. She did not believe that C.Z.S. had anything to do with the allegations against him.

Dr. Lawrence Thompson, a psychologist, testified that it is not unusual for child abuse victims to give a delayed disclosure. Thompson testified that he has witnessed times when children have recanted allegations of sexual abuse for various reasons, such as the abuse did not happen or the child is being pressured to recant. He explained that when a child knows the perpetrator, the child can be reluctant to disclose abuse and can be manipulated. Thompson testified that it is not uncommon for some family members to believe the abuse occurred, while others believe there was no abuse. He stated that it is not unusual for abused children to act normal or to fear getting into trouble if they disclose the abuse. As an example of grooming, Thompson identified an instance when the perpetrator tells the child to “[d]o this sexual act, and I'll play with you.”

In this case, the State alleged that C.Z.S. committed indecency with a child by (1) engaging in sexual contact with R.S.; and (2) with intent to arouse or gratify the sexual desire of any person, exposed his anus or any part of his genitals, knowing R.S. was present. See Tex. Penal Code Ann. § 21.11(a)(1), (2)(A) (West 2011). The jury heard R.S. testify that C.Z.S. said he would play with her if she touched his penis, which she did. She eventually disclosed the abuse to her mother and to Odhiambo. R.S. explained that she initially failed to disclose what occurred because she was afraid she had done something wrong and would be in trouble if she told the truth. The jury heard Thompson explain that it is not uncommon for child victims to delay a disclosure or to be afraid of getting into trouble for disclosing the abuse. Thompson's testimony also demonstrated that an example of grooming includes a perpetrator promising to play with the child in exchange for the child engaging in a sexual act.

**Held:** Affirmed

**Memorandum Opinion:** In issue two, C.Z.S. contends that the trial court abused its discretion by allowing Thompson to testify because, according to C.Z.S., Thompson's testimony was not relevant to whether C.Z.S. had committed the offense. Outside the jury's presence, Thompson testified that he had not reviewed documents or interviewed witnesses in connection with C.Z.S.'s case and had no specific knowledge of the facts. He explained that the purpose of his testimony was “[t]o provide information to the jury from my clinical experience, from the research related to child sexual abuse so that they can apply [it] to this case as they see fit.” Thompson testified that he would be discussing what an outcry is, that disclosure of sexual abuse is a process, the effects of child abuse on the victim, how the child victim might testify, and grooming. C.Z.S. argued that Thompson's testimony was irrelevant to the facts of the case. The trial court overruled C.Z.S.'s objections.

Relevant evidence is that which “has any tendency to make a fact more or less probable than it would be without the evidence” and is a fact of consequence in determining the action. Tex.R. Evid. 401. “A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.” Tex.R. Evid. 702. Expert testimony regarding the characteristics commonly displayed by child victims of sexual abuse is admissible. *Tillman v. State*, 354 S.W.3d 425, 440 (Tex.Crim.App.2011); *Cohn v. State*, 849 S.W.2d 817, 818–19 (Tex.Crim.App.1993). This type of testimony satisfies Rule 702 because it allows the jury to “assess the credibility of a particular complainant more fairly by explaining the emotional antecedents underlying the typical victim's behavior[.]” *Kirkpatrick v. State*, 747 S.W.2d 833, 836 (Tex.App.—Dallas 1987, pet. ref'd).

**Conclusion:** Because Thompson's testimony was intended to explain the traits of child sexual abuse victims, we conclude that the trial court did not abuse its discretion by allowing Thompson to testify. See *Tillman*, 354 S.W.3d at 440; see also *Cohn*, 849 S.W.2d at 818–19; *Kirkpatrick*, 747 S.W.2d at 836; Tex.R. Evid. 702. We overrule issue two.

