STATE OF CONNECTICUT *v.* JORGE P.*
(SC 18711)

Rogers, C. J., and Norcott, Palmer, Zarella and Harper, Js.*

Argued October 26, 2012—officially released June 11, 2013

Pamela S. Nagy, special public defender, for the appellant (defendant).

Timothy F. Costello, assistant state's attorney, with whom, on the brief, were *Stephen J. Sedensky III*, state's attorney, and *Colleen P. Zingaro*, assistant state's attorney, for the appellee (state).

Opinion

PALMER, J. Following a jury trial, the defendant, Jorge P., was found guilty of two counts of sexual assault in the first degree in violation of General Statutes § 53a-70 (a) (2), seven counts of risk of injury to a child in violation of General Statutes § 53-21 (a) (1) and seven counts of risk of injury to a child in violation of § 53-21 (a) (2).[1] The trial court rendered judgment in accordance with the jury verdict and sentenced the defendant to a total effective term of thirty-two years incarceration and lifetime sex offender registration. The defendant appealed to the Appellate Court, which affirmed the judgment of the trial court. *State* v. *Jorge P.*, 124 Conn. App. 99, 118, 4 A.3d 314 (2010). We granted the defendant's petition for certification to appeal, limited to the issue of "[w]hether the Appellate Court properly found that the defendant's objection to the admission of expert testimony was unpreserved, and, if not, whether the expert opined on ultimate issues . . . ." *State* v. *Jorge P.*, 301 Conn. 912, 19 A.3d 1259 (2010). We agree with the Appellate Court that defense counsel's objection was not preserved, and, therefore, we decline to review the defendant's claim that the state's expert improperly expressed an opinion on an ultimate issue. Accordingly, we affirm the judgment of the Appellate Court.

The opinion of the Appellate Court sets forth the following facts that the jury reasonably could have found. "The victims, S and G, are sisters who were born in 1993 and 1997, respectively. At the time of trial in 2007, S was fourteen years old and G was ten years old. Between 2000 and 2002, the victims lived with their parents and younger brother in a second floor apartment in a multifamily home on W Street. The victims' aunt, C, the defendant, who is C's boyfriend, their three children, and numerous other family members lived in the first floor apartment. In 2002, the victims, with their parents, moved to a house on W Avenue. In 2003, C and the defendant moved to a house on S Avenue.

"While the victims lived at W Street, both of their parents worked. Their mother regularly took them to the defendant's apartment in the mornings before school started to be watched by C until their school bus came. S would normally watch television in the bedroom of one of her cousins. On many occasions, the defendant would take her to a rarely used interior front staircase of the multifamily home and touch her. Specifically, the defendant would pull down both his and S's pants, make S face the bottom of the stairs, touch her vagina, and rub his penis on her buttocks and against her vagina. S testified that this would happen 'most of the days of the week, but it wasn't like every single day, but it would happen very often.' Afterward, the defendant would give S toys, stickers or candies so she would not tell anyone about the incidents.

S recalled two specific incidents of touching by the defendant on W Street. One incident occurred when the defendant abruptly stopped touching her when he heard the doorknob turn at the top of the stairs. On that occasion the defendant pushed S aside, which caused her to cut her 'pinky' on some mirrors that were on the stairs. Another incident occurred in the summer. On that occasion, when S went to the basement to get a scooter, the defendant followed her, and started touching her and engag[ing] in penile-vaginal intercourse with her. Afterward, when S went to the bathroom, she felt something on her leg that was like a 'white jelly kind of thing.' She felt a wetness in her pants and, after using the toilet, saw a condom in the toilet.

"The defendant continued this behavior after the victims' family moved out of the apartment on W Street in 2002. S recalled three specific incidents of touching while visiting her cousins at the defendant's house on S Avenue, where [the defendant] had moved in 2003. One incident occurred when the defendant picked up S and G to take them to an airport because C was returning from a trip. Before going to the airport, the defendant took them to S Avenue and would not let S leave until she allowed him to touch her. The defendant penetrated her vagina digitally and rubbed his penis on her buttocks. Another incident occurred when the defendant took S and G to a carnival. Before taking them to the carnival, the defendant took them to S Avenue and told S that he would pay for the tickets and tokens only if she allowed him to touch her. During this incident, while playing hide-and-seek, G walked in on the defendant while he was touching S. G testified that she saw the defendant's hand in S's pants and knew it was inside her vagina 'because it happened to me also.' Another incident occurred when the defendant took S to a [department] store and allowed her to get a [compact disc] and [a] poster as late birthday gifts. After making the purchases, the defendant refused to give them to S unless she allowed him to touch her. After the defendant touched S, he gave the gifts to her.

"The defendant also touched G at his house on S Avenue approximately ten or fifteen times. G could recall only a few specific incidents. The defendant always gave her toys, stickers or candies after touching her. The first incident occurred when G spent the night at C's house at S Avenue. The defendant called G into his room and put his finger 'a little inside' her vagina. After the incident, the defendant gave G bubblegum.

"All of the incidents occurred between 2000 and 2005. S and G first disclosed the defendant's conduct in 2006. At that time, S was sick with a high fever and stomach ache. S's mother indicated her intention to take S to the emergency room. G wanted to accompany S and her mother to the emergency room so she could get stickers, but her mother refused. G then responded,

'when . . . people touch you, they give you stickers and candies.' After further questioning, both S and G disclosed that the defendant gave them toys, stickers or candies after touching them. In 2007, [S] and G's guardian ad litem referred them to Veronica Ron-Priola, a [pediatrician who specializes in child physical and sexual abuse], for a physical examination, because none had been done previously. A physical examination by Ron-Priola revealed that G had a mild protrusion of the urethra, which was normal [for girls her age], and that S had [a] complete transection of the hymen, which was indicative of blunt trauma penetration [of] the vagina." *State* v. *Jorge P.*, supra, 124 Conn. App. 102–104. Following a jury trial, the defendant was convicted on all counts of the information.

The defendant appealed from the judgment of conviction to the Appellate Court, claiming, inter alia, that "he was deprived of a fair trial because the [trial] court impermissibly allowed Ron-Priola to testify, both directly and indirectly, as to the ultimate issue of whether S and G had been sexually abused."[2] Id., 105. The Appellate Court declined to review this claim, concluding that it was not properly preserved because defense counsel had failed to object to Ron-Priola's testimony at trial. See id. Specifically, the Appellate Court determined that, although defense counsel had raised concerns that Ron-Priola might testify as to whether S and G had been sexually abused, defense counsel was afforded an opportunity to examine Ron-Priola outside of the presence of the jury for the purpose of addressing those concerns. See id., 105–106 n.5. According to the Appellate Court, defense counsel's failure to object to Ron-Priola's testimony, either at the time of her voir dire testimony or thereafter when Ron-Priola testified before the jury, rendered the defendant's claim unpreserved.[3] See id.

On appeal to this court following our grant of certification, the defendant challenges the Appellate Court's determination that his claim is unreviewable for lack of preservation. In essence, he contends, contrary to the conclusion of the Appellate Court, that defense counsel properly objected to Ron-Priola's testimony, prior to her voir dire examination, on the ground that she would testify on an ultimate issue, and the trial court overruled that objection. The defendant further maintains that, once the trial court overruled the objection, defense counsel was not required to object again, whenever Ron-Priola expressed an opinion on an ultimate issue in her testimony before the jury, because any such objection would have been futile. We disagree with the defendant that his claim is preserved.

The following facts are necessary to our resolution of the defendant's claim. At trial, the state called Ron-Priola to testify with respect to her physical examination of S and G and as to certain statements that S and

G had made to her. On two occasions before Ron-Priola took the stand, however, defense counsel objected to her testimony. The first such occasion was during the state's direct examination of S, when the deputy assistant state's attorney (prosecutor) asked S whether she had had a medical examination and, if so, the name of the examining physician. S responded that Ron-Priola had examined her. At this point, defense counsel objected and asked to be heard outside the presence of the jury. After the court excused the jury from the courtroom, defense counsel informed the court that she intended to file a motion in limine to preclude Ron-Priola's testimony and, therefore, that the court should prohibit the state from eliciting any testimony from S concerning Ron-Priola's examination of her until the court ruled on the defendant's motion. The trial court asked defense counsel to explain the basis for the motion to preclude Ron-Priola's testimony. Defense counsel responded that the testimony was inadmissible on several grounds, including that Ron-Priola was not a treating physician[4] and that "[she] is going to be stating an opinion on the ultimate issue of fact in this case, which is whether or not the statements of the victim are truthful." The trial court asked defense counsel how she knew that Ron-Priola would testify in such a manner and whether she could provide specific examples of such testimony. Counsel responded that she was unable to give any examples at that time but that she would address the issue later if permitted to question Ron-Priola outside the presence of the jury. After expressing some confusion as to the nature of defense counsel's objection, the court stated, "we'll take up the issue if and when it arises with [Ron-Priola's] testimony." The court then overruled defense counsel's objection to S's testimony about her medical examination by Ron-Priola.

Two days later, immediately before Ron-Priola was scheduled to take the stand, the trial court inquired of the parties whether there would be an offer of proof prior to her testimony. The prosecutor responded that, as far as the state was concerned, there was no need for an offer of proof because Ron-Priola was simply "going to testify that she examined both [S and G], that she did a full examination head to toe, [that] her findings with regard to [G] were normal, and [that] her findings with regard to [S] were that [Ron-Priola] found that [S's] hymen had been perforated."

The trial court then asked defense counsel whether she had any objection to this testimony. Defense counsel responded that she did, "in its entirety." When the court asked defense counsel to explain the basis of her objection, she stated that Ron-Priola's testimony was inadmissible under the medical diagnosis and treatment exception to the hearsay rule because Ron-Priola was not a treating physician. The trial court responded that whether Ron-Priola qualified as a treating physician

was a threshold question to be decided by the court, and that a proffer of Ron-Priola's testimony was necessary for the court to resolve that issue.

The prosecutor then reminded the court that there were two issues for the court to decide, namely, the admissibility of Ron-Priola's medical findings and the admissibility of any statements made to Ron-Priola in the course of medical diagnosis and treatment. With respect to Ron-Priola's medical findings, the court responded that they would be admissible only if the court concluded that she had examined S and G for medical purposes and not for litigation purposes. The court noted, however, that, even if it found that Ron-Priola was not a treating physician, her testimony as to what the victims had told her nevertheless might be admissible under the tender years exception to the hearsay rule[5] or as constancy of accusation testimony in accordance with *State* v. *Troupe*, 237 Conn. 284, 677 A.2d 917 (1996).[6] The court further explained, however, that testimony by Ron-Priola outside the presence of the jury was necessary to determine whether the statements of S and G to Ron-Priola were admissible under the hearsay exception for statements in furtherance of medical treatment and diagnosis, under the tender years hearsay exception, or under the constancy of accusation doctrine. The prosecutor responded that the proffer would serve to explain "why . . . she's . . . a treating physician . . . [and] why . . . the statements made to her fit under about four different exceptions to the hearsay rule."

At this point, defense counsel interjected, stating that "Connecticut case law is crystal clear as to why the statements made by [S and G] are not admissible . . . ." When the court asked defense counsel to identify the case law to which she was referring, she responded that *State* v. *DePastino*, 228 Conn. 552, 565, 638 A.2d 578 (1994); see footnote 4 of this opinion; precluded such testimony. The court disagreed that *DePastino* supported defense counsel's contention. The court also asked defense counsel to explain why, even if it did, S's and G's statements to Ron-Priola were not admissible under the constancy of accusation doctrine. Defense counsel responded: "[T]his is going to her examination and what she relied on. And it goes to the ultimate issue, Your Honor. Ultimately, if you look at the . . . [medical report, Ron-Priola] does not make a diagnosis.[7] She has an impression. And her impression is that based [on] the disclosure made to her by [S] that her findings support the disclosure. So she's relying entirely on the veracity of the statements made by [S]. And the case law states that . . . the veracity of [S's] statements is for the jury to decide, not the doctor. And there's ample case law." Defense counsel then argued that "[t]he seminal case on [this] issue" is *State* v. *Apostle*, 8 Conn. App. 216, 512 A.2d 947 (1986),[8] which, she maintained, was "directly on point . . . ."

The trial court disagreed that *Apostle* supported counsel's assertion that Ron-Priola's testimony was inadmissible. The trial court explained that *Apostle* involved the "different issue" of whether a physician could give an opinion as to whether sex between adults was consensual. The trial court explained that the Appellate Court concluded in *Apostle* that such testimony was not admissible because it went to the ultimate factual issue to be decided by the jury and because expert testimony was not required to assist the jury in making that determination. The trial court observed that the present case was distinguishable from *Apostle* because the proffered expert testimony was relevant to the issue of whether S and G had been sexually abused. Defense counsel responded: "Okay. And then that brings me to my final . . . thoughts about the admissibility of [this] testimony . . . . I mean, this is why we need an offer of proof . . . . I don't know—I don't see how [this] doctor . . . can state to a reasonable—absent the testimony of [S and G], given the length of time from the alleged disclosure, which is even more removed from the date of the alleged abuse—how this doctor can say . . . to a reasonable degree of medical probability, that this child was sexually assaulted by [the defendant]. She can say . . . the fact that the hymen was perforated . . . ."

Immediately thereafter, the trial court interjected: "I don't think that's what she's going to say. . . . I think that [what] she's going to say [is] that there's evidence of sexual abuse and that the victim told [her] that the source of the abuse was [the defendant]. . . . I don't think her testimony is going to be [that] there is sexual abuse, ergo it had to be [the defendant]." The court then asked the prosecutor whether this was correct, and the prosecutor responded that it was. Defense counsel replied, "[a]ll right," but then added that a perforated hymen could be indicative of sexual abuse or it could be indicative of something else, such as a bicycle injury, which is "why we need the offer of proof . . . ." The trial court responded, "[that's a] [f]air question for cross-examination." The parties then examined Ron-Priola outside the presence of the jury. Upon the conclusion of Ron-Priola's voir dire testimony, the trial court ruled that Ron-Priola was a treating physician and, therefore, that she could testify as to her medical findings with respect to S and G. Defense counsel excepted to this ruling and also renewed her claim that Ron-Priola's testimony was inadmissible because Ron-Priola could not state to a reasonable degree of medical probability that S was forcibly penetrated.

With this background in mind, we turn to the defendant's contention that the Appellate Court incorrectly concluded that his claim regarding Ron-Priola's purported ultimate issue testimony was not preserved. "[T]he standard for the preservation of a claim alleging

an improper evidentiary ruling at trial is well settled. This court is not bound to consider claims of law not made at the trial. . . . In order to preserve an evidentiary ruling for review, trial counsel must object properly. . . . In objecting to evidence, counsel must properly articulate the basis of the objection so as to apprise the trial court of the precise nature of the objection and its real purpose, in order to form an adequate basis for a reviewable ruling. . . . Once counsel states the authority and ground of [the] objection, any appeal will be limited to the ground asserted. . . .

"These requirements are not simply formalities. They serve to alert the trial court to potential error while there is still time for the court to act. . . . Assigning error to a court's evidentiary rulings on the basis of objections never raised at trial unfairly subjects the court and the opposing party to trial by ambush." (Internal quotation marks omitted.) *State* v. *Johnson*, 289 Conn. 437, 460–61, 958 A.2d 713 (2008); see also *Council* v. *Commissioner of Correction*, 286 Conn. 477, 498, 944 A.2d 340 (2008) ("[A] party cannot present a case to the trial court on one theory and then seek appellate relief on a different one . . . . For this court to . . . consider [a] claim on the basis of a specific legal ground not raised during trial would amount to trial by ambuscade, unfair both to the [court] and to the opposing party." [Internal quotation marks omitted.]). Thus, because the sina qua non of preservation is fair notice to the trial court; see, e.g., *State* v. *Ross*, 269 Conn. 213, 335–36, 849 A.2d 648 (2004) ("the essence of the preservation requirement is that *fair notice* be given to the trial court of the party's view of the governing law" [emphasis in original]); the determination of whether a claim has been properly preserved will depend on a careful review of the record to ascertain whether the claim on appeal was articulated below with sufficient clarity to place the trial court on reasonable notice of that very same claim.

The defendant contends that his claim on appeal is preserved because, prior to Ron-Priola's testimony outside the presence of the jury, defense counsel unsuccessfully "objected to Ron-Priola's testimony on the exact same ground that [the defendant] raises on appeal: that [Ron-Priola's] opinion went to the ultimate issue of whether the statements of [S and G] were truthful." The defendant maintains that, because the trial court considered and rejected this claim, defense counsel was not required to object when Ron-Priola's testimony on voir dire examination or at trial touched on an ultimate issue. In support of this contention, the defendant directs our attention to the two colloquies that occurred prior to Ron-Priola's voir dire testimony. We disagree that either of these colloquies supports the defendant's contention.

The first colloquy on which the defendant relies

occurred during S's testimony, when defense counsel informed the court that she intended to file a motion in limine to preclude Ron-Priola's testimony in its entirety on the ground that it would violate the prohibition against experts opining on an ultimate issue. As we previously indicated, the trial court queried defense counsel at that time how she knew that Ron-Priola would testify in such a manner and requested specific examples of testimony that would be improper. Defense counsel responded that she could not provide any examples but intended to explore the issue with Ron-Priola during an anticipated voir dire examination. Accordingly, this colloquy provides no support whatsoever for the defendant's claim that the trial court overruled defense counsel's objection to Ron-Priola's testimony. Indeed, we are hard pressed to see how the trial court possibly could have ruled on such an objection without hearing Ron-Priola's testimony or, at the least, an offer of proof by defense counsel as to what that testimony would be. The trial court was apparently of the same view because it informed defense counsel at that time that it could *not* rule on defense counsel's objection without an offer of proof concerning Ron-Priola's trial testimony.

The second colloquy occurred two days later, when defense counsel again sought to preclude Ron-Priola's testimony in its entirety on the ground that Ron-Priola was not a treating physician and because she would offer an opinion on an ultimate issue of fact. At that point, the trial court asked defense counsel to explain why, even if Ron-Priola was not a treating physician, she could not testify as a constancy of accusation witness. As we previously noted, counsel responded: "[T]his is going to her examination and what she relied on. And it goes to the ultimate issue, Your Honor. Ultimately, if you look at the . . . [medical report, Ron-Priola] does not make a diagnosis. She has an impression. And her impression is that based [on] the disclosure made to her by [S] that her findings support the disclosure. So she's relying entirely on the veracity of the statements made by [S]. And the case law states that . . . the veracity of [S's] statements is for the jury to decide, not the doctor. And there's ample case law. The seminal case on that issue . . . is . . . *Apostle* . . . ."

The trial court's apparent confusion with defense counsel's argument is perfectly understandable because the argument was not responsive to the question that the court had asked and it was predicated on a medical report by Ron-Priola concerning S that was not in evidence. In that report, which was marked for identification purposes only, Ron-Priola stated that her finding that S had suffered an injury to her hymen indicative of blunt force trauma supported S's claim of sexual abuse. Although defense counsel's argument during this colloquy is not a model of clarity, we understand her

to be asserting that Ron-Priola's testimony was inadmissible because her medical findings were based on S's disclosure of sexual abuse rather than on the physical or medical evidence. Defense counsel appears to have been arguing that, because Ron-Priola's medical findings were based on S's statements, they constituted a form of indirect vouching for the veracity of those statements.[9]

We begin our review of the import of this colloquy with the observation that defense counsel's assertion that Ron-Priola's medical findings were based "entirely on the veracity of [S's] statements" was not an accurate characterization of the medical report that counsel relied on in making this argument. That report simply indicated that the injury to S's hymen supported, or was consistent with, S's disclosure. More to the point, however, the sole argument that defense counsel made in the trial court in support of her objection to Ron-Priola's testimony on ultimate issue grounds was that Ron-Priola's medical findings allegedly were predicated on Ron-Priola's belief in the veracity of S's statements and that, consequently, any opinion by Ron-Priola about S's medical condition constituted improper ultimate issue testimony because the veracity of S's statements was an issue for the jury to decide. Even if this argument had a foundation in the evidence, which it does not, the argument obviously bears no resemblance to the defendant's claim on appeal, which concerns the admissibility of a handful of statements by Ron-Priola at trial; see footnote 2 of this opinion; that have nothing to do with the propriety or admissibility of her medical opinion about the nature or cause of S's injuries. Accordingly, although defense counsel invoked the term "ultimate issue" in objecting to the admissibility of Ron-Priola's testimony concerning her examination of S, it is abundantly clear that defense counsel's argument could not have alerted the trial court and the state to the completely different ultimate issue claims that the defendant now raises on appeal.

The defendant's preservation claim boils down to the assertion that defense counsel's argument in the trial court that Ron-Priola could not testify for any purpose because her medical findings were tainted by the information that had been imparted to her by S and G was sufficient to preserve any and all future claims that Ron-Priola improperly had expressed an opinion on an ultimate issue. This is not the law of our state, first, because it would constitute a blatant ambuscade of the trial judge, who could not possibly be expected to recognize that he or she was being asked to rule on the same ultimate issue objection that forms the basis of the claim on appeal and, second, because it would effectively relieve trial counsel of the duty to alert the trial court to potential error while there is still time to correct it.[10]

The defendant's preservation argument also founders on the fact that it assumes the trial court, in declining to bar Ron-Priola's testimony in its entirety prior to an offer of proof with respect to the substance of that testimony, also intended to reject any and all future objections to Ron-Priola's testimony on ultimate issue grounds. It is entirely unreasonable to think that any judge would make such a blanket ruling, especially without having heard even one word of the challenged testimony, and there is absolutely nothing in the record to suggest that the trial court did so in the present case.

We note, finally, that, although the defendant would confine our review of his claim to the procedural history immediately preceding Ron-Priola's voir dire testimony, we agree with the state that the record of the proceedings following that voir dire examination also belies the defendant's claim that any further objection to Ron-Priola's testimony would have been futile because the trial court already had decided to allow ultimate issue testimony. Cf. *State* v. *Velky*, 263 Conn. 602, 615, 821 A.2d 752 (2003) (no further objection was necessary when "[i]t was . . . perfectly clear from the attitude of the court that [such objection] would have been futile"). For example, immediately following the voir dire examination, defense counsel renewed her objection to Ron-Priola's testimony on the ground that Ron-Priola could not "state to a reasonable degree of medical probability that [S] was forcibly penetrated. She [could not] state to a reasonable degree of medical probability as to how, when, or under what circumstances this injury occurred." The trial court responded by asking counsel whether it was her contention that, "unless [the] doctor can say in every case that this was sexual abuse, this was sexual assault, and it couldn't have been anything else in the world, then a doctor can never testify?" The prosecutor interrupted at this point, noting that defense counsel's argument was fundamentally flawed because, in fact, whether S had been sexually assaulted was an ultimate issue in the case. Specifically, the prosecutor stated: "Medical degree of certainty as to what, Your Honor? *The state is offering* [*Ron-Priola's testimony*] *to show injuries*, *not to conclude in terms of the ultimate question here.* And I think [defense] counsel is . . . addressing the ultimate question." (Emphasis added.) Indeed, the record is replete with examples of the trial court and the prosecutor *disabusing* defense counsel of her mistaken belief that Ron-Priola would or properly could offer an opinion as to the ultimate issue of whether S and G had been sexually assaulted. This procedural history further demonstrates that the defendant's claim is not preserved. We therefore agree with the state that the Appellate Court properly declined to reach the merits of the defendant's claim of evidentiary impropriety.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

* In accordance with our policy of protecting the privacy interests of the victims of sexual abuse and the crime of risk of injury to a child, we decline to identify the victims or others through whom the victims' identities may be ascertained. See General Statutes § 54-86e.

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

[1] We note that the incidents that led to the charges in this case occurred between 2000 and 2005. Although § 53-21 had been amended in 2000; see Public Acts 2000, No. 00-207, § 6; and in 2002; see Public Acts 2002, No. 02-138, § 4; those amendments did not alter the elements of the substantive crimes at issue and have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of § 53-21.

[2] The defendant claimed that Ron-Priola expressed an opinion as to whether S and G had been sexually abused on several occasions. For example, on one such occasion, the deputy assistant state's attorney (prosecutor) asked Ron-Priola whether she had recommended any follow-up treatment for G. Ron-Priola responded, "I recommended for the child to continue to follow up with her pediatrician, and the child and the mother needed counseling." When Ron-Priola was asked whether counseling was a routine recommendation, she responded: "[Y]es, for children that have been sexually abused . . . ." Thereafter, the prosecutor asked Ron-Priola whether she knew, prior to S's visit, why S was coming to see her. Ron-Priola stated: "[A]ll I know is that she had had a history of being sexually abused . . . ." The defendant also claims that Ron-Priola provided improper ultimate issue testimony in response to the following question by the prosecutor: "When you see an injury to the hymen indicative of blunt force penetrating trauma, what does this mean to you?" Ron-Priola replied that "[it] is indicative or corroborates the history of sexual abuse."

[3] The Appellate Court also declined to review the defendant's claim under the plain error doctrine because none of Ron-Priola's testimony "that could be construed to relate to the ultimate issue of whether S and G were sexually abused compromised the fairness or integrity of the defendant's trial or diminished public confidence in our judicial proceedings." *State* v. *Jorge P.*, supra, 124 Conn. App. 107. That issue, however, is not before us in the present appeal. In addition, the Appellate Court rejected each of the defendant's other claims, none of which has been certified for review by this court. See id., 107, 110, 118.

[4] Whether Ron-Priola qualified as a treating physician was relevant to the permissible scope of her testimony under the medical diagnosis and treatment exception to the hearsay rule. See, e.g., *State* v. *DePastino*, 228 Conn. 552, 565, 638 A.2d 578 (1994) ("[I]n cases of sexual abuse in the home, hearsay statements made in the course of medical treatment which reveal the identity of the abuser, are reasonably pertinent to treatment and are admissible. . . . If the sexual abuser is a member of the child victim's immediate household, it is reasonable for a physician to ascertain the identity of the abuser to prevent recurrences and to facilitate the treatment of psychological and physical injuries." [Citation omitted; internal quotation marks omitted]); accord Conn. Code Evid. § 8-3 (5), commentary.

[5] See Conn. Code Evid. § 8-10 (a) (effective January 1, 2011) (permitting admission, in criminal and juvenile proceedings, of "a statement by a child under thirteen years of age relating to a sexual offense committed against that child" under specified circumstances), in 72 Conn. L.J. No. 2, p. 235C (July 13, 2010).

[6] In *Troupe*, we concluded that "a person to whom a sexual assault victim has reported the assault may testify . . . with respect to the fact and timing of the victim's complaint . . . [but that] any testimony by the witness regarding the details surrounding the assault must be strictly limited to those necessary to associate the victim's complaint with the pending charge, including, for example, the time and place of the attack or the identity of the alleged perpetrator. . . . [In addition], such evidence is admissible only to corroborate the victim's testimony and not for substantive purposes." *State* v. *Troupe*, supra, 237 Conn. 304.

[7] The medical report to which defense counsel apparently was referring had been marked for identification only and was not a full exhibit. In the report, Ron-Priola states in relevant part: "[Fourteen year old] female with [i]njury to the [h]ymen indicative of blunt force penetrating trauma. This [p]hysical finding supports the disclosure of [s]exual [a]buse."

[8] The defendant in *Apostle* claimed that the trial court improperly permitted a hospital emergency room physician to testify that, in his opinion, the

victim did not consent to intercourse with the defendant. *State* v. *Apostle*, supra, 8 Conn. App. 231. The Appellate Court concluded that "[t]he testimony of the doctor regarding whether the intercourse was consensual went beyond the scope of permissible expert testimony because it involved an opinion based [on] factors outside the realm of his professional expertise. The doctor's opinion that the intercourse was nonconsensual was based in part [on] the victim's emotional state as well as the victim's own representations given to him regarding the history of the incident. The doctor, therefore, reached a conclusion on the ultimate issue by drawing on factors already made known to the jury, and which went beyond his physical examination of the victim." Id., 232.

[9] This likely explains why, during her cross-examination of Ron-Priola outside the presence of the jury, defense counsel repeatedly asked Ron-Priola whether her opinion of S's injury was based on S's statements and whether Ron-Priola "relied on the truthfulness of [S's] statements" in concluding that S's injuries were consistent with sexual abuse. In one such exchange, defense counsel asked Ron-Priola:

"[Defense Counsel]: . . . Doctor, given your findings, you testified . . . that [S's] injury was a perforation to the . . . hymen?

"[Ron-Priola]: Not a perforation, a transection.

"[Defense Counsel]: . . . Okay. And . . . that transection or that finding in and of itself is not indicative of abuse, correct?

"[Ron-Priola]: It is indicative of penetration into the vagina.

"[Defense Counsel]: That's it. And that finding would be there whether penetration had occurred forcibly or consensually?

"[Ron-Priola]: That is right.

* * *

"[Defense Counsel]: All right. Now with respect to [S], in your assessment that's at the bottom of the page, you concluded that the injury to the hymen was indicative of blunt force penetrating trauma?

"[Ron-Priola]: Yes.

"[Defense Counsel]: Okay. And then have you reached an opinion as to the cause of that blunt force trauma?

"[Ron-Priola]: . . . I did.

"[Defense Counsel]: Okay. And your opinion was what?

"[Ron-Priola]: That [the injury] supports the disclosure of sexual abuse.

"[Defense Counsel]: Okay. Now, your opinion, therefore, is based solely on the disclosure made to you by [S] and her mother during the course of [the] exam[ination], correct?

"[Ron-Priola]: Correct.

"[Defense Counsel]: Okay, because there's nothing in your physical findings that can lead you to believe otherwise, correct?

"[Ron-Priola]: The physical findings supported what she told me.

"[Defense Counsel]: Okay. So you relied on the truthfulness of her statements when you reached the conclusion that your findings supported the diagnosis of sexual abuse?

"[Ron-Priola]: Yes."

[10] Our acceptance of the defendant's argument would result in a wholly unworkable approach to preservation. Suppose that a party objected at trial to a witness' testimony on the ground that it would consist entirely of inadmissible hearsay. Under the defendant's proposed preservation standard, if the court overruled the objection on the ground that the objecting party had failed to establish that the entirety of the witness' testimony was inadmissible on hearsay grounds, the objecting party would have preserved all future hearsay claims with respect to the testimony of that witness regardless of whether those claims implicated the same aspect of the hearsay rule that provided the basis for the original objection. Such an approach would effectively eliminate the fair notice component of the preservation requirement because, in such circumstances, the trial court has no notice of, and no opportunity to rule on, any hearsay claim other than the one on which it did rule.