ADVANCE SHEET HEADNOTE
September 27, 2021

2021 CO 70

No. 19SC485, *People v. Coons*— Admissibility of Expert Testimony—CRE 702—Relevance—Helpfulness to the Jury—"Fit"—Generalized Expert Testimony—Sufficient Logical Connection to the Facts to be Helpful to the Jury—CRE 403 Admissibility—Domestic Violence Expert Testimony—Power and Control Dynamic—Power and Control Wheel.

Before expert testimony is admitted into evidence, a trial court must find that it would be helpful to the jury. Whether expert testimony is helpful to the jury hinges on "fit"—the expert testimony must fit the case. Today the supreme court considers just how close a fit is required.

The supreme court holds that generalized expert testimony fits a case if it has a sufficient logical connection to the factual issues to be helpful to the jury while still clearing the ever-present CRE 403 admissibility bar. In evaluating the fit of generalized expert testimony, a trial court must be mindful of the purposes for which such testimony is offered—that is, the reasons why the proponent of the

evidence has asked the expert to educate the jury about certain concepts or principles.

The trial court in this case admitted the generalized expert testimony offered by the People on the dynamics of domestic violence, ruling that it would be helpful to the jury and impliedly finding that it passed muster under CRE 403. A jury then returned guilty verdicts against the defendant. But a division of the court of appeals reversed the judgment of conviction, concluding that some of the People's generalized expert testimony did not fit the case. According to the division, the trial court's failure to exclude those portions of the expert testimony that had no logical relation to the facts of the case constituted an abuse of discretion warranting reversal.

As the supreme court explains in *Cooper*, however, while generalized expert testimony must fit the case, the fit need not be perfect. In other words, each aspect of such testimony need not match a factual issue. Since generalized expert testimony, by definition, seeks to inform the jury about generic concepts or principles without knowledge of the facts, it is almost inevitable that parts of such testimony will not be logically connected to the case. For that reason, the fit inquiry must be flexible. A trial court should certainly not be expected to parse the proposed testimony and determine whether each statement the expert intends to utter is logically connected to a fact in the case. If the generalized expert

testimony's logical connection to the factual issues is sufficient to be helpful to the jury without running afoul of CRE 403, the testimony fits the case.

Still, attorneys and trial courts should do their best to avoid introducing generalized expert testimony that has no logical connection to the facts of the case. As relevant here, prosecutors should take care to endorse generalized expert testimony about domestic violence only in appropriate cases; and, when they do so, they should endeavor to present only testimony that is logically connected to the factual issues. Trial courts, in turn, should exercise their discretion in deciding whether to permit all, some, or none of the proffered testimony under the fit standard the supreme court articulates today. In doing so, trial courts should consider the feasibility and propriety of admitting only a portion of the proposed generalized expert testimony on a particular subject.

Because the court of appeals employed a fit standard that's inflexible and overly exacting, and because the trial court's decision to admit the challenged evidence was entitled to deference, the division erred. Applying the correct fit standard and affording the trial court's decision its due deference, the supreme court concludes that the admission of the generalized expert testimony in question did not constitute an abuse of discretion. The supreme court therefore reverses the judgment of the court of appeals and remands for further proceedings consistent with this opinion.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2021 CO 70

Supreme Court Case No. 19SC485
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 2015CA1922

Petitioner:

The People of the State of Colorado,

v.

Respondent:

Dylan Thomas Coons.

Judgment Reversed
en banc
September 27, 2021

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JUSTICE SAMOUR delivered the Opinion of the Court.
JUSTICE GABRIEL concurs in the judgment, and **JUSTICE HOOD** and **JUSTICE HART** join in the concurrence in the judgment.

¶1 Before expert testimony is admitted into evidence, a trial court must find that it is both reliable and relevant. Only the relevance requirement is before us today. To determine whether expert testimony is relevant, a trial court must consider the testimony's helpfulness to the jury, which hinges on whether the testimony "fits" the facts of the particular case. But just how close a fit is required? The questions we agreed to review in this case and the lead companion case of *People v. Cooper*, 2021 CO 69, __ P.3d __, call upon us to explore the fit requirement in the context of *generalized* expert testimony (i.e., testimony aimed at educating the jury about general concepts or principles without attempting to discuss the particular facts of the case).[1]

¶2 We now hold that generalized expert testimony fits a case if it has a sufficient logical connection to the factual issues to be helpful to the jury while still clearing the ever-present CRE 403 admissibility bar. In evaluating the fit of generalized expert testimony, a trial court must be mindful of the purposes for which such testimony is offered—that is, the reasons why the proponent of the evidence has asked the expert to educate the jury about certain concepts or principles.

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[1] Perhaps taking a cue from the case law, the parties use the term "blind expert testimony." We prefer "generalized expert testimony."

¶3 The trial court in this case admitted the generalized expert testimony offered by the People on the dynamics of domestic violence, ruling that it would be helpful to the jury and impliedly finding that it passed muster under CRE 403. A jury then returned guilty verdicts against the defendant, Dylan Thomas Coons, for sexual assault, extortion (involving an unlawful act), extortion (involving a third party), and assault in the third degree. But a division of the court of appeals reversed the judgment of conviction, concluding that some of the People's generalized expert testimony did not fit the case. More specifically, the division ruled that the trial court abused its discretion in admitting expert testimony about some aspects of the Power and Control Wheel (a tool adopted by social scientists to explain the common dynamics of domestic violence), including "certain of the examples of abusive acts that abusers may commit." *People v. Coons*, No. 15CA1922, ¶ 45 (May 23, 2019). According to the division, since this testimony had no logical relation to the facts of the case, it should have been excluded and the trial court's failure to do so was reversible error.

¶4 As we explain in *Cooper*, however, while generalized expert testimony must fit the case, the fit need not be perfect. *Cooper*, ¶¶ 5, 53. In other words, each aspect of such testimony need not match a factual issue. *Id.* Since generalized expert testimony, by definition, seeks to inform the jury about generic concepts or principles without knowledge of the facts, it is almost inevitable that parts of such

testimony will not be logically connected to the case. *Id.* For that reason, the fit inquiry must be flexible. *Id.* A trial court should certainly not be expected to parse the proposed testimony and determine whether each statement the expert intends to utter is logically connected to a fact in the case. *Id.* If the generalized expert testimony's logical connection to the factual issues is sufficient to be helpful to the jury without running afoul of CRE 403, the testimony fits the case. *Id.*

¶5 Still, attorneys and trial courts should do their best to avoid introducing generalized expert testimony that has no logical connection to the facts of the case. *Id.* at ¶¶ 6, 54. As relevant here, prosecutors should take care to endorse generalized expert testimony about domestic violence only in appropriate cases; and, when they do so, they should endeavor to present only testimony that is logically connected to the factual issues. *Id.* Trial courts, in turn, should exercise their discretion in deciding whether to permit all, some, or none of the proffered testimony under the fit standard we articulate today. *Id.* In doing so, trial courts should consider the feasibility and propriety of admitting only a portion of the proposed generalized expert testimony on a particular subject. *Id.*

¶6 As in *Cooper*, we recognize in this case that some aspects of the expert's testimony about the Power and Control Wheel had no logical connection to the factual issues. *See id.* at ¶ 84. But, consistent with *Cooper*, we rule that it would have been infeasible and improper to require the expert to present an incomplete

(and arguably inaccurate and misleading) version of the Power and Control Wheel. *See id.* at ¶¶ 86–87.

¶7 Because the court of appeals employed a fit standard that's inflexible and overly exacting, and because the trial court's decision to admit the challenged evidence was entitled to deference, the division erred. *See id.* at ¶ 4. Applying the correct fit standard and affording the trial court's decision its due deference, we conclude that the admission of the generalized expert testimony in question did not constitute an abuse of discretion. We therefore reverse the judgment of the court of appeals and remand for further proceedings consistent with this opinion.

I. Facts

¶8 The victim, K.J., met Coons when they were in high school; she was a freshman, and he was a senior. The day after K.J. turned fifteen, they began a sexual relationship. She initially performed oral sex on Coons, but a few months later, he started caning her during their sexual encounters. Coons subsequently used a shock collar on K.J. She didn't like the shock collar, but Coons told her that if she liked him, she would agree to it. Coons also tied up K.J. and suspended her from ropes.

¶9 According to K.J., she was very shy and thought of herself as a "loser." She explained that nobody had ever been interested in her before and that it was "nice having someone older interested in [her] who was good looking [and] nice."

¶10 Coons eventually shared with K.J. that his girlfriend, Leanna Rutledge, knew about their sexual relationship. At Coons's suggestion, Rutledge became involved in the relationship during K.J.'s junior year. In the trio's first sexual session, K.J. performed oral sex on Coons while Rutledge caned her. On other occasions, K.J. performed sexual acts on Rutledge.

¶11 During K.J.'s senior year, she began having vaginal and anal sex with Coons. Coons and Rutledge got engaged around this time.

¶12 While K.J. was in high school, she never told anyone about her sexual relationship with Coons and Rutledge, and the relationship was never public knowledge. K.J. was afraid that her family and friends would be disappointed in her and would stop speaking with her if they found out about the sexual relationship.

¶13 In the summer after K.J.'s high school graduation, Coons and Rutledge sought to take sexually explicit photographs of her. K.J. was hesitant, fearing that the pictures could become public. But she ultimately allowed Rutledge to photograph her.

¶14 As K.J. prepared to go away to college, she told Coons and Rutledge that she wanted a break from them. Coons and Rutledge didn't take the news well and began threatening to send the sexually explicit photographs to K.J.'s family and friends and to post them on Facebook. These threats continued after K.J. started

attending college in the fall of 2013. One day, Coons and Rutledge unexpectedly showed up on campus. K.J. told them she had to study, and that rejection, combined with her failure to visit them after starting college, upset them.

¶15 K.J. participated in the Reserve Officer Training Corps ("ROTC") in her first college semester. Upon learning about K.J.'s involvement in ROTC, Coons threatened to release the photographs to her ROTC captain and the school's administration. K.J. eventually quit ROTC because she was worried about the disclosure of the photographs. She was convinced that if the pictures became public, she would be kicked out of school. K.J. was also afraid that dissemination of the pictures would cause her family to stop supporting her financially and would adversely affect her employment prospects.

¶16 The threats from Coons to publish the photographs persisted into the spring of 2014 (K.J.'s second college semester). K.J. told Coons that she didn't like his threats. But Coons told her that she was "not giving [him] a choice" and that she knew "how to fix things" between them. He asked her, "[W]hy keep fighting it?"

¶17 Coons often used the term "blackmail" when referring to his threats to disclose the photographs. For example, he blamed K.J. for not "fix[ing] things earlier" and said that she "would have gotten [her] pictures" and "the blackmail would have stopped" already had she done what he wanted. And, on at least one occasion, he apologized for "blackmailing" her.

¶18 At some point during K.J.'s second semester, Coons told her that he had deleted the photos. K.J. responded that it was the right thing to do because the "blackmail was awful." Coons said that he was "truly sorry" and asked for her forgiveness, and she, in turn, forgave him but told him that things needed to be different going forward. K.J. mentioned that if she found someone with whom she wanted a relationship, Coons and Rutledge would have to understand and accept it. She added that they could not continue to prevent her from seeing other people and engaging in new relationships. Coons purportedly agreed.

¶19 But shortly after that, in April 2014, Coons again repeatedly threatened to disclose the photographs. He faulted K.J. for not having made things right.

¶20 A couple of months later, in June 2014, Coons asked K.J. to sign a contract he drafted. Under the contract, K.J. would agree to "not lie, to show emotion, to spend the night, [and] to use nicknames." For their part, Coons and Rutledge would agree to "not threaten" K.J. and "to never tell anybody" about their sexual relationship with her. K.J. realized that the contract required her to do "[a]nything they wanted" when she spent the night with them. She nevertheless signed the contract to end the blackmail. Almost immediately after it was signed, though, Coons accused her of breaking it by not using nicknames enough.

¶21 In the summer of 2014, while K.J. was on break from school, she had a sexual encounter with Coons and Rutledge. She did not remember the specifics of this incident because she got drunk to "numb the pain a little bit."

¶22 There was a second sexual encounter during the summer of 2014, this time in Rutledge's mother's house. After drinking for a while, Coons, Rutledge, and K.J. went to the basement, where K.J. got undressed and was tied to a pool table with a rope. K.J. then performed oral sex on Coons while Rutledge used a vibrator on her. Eventually, Coons and Rutledge went upstairs, leaving K.J. tied to the table with the vibrator on her labia. They didn't return and untie her until approximately twenty-five minutes later. When Coons and Rutledge sought to use the vibrator on K.J. again, she refused. In response, Coons repeatedly hit her in the "crotch." The evening ended with Coons, Rutledge, and K.J. falling asleep on a couch upstairs while watching a movie.

¶23 Early the next morning, Coons woke K.J. up and asked her to go downstairs. He wanted to have sex with her, but she declined. He then shared that he had taken additional photographs of her the night before without her knowledge and that he would disclose them if she didn't do as he requested. K.J. acquiesced to having sex with him so that the new photographs would not be disclosed. After having sex, Coons and K.J. went back upstairs and fell asleep.

¶24 K.J. felt awful after this incident because she had just "been sexually assaulted, . . . had bruises, . . . hurt everywhere, and . . . didn't want to do this anymore." She thus texted Coons that she was "never doing that again" and that the relationship was "done" and "broken." Coons texted back and informed her that he was on his way to the hospital. Rutledge then texted K.J.: "What the hell, you killed him." K.J. replied: "He said he wouldn't do it again but he did, and he threatened me until I did what he wanted. I hope he is okay."

¶25 Rutledge and K.J. exchanged additional texts about Coons, who was having heart problems. In her texts, Rutledge again blamed K.J. for Coons's medical condition. She also pressured K.J. to acknowledge that they were all adults and that Coons had not hurt or forced anyone to do anything. But K.J. wouldn't take the bait:

> [Coons] apparently took a [new] photo of me and then told me downstairs he was going to send it to my parents if I didn't do what he wanted. And it was in the morning and you weren't there. And I did not consent to being repeatedly slapped in the crotch. He still blackmailed [me] before that point.

Rutledge replied: "Leave us alone, then, if that night was that bad, K?" She later asked K.J. to imagine how Coons would feel if he found out that K.J. had breached the contract and wanted out of the relationship.

¶26 In a subsequent text, Rutledge was critical of K.J. for not visiting Coons in the hospital. When K.J. repeated that Coons had blackmailed her and that it was

"bad," Rutledge didn't react kindly: "Wow. Bye. You're a liar and really don't care. He may threaten you, but you killed him. Leave me alone. I trusted you and loved you."

¶27 After K.J. returned to school for her sophomore year, she had the following text conversation with Coons:

> K.J.: Why is being able to say no a big deal?
>
> Coons: Do you want to fix things or not?
>
> K.J.: Can you not call me with my roommate in the room? And do you want to give what I asked for?
>
> Coons: No.
>
> K.J.: Why?
>
> Coons: Because if I'm putting my heart on the line, you have to trust us.
>
> K.J.: You didn't stop when I said no.
>
> Coons: K.
>
> K.J.: So I don't get to be treated like a person?
>
> Coons: No. You just have to trust us. And after class call me.

¶28 K.J. then spoke with Coons on the phone. A school employee became concerned after overhearing part of the conversation and observing that K.J. was upset. Although K.J. told the employee that she was fine, the employee later emailed her to see if everything was okay and to ensure that K.J. knew about

resources the school could offer her. The employee eventually convinced K.J. to open up, and K.J. shared what had been taking place. The matter was then referred to a law enforcement agency, which collected information that K.J. had stored on her cell phone—text and voicemail messages from Coons and Rutledge, as well as photographs that K.J. had taken of her injuries.

II. Procedural History

¶29 Coons was charged with sexual assault, two counts of criminal extortion (each alleging a different method of committing the crime of extortion), and third degree assault. The People further asserted that the facts forming the basis of each charge met the statutory definition of domestic violence in Colorado. *See* § 18-6-800.3(1), C.R.S. (2020) ("'Domestic violence' means an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship," as well as "any other crime against a person, or against property . . . when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.").[2]

[2] A person convicted of a crime, the underlying factual basis of which has been found to be an act of domestic violence, is subject to certain consequences. *See* § 18-6-801, C.R.S. (2020).

¶30 Before trial, the People provided notice of their intent to introduce generalized expert testimony regarding domestic violence through Erica Laue, who was employed at TESSA (a domestic violence and sexual assault response organization) and had worked as a counselor and victim advocate for more than a decade. Coons objected on the ground that Laue didn't "know anything about this case" and was going to speak in "generalities in hopes of prejudicing the jury" against him. The trial court noted that it wasn't aware of "a requirement for expert witnesses to have been specifically involved with the parties to the suit" and that this wasn't the first time generalized expert testimony was being introduced to address "how a typical person in a situation reacts to certain things."

¶31 On the morning of trial, Coons again opposed Laue's expert testimony, this time arguing that it was irrelevant because there was no "allegation of violence" between Coons and K.J. before the charged conduct. The "basic stuff about domestic violence and the cycle of violence," maintained Coons, just didn't "apply to this particular case." Further, consistent with his theory of defense, Coons contended that any acts between him and K.J., including the alleged sexual assault, were consensual, and that his threats were empty and not meant to be taken seriously.

¶32 The People countered that they had alleged that the acts supporting all of the charges were acts of "domestic violence," that they had to prove each such

allegation (a burden they anticipated would be very difficult to satisfy without Laue's expert opinions about "how these things work and what domestic violence entails"), that domestic violence was intertwined "throughout this entire case," and that the jury would have to "properly contextualize" the events in question. As further support for their request to introduce Laue's generalized expert testimony, the People maintained that: (1) the relationship between Coons and K.J. had spanned several years and included "a substantial amount of manipulation and control . . . by [Coons] over [K.J.]"; (2) K.J. had been repeatedly coerced and blackmailed by Coons, including through threats to disclose "the most intimate details of her sexual history, as well as pictures of sexual acts . . . unless she did what [Coons] said"; and (3) the jury needed to understand that when a person commits domestic violence, he "is not always mean, cruel, or vindictive" and is often "polite," "nice," and willing to "go back," "make up," and engage in "reconciliation."

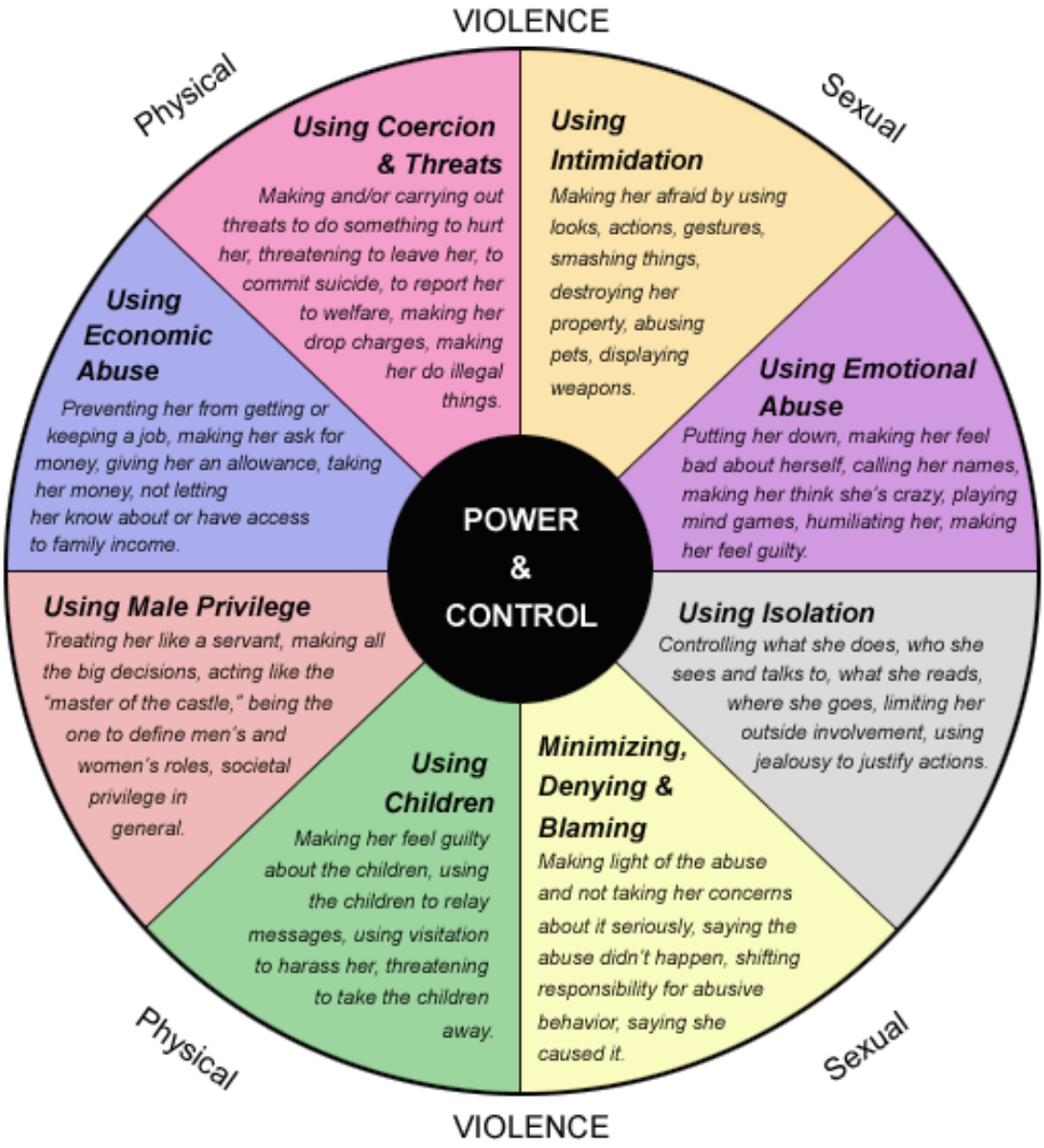
¶33 After considering the parties' arguments, the trial court allowed Laue's proposed generalized expert testimony. It concluded that such testimony would be helpful to the jury "in light of the nature of the charges and the statements of counsel as far as what type of evidence will be solicited." And the court impliedly found that the evidence cleared the CRE 403 admissibility bar.

¶34 On direct examination, Laue was qualified as an expert witness in the dynamics of domestic violence. She testified about "power and control" being the defining characteristic of domestic violence. To educate the jury regarding that overarching concept, she used the Power and Control Wheel, a "widely accepted tool" developed by social scientists to explain the common "dynamics of domestic violence." Jane K. Stoever, *Transforming Domestic Violence Representation*, 101 Ky. L.J. 483, 511 (2013).

¶35 Laue explained that, while people have historically thought of domestic violence as purely physical violence, the Power and Control Wheel illustrates "that physical violence is only one component of a domestic violence situation." Consequently, said Laue, although physical violence may occur in an abusive intimate relationship, "what makes an abusive relationship abusive" is the "power and control" that a person exerts over his or her intimate partner. Laue added that the eight different spokes of the Power and Control Wheel represent the nonphysical forms of abuse through which power and control are typically exerted in an intimate relationship: (1) coercion and threats; (2) intimidation; (3) emotional abuse; (4) isolation; (5) making light of the abuse, denying it happened, and blaming the victim for it; (6) using children; (7) male privilege; and (8) economic abuse.

¶36 The Power and Control Wheel, which we reproduce below, prominently features the words "Power and Control" in the hub, refers to physical and sexual violence along the top and bottom peripheries, and includes the eight aforementioned spokes:[3]

[3] This graphic of the Power and Control Wheel is for illustrative purposes only. Though not a replica of the exhibit used at trial, it is substantively identical to it.



¶37 In discussing each of the spokes of the Power and Control Wheel, Laue provided examples of the behaviors listed within each spoke. She did so to highlight for the jury "how somebody might use . . . different social dynamics and different interpersonal and relational dynamics to exert power and control" in an intimate relationship.

¶38 The jury returned guilty verdicts on all the charges. It also rendered a separate "domestic violence" finding for the acts underlying each charge.

¶39 Coons appealed, and a division of the court of appeals reversed. The division acknowledged that much of Laue's testimony was relevant "to explaining the dynamics of the relationship between Coons and [K.J.] and the behavior of Coons and [K.J.] during their relationship." *Coons*, ¶ 45. But the division viewed most of the spokes on the Power and Control Wheel as logically unrelated to the facts of this case. *Id.* In this regard, it deemed irrelevant the testimony about "the various acts of abuse not involving [the] coercion [and] threats [spoke]," including threats or attempts to harm "the victim's pets" or to abuse "the victim's children." *Id.* And within the coercion and threats spoke, the division identified threats or attempts to kill the victim as acts of abuse lacking relevance in this case. *Id.* The division noted that these aspects of Laue's testimony "did not fit" this case because there was no allegation by the People that Coons tried or threatened to kill K.J. or tried or threatened to kill or harm any child or pet she may have had. *Id.* Therefore, concluded the division, the trial court should have excluded those

portions of Laue's testimony, and its failure to do so was an abuse of discretion that constituted reversible error.[4] *Id.* at ¶¶ 45–46.

¶40 The People then filed a petition for certiorari. We granted the People's petition in part.[5]

III. Standard of Review

¶41 "We review a trial court's admission of expert testimony for an abuse of discretion and will reverse only when that decision is manifestly erroneous." *People v. Rector*, 248 P.3d 1196, 1200 (Colo. 2011). This is a deferential standard that reflects the superior opportunity a trial court has to assess both the competence of an expert witness and whether her opinions will be helpful to the jury. *Id.*

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[4] Because principles of double jeopardy "would bar retrial if the evidence presented at trial was not sufficient to support the two extortion convictions," the division considered Coons's challenge to the sufficiency of the evidence regarding the two extortion counts. *Coons*, ¶ 1. After rejecting Coons's claim, the division declined to consider the merits of his objection to one of the jury instructions, which he raised for the first time on appeal. *Id.* at ¶ 70.

[5] Here are the issues we agreed to review:

1. Whether the court of appeals erred in finding the entirety of a blind expert's testimony under CRE 702 must be limited to occurrences that are specifically tied to the particular facts of the case.
2. Whether the court of appeals erred in finding the admission of the expert testimony was not harmless.

IV. Analysis

¶42 Guided by *Cooper*, we hold that generalized expert testimony fits a case if it has a sufficient logical connection to the factual issues to be helpful to the jury while still clearing the ever-present CRE 403 admissibility bar. *Cooper*, ¶ 3. In evaluating the fit of generalized expert testimony, a trial court must be mindful of the purposes for which such testimony is offered—that is, the reasons why the proponent of the evidence has asked the expert to educate the jury about certain concepts or principles. *Id.*

¶43 While generalized expert testimony must fit the case, the fit need not be perfect. *Id.* at ¶¶ 5, 53. In other words, each aspect of such testimony need not match a factual issue. *Id.* Since generalized expert testimony, by definition, seeks to inform the jury about generic concepts or principles without knowledge of the facts, it is almost inevitable that parts of such testimony will not be logically connected to the case. *Id.* For that reason, the fit inquiry must be flexible. *Id.* A trial court should certainly not be expected to parse the proposed testimony and determine whether each statement the expert intends to utter is logically connected to a fact in the case. *Id.* If the generalized expert testimony's logical connection to the factual issues is sufficient to be helpful to the jury without running afoul of CRE 403, the testimony fits the case. *Id.*

¶44 Still, attorneys and trial courts should do their best to avoid introducing generalized expert testimony that has no logical connection to the facts of the case. *Id.* at ¶¶ 6, 54. As relevant here, prosecutors should take care to endorse generalized expert testimony about domestic violence only in appropriate cases; and, when they do so, they should endeavor to present only testimony that is logically connected to the factual issues. *Id.* Trial courts, in turn, should exercise their discretion in deciding whether to permit all, some, or none of the proffered testimony under the fit standard we articulate today. *Id.* In doing so, trial courts should consider the feasibility and propriety of admitting only a portion of the proposed generalized expert testimony on a particular subject. *Id.*

¶45 So, did the trial court abuse its discretion in allowing all of Laue's generalized expert testimony on abusive intimate relationships? The division held that it did. But we beg to differ.

¶46 We don't have a bone to pick with the division's determination that parts of Laue's testimony had no logical relation to the facts of this case. Indeed, the division correctly observed that there was no allegation that Coons attempted or threatened to kill the victim or attempted or threatened to kill or harm a pet or a child. *Coons*, ¶ 45. Yet Laue mentioned all of those behaviors as examples of some of the nonphysical forms of abuse set out in the Power and Control Wheel. The question is whether the lack of a logical connection between certain parts of Laue's

testimony and the facts of this case rendered that testimony inadmissible. The division answered in the affirmative and ruled that the trial court abused its discretion and committed reversible error in failing to exclude such testimony. We answer in the negative and conclude that the division applied an overly arduous fit standard that lacked pliability. *See Cooper*, ¶ 4.

¶47 But we must "[b]egin at the beginning." Lewis Carroll, *Alice's Adventures in Wonderland* 142 (Edmund R. Brown ed., International Pocket Library 1865). So, we first note our wholehearted agreement with the division's conclusion that "much" of Laue's generalized expert testimony was both logically connected to the facts of this case and admissible under CRE 403. *Coons*, ¶ 45. As the division acknowledged, Laue educated the jury about the characteristics of an abusive intimate relationship like the one between Coons and K.J. *Id.*

¶48 The division next correctly recognized that Laue's testimony regarding the power-and-control dynamic helped explain to the jury "the behavior of Coons and [K.J.]" throughout their relationship. *Id.* But the division didn't do justice to the logical connection between Laue's testimony and the behaviors exhibited by Coons and K.J.

¶49 With respect to Coons's behavior, the division undersold Laue's testimony. While her opinions regarding "coercion and threats" did, indeed, fit the facts of this case, *see id.*, so did her opinions regarding: intimidation; emotional abuse;

isolation; economic abuse; male privilege; and making light of the abuse, denying it happened, and blaming the victim for it. Thus, contrary to the division's impression, Laue's testimony about seven of the eight spokes on the Power and Control Wheel—not just her testimony about the "coercion and threats" spoke—was logically related to the facts of this case.

¶50 The People introduced evidence that Coons had repeatedly *intimidated* K.J. through his actions and communications; that he had *emotionally abused* her by putting her down and making her feel both guilty and bad about herself; that he had *isolated* her by limiting who she saw; that he had *economically abused* her by threatening to jeopardize her parents' financial support and her employment prospects; that he had displayed a sense of *male privilege* by treating her like his servant; and that he had *minimized, denied, and blamed* by making light of the abuse, refusing to take her concerns seriously, and shifting responsibility for the abuse to her. Of the eight spokes, the only one that Laue addressed that didn't match a fact in this case was the "using children" spoke.[6]

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[6] While seven spokes were logically related to this case, we've acknowledged that not all of the examples of abusive behaviors within those spokes had a logical connection to this case. For instance, as we mentioned earlier, Laue referenced pet abuse as an example of abusive behaviors within the intimidation spoke.

¶51 Separate and apart from the Power and Control Wheel, there was another aspect of Coons's behavior about which Laue educated the jury. Laue disabused the jurors of any belief they may have had about domestic violence perpetrators always being mean, cruel, and vindictive. She explained that abusers are often kind and willing to reconcile after a disagreement. This testimony, too, was logically related to the facts of this case because Coons had at times been caring and had demonstrated a willingness to reconcile with K.J.[7]

¶52 With respect to K.J.'s behavior, the division didn't go into specifics. But the devil is in the details. Coons attacked K.J.'s credibility at trial based on her delayed outcry and the fact that she kept returning to her relationship with Coons. Laue's opinions put these criticisms in context for the jury. *See Cooper*, ¶¶ 66–76. The People were entitled to rely on generalized expert testimony to counter any false assumptions and antiquated notions that may have led some jurors to view K.J.'s behavior as counterintuitive. *See id.*

¶53 Returning to the linchpin of the division's decision, we again recognize that certain facets of Laue's testimony on the Power and Control Wheel had no logical

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[7] Today's decision should not be understood as permitting generalized expert testimony on domestic violence whenever there is evidence that a defendant has been both kind and violent. As we make clear, this wasn't the only fact on which the trial court relied in finding that Laue's testimony fit this case.

relation to this case—namely, her discussion of the "using children" spoke and her comments regarding threats or attempts to harm someone or a pet. However, the admission of those statements does not constitute error, let alone reversible error. As we explain in more detail in *Cooper*, it is virtually inevitable that some generalized expert testimony about the dynamics of abusive intimate relationships will fall short of matching a fact in a particular domestic violence case. *Id.* at ¶¶ 5, 53, 85. Indeed, the point of generalized expert testimony is to educate the jury about *generic* concepts and principles without regard for the specific facts of the case. *Id.* It follows that there will almost always be some testimony that has no logical relation to the facts of the case. *Id.* at ¶ 85. To require a perfect match between generalized expert testimony and the facts of a case would be to transform such testimony into case-specific testimony. *Id.* at ¶¶ 85, 87.

¶54 In *Cooper*, we conclude that it was feasible and proper for the trial court to limit the generalized expert testimony of the People's expert, Janet Kerr, regarding a victim's counterintuitive behaviors by excluding the proffered opinions on recantation, minimization, and lack of cooperation. *Id.* at ¶¶ 57, 87. Because the victim there had not recanted, minimized, or failed to cooperate, such testimony had no logical connection to the factual issues. *Id.* at ¶ 57. We hasten to add in *Cooper*, though, that "it would have been infeasible and improper to similarly

restrict [Kerr's] testimony on the Power and Control Wheel" by requiring her to omit mention of some of its spokes:

> The division's approach would have required the prosecutor to tell Kerr which spokes of the Power and Control Wheel matched the facts of this case. It then would have required Kerr to recast, on the fly, the Power and Control Wheel into something that social science has neither studied nor approved. And it ultimately would have required Kerr to share with the jury an incomplete (and arguably inaccurate and misleading) version of the Power and Control Wheel.

Id. at ¶¶ 86–87.

¶55 The division nevertheless surmised that there was "a reasonable probability that the jury could have considered" the parts of Laue's testimony that lacked a logical connection to the facts of this case as "predictive of Coons's future behavior." *Coons*, ¶ 48. Continuing, the division observed that such testimony went hand in glove with Laue's opinions that domestic violence is typically cyclical and often increases in severity, and that victims of domestic violence are frequently unable (or unwilling) to escape. *Id.* In the division's view, there was a "reasonable probability that, if the cycle of domestic violence" between Coons and K.J. persisted, "Coons's abuse would increase in severity and Coons would begin to do things such as threatening to kill the victim." *Id.* The division ultimately reversed Coons's judgment of conviction because it believed that the guilty verdicts could have been based, at least in part, on the jury's desire "to break the cycle of abuse" between Coons and K.J. before Coons began to abuse her "in the

other ways described" by Laue. *Id.* Though we appreciate the division's concern, we reject its conclusion for three reasons.

¶56 First, there is no basis in the record to believe that the jury drew improper inferences from Laue's testimony, and we can't assume that unfounded considerations influenced the verdicts. The prosecutor made crystal clear that Laue was simply sharing general background information about certain concepts and principles related to domestic violence. Laue herself told the jury, in no uncertain terms, that she had no knowledge of any of the facts of this case, had not interviewed Coons or K.J., and was not opining about the veracity of K.J.'s version of events, much less about whether Coons was guilty or not guilty. There is no reason to think that the jury was confused and unable to distinguish between the case-specific factual testimony and Laue's generalized expert testimony.

¶57 Moreover, at the end of the trial, the court instructed the jurors that they were not bound by Laue's testimony and that it was up to them to decide whether to believe all of that testimony, some of it, or none of it. Thus, having been told that Laue knew nothing about this case and was simply providing general background information about domestic violence, the jurors were then advised that, in any event, it was their prerogative to decide whether to accept or disregard her opinions in whole or in part. The jurors were also directed to: assess the credibility of the witnesses (including the factual witnesses); base their verdicts on

the evidence introduced at trial and not on speculation; and guard against being influenced by sympathy, bias, or prejudice. We, of course, must "presume that a jury follows the trial court's instructions and would acquit . . . if the prosecution did not prove all of the elements of the . . . charge beyond a reasonable doubt." *Galvan v. People*, 2020 CO 82, ¶ 29, 476 P.3d 746, 755 (omissions in original) (quoting *People v. Trujillo*, 83 P.3d 642, 648 (Colo. 2004)).

¶58 Second, the division failed to consider the infeasibility and impropriety of introducing a partial Power and Control Wheel. Relatedly, the division overestimated the risk that Laue's testimony unfairly prejudiced Coons given that seven of the eight spokes of the Power and Control Wheel were logically connected to the facts of this case.

¶59 Third, embracing the division's standard would risk rendering generalized expert testimony largely, if not wholly, inadmissible. Here, the division decided that a new trial was necessary because parts of Laue's testimony had no logical relation to this case and thus the jury may have assumed facts that were prejudicial to Coons. But such a standard essentially requires a perfect match between generalized expert testimony and the facts of a case, and we've already explained that it is almost impossible to have such a match in any particular case. Because parts of Laue's testimony did not match the facts of this case, the division ruled that the trial court committed reversible error. In our opinion, however, throwing

the baby out with the bathwater isn't the answer. Rather, to mitigate the valid concerns identified by the division, a trial court should: (1) make clear for the jury the scope of the generalized expert testimony; (2) afford the defendant an opportunity for vigorous cross-examination of the expert; (3) allow the defendant to present contrary evidence; (4) provide appropriate jury instructions; and (5) apply CRE 403. *See Cooper*, ¶¶ 90–93. The trial court employed all these mechanisms.

¶60 Notably, we infer from the record that the trial court applied CRE 403 and found that the probative value of Laue's testimony was not substantially outweighed by the risk of confusing or misleading the jury. While we understand the need for trial courts to guard against the potential for expert evidence confusing or misleading the jury, we conclude that the division in this case failed to give the trial court's admissibility decision the deference it deserved. When reviewing a determination regarding the admission of expert testimony, our task as appellate courts is to check for an abuse of discretion, not to substitute our judgment for the trial court's. Here, we perceive no abuse of discretion by the trial court.

V. Conclusion

¶61 We reiterate that generalized expert testimony, like that provided by Laue in this case, is not automatically admissible in domestic violence trials—the

testimony must fit the facts of the case. Today we clarify that the fit requirement means that generalized expert testimony must have a sufficient logical connection to the facts of the case to be helpful to the jury while still clearing the ever-present CRE 403 bar. Prosecutors should take care to endorse generalized expert testimony about domestic violence only in appropriate cases; and, when they do so, they should endeavor to present only testimony that is logically connected to the factual issues. Trial courts, in turn, should exercise their discretion in deciding whether to permit all, some, or none of the proffered testimony under the fit standard we articulate today. In doing so, trial courts should consider the feasibility and propriety of admitting only a portion of the proposed generalized expert testimony on a particular subject.

¶62 Inasmuch as the division mistakenly concluded that the trial court committed reversible error in allowing Laue to provide certain generalized expert testimony regarding domestic violence, we reverse. We remand for further proceedings consistent with this opinion.

JUSTICE GABRIEL concurs in the judgment, and **JUSTICE HOOD** and **JUSTICE HART** join in the concurrence in the judgment.

JUSTICE GABRIEL, concurring in the judgment.

¶63 For the reasons set forth in my dissenting opinion in *People v. Cooper*, 2021 CO 69, ¶¶ 100–41, __ P.3d __ (Gabriel, J., dissenting), which the court is also announcing today, I do not agree with the new test that the majority announces, namely, that generalized expert testimony fits a case if it has a sufficient logical connection to the factual issues to be helpful to the jury while still clearing the ever-present CRE 403 admissibility bar. Maj. op. ¶¶ 2, 42, 61. Nor do I agree that it would have been "infeasible and improper," *id.* at ¶ 6, to require the People's expert, Erica Laue, to omit mention of the clearly irrelevant spokes of the so-called "Power and Control Wheel," *see Cooper*, ¶ 128 (Gabriel, J., dissenting) (disagreeing with the majority's statement that it was "impossible" for the domestic violence expert in that case to discuss the Power and Control Wheel without referring to matter that was not logically related to the facts of the case). It is certainly appropriate for a trial court to omit testimony regarding portions of the Power and Control Wheel that have no relevance to the case before it. Moreover, I would continue to follow the test set forth in *People v. Martinez*, 74 P.3d 316, 323 (Colo. 2003), where we explained:

> Helpfulness to the jury hinges on whether the proffered testimony is relevant to the particular case: whether it "fits." Fit demands more than simple relevance; it requires that there be a logical relation between the proffered testimony and the factual issues involved in the litigation. That is, even if good grounds exist for the expert's opinion, it must be validly and scientifically related to the issues in

> the case. That particular expert testimony fits or is valid for one facet or purpose of a proceeding does not necessarily compel the conclusion that it fits all facets. Therefore, the admissibility of evidence must be evaluated in light of its offered purpose.

(Citations omitted.)

¶64 That said, I do not believe that it was necessary for the majority to decide or apply either test in this case because, assuming without deciding that the trial court erred in admitting the generalized expert testimony at issue, any such error was harmless. The evidence of guilt in this case was overwhelming, with the evidence strongly tending to establish a cycle of domestic and emotional abuse, violence, intimidation, manipulation, control, and coercion. Moreover, I agree with the majority that the record does not support the division's surmise that the jury may have viewed Laue's testimony as predictive of defendant Dylan Coons's future behavior. Maj. op. ¶¶ 55–56.

¶65 Accordingly, like the majority, I would reverse the judgment of the division below, but I would do so on far narrower grounds. I therefore concur in the judgment only.

I am authorized to state that JUSTICE HOOD and JUSTICE HART join in this concurrence in the judgment.