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VERTEFEUILLE, J., dissenting. I respectfully disagree with the majority's determination that the Appellate Court improperly concluded that the state's use of constancy of accusation testimony, although beyond the scope of *State* v. *Troupe*, 237 Conn. 284, 677 A.2d 917 (1996), constituted harmful impropriety warranting reversal of the defendant's conviction. After a careful review of the evidence, I am persuaded that, in the present case, the iteration of the graphic details of the sexual assaults on the victim, as well as the additional details not testified to by the victim or her half sister, who had witnessed some of the sexual assaults, may have had a tendency to influence the jury by improperly bolstering the credibility of the victim and her half sister and by unfairly arousing in the jury feelings of antipathy toward the defendant. Accordingly, I would affirm the Appellate Court's judgment that reversed the trial court's judgment of conviction and ordered a new trial. I therefore dissent.[1]

Whether the improper admission of evidence is harmless in a particular case ''depends upon a number of factors, such as the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case. . . . Most importantly, we must examine the impact of the evidence on the trier of fact and the result of the trial. . . . If the evidence may have had a tendency to influence the judgment of the jury, it cannot be considered harmless.'' (Internal quotation marks omitted.) *State* v. *William C.*, 267 Conn. 686, 708–709, 841 A.2d 1144 (2004).

Prior to addressing the substance of the testimony in question, I believe that it is important to take note of the credentials of the two witnesses whose testimony was improperly admitted. The testimony at issue came from two highly qualified individuals who had substantial professional skill and experience in dealing with cases of alleged child molestation, thereby giving their testimony greater weight in the eyes of the jury. Rita Kornblum, an intake worker for the department of children and families (department) at the time of the investigation of the alleged incidents in this case, had worked for the department for over three and one-half years and for the New Jersey equivalent of the department for more than eight years. She testified that she had experience in social work, investigatory practices, and counseling services, and had received special training in handling cases of child molestation. Similarly, Kimberly Herwerth, a sexual assault crisis counselor, was a state

certified child crisis counselor for more than ten years, and had worked at both the Northeastern Connecticut Sexual Assault Crisis Services and Saint Francis Hospital Children's Center in that capacity. She testified that, at the time she interviewed the victim, her counseling focused on ''children who were in crisis, who had made allegations of sexual abuse,'' and she had worked with more than 900 alleged victims of molestation. It is important to evaluate the significance of the testimony of these witnesses in light of their experience and expertise. I find it reasonable to presume that because of the professional qualifications of these witnesses, the jury might reasonably have inferred that neither witness would have repeated such graphic allegations of sexual abuse unless she believed them to be true.

I turn next to the substance of the testimony in question. Following the testimony of the victim and her half sister, both Kornblum and Herwerth reiterated horribly graphic details of the sexual assaults as related to them by the victim. In my view, the harmfulness of the testimony of Kornblum and Herwerth[2] derives from their repetition of the most lurid details of the sexual abuse of the victim: the defendant's multiple penetrations of the victim's vagina and anus with his penis and the defendant's multiple ejaculations resulting from his abuse of the seven year old victim. The witnesses testified that the victim had told them that the defendant, ''on several occasions,'' had ''inserted his penis . . . into her private parts'' or had ''put his private in her private . . . .'' Moreover, Kornblum testified that the victim ''described some white stuff coming out of [the defendant's] . . . 'penis.' '' Herwerth testified that the victim had told her that ''slimy white stuff would come out into his hand. He would throw it into the toilet.''

Herwerth's testimony highlighted the victim's emotional state due to the fact that the abuse had been witnessed by her half sister. Herwerth testified that the victim had told her that ''her [half sister] had witnessed [the sexual assaults] . . . and it would make her throw up.'' Herwerth's testimony also repeated the fact of the defendant's threat to the victim. She testified that the defendant had warned the victim ''not to tell because her mother would hit her if she did tell.''

In addition, Herwerth related an incident of abuse not mentioned by either the victim or her half sister in their testimony. This additional incident revealed the victim's anxiety that her mother might discover the abuse. Herwerth testified that the victim had mentioned an incident in which the victim's mother ''almost caught'' the defendant sexually assaulting the victim when ''on one occasion in particular the slimy white stuff went into her [vagina]. [The victim] got up, went to the bathroom to clean herself with toilet paper. [The victim] said . . . that her mother almost caught them, but that when her mother came to the bathroom [the

victim] was a little nervous . . . [so she told her mother she] was going to the bathroom.''

In my view, the testimony of Kornblum and Herwerth unfairly influenced the jury in exactly the manner we intended to avoid as we explained in *Troupe*. In *Troupe*, we reasoned that ''testimony by multiple witnesses about the facts of the victim's complaint may so *unfairly bolster the victim's credibility* that, in such cases, cross-examination of the victim is not a sufficient protection from prejudice.'' (Emphasis added; internal quotation marks omitted.) *State* v. *Troupe*, supra, 237 Conn. 303. We stated therefore that in such circumstances there is an ''enhanced risk that the jury may be *unduly swayed* by the repeated iteration of the constancy of accusation testimony.'' (Emphasis added.) Id. Thus, we concluded that ''a person to whom a sexual assault victim has reported the assault may testify only with respect to the fact and timing of the victim's complaint . . . .'' Id., 304.

I cannot conclude that in the present case this graphic testimony from two trained professionals repeating the details of multiple sexual assaults on a seven year old girl did not ''unfairly bolster the victim's credibility'' and therefore ''unduly [sway]'' the jury. Id., 303.

Moreover, my conclusion that the improperly admitted testimony of Kornblum and Herwerth may have unfairly influenced the jury is reinforced by the fact that: (1) the defendant raised serious questions about the credibility of both the victim and her half sister; and (2) without the testimony of Kornblum and Herwerth, the state's case was not particularly strong. The defendant undermined the credibility of both the victim and her half sister by: (1) eliciting testimony from the victim revealing a possible motive to lie; and (2) revealing prior lies told by the victim's half sister. During cross-examination of the victim, she admitted that her mother had physically abused her and her half sister. In particular, the victim testified that her mother would hit her and her half sister with her hand, a broom or a belt on her head, thighs, face, arms, back and legs, almost daily. Thus, defense counsel elicited evidence regarding a possible motive for the victim to fabricate the allegations of sexual abuse, namely, a desire to be removed from the home. Furthermore, during cross-examination, the victim's half sister, the state's only eyewitness to the abuse, admitted to falsifying an allegation of sexual assault against her mother's boyfriend in 1998. The victim's half sister admitted that she had fabricated the sexual assault allegation only because her mother's boyfriend had been ''getting into [her] business'' and ''snitching'' on her to her mother. The jury might well have given additional weight to the testimony of Kornblum and Herwerth in light of these questions about the credibility of the victim and her half sister.

Additionally, I believe that without the testimony of Kornblum and Herwerth, the state's case was not particularly strong, and the defendant's conviction therefore may have resulted from the jury's increased reliance on their testimony. First, there was no physical evidence of the defendant's guilt, such as DNA, semen or blood analysis pointing to the defendant as the perpetrator of the alleged sexual assaults. Additionally, the medical evidence admitted on the issue of whether the victim had been sexually assaulted was ambiguous at best. On cross-examination, although Frederick B. Berrien, the physician who examined the victim, maintained that the inflammation he found in the victim's vagina was due to an infection that he believed was indicative of sexual contact, he also acknowledged that ''any sort of trauma could [have caused the inflammation].'' Berrien also testified that, at the time of the victim's examination, she did not exhibit any lacerations to the labia or her hymen, nor did she have any labial adhesions. He also acknowledged that he could not state, with any reasonable medical certainty, what type of object had penetrated the victim.[3] Finally, Berrien testified that, due to research that had been performed in the years subsequent to his examination of the victim, his findings regarding the victim ''would not necessarily indicate that the full penetration . . . necessarily is confirmed by . . . the findings that were present . . . during the examination.''[4]

Thus, I am persuaded that in the present case, the testimony of Kornblum and Herwerth, two experienced professionals, concerning the graphic details of the assaults on the victim, as well as the additional details not testified to by the victim or her half sister, may have had a tendency to influence the judgment of the jury by improperly bolstering the credibility of the victim and her half sister and by unfairly arousing feelings of antipathy in the jury. I therefore agree with the Appellate Court's conclusion that the defendant was entitled to a new trial and I disagree with the majority's determination to reverse the judgment of the Appellate Court.

Accordingly, I respectfully dissent.

[1] Because I would affirm the Appellate Court's judgment that reversed the trial court's judgment of conviction, I do not address the defendant's alternate grounds for affirmance.

[2] See part I of the majority opinion for the relevant excerpts of the testimony of both Kornblum and Herwerth.

[3] Berrien also could not identify with any reasonable degree of medical certainty the person who had penetrated the victim. It should be noted that the victim also alleged that two other males had sexual contact with her during the same time period that she claimed the defendant had committed these sexual assaults.

[4] Specifically, Berrien testified: "At the time that this examination was done, [more than] seven years ago, there was greater weight placed upon the hymenal opening and the amount of hymen that was present. And it's possible [that he would have confirmed sexual abuse], because my records do reflect that there was a sense that penetration had occurred at that time . . . . [I]n the interim time, over the past seven years . . . our profession has looked at some of the findings and has determined that this would not necessarily indicate that the full penetration, as you referred to, necessarily

is confirmed by this—by the findings that were present . . . during the examination.''