No. 129289

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. RAMON TORRES, Defendant-Appellant.	)	On Appeal from the Appellate Court of Illinois, First District, No. 1-21-0990 There on Appeal from the Circuit Court of Cook County, Illinois, No. 16 CR 17805 The Honorable William Raines, Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

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NATURE OF THE CASE

Defendant appeals from the appellate court's judgment affirming his conviction of predatory criminal sexual assault of a child. No issue is raised concerning the charging instrument.

ISSUE PRESENTED FOR REVIEW

Defendant was convicted in absentia for sexually assaulting his four-year-old daughter, J.T., by making contact between his penis to her vagina. The assault was exposed when J.T. suffered a chlamydia infection. The trial evidence included defendant's videotaped confession, which mirrored J.T.'s testimony implicating defendant. In addition to defendant's own statements in his confession, testimony from defendant's wife and medical personnel also established that defendant too was diagnosed with chlamydia. The issue presented is:

Whether counsel provided constitutionally ineffective assistance by not objecting to the testimony from medical personnel, defendant's wife, and the investigating detective that defendant was diagnosed with chlamydia.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315(a), 612(b)(2), and 651(d). On March 29, 2023, this Court allowed defendant's petition for leave to appeal.

STATUTE INVOLVED

735 ILCS 5/8-802 provides, in relevant part:

Physician and patient. No physician or surgeon shall be permitted to disclose any information he or she may have acquired in attending any patient in a professional character, necessary to enable him or her professionally to serve the patient, except only (1) in trials for homicide when the disclosure relates directly to the fact or immediate circumstances of the homicide, (2) in actions, civil or criminal, against the physician for malpractice, (3) with the expressed consent of the patient, or in case of his or her death or disability, of his or her personal representative or other person authorized to sue for personal injury or of the beneficiary of an insurance policy on his or her life, health, or physical condition, or as authorized by Section 8-2001.5, (4) in all actions brought by or against the patient, his or her personal representative, a beneficiary under a policy of insurance, or the executor or administrator of his or her estate wherein the patient's physical or mental condition is an issue, (5) upon an issue as to the validity of a document as a will of the patient, (6) (blank), (7) in actions, civil or criminal, arising from the filing of a report in compliance with the Abused and Neglected Child Reporting Act, (8) to any department, agency, institution or facility which has custody of the patient pursuant to State statute or any court order of commitment, (9) in prosecutions where written results of blood alcohol tests are admissible pursuant to Section 11-501.4 of the Illinois Vehicle Code, (10) in prosecutions where written results of blood alcohol tests are admissible under Section 5-11a of the Boat Registration and Safety Act, (11) in criminal actions arising from the filing of a report of suspected terrorist offense in compliance with Section 29D-10(p)(7) of the Criminal Code of 2012, (12) upon the issuance of a subpoena pursuant to Section 38 of the Medical Practice Act of 1987; the issuance of a subpoena pursuant to Section 25.1 of the Illinois Dental Practice Act; the issuance of a subpoena pursuant to Section 22 of the Nursing Home Administrators Licensing and Disciplinary Act; or the issuance of a subpoena pursuant to Section 25.5 of the Workers' Compensation Act, (13) upon the issuance of a grand jury subpoena pursuant to Article 112 of the Code of Criminal Procedure of 1963, or (14) to or through a health information exchange, as that term is defined in Section 2 of the Mental Health and Developmental Disabilities Confidentiality Act, in accordance with State or federal law.

STATEMENT OF FACTS

I. A Jury Found Defendant Guilty of Predatory Criminal Sexual Assault of His Young Daughter.

Defendant was charged with predatory criminal sexual assault for committing an act of sexual penetration upon his daughter, J.T., by making contact between his penis and her vagina in 2013. C30-33.[1] After defendant failed to appear for trial, R166, he was tried in absentia, R314. The trial evidence included testimony from J.T., Jasmine Torres (J.T.'s mother), and medical professionals, and a video recording of defendant's confession to police.

A. Defendant sexually assaulted J.T. in 2013.

Jasmine testified that defendant was her husband and the father of J.T. and their son, E.T; she also had an older son. R361-62. They lived in Rantoul, Illinois, until 2012, when she and defendant separated and he moved to Chicago with his cousin, Vanessa Valentin, and Vanessa's son, J.V., who was a little older than J.T. R362-65. J.T. and E.T. would visit defendant approximately every other weekend. R365.

J.T., who was ten years old at the time of trial, testified that when she and E.T. stayed overnight while visiting defendant at Vanessa's, she would stay in a bedroom with E.T. and defendant. R399. One night, J.T. awoke to find that defendant was touching her "private part," which she used "to pee,"

[1] "C_" and "R_" refer to the common law record and report of proceeding; "Def. Br. _" and "A_" refer to defendant's opening brief and its appendix.

with his "private part," which he used "to pee." R400-01. Defendant had pulled down J.T.'s pajama pants and underwear while she was sleeping. R401-02. After a few seconds, she told him to stop, and he did. R403-04. She did not tell anybody what happened because she was afraid she would get in trouble. R405. Soon after, her "private part" hurt and stung, especially when she had to pee. R405-06.

Jasmine testified that in November 2013, when J.T. was four, J.T. complained that her "private area" hurt and she could not use the restroom. R366. J.T.'s vagina was "red and burned," so Jasmine took her to the emergency room at St. Mary of Nazareth Hospital. R367-68.

B. J.T. was diagnosed with chlamydia in 2013 but did not implicate defendant in her assault.

Dr. Katherine Schroeder testified that on November 23, 2013, she treated J.T. in the emergency room, then reported to J.T.'s mother that J.T. had tested positive for chlamydia, a sexually transmitted infection (STI) that is transmitted orally or via secretions from the genital areas. R423-24. She prescribed treatment for J.T.'s chlamydia and, while the hospital was waiting for an agent of the Department of Children and Family Services (DCFS) to arrive pursuant to the report of potential abuse, she transferred J.T.'s care to Dr. Lauren Bence. R427.

Dr. Bence testified that the next day she spoke with Danice Sher, a physician's assistant, who informed her that defendant had presented complaining of symptoms suggestive of an STI, so they prescribed him the

appropriate treatment. R435-38. Consistent with Bence's testimony, Sher testified that on November 24, 2023, defendant came into the hospital complaining of dysuria (a stinging sensation when he urinated). R466. She ordered an "STI panel" and treated him for gonorrhea and chlamydia, which is standard practice in such circumstances. R467. Richard Montes, another St. Mary's physician's assistant, testified that he called defendant to inform him that he had tested positive for chlamydia. R443-44.

Jasmine testified that, following J.T.'s chlamydia diagnosis, she took J.T. to the Chicago Children's Advocacy Center (CCAC) to be interviewed. R369. A DCFS official informed Jasmine that J.T. had stated that J.V. (Vanessa's son) had done "something to her." R369-70. J.T. explained at trial that she claimed J.V. (and not defendant) had touched her because she was afraid she was going to get in trouble if she implicated defendant. R409.

Jasmine testified that the DCFS official asked her and defendant to be tested for chlamydia. R368. Jasmine was tested for chlamydia but defendant did not go with her. R369. Approximately two weeks after J.T. tested positive, defendant (falsely) told Jasmine that he had not yet been tested. R370; *see also supra* pp. 4-5. DCFS informed Jasmine at the end of 2013 or beginning of 2014 that defendant had tested negative for chlamydia. R371-72. After hearing this information, Jasmine reconciled with defendant and they moved back in together with their children. R372.

C. In 2016, J.T. implicated defendant in the 2013 assault.

Jasmine testified that on a Saturday in October 2016, she took J.T. to the Young Family clinic for her school physical examination with Susana Guzman, a family nurse practitioner. R373; *see also* R471. J.T. had been having vaginal discharge, so Guzman tested her for STIs. R373-74; *see also* 473. The following Monday, the clinic asked Jasmine to bring J.T. in right away, which she and defendant did, and J.T. was treated for chlamydia. R374-75; *see also* R473.

Guzman testified that after she relayed the result to J.T., and then to Jasmine, who informed defendant, she treated J.T. and notified DCFS. R473-75. As "part of that practice" with the DCFS investigation, "[a]ll of the family members in household" were required to be tested for chlamydia. R475. Guzman tested Jasmine and defendant the next day, not immediately, because her clinic was not their primary care provider. R475; *see also* R375-76.

Jasmine testified that following this second diagnosis with chlamydia, she brought J.T. back to the CCAC, but J.T. did not disclose any new sexual assault or any new source of abuse. R378.

Guzman testified that both Jasmine and defendant tested positive for chlamydia. R476-77. Jasmine returned to the clinic with defendant. R376. Guzman treated Jasmine and spoke with her about DCFS involvement, which included that defendant was not to be in the home during the DCFS

investigation. R476. She then separately told defendant that he had tested positive for chlamydia. R477. Defendant denied having sexual contact with J.T. but admitted to having unprotected sex with someone other than Jasmine. R477.

Jasmine testified that she knew that day that both she and defendant had tested positive for chlamydia. R376-77. Jasmine insisted that defendant move out immediately. R377.

On one occasion, after defendant had moved out, Jasmine was getting J.T. ready for school, and Jasmine asked her for more information about "what happened to" her, explaining that defendant could "get in trouble for something he didn't do." R378-79. J.T. responded that "he [defendant] did do something to" her. R379. J.T. told Jasmine that when she was at Vanessa's house, defendant "put his private part in her private part and she asked him to stop and she began to cry and he wouldn't stop." R380.

Jasmine reported defendant's sexual assault to the police, and they returned to the CCAC, where J.T. was interviewed. R381. J.T. testified that during this interview at the CCAC, she stated that defendant had assaulted her in 2013, and that she was not afraid to tell the truth anymore because she had already told her mother. R410-11.

D. The 2016 investigation led to defendant's arrest and his confession to the 2013 assault.

Chicago Police Detective Emily Rodriguez testified that she was assigned to investigate the abuse of J.T., but the investigation was suspended

in 2013 after J.T. stated in her forensic interview that it was J.V. (and not defendant) who had touched her. R515. On October 18, 2016, Rodriguez observed a forensic interview of J.T. in which J.T. again stated that it was J.V. who touched her. R517-18.

On October 24, 2016, Jasmine telephoned Rodriguez and told her that DCFS had required her and defendant be tested for chlamydia and that they had both tested positive. R518-19. Rodriguez arranged another forensic interview with J.T. R519. The interview was conducted by Lynn Aladeen, a forensic interviewer with special training in interviewing children about allegations of abuse. R519-20; *see also* R484-85. At this interview, J.T. named defendant as the person who touched her. R519-20. Portions of the video of that interview were played for defendant's jury. R492-93; People's Exh. No. 5.

After Detective Rodriguez learned from a nurse that defendant also had tested positive for chlamydia in 2013, she obtained defendant's hospital medical records (via subpoena) and reviewed them. R521-22.

The police arrested defendant and interviewed him, and portions of the video of that interview were published to the jury. R522-28; People's Exh. 6. In the video, defendant admitted that one night when J.T. and E.T. were staying with him at Vanessa's house, he was drunk and "frustrated" because some women who were supposed to come over did not. A13 ¶ 38. Defendant removed J.T.'s clothes while she was sleeping and rubbed his penis on J.T.'s

vagina for a couple of minutes. *Id.* He acknowledged that he and J.T. tested positive for chlamydia in 2013. *Id.* Defendant stated that he was tested again in 2016 because DCFS and the doctors told the family that everyone in the household had to get tested; though he tested positive, he denied giving J.T. chlamydia again or abusing her in 2016. A14 ¶ 39.

E. At trial, defense counsel focused on J.T.'s changing story and the inability to determine the source of her chlamydia infection.

Defense counsel emphasized two areas of defense: (1) J.T. denied for years that her father abused her, and (2) there was no way to prove the source of her chlamydia.

First, defense counsel stressed throughout the trial that J.T. had twice stated that J.V., not defendant, touched her, including less than one week before she implicated defendant. Through cross-examination, counsel elicited testimony from Jasmine that J.T. in 2013 and on October 18, 2016, had named J.V. as the only person to have touched her inappropriately. R387. Counsel elicited testimony from J.T. that at the CCAC, she promised to tell the interviewer the truth and twice, in interviews that were years apart, told the interviewer that J.V. touched her and defendant never did. R415-16. And counsel elicited an admission from Aladeen that when J.T. implicated defendant, she provided "a completely different story" than when she implicated J.V. the two prior occasions. R501. Counsel also played videos of

J.T.'s 2013 and October 18, 2016 interviews for the jury. R552-54; Def. Exhs. 4 & 5.

Defense counsel's strategy with respect to the chlamydia evidence was to demonstrate through cross-examination that the prosecution had not proved that J.T. had contracted the infection from defendant. To that end, counsel elicited testimony on cross-examination of Dr. Schroeder that there was "no way to determine" how, when, or from whom J.T. had contracted chlamydia, R428, and similarly from Guzman that she could not determine how or when J.T., Jasmine, or defendant contracted chlamydia, R480. Counsel also provided another possible source for J.T.'s chlamydia infection, eliciting testimony that Jasmine's cousin Enrique Mendez lived with Jasmine's mother, and thus had access to J.T., and that his girlfriend had been diagnosed with chlamydia around the same time as J.T. in 2013. R384-85, 531. Counsel elicited a further concession from Detective Rodriguez that she did not follow up with or interview Mendez. R531.

In closing, defense counsel argued that there was reasonable doubt that J.T. "finally was telling the truth" on October 24, 2016, when "six days prior" and in December 2013 "she totally denied that [defendant] did anything to her." R577. And counsel emphasized that other men had access to J.T., including Mendez, whom Detective Rodriguez "never bothered to follow up with." R578.

F. The jury found defendant guilty.

The jury found defendant guilty of predatory criminal sexual assault of J.T, R593, and the court sentenced defendant in absentia to 55 years in prison, R615; CI214. After defendant was subsequently arrested, he moved for a new trial or sentencing hearing, C248-50, but the circuit court denied the motions, R676-80.

II. The Appellate Court Affirmed, Rejecting Defendant's Argument That His Counsel Was Ineffective for Failing to Challenge the Admissibility of His Chlamydia Test Results.

On appeal, defendant argued that his counsel was ineffective for failing to challenge the admissibility of his positive test results for chlamydia in 2013 and 2016 because that information was privileged and no exception to the physician-patient privilege enumerated in 735 ILCS 5/8-802 applied. *See* A15 ¶ 46. The appellate court affirmed, finding that counsel's actions did not constitute ineffective assistance because the test results were admissible. The physician-patient privilege did not apply to defendant's 2016 results, the court reasoned, because he was tested pursuant to the DCFS investigation, not as a result of seeking medical treatment, A24-25 ¶¶ 70-71; and the 2013 test results were admissible under subsection (7) because this was a criminal action arising out of a report filed pursuant to the Abused and Neglected Child Reporting Act (ANCRA), A25-28 ¶¶ 73-79. Having found that counsel did not perform deficiently because objections would have been futile, the appellate court declined to further address prejudice.

STANDARDS OF REVIEW

The "standard of review for determining whether a defendant was denied the effective assistance of counsel is ultimately *de novo*." *People v. Johnson*, 2021 IL 126291, ¶ 52.

The interpretation of a statute presents a question of law that the Court reviews de novo. *Palm v. Holocker*, 2018 IL 123152, ¶ 21.

ARGUMENT

Defendant fails to show that defense counsel provided ineffective assistance when he did not object that evidence that defendant was diagnosed with chlamydia in 2013 and 2016 was barred by the physician-patient privilege. Defendant did not demonstrate that counsel performed deficiently because his chlamydia diagnoses were admissible under several independent theories. Defendant waived the privilege by disclosing his 2013 diagnosis to Jasmine and his 2013 and 2016 diagnoses to police. Waiver aside, no privilege attached to Jasmine's testimony about the diagnoses or to Guzman's testimony about the 2016 chlamydia result because neither was a treating physician for purposes of the privilege.

Finally, both diagnoses were admissible under two statutory exceptions to the privilege. First, the privilege does not apply in criminal actions arising from the filing of a report in compliance with ANCRA. 735 ILCS 5/8-802(7). Second, the privilege does not apply in actions in which the patient's physical condition is an issue, which in criminal cases means that

the condition is relevant to establishing an element of the offense. 735 ILCS 5/8-802(4).

As long as each diagnosis was likely admissible under at least one theory, counsel could reasonably conclude that objecting would only highlight its importance.

Defendant also failed to demonstrate prejudice because there was no reasonable probability of acquittal had counsel objected. As discussed above, the diagnoses were admissible under multiple theories. Moreover, there is no reasonable probability defendant would have been acquitted even without any testimony regarding his chlamydia diagnoses. The overwhelming evidence included defendant's videotaped confession that he removed J.T.'s clothes while she was sleeping and rubbed his penis on her vagina, which matched the account that J.T. gave on three occasions, including at trial.

Defendant Failed to Demonstrate Ineffective Assistance Because the Chlamydia Diagnoses Were Admissible Under Several Independent Theories.

"To prevail on a claim of ineffective assistance of counsel, a defendant must show both that: (1) counsel's representation was so deficient as to fall below an objective standard of reasonableness under prevailing professional norms, and (2) the deficient performance so prejudiced defendant as to deny him a fair trial." *People v. Perry*, 224 Ill. 2d 312, 341-42 (2007) (citing *Strickland v. Washington,* 466 U.S. 668, 687-88 (1984)). "To establish deficient performance, the defendant must overcome the strong presumption

that counsel's action or inaction was the result of sound trial strategy" and "show that counsel's errors were so serious, and his performance so deficient, that he did not function as the 'counsel' guaranteed by the sixth amendment." *Perry*, 224 Ill. 2d at 342. To demonstrate prejudice, "defendant must prove there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." *Id.* Defendant's claim fails under both *Strickland* prongs.

A. Counsel did not perform deficiently because the chlamydia diagnoses were admissible under several independent theories.

Defendant's *Strickland* claim fails because he cannot demonstrate deficient performance. "This [C]ourt has noted on several occasions that decisions regarding 'what matters to object to and when to object' are matters of trial strategy." *Perry*, 224 Ill. 2d at 344 (quoting *People v. Pecoraro,* 175 Ill. 2d 294, 327 (1997)). And "a reviewing court will be highly deferential to trial counsel on matters of trial strategy, making every effort to evaluate counsel's performance from his perspective at the time, rather than through the lens of hindsight." *Id.*

It is equally well established that if "the admission of testimony . . . was not error[,] . . . counsel was not deficient for failing to object." *People v. Evans*, 209 Ill. 2d 194, 222 (2004) (rejecting claim that counsel was ineffective for failing to object to witness's written statement because statement was admissible). And even if an objection has potential merit, counsel could

nonetheless have valid strategic reasons for declining to object. *Perry*, 224 Ill. 2d at 345 (no deficient performance in failure to object to hearsay statements because it was "entirely likely counsel chose to let these statements pass rather than object and run the risk of the declarants themselves being called to testify"); *Evans*, 209 Ill. 2d at 221 (counsel not deficient for not objecting to defendant's statements where, among other things, it was "highly possible that defense counsel allowed the statement to pass without objecting to diffuse its importance, rather than object and draw further attention to the statement").

Here, defense counsel made a reasonable strategic decision not to object to testimony regarding defendant's chlamydia diagnoses because they were likely admissible and objecting would draw attention to their importance. Instead, counsel elicited testimony through cross-examination that the prosecution had not proved that J.T. contracted chlamydia from defendant. Counsel elicited testimony on cross-examination of Dr. Schroeder that there was "no way to determine" how, when, or from whom J.T. contracted chlamydia, R428, and similarly from Guzman that she could not determine how or when J.T., Jasmine, or defendant contracted it, R480. Counsel also offered another possible source for the infection, Jasmine's cousin Mendez, R384-85, whose girlfriend had also been diagnosed with chlamydia around the same time in 2013, but was not investigated, R531.

Counsel reasonably could have concluded that testimony regarding defendant's diagnoses would be admitted under at least one of several theories. First, defendant's disclosures of his diagnoses were admissible and waived the privilege. Second, with respect to the 2016 diagnosis, the physician-patient privilege did not apply to Jasmine or Guzman because they were not defendant's treating physicians. And third, the testimony from the treating physicians about the 2013 diagnosis was admissible under two statutory exceptions.

1. Defendant's disclosures of his diagnoses were admissible and waived the privilege.

Defendant's disclosures of both of his chlamydia diagnoses were admissible and waived the privilege. "If there is a disclosure of confidential information by the individual for whose benefit the privilege exists, or if he permits such a disclosure, the privilege is waived and cannot be reasserted." *Novak v. Rathnam*, 106 Ill. 2d 478, 484 (1985).

Here, defendant disclosed his 2013 and 2016 chlamydia diagnoses to police during his confession. *See* A13 ¶ 38. Further, by submitting to testing from Guzman, who was not his treating physician, he permitted the disclosure of his diagnosis to her. *See* R476-77. He also went with Jasmine to receive his (and her) test results and either disclosed or permitted the disclosure of the results to her as she knew that day that he tested positive. *See* R376-77. Defendant's disclosures waived the privilege; as a result, both lay witnesses and medical professionals could testify about his diagnoses.

Moreover, his confession to police regarding his diagnoses was a party's own statement and not hearsay, *see* Ill. R. Evid. 801(d)(2)(A), and could be admitted, *see Novak*, 106 Ill. 2d at 484.

Defendant misses the mark with his argument that "his acquiescence to DCFS testing" in 2016 did not waive his right to assert the privilege because he would not have understood that his acquiescence would "abrogate[] his right to keep this deeply sensitive information confidential." Def. Br. 37. At the outset, this does not address his waiver of the privilege regarding the 2013 diagnosis by his disclosure to police. Further, defendant also waived the privilege regarding the 2016 diagnosis by disclosing or permitting the disclosure of the information to Jasmine and the police, not merely by participating in the testing. *Novak*, 106 Ill. 2d at 484. Because defendant waived the privilege, counsel did not perform deficiently in declining to object to admission of his chlamydia diagnoses.

2. The privilege did not apply to testimony from Jasmine and Guzman because they were not treating physicians.

Even if defendant had not waived the privilege by disclosing or permitting the disclosure of his diagnoses, the evidence was nonetheless admissible. Because the physician-patient privilege applies only to treating physicians, *Palm*, 2018 IL 123152, ¶¶ 16, 34-35, the privilege did not apply to Jasmine (a lay witness), or to Guzman, who tested defendant pursuant to the DCFS investigation in 2016.

The physician-patient privilege codified in section 8-802 only "applies when a physician or surgeon is asked to disclose medical information." *Palm*, 2018 IL 123152, ¶16; *see also* 735 ILCS 5/8-802. Thus, by its plain terms, it did not apply to Jasmine, a layperson who testified that she knew that defendant had tested positive for chlamydia the day he got his results from Guzman. R376-77.

Nor did it apply to Guzman, who could testify about petitioner's chlamydia diagnosis because she was not treating him. "Simply because [a physician] evaluated [a patient] . . . does not make [the physician] a treating physician." *Dameron v. Mercy Hosp. & Med. Ctr.*, 2020 IL 125219, ¶ 25. Instead, a "treating physician is one consulted for treatment." *Id.* ¶ 24. "'As a general rule, the relationship of physician and patient does not exist unless the physician's consultation with, or attendance upon, the prospective patient is with a view to protective, alleviative, or curative treatment,'" and accordingly the privilege does not apply "'to information acquired by a physician through the physical or mental examination of a person unless it is made in contemplation of, and as preparation for, medical care and treatment.'" *Palm*, 2018 IL 123152. ¶ 35 (quoting Clinton DeWitt, Privileged Communications Between Physician and Patient 104-05 (1958)).

As the appellate court explained, defendant's 2016 chlamydia diagnosis was not subject to the privilege because he did not seek treatment for chlamydia symptoms. Guzman treated J.T., not defendant, and Guzman

directed defendant that he had to be tested as part of the DCFS investigation. A24 ¶ 70. She testified that she was not defendant's primary care provider and tested him solely because it was required by DCFS. R475. Defendant admitted to police that he was tested for chlamydia in 2016 because DCFS and the doctors told the family that everyone in the household had to be tested. *See* A25 ¶ 70. Thus, the appellate court explained, "[t]here is no indication in the record that defendant was complaining of symptoms in 2016," and he went to the clinic "for the sole purpose of submitting to a chlamydia test because [he was] ordered to do so" as part of the investigation. A25 ¶ 71. There "was no physician-patient relationship between Guzman and defendant," and "[t]hus, there was no privilege." *Id.* Guzman could therefore testify about defendant's 2016 chlamydia diagnosis.

Defendant's argument that the privilege applied to bar testimony from Guzman fails given his concession that "there is no privilege where a patient sees a physician to obtain medical information to be shared with some other party for some nonmedical purpose, rather than for the purpose of seeking medical treatment for a medical problem." Def. Br. 34. As discussed, defendant was not suffering symptoms or seeking treatment but was tested as part of the DCFS investigation with the "nonmedical purpose" of determining who abused J.T. and whether it was safe for her to remain in the home. *See supra* pp. 6, 18-19. Although defendant argues that he "would have expected" the results of the testing to be confidential, *see* Def. Br. 37-38,

such a belief would not transform Guzman into his treating physician when he was not consulting her for treatment. Moreover, he never testified to that belief, which would be unreasonable with respect to incriminating results in a government agency investigation into the sexual abuse of a child. In short, evidence of defendant's chlamydia diagnoses was admissible through his confession and the testimony of Jasmine and Guzman.

3. The privilege did not apply under the statutory exceptions set forth in subsections (7) and (4).

Even if the privilege had applied and was not waived, counsel reasonably could have determined that the trial court would rule the chlamydia diagnoses admissible under the statutory exceptions to the privilege set forth in subsections (7) and (4). 735 ILCS 5/8-802(4), (7). Indeed, no case law at the time of trial would have clearly supported a contrary argument. Defendant's cited case, *People v. Bons*, 2021 IL App (3d) 180464, was not issued until after his trial, and "[c]ounsel's failure to raise [a] novel argument does not render his performance constitutionally ineffective." *Anderson v. United States*, 393 F.3d 749, 754 (8th Cir. 2005). Moreover, contrary to the holding of *Bons*, subsections (7) and (4) exceptions do apply.

To determine whether the exceptions set forth in subsections (7) and (4) apply requires this Court to construe those portions of the privilege statute. The cardinal rule of statutory construction is to give effect to the legislature's intent, with the most reliable indicator being the ordinary meaning of the statutory language. *Palm*, 2018 IL 123152, ¶ 21. The Court

"may consider the purpose behind the law and the evils the law was designed to remedy," *id.*, and will narrowly construe statutory privileges "because they operate to exclude relevant evidence and thus work against the truthseeking function of legal proceedings," *People ex rel. Birkett v. City of Chicago*, 184 Ill. 2d 521, 527 (1998) (internal quotation marks omitted); *see also Harris v. One Hope United, Inc.*, 2015 IL 117200, ¶ 18 ("privileges are disfavored because they are in derogation of the search for truth") (internal quotation marks omitted).

i. Defendant's chlamydia diagnoses were admissible under subsection (7) because the criminal case arose from the filing of a report in compliance with ANCRA.

Defendant's chlamydia diagnoses were admissible under the exception provided in subsection (7), which provides that the prohibition on disclosure of information by a treating physician does not apply "in actions, civil or criminal, arising from the filing of a report in compliance with [ANCRA]." 735 ILCS 5/8-802(7). As the appellate court explained, "this case is a criminal action that arose from the filing of a report with DCFS in compliance with the Act." A26 ¶ 74. "Accordingly, pursuant to the plain language of the exception in subsection (7), Bence, Sher, and Montes [defendant's treating medical personnel] were permitted to disclose defendant's chlamydia diagnosis at trial." *Id.*

Defendant seeks to rewrite the statutory exception to instead "appl[y] to *information* 'arising from the filing of a report in compliance [with

ANCRA].'" Def. Br. 12 (emphasis added). Under defendant's reading, which relies on *Bons*, *see id.* at 28, the exception would apply to information in the report itself and any medical records from the ensuing DCFS investigation (information medical personnel must disclose to comply with mandatory reporter obligations), *see also Bons*, 2021 IL App (3d) 180464, ¶ 44 (even under restrictive reading, medical records would be admissible if they "*arose from* the DCFS investigation or report") (emphasis in original). At the outset, even under defendant's restrictive reading, the 2016 chlamydia diagnosis was admissible. In 2016, defendant sought testing not based on symptoms but at the insistence of DCFS. *See supra* Section A.2.

And the 2013 diagnosis was also admissible, because defendant is attempting to rewrite the statute. The statute creates an exception permitting disclosure of medical information in "*actions* . . . arising from the filing of a report," 735 ILCS 5/8-802(7) (emphasis added), and in such circumstances, the statute broadly permits a medical professional to disclose "any information he or she may have acquired in attending any patient in a professional character," 735 ILCS 5/8-802.

Thus, as the appellate court below explained, "the plain language of the statute does not provide an exception for 'information' that arises from the filing of a report in compliance with the Act" but 'in actions, civil or criminal, arising from the filing of a report.'" A27 ¶ 76 (quoting 735 ILCS 5/8-802(7)). The "exception under subsection (7) is not based on the origin of the

medical information, but rather, is based on where or in what type of proceedings the information is being disclosed." *Id.* Indeed, as the appellate court observed, "all 14 of the exceptions enumerated in the statute address specific proceedings or circumstances where the otherwise privileged medical information could be disclosed," and subsection (7) similarly refers to a type of proceeding at which otherwise privileged medical information may be admitted. *Id.*

Defendant concedes that the most straightforward reading of the statute permits disclosure of medical information in a criminal case that arises from the filing of a report in compliance with ANCRA. Def. Br. 27. Defendant further acknowledges that the "last antecedent doctrine, a long-recognized grammatical canon of statutory construction, provides that relative or qualifying words, phrases, or clauses are applied to the words or phrases immediately preceding them and are not generally construed as extending to more remote clauses." *Id.* (citing *City of Mt. Carmel v. Partee*, 74 Ill. 2d 371, 375 (1979)). Defendant even concedes that, "[a]t first blush, this would appear to favor the First District's interpretation of the phrase 'arising from the filing of a report' as solely modifying the immediately preceding language of 'in actions, civil or criminal.'" *Id.* at 27-28 (quoting 735 ILCS 5/8-802(7)).

Nonetheless, defendant asks this Court to abandon the appellate court's straightforward interpretation of subsection (7) and apply a "corollary

rule" under which the phrase "'arising from the filing of a report' can be read to modify the more remote language 'information [a physician] may have acquired.'" *Id*. at 28. But under no reasonable application of the rule does the phrase "arising from the filing of a report" modify language separated from that phrase by six subsections, two dependent clauses, and 16 commas. Indeed, under defendant's "rule of punctuation," the "arising from" clause would "apply to *all* antecedents instead of only to the immediately preceding one." *In re E.B.*, 231 Ill. 2d at 468 (emphasis added). That would mean that the "arising from" clause applies to all possible antecedents between it and the "information" language, including these six other subsections. But the "arising from" phrase does not logically modify all the antecedents in the six subsections preceding subsection (7). Accordingly, this Court should adopt what defendant acknowledges is the straightforward grammatical interpretation of the statutory language, in which "arising from" modifies the antecedent in subsection (7) and refers to "actions, civil or criminal," rather than the type of medical information that may be disclosed.

Nor does the mere use of commas render subsection (7) ambiguous. *See* Def. Br. 28. Defendant asserts that the "legislature easily could have made the choice not to insert commas in that portion of the text [reading 'in actions, civil or criminal, arising from the filing of a report'] so that it would read 'in civil or criminal actions arising from the filing of a report.'" *Id.* But the legislature does not create an ambiguous statute every time it uses

commas. Subsection (7) would be arguably ambiguous only if the "arising from" qualifying language could be applied to two closely preceding antecedents without impairing meaning of the sentence. *E.B.*, 231 Ill. 2d at 465; *see also* Singer, Sutherland on Statutory Construction § 47:33 (7th ed. 2022) ("The last antecedent is the last word, phrase, or clause that can be made an antecedent without impairing the meaning of the sentence.") (internal quotation marks omitted).

In contravention of established principles of statutory construction, defendant's strained interpretation impair the meaning of the sentence and render it nonsensical. *See* Singer, Sutherland on Statutory Construction § 47:33; *see also Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 267-68 (2006) (refusing to interpret statute in a "nonsensical" manner). Defendant suggests limiting the exception in subsection (7) to information a physician may have acquired arising from the filing of a report. *See* Def. Br. 28 (arguing that "'arising from the filing of a report' can be read to modify the more remote language of 'information [a physician] may have acquired'"); *see also Bons*, 2021 IL App (3d) 180464, ¶ 44 (asserting that plain language of subsection (7) "excepts from the physician-patient privilege information 'arising' from the filing of a report in compliance with the Act"). But this construction is nonsensical. A treating physician does not acquire information arising from the filing of a report in compliance with the Act. The physician may include information in the report or acquire information

from an ensuing investigation or action, civil or criminal, but information simply does not "arise" from the "filing of a report."

Because subsection (7) is unambiguous, defendant is incorrect when he asks the Court to resort to additional tools of construction. *See* Def. Br. 28-29. In any event, those tools further confirm what the plain language of subsection (7) already makes clear: that the exception broadly applies in civil and criminal actions arising from ANCRA.

Defendant argues that subsection (7) should be read "in pari materia" or in harmony with ANCRA such that it exempts only "information a doctor is required to disclose in order to comply with his obligations as a mandatory reporter." Def. Br. 31. But the Act already exempts such information from the privilege:

> Any person who makes a report . . . under this Act shall testify fully in any judicial proceeding . . . resulting from such report, as to any evidence of abuse or neglect, or the cause thereof. . . . No evidence shall be excluded by reason of any common law or statutory privilege relating to communications between the alleged perpetrator of abuse or neglect, or the child subject of the report under this Act and any person who is required to report a suspected case of abuse or neglect.

325 ILCS 5/10. Defendant's interpretation would thus render subsection (7) redundant. *Palm*, 2018 IL 123152, ¶ 29 (finding "problematic" an interpretation rendering subsections redundant). Moreover, the legislature did not limit subsection (7)'s application to "information a doctor is required to disclose" under the Act (as defendant would read the statute) but instead chose much broader language of "actions, civil or criminal, arising from the

filing of a report in compliance with [ANCRA]." 735 ILCS 5/8-802(7). In any such action, the physician-patient privilege does not apply whether a medical provider is a mandatory reporter or not.

Meanwhile, permitting disclosure of medical information in actions, civil or criminal, arising from the filing of a report is in harmony with ANCRA, which itself contemplates broad disclosure of medical information relating to child abuse. DCFS must notify law enforcement and the State's Attorney of any report of "sexual abuse to a child, including, but not limited to, sexual intercourse, sexual exploitation, sexual molestation, and sexually transmitted disease in a child age 12 and under." 325 ILCS 5/7. Medical personnel are mandated reporters for any child they come into contact with in the course of employment. 325 ILCS 5/4(a), (c). And DCFS is required as part of its "family assessment" investigation to "collect any available and relevant information to determine child safety," including "[c]ollateral source information" such as "prior medical records relating to the alleged maltreatment or care of the child maintained by any facility, clinic, or health care professional, and an interview with the treating professionals." 325 ILCS 5/7.4. The information is not limited to records regarding the treatment of the child, but includes any record "relating to the alleged maltreatment." *Id.*

Defendant is incorrect that if the General Assembly wanted the exception to apply to all actions arising from the filing of a report in

compliance with ANCRA it would have written that the exception applied in "all cases involving child abuse." Def. Br. 31. While the statute's language limits the exception to civil and criminal actions arising from the filing of a report in compliance with ANCRA, defendant's suggestion would apply to any allegation of child abuse in any action from any source. For instance, defendant's suggestion would eliminate physician-patient confidentiality in a divorce case if one spouse accused the other of "child abuse" with no evidence. *See*, *e.g.*, *McClelland v. McClelland,* 231 Ill. App. 3d 214, 229 (1st Dist. 1992) ("Judith brought charges of sexual abuse and satanic cult practices against Donald without presenting evidence to substantiate the charges."). The legislature could reasonably decide to limit the exception to actions arising from the filing of a report in compliance with ANCRA.

In sum, in subsection (7), the General Assembly balanced the need to protect children from abuse with the need to protect physician-patient confidences: the privilege protects such confidences until an action arises from the filing of a report in compliance with ANCRA. While a physician who diagnosed defendant with chlamydia might not have known that it related to child abuse, and was thus not a mandatory reporter and was bound by the privilege, once the physician was made aware that defendant's young daughter was also diagnosed with chlamydia, and was therefore the subject of a DCFS report, the disclosure and prevention of abuse took precedence over the privilege. Indeed, defendant concedes that legislatures across the

country have determined that the physician-patient privilege must give way in such circumstances to prevent child abuse and that such laws "'remove[d] any legal prohibition that may [have] prevent[ed] the physician from testifying about the case in court.'" Def. Br. 30 (quoting Monrad G. Paulsen, The Legal Framework for Child Protection, 66 Colum. L. Rev. 679, 711 (1966)).

Thus, the testimony from defendant's treating medical personnel regarding his chlamydia diagnoses was admissible in the criminal action arising from the report that he sexually assaulted J.T. Defense counsel did not perform deficiently by not objecting to testimony admissible under subsection (7).

ii. Defendant's chlamydia diagnoses were admissible under subsection (4) because they were relevant to establishing the elements of predatory criminal sexual assault of a child.

Alternatively, defense counsel reasonably could have concluded that the trial judge would admit the chlamydia diagnoses under subsection (4), which permits disclosure of privileged medical information in "all actions brought . . . against the patient . . . wherein the patient's physical . . . condition is an issue." 735 ILCS 5/8-802(4). Indeed, binding precedent held that subsection (4) applies in a criminal case when medical information about a defendant's physical or mental condition is relevant to establishing the elements of the offense. *See*, *e.g.*, *People v. Botsis*, 388 Ill. App. 3d 422, 435 (1st Dist. 2009). Here, the challenged evidence was plainly relevant to

establishing the elements of predatory criminal sexual assault in that it tended to show that defendant touched J.T.'s vagina with his penis, thereby infecting her with chlamydia.

Contrary to defendant's argument, this Court in *Palm* did not overturn the rule that subsection (4) applies in a criminal case when medical information about a defendant's physical or mental condition is relevant to establishing the elements of the offense. *Palm* held that in civil cases, subsection (4) applies only when the patient places his or her own medical condition at issue. *See* 2018 IL 123152, ¶ 39. The Court explained that criminal cases are distinct and observed that "courts have applied section 8-802(4) when the State has put a defendant's medical condition in issue." *Palm*, 2018 IL 123152, ¶ 22 (citing *People v. Beck*, 2017 IL App (4th) 160654 (post-accident medical records in aggravated driving under the influence (DUI) proceeding); *Botsis*, 388 Ill. App. 3d 422 (medical records in reckless homicide proceeding); *People v. Popeck*, 385 Ill. App. 3d 806 (4th Dist. 2008) (post-accident medical records in DUI proceeding); *In re Det. of Anders*, 304 Ill. App. 3d 117 (2d Dist. 1999) (mental health evaluation in Sexually Violent Persons Commitment Act proceeding); *People v. Nohren*, 283 Ill. App. 3d 753 (4th Dist. 1996) (blood test results in DUI proceeding); *People v. Wilber*, 279 Ill. App. 3d 462 (4th Dist. 1996) (post-accident statements to paramedics in aggravated DUI proceeding); *People v. Krause*, 273 Ill. App. 3d 59 (3d Dist. 1995) (post-accident statements to paramedics in aggravated DUI

proceeding)). Moreover, the Court reasoned, the General Assembly had acquiesced to this judicial construction of subsection (4), observing that "[a]lthough the legislature has amended section 8-802 numerous times since those decisions were issued, it has never amended subsection (4) in response to those decisions." *Palm*, 2018 IL 123152, ¶ 31. Indeed, in the same sentence that defendant invites this Court to hold for the first time "that the application of section 8-802(4) does not differ between civil and criminal cases," he implicitly concedes that courts have held that the application *does* differ in criminal cases in which the medical information at issue is an element of the offense. Def. Br. 19 (asking Court to hold "that the application of section 8-802(4) does not differ between civil and criminal cases, particularly in criminal cases in which the medical information at issue is not an element of the offense.").

The concerns expressed in *Palm* regarding allowing a plaintiff in a civil action to make a defendant's medical condition an issue do not apply with the same force in the criminal context. In *Palm*, this Court noted that allowing disclosure of medical information that was merely relevant to a civil suit would render "the privilege virtually meaningless," as that case illustrated: a plaintiff who filed a personal injury complaint represented that she learned through a hearsay statement posed on Facebook that the defendant was legally blind, the plaintiff was allowed to obtain the defendant's medical records, and the plaintiff then filed an amended complaint based on the

medical information obtained. 2018 IL 123152, ¶ 30. The privilege could be vitiated, the facts of *Palm* demonstrated, without anything more than the filing of a negligence complaint, which requires no factual demonstration by the plaintiff. *See Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006) ("the plaintiff is not required to set forth evidence in the complaint"); *see also Bogenberger v. Pi Kappa Alpha Corp., Inc.*, 2018 IL 120951, ¶ 23 ("critical inquiry is whether the allegations of the complaint, when construed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted").

The filing of an indictment in a criminal proceeding differs from the filing of a civil negligence complaint and therefore does not so readily vitiate the privilege. "An indictment shall be signed by the foreman of the Grand Jury." 725 ILCS 5/111-3(b); *see also id.* ("an information shall be signed by the State's Attorney and sworn to by him or another"); 735 ILCS 5/2-605(a) (civil pleadings are "not required to be sworn to"). In addition, an "'indictment fair upon its face, and returned by a properly constituted grand jury, conclusively determines the existence of probable cause' to believe the defendant perpetrated the offense alleged." *People v. Deleon*, 2020 IL 124744, ¶ 18 (quoting *Gerstein v. Pugh*, 420 U.S. 103, 117 n.19 (1975)) (further quotation marks omitted). It is entirely reasonable to believe that the General Assembly sought to permit disclosure of medical information when there is probable cause to believe a defendant perpetrated a crime allowing

the defendant to be detained and tried. *See id.* ¶ 20 ("As an indictment is constitutionally sufficient to sustain detainment, a more extreme restriction on liberty, we likewise find it constitutionally sufficient to be the basis of a protective order."); *see also* 725 ILCS 5/109-3.1(b) (requiring preliminary examination or indictment for all felony charges); 725 ILCS 5/109-3(a) (judge determines in preliminary examination if there is probable cause to believe defendant committed offense).

And while *Palm* explained that an overwhelming majority of States agreed that in civil cases an exemption to the privilege does not apply when the plaintiff puts the defendant's medical condition at issue, 2018 IL 123152, ¶ 25, that does not hold true for criminal cases.[2] Further, the cases relied on

[2] *See*, *e.g.*, *Jones v. State*, 858 So. 2d 139, 142 (Miss. 2003) ("This Court, citing cases from other jurisdictions, made this same point numerous times . . . , stating that where there is an investigation into a serious and/or dangerous felony, public policy must override the rights of an individual, and that the physician-patient privilege would not be used as a cloak for a crime.") (internal quotation marks and brackets omitted); *Baker v. State*, 637 S.W.2d 522, 525 (Ark. 1982) (treatment for gonorrhea in aggravated robbery and rape case was not subject to physician-patient privilege); *State in Int. of M.P.C.*, 397 A.2d 1092, 1095 (N.J. App. Div. 1979) ("here and, indeed, in the usual case, the patient-physician privilege must give way where it conflicts with the sensible administration of the law and policy relating to drunken driving"); *State v. Howard*, 158 S.E.2d 350, 350 (N.C. 1968) (in manslaughter case, "that the evidence of the physician was necessary to a proper administration of justice . . . takes the physician's evidence out of the privileged communication rule"); Ariz. Rev. Stat. § 13-3620(K) ("Except for the attorney client privilege or the [religious confession] privilege . . . , no privilege applies to any: 1. Civil or criminal litigation or administrative proceeding in which a minor's neglect, dependency, abuse, child abuse, physical injury or abandonment is an issue."); Ariz. Rev. Stat. § 13-3806(A) (physician must notify police if called upon to treat gunshot or knife wounds resulting from illegal activity); La. Code Evid. art. 510(C)(2)(f) (physician-

by defendant include cases from jurisdictions that do not have the broadly worded exception in subsection (4).[3]

In sum, counsel reasonably could have determined that testimony from treating medical personnel regarding defendant's diagnoses was admissible because binding precedent held that the exception codified in subsection (4) applies in a criminal case when medical information was an issue — *i.e.*, relevant to establishing the elements of the offense, *Botsis*, 388 Ill. App. 3d at 435 — as it was here to demonstrate that defendant committed predatory criminal sexual assault of a child. And as long as each diagnosis was likely admissible under at least one theory, counsel reasonably decided "to pass without objecting" to cumulative testimony even if such testimony could have

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patient privilege does not apply when "the communication is relevant to an investigation of or prosecution for child abuse, elder abuse, or the abuse of persons with disabilities or persons who are incompetent"); N.C. Gen. Stat. § 8-53 ("Any resident or presiding judge in the district, either at the trial or prior thereto, . . . may . . . compel disclosure [of confidential information in medical records] if in his opinion disclosure is necessary to a proper administration of justice"); N.C. Gen. Stat. § 8-53.1 ("the physician-patient or nurse privilege shall not be a ground for excluding evidence regarding the abuse or neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial proceeding related to a report pursuant to the North Carolina Juvenile Code, Chapter 7B of the General Statutes of North Carolina").

[3] *Compare* 735 ILCS 5/8-802(4) *with*, *e.g.*, La. Code Evid. art. 510(a) (exemption to privilege applies "[w]hen the communication is relevant to an issue of the health condition of the accused in any proceeding in which the accused relies upon the condition as an element of his defense"); N.M. Evid. R. 11-504(D)(3) ("If a patient relies on a physical, mental, or emotional condition as part of a claim or defense, no privilege shall apply concerning confidential communications made relevant to that condition.").

been barred as privileged, "to diffuse its importance, rather than object and draw further attention to the" diagnosis. *Evans*, 209 Ill. 2d at 221.

B. Defendant failed to show prejudice by demonstrating a reasonable probability of acquittal had counsel objected to the testimony regarding his chlamydia diagnoses.

Defendant also failed to demonstrate prejudice because he did not establish a reasonable probability of acquittal had counsel objected to the evidence regarding his chlamydia diagnoses. *Strickland,* 466 U.S. at 687-88. A "'reasonable probability' is defined as a showing sufficient to undermine confidence in the outcome, rendering the result unreliable or fundamentally unfair." *People v. Patterson*, 2014 IL 115102, ¶ 81.

Here, defendant failed to show a reasonable probability that evidence of his diagnoses would have been inadmissible through every one of the many sources of testimony, including his own confession. As defendant notes, "no less than six witnesses testif[ied] that [he] tested positive for chlamydia," Def. Br. 43, and that total does not include defendant's own video-recorded confession. For the reasons discussed above, there is no reasonable probability that all such testimony would have been excluded. Defendant's disclosures of both his chlamydia diagnoses were admissible and waived the privilege. *See supra* Section A.1. The privilege did not apply to Jasmine (a lay witness) or to Guzman, who tested defendant pursuant to the DCFS investigation, because they were not treating physicians. *See supra* Section A.2. And the privilege did not apply under the exception set forth in

subsection (7), because the case arose from the filing of a report in compliance with ANCRA, *see supra* Section A.3.i, and subsection (4), because the medical evidence was relevant to establishing the elements of the offense, *see supra* Section A.3.ii. There is thus no reasonable probability that counsel could have succeeded in excluding all of this evidence.

Further, defendant has not demonstrated a reasonable probability of acquittal even if he had succeeded in excluding all testimony regarding his chlamydia diagnoses. The evidence against him, including his own confession, was overwhelming. *See People v. Nieves,* 193 Ill. 2d 513, 529 (2000) (admission of other crimes "was overshadowed by the substantial evidence of defendant's guilt — most notably, his own uncontested statement"); *see also Patterson*, 2014 IL 115102, ¶ 87 (no prejudice from admission of confession because "details of [victim's] account were entirely consistent with the physical evidence of a violent assault, while defendant's account could not be reconciled with that evidence," so "reasonably probable impact of counsel's alleged error is not sufficient to undermine our confidence in the outcome of the trial"); *Evans*, 209 Ill. 2d at 219-21 (no prejudice from admission of defendant's statement to correctional officer — that "I come up here a lot, and I'll be here for a long time. I stabbed that guy" — because statement was "overshadowed by extensive evidence of defendant's guilt").

Defendant's confession, which was published to the jury, included his admission that he, while drunk and frustrated because women who were

supposed to come over did not, removed J.T.'s clothes while she was sleeping and rubbed his penis on her vagina. R522-28; People's Exh. 6; A13 ¶ 38. J.T. provided an account matching defendant's confession on three occasions. At trial, J.T. testified that she woke while defendant was touching her "private part" with his "private part" after he had pulled down her pajamas while she was sleeping. R400-04. Jasmine testified that after defendant moved out, J.T. told her defendant "put his private part in her private part." R380. And in her interview at the CCAC after defendant moved out, J.T. stated that defendant, not J.V., had touched her inappropriately. R.410-11. With respect to the inconsistencies with her earlier statements, *see* Def. Br. 46, J.T. explained that she initially did not tell anybody the truth about what happened because she was scared she would get in trouble, R405, 410-11. And J.V., whom J.T. originally named, was only slightly older than four-year-old J.V., R365, and an unlikely abuser or source of J.T.'s chlamydia. Meanwhile, defendant did not testify at trial, much less appear, to contest his confession or J.T.'s testimony. R314.

In sum, there was unopposed testimony from J.T. that matched defendant's confession that he assaulted her. Because there is no reasonable probability that defendant would have been acquitted even without testimony regarding his chlamydia diagnoses, he cannot demonstrate *Strickland* prejudice.

CONCLUSION

This Court should affirm the judgment of the appellate court.

October 20, 2023

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 38 pages.

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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On October 20, 2023, the foregoing **Brief of Plaintiff-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system, which served a copy to the e-mail addresses of the persons named below:

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