No. 127904

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- ANTONIO D. KIDD, Defendant-Appellant.	Appeal from the Appellate Court of Illinois, Fourth Judicial District, No. 4-19-0345. There on appeal from the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois, No. 17-CF-556. Honorable John M. Madonia, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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E-FILED
3/23/2022 3:15 PM
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TABLE OF CONTENTS AND POINTS AND AUTHORITIES

NATURE OF THE CASE

Antonio D. Kidd was convicted of two counts of predatory criminal sexual assault of a child after a jury trial and was sentenced to two consecutive terms of 25 years in prison.

This is a direct appeal from the judgment of the court below. An issue is raised challenging the charging instrument, namely, whether the charging instrument strictly complied with section 111-3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/111-3 (2016)).

ISSUE PRESENTED FOR REVIEW

Whether both of Antonio D. Kidd's convictions must be reversed because Counts I and II of the indictment did not set forth every element of the offense charged.

STATUTES INVOLVED

720 ILCS 5/11-1.40 (2016), Predatory criminal sexual assault of a child:

"(a) A person commits predatory criminal sexual assault of a child if that person is 17 years of age or older, and commits an act of contact, however slight, between the sex organ or anus of one person and the part of the body of another for the purpose of sexual gratification or arousal of the victim or the accused, or an act of sexual penetration, and:

(1) the victim is under 13 years of age[.]"

725 ILCS 5/111-3 (2016), Form of charge:

"(a) A charge shall be in writing and allege the commission of an offense by:

(1) Stating the name of the offense;

(2) Citing the statutory provision alleged to have been violated;

(3) Setting forth the nature and elements of the offense charged;

(4) Stating the date and county of the offense as definitely as can be done; and

(5) Stating the name of the accused, if known, and if not known, designate the accused by any name or description by which he can be identified with reasonable certainty.

(a-5) If the victim is alleged to have been subjected to an offense involving an illegal sexual act ***, the charge shall state the identity of the victim by name, initials, or description."

STATEMENT OF FACTS

On June 14, 2017, defendant Antonio D. Kidd was indicted on two counts of predatory criminal sexual assault of a child, a Class X felony with an enhanced sentencing range of 6 to 60 years, 720 ILCS 5/11-1.40(a)(1), (b) (2016).[1] (C. 39-40/A-15–A-16.) Count I of the indictment alleged that Mr. Kidd, who was over age 17, "committed an act of sexual contact, however slight, with T.F., in that [Mr. Kidd] placed his penis in contact with the mouth of T.F.," who was under age 13, "between" August 28, 2016, and August 29, 2016. (C. 39/A-15.) Count II of the indictment alleged that Mr. Kidd, who was over age 17, "committed an act of sexual contact, however slight, with T.F., in that [Mr. Kidd] placed his penis in contact with the mouth of T.F.," who was under age 13, "between" July 1, 2011, and August 29, 2016. (C. 40/A-16.) Neither Count I nor Count II included an allegation that the act of contact alleged was "for the purpose of sexual gratification or arousal of the victim or the accused," 720 ILCS 5/11-1.40(a) (2016). (See C. 39-40/A-15–A-16.)

Mr. Kidd, who was then represented by public defender (PD) Lindsay Evans, pleaded not guilty and requested a jury trial. (R. 15.) A series of defense continuances followed. (R. 19, 22, 25, 28, 31, 34, 37-39.) On February 27, 2018, Mr. Kidd filed the first of many *pro se* motions, with this filing alleging Ms. Evans's neglect of his case and seeking new appointed counsel. (C. 66-72; R. 42.) After a short hearing at which Mr. Kidd was given an opportunity to expound on his allegations of neglect, Judge Brian T. Otwell denied the motion, urged Mr. Kidd to work with Ms. Evans, and discouraged Mr. Kidd's equivocal request to represent himself. (R. 42-46.) Another defense continuance followed (R. 49, 57), as did more complaints against Ms. Evans by Mr. Kidd, equivocal requests to represent himself, and mediation and redirection by Judge Otwell (see R. 50-58).

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[1] Mr. Kidd also was indicted on one count of criminal sexual assault, a Class 1 felony, 720 ILCS 5/11-1.20(a)(3), (b) (2016), with the indictment alleging that Mr. Kidd, who was over age 17 and a "family member" of T.F., "committed an act of sexual penetration with T.F., in that [Mr. Kidd] placed his penis in the mouth of T.F.," who was under age 18, "between" July 1, 2011, and August 29, 2016. (C. 41.) But the state immediately nol-prossed that charge. (C. 41; R. 15.)

On May 21, 2018, Mr. Kidd again complained about Ms. Evans's representation and unambiguously invoked his right to represent himself. (R. 64-65; see R. 62-63.) Judge Otwell discharged Ms. Evans and admonished Mr. Kidd about the perils of self-representation based on *People v. Williams*, 277 Ill. App. 3d 1053, 1057-58 (4th Dist. 1996). (R. 69, 71-75.) Then Mr. Kidd was permitted to file *pro se* motions to dismiss Counts I and II for defects in the indictment. (C. 93-108; R. 77.) The motions to dismiss alleged each count's (1) omission of an element of predatory criminal sexual assault of a child, *i.e.*, that the "act of contact" was "for the purpose of sexual gratification or arousal of the victim or the accused," 720 ILCS 5/11-1.40(a); and (2) "multiplicity" due to the two-day overlap in the date ranges for Counts I and II. (C. 99-108.) On May 31, 2018, Judge Otwell further admonished Mr. Kidd pursuant to Supreme Court Rule 401(a) and had him execute a written waiver of his right to counsel. (C. 110; R. 83-92.)

On June 18, 2018, Judge Otwell heard Mr. Kidd's May 21, 2018 *pro se* motions to dismiss. (R. 104-11.) Assistant State's Attorney (ASA) Jennifer Mathew asked that the motions be denied, asserting that "[b]oth of the two predatory criminal sexual assault counts include all of the necessary factors that the State must prove at trial." (R. 106, 108.) Judge Otwell ruled: "I do not find that the failure to allege the various motives, if you will, such as sexual gratification, has failed to [*sic*] the indictments in this case, and so, the—those motions will be denied." (R. 111.)

On June 26, 2018, Mr. Kidd filed *pro se* motions to dismiss Counts I and II and "to quash arrest and suppress" Counts I and II, repeating his earlier complaint that each count omitted an element of predatory criminal sexual assault of a child, *i.e.*, that the "act of contact" was "for the purpose of sexual gratification or arousal of the victim or the accused," 720 ILCS 5/11-1.40(a). (C. 113-19.) Those motions were heard on July 26, 2018. (R. 138-47.) ASA Mathew reiterated the state's earlier position: "The People have included all of the necessary elements of the offense in the charging documents." (R. 144.) Judge Otwell agreed that the indictment "alleges exactly what the statute requires" and denied the motions. (R. 145-47.)

On July 31, 2018, Mr. Kidd filed a *pro se* motion to dismiss Count II, repeating his earlier complaint regarding the overlap in the date ranges for Counts I and II. (C. 127-29; see R. 217.) Judge Otwell denied that motion on August 6, 2018. (R. 218.) On the same day, Mr. Kidd filed in this Court a *pro se* petition for writ of habeas corpus, seeking review of Judge Otwell's rulings on his motions to dismiss. (C. 135-70; see R. 218-19.) Judge Otwell denied Mr. Kidd's subsequent *pro se* motion for a stay or injunction pending resolution of the habeas petition, and the record contains no further mention of that petition. (C. 172-74, 176.)

On September 28, 2018, after Judge Otwell denied his request for standby counsel, Mr. Kidd asked that the PD be reappointed to represent him, explaining that he felt he had "no other choice." (Sup. R. 14-16.) Judge Otwell granted the request and ordered the reappointment of the PD and the continuance of trial. (Sup. R. 17-18.) Ms. Evans became Mr. Kidd's appointed attorney again, and a series of defense continuances followed. (R. 286, 290, 293-94.) Meanwhile, Judge Otwell retired, the case was reassigned to Judge Adam Giganti and then to Judge Raylene D. Grischow, and Mr. Kidd kept making *pro se* filings. (C. 217-31; R. 293, 297-98.) On March 11, 2019, at Ms. Evans's request, Judge Grischow struck all *pro se* filings postdating the reappointment of the PD. (R. 304.) More *pro se* filings followed. (C. 242-46, 249-53.) The case was reassigned to Judge John M. Madonia on March 14, 2019, and Judge Madonia struck those additional *pro se* filings at Ms. Evans's request. (R. 317, 333-34.) Judge Madonia and counsel then reviewed and reconstructed Judge Otwell's rulings on the many pretrial filings in this case. (R. 338-59, 366-67.) A final trial date of March 26, 2019, was set. (R. 360-61.)

On March 25, 2019, the day before trial, ASA Mathew filed a motion to amend the indictment, seeking to amend both counts of the indictment by adding the word "knowingly" before "placed his penis in contact." (Sup2 C. 8-9.) ASA Mathew represented that "the word 'knowingly' was inadvertently omitted" and argued that the omission was a "formal defect[]" because, "[a]s alleged," the charges stated, "either explicitly or implicitly, each element of

the offense" of predatory criminal sexual assault of a child. (Sup2 C. 9.) The motion to amend made no mention of the statutory language, still missing from both counts of the indictment, that the alleged "act of contact" was "for the purpose of sexual gratification or arousal of the victim or the accused," 720 ILCS 5/11-1.40(a). (See Sup2 C. 8-9.)

The motion to amend was heard the next day, on the morning of the first day of Mr. Kidd's jury trial. (R. 369-76.) At that time, ASA Mathew requested an additional amendment to the indictment, acknowledging that "the language for the purpose of the sexual gratification of the Defendant or the victim was omitted from the charging document" and "seeking to add that in as well." (R. 370.) Ms. Evans objected and moved to dismiss the indictment as defective. (R. 371-72.)

Just before jury selection began, Judge Madonia denied both the state's motion to amend the indictment and the defense cross-motion to dismiss the indictment. (R. 375-76.) As to ASA Mathew's written request to add "knowingly" to the indictment, Judge Madonia ruled:

> "I don't know why they're requesting to add it. I don't believe it to be necessary. And I think they're trying to put you on notice as to how they are going to ask the jury to be instructed even though the jury doesn't necessarily have to be instructed. I think they're going to request that a mental state be included in the jury instructions, one that is implied in the charge. They are suggesting it should be knowingly. Court might take the position that they should prove intent. Since they didn't name it in the first place, they should probably be held to the highest standard of mental state that is implied in the charge, which is intent. I think the way to address this is simply to have—if they want to add an element and they want to risk it, then the element they're going to be ordered to prove the highest of the mental states, which is intentional contact. And I think that's how the Court is going to rule. I'm not allowing you to amend this charge. So, the charge is staying where it's at at this stage in the game all the way across the board.
>
> * * *
>
> And if that's a problem on appeal, then that's a problem on appeal. But I don't think it's appropriate to amend a charge at this stage. But to deal with it and properly instruct the jury, you should try this case as if you are going to be proving intentional contact by this Defendant in this case. I'm putting you on notice of that."

(R. 373-75.)

And as to ASA Mathew's oral request to add "for the purpose of sexual gratification or arousal of the victim or the accused" to the indictment, Judge Madonia ruled:

> "[T]he fact that they added sexual contact into their indictment I think sufficiently apprises this Defendant and, in fact, I know it does because I've seen his pleadings. And he seized on sexual conduct and the definition of sexual conduct which is exactly that language for the purpose of sexual gratification or arousal of another. He knew it. He wasn't surprised. It's in his pleadings. So, I believe the State is saved by the fact that they called the contact in their charge sexual, alerting people to the definition of what sexual conduct, sexual contact is, and that is for the purpose of sexual gratification. Mr. Kidd when he represented himself was not surprised. All of his pleadings referenced that. He references the statutory language and the definition. So, I cannot rule that this charge is defective to the point that it must be dismissed. I think it apprises this Defendant of the nature of the charge, it meets the elements, including the mental state that is implicit and implied in the charge[.]"

(R. 375-76.) Judge Madonia summed up: "We're going to trial on the status of these indictments as they sit here today." (R. 376.)

At the ensuing jury trial on the unamended indictment, the state presented evidence of the following. Gaila Carlisle is the mother of Megan Jennings, who is the mother of T.F., born in April 2007. (R. 575, 790-92, 932-33; Sec. E. 46.) Ms. Carlisle, Ms. Jennings, Mr. Kidd, Ms. Jennings and Mr. Kidd's three very young children in common, and Ms. Jennings's six school-aged children from previous relationships—including T.F.—lived in Ms. Carlisle's one-bedroom Springfield home for approximately a year in about 2015. (E. 16-21; R. 574-75, 579-80, 582-83, 587-89, 597-98, 602-03, 605-06, 791-93, 932-33, 936.) Ms. Jennings, Mr. Kidd, and some of the children moved to a home on East Keys Street in Springfield in late 2015 or early 2016. (E. 18; R. 577, 602-03, 792-93, 933.) Five of the six older children, including T.F., continued to live at Ms. Carlisle's home on weekdays, with all the children sleeping on couches. (R. 576-77, 579-80, 586-88.) On weekends, T.F. lived at the East Keys home with Ms. Jennings, Mr. Kidd, Mr. Kidd's mother, and six of T.F.'s eight siblings; T.F.'s fifteen-year-old brother Alex lived with Ms. Carlisle on weekends as well as weekdays, and no evidence was

presented as to where T.F.'s thirteen-year-old brother Brayden lived after the family moved out of Ms. Carlisle's home. (R. 575-77, 586-89, 605, 792-94, 801.) Because the East Keys home did not have enough bedrooms, some of the children slept on a couch there. (R. 584, 587-88, 794, 938.)

T.F. testified that on a Sunday night in August 2016, she was sleeping on a couch in the living room of the East Keys home, holding her baby brother against her right shoulder. (R. 794-95, 802-03.) She and the baby were covered up with blankets, and some of her other siblings were sleeping elsewhere in the living room. (R. 803.) Ms. Jennings sometimes took naps on the couch where T.F. and the baby were sleeping that night. (R. 803-04.) T.F. woke up because Mr. Kidd's "private part" was "on [her] mouth" and something came out of it that tasted "[d]isgusting." (R. 795-97, 804.) Then Mr. Kidd ran back to his room. (R. 795.) The next morning, T.F. told Ms. Carlisle that Mr. Kidd "put his private part on [her] mouth and sperm came out," and Ms. Carlisle took her to the hospital. (R. 797-98, 802, 805.) According to T.F., she did not eat or drink anything before going to the hospital because Ms. Carlisle "didn't want to mess up the DNA." (R. 807.)

As relevant to Count II of the indictment, which alleged an act of "sexual contact" between Mr. Kidd's penis and T.F.'s mouth on or after July 1, 2011, and on or before August 29, 2016 (C. 40/A-16), T.F. testified on direct examination as follows:

> "Q. What happened when you woke up and his private part was on your mouth? Did anything happen?
> A. He ran back to his room.
> Q. Now, did this happen that night once or more than once?
> A. More.
> Q. Okay. What happened the second time?
> A. That happened?
> Q. Yeah.
> A. The same thing.
> Q. And that time did he place his penis on your mouth or in your mouth?
> A. On.
> Q. At some point did anything come out of his penis?
> A. Yes.
> Q. And when did that happen?
> A. Like all nights that happened.

* * *

Q. Okay. After that all happened, did [Ms. Carlisle] show up?
A. Yeah.
Q. And how long did it happen between the last time that [Mr. Kidd] did that to you and [Ms. Carlisle] showing up, do you know?
A. Many, probably about a year.
Q. Okay.
A. Or so.
Q. Okay. I don't want to confuse times, okay?
A. Yeah.

* * *

Q. Okay. So, we talked about the time that this happened on Keys. Were there any other times that this happened where [Mr. Kidd] placed *** his private parts either on or in your mouth?
A. Other times?
Q. Yes.
A. Yeah.
Q. Where were you living when that happened?
A. My grandma.
Q. And when that happened, can you tell us whether he placed his private parts in your mouth or on your mouth?
A. On.
Q. And did stuff come out?
A. Yes."

(R. 795-97, 799-800.)

On cross-examination, T.F.'s testimony again suggested multiple acts of contact between Mr. Kidd's penis and her mouth on the night of Sunday, August 28, 2016, or in the early morning hours of Monday, August 29, 2016:

"Q. Okay. Did you wake yourself up for school that morning?
A. No.
Q. How did you wake up?
A. I woke up when it all happened.
Q. Okay. And then you went back to sleep, right?
A. No, I couldn't because he kept coming."

(R. 804.) But then she seemed to contradict herself on that point before again affirming multiple acts of penis-to-mouth contact that night:

"Q. Okay. You have testified or told us here this afternoon that [Mr. Kidd] bothered with you more than once that night?
A. No, not that night, but just like more than once in all.
Q. Oh, okay. So, the day that you went to the hospital, how many times had it happened that night?
A. I don't know.

> Q. Well, maybe I misunderstood you, but I think you testified that it happened more than once and you couldn't get back to sleep because he kept coming in there.
> A. Well, yeah.
> Q. Okay. Is it hard for you to remember?
> A. No, not really. I just don't get these questions.
> Q. Okay. Well, how many times did it happen the night before you went to the hospital?
> A. I don't know. I didn't count.
> Q. Okay. Did it happen more than once?
> A. Yeah."

(R. 807-08.)

The state later presented evidence regarding T.F.'s September 8, 2016 Child Advocacy Center (CAC) interview, including a redacted recording of the CAC interview itself.[2] (R. 742-43, 799, 808, 825-49; State's ex. 4.) T.F. told CAC interviewer Denise Johnson that Mr. Kidd had put his "part" in her mouth and "liquidy stuff" came out. (R. 839-40; State's ex. 4 at 10:44 - 11:00, 13:01 - 13:28.) T.F. identified the penis on an anatomical drawing of a boy as the boy's "part." (R. 839-41; Sec. E. 42; see State's mot. ex. 1 at 18:50 - 19:25.)

When Ms. Johnson asked T.F. whether Mr. Kidd put his "part" in her mouth "once, more than once, or something else," T.F. answered: "More than once." (R. 844; State's ex. 4 at 13:36 - 13:43.) Ms. Johnson asked how many times Mr. Kidd "did it," and T.F. answered: "Fifteen?" (R. 844; State's ex. 4 at 17:00 - 17:12.) She said that he "done it" when her family lived at Ms. Carlisle's home and "done it" at the East Keys home too. (R. 844-45; State's ex. 4 at 11:33 - 12:06.) He "last done it" on "last Monday night" before she went to the hospital. (R. 842; State's ex. 4 at 12:10 - 12:22.) That night, she was sleeping on the couch with her little brother and two of her other younger siblings when she felt something in her month, the

[2] By agreement of the parties (R. 368-69; see C. 90-91; R. 96, 148-49), the recording was redacted to remove, among other things, a lengthy discussion of T.F.'s repeated sexual assaults by her two teenaged brothers, Alex and Brayden, which reportedly took place from approximately mid-to-late 2011 or early 2012 to mid-to-late 2015 or early 2016 (compare State's mot. ex. 1 at 11:34 - 31:51, with State's ex. 4 at 10:25 - 10:37).

liquidy stuff came out and "tasted nasty," and Mr. Kidd ran away to his room. (R. 841-44; State's ex. 4 at 12:23 - 12:50, 13:47 - 15:14.) Then T.F. went back to sleep. (State's ex. 4 at 16:14 - 16:26.) When she got up the next morning, she told Ms. Carlisle, and Ms. Carlisle said T.F. had to go to the hospital because "there was some evidence on [her] arm." (R. 845; State's ex. 4 at 16:26 - 16:57.)

Ms. Carlisle testified that just after 6 a.m. on Monday, August 29, 2016, she drove to the East Keys home to pick up the four children who lived with her on weekdays. (R. 577-79, 586, 589.) The house was dark and unlocked, and she did not see any adult there. (R. 580, 583, 588-92.) Ms. Carlisle was "pretty certain" that T.F. was on the living room couch when she came in. (R. 584, 590-91.) She woke up the four children and took them to her car. (R. 580, 583, 590-91.) As they were leaving, T.F. asked Ms. Carlisle, "[W]hat's this on my arm?" (R. 580, 592-93.) In the car, Ms. Carlisle saw a white streak on T.F.'s right upper arm, and T.F. said, "Tony did this." (R. 580, 582, 594-96.) Ms. Carlisle told T.F. not to touch or wash what was on her arm. (R. 581, 583, 597.) When they got to Ms. Carlisle's home, T.F. told Ms. Carlisle that "Tony had put his penis in her mouth and that it tasted terrible." (R. 582, 604.) Ms. Carlisle sent the other children to school and took T.F. to the hospital. (R. 579, 581, 584, 597-98.) According to Ms. Carlisle, T.F. did not eat or drink anything before going to the hospital. (R. 599.)

Emergency physician Janda Stevens testified that she treated T.F. at the hospital on August 29, 2016, and that during the course of treatment T.F. "indicated that in the middle of the night her mother's boyfriend came into the room and placed his penis in her mouth. She also said he put semen into her mouth. Uhm, she stated this was not the first time that this had happened." (R. 657, 659-60, 665.) According to Dr. Stevens, T.F. referred to semen as "sperm," which Dr. Stevens found surprising from a nine-year-old child. (R. 667, 676-78.) Dr. Stevens observed a "dried white substance" on T.F.'s shoulder and on her face. (R. 668, 684-87.) T.F. reported that she both ate and drank that morning before coming to the hospital. (R. 680-81.)

Emergency nurse Kayla Teich testified that she assisted in T.F.'s treatment at the hospital on August 29, 2016, and that during the course of treatment T.F. said that her mother's boyfriend put his penis and his "semen" into her mouth the night before. (R. 689-91, 701-02, 719-22.) Over Ms. Evans's objection, Ms. Teich testified that T.F. "said that this was not the first time this had occurred." (R. 730-31.) Ms. Teich observed a "white stain" on T.F.'s right arm or shoulder and a "white stain" on right side of T.F.'s jaw. (R. 702, 725-27.) T.F. reported that she both ate and drank that morning before coming to the hospital. (R. 722-23.)

The state presented evidence that Ms. Teich completed a sexual assault kit on T.F. at the hospital on the morning of August 29, 2016, and that the kit was sealed, secured by law enforcement, and transported to the crime lab for DNA analysis. (R. 613-18, 621-22, 629-32, 635, 659-60, 667-69, 681, 691-707, 727-29, 731-32, 798.) The state also presented evidence that law enforcement collected buccal swabs from Mr. Kidd, with his consent, on September 22, 2016; that the swabs were removed from an evidence locker on September 26, 2016; and that the swabs were transported to the state crime lab for DNA analysis on January 5, 2017. (R. 633-34, 744-50, 777-79.)

The parties stipulated to "a true and complete chain of custody" for T.F.'s sexual assault kit. (C. 321; R. 929-30.) Forensic scientist Kelly Biggs "identified semen" on a swab taken from T.F.'s right shoulder, "identified semen" on a swab taken from T.F.'s right cheek/jaw, and "indicated semen" on "oral swabs." (C. 321; R. 929-30.) The identified and indicated semen was preserved for DNA analysis. (C. 321; R. 929-30.) The state also presented paternity-acknowledgment forms for Ms. Jennings and Mr. Kidd's three children in common, each containing Mr. Kidd's June 1977 birth date, as evidence of his age. (E. 16-21; R. 930-31.)

Finally, forensic scientist Sangeetha Srinivasan testified that "semen identified" means that sperm cells were confirmed and "semen indicated" means that no sperm cells were confirmed. (R. 872, 886-88.) Dr. Srinivasan performed DNA extraction and analysis on T.F.'s blood standard,

Mr. Kidd's buccal swabs, and T.F.'s facial and oral swabs. (R. 880-86.) Dr. Srinivasan obtained a "mixture" of DNA—T.F.'s and another person's—from "semen indicated" on T.F.'s oral swabs; Mr. Kidd was included as a contributor, as were an estimated 1 in 44 billion African-Americans, 1 in 200 trillion Caucasians, and 1 in 30 trillion Hispanics. (R. 887-88, 891-93, 896.) "[S]emen identified" on T.F.'s facial swab included "a non-sperm fraction and a sperm fraction." (R. 888, 893-94.) A "major profile" was obtained from "the non-sperm fraction," which profile "matched the profile of Mr. Antonio Kidd at all the locations, at all the 23 locations." (R. 894.) Dr. Srinivasan testified that "this profile would be expected to occur in 1 in 7.6 octillion African[-]American, 1 in 680 nonillion Caucasian, and 1 in 67 nonillion Hispanic population." (R. 895.) Dr. Srinivasan did not testify regarding any DNA profile obtained from the sperm fraction of the "semen identified" on T.F.'s facial swab. (See R. 894-99.)

Ms. Evans elicited testimony from a law enforcement officer and from Ms. Jennings showing that, sometime in 2015, T.F. made an accusation of sexual assault against Mr. Kidd, which she almost immediately recanted to accuse one of her brothers instead. (R. 761-63, 767-68, 934-35.) T.F. herself acknowledged her prior accusation of sexual assault against Mr. Kidd, but she denied recanting the accusation against Mr. Kidd to accuse her brother or brothers instead. (R. 808-09, 814-15.)

Ms. Jennings was the only defense witness. In addition to testifying about T.F.'s prior, recanted accusation of sexual assault against Mr. Kidd, Ms. Jennings testified that Mr. Kidd had a "problem" with alcohol and was "drunk and high" on the evening of August 28, 2016; that she did not hear any commotion or anyone running in the house that night; and that she "usually" slept on the living room couch. (R. 934-35, 937-41.) She also testified, "[I]f he says that he don't remember doing it, I believe that because he couldn't remember anything from the previous day hardly ever." (R. 943.)

At the jury instructions conference, Judge Madonia ruled—over Ms. Evans's objections—the jury would be instructed that the state had to prove (1) an intentional act of contact between Mr. Kidd's penis and T.F.'s body, and (2) that the act of contact between Mr. Kidd's penis and T.F.'s body was "for the purposes of sexual gratification of [Mr. Kidd]." (R. 916-23; see C. 304, 306.) Judge Madonia denied Ms. Evans's subsequent requests for the Illinois Pattern Jury Instruction (IPI) defining intent and for the IPI on mistake of fact, rejecting her argument that there was some evidence to support a defense theory that Mr. Kidd mistook T.F. for Ms. Jennings. (R. 946-49.) Next, Judge Madonia denied Ms. Evans's request for IPIs on voluntary intoxication and warned Ms. Evans not to attempt to address intoxication's impact on intent in her closing argument, threatening to "de-pants [her] in front of this jury verbally." (R. 949-53.) Judge Madonia later qualified his warning, citing *People v. Slabon*, 2018 IL App (1st) 150149, and suggesting that Mr. Kidd was on trial for a specific-intent crime because the state was being held to "the higher standard of intentional conduct." (R. 959-65.) After some back and forth with the parties, Judge Madonia stood by his refusal to instruct the jury on voluntary intoxication but stated that Ms. Evans would have "some latitude" to "argue [Mr. Kidd's] intent in some meaningful manner." (R. 959-65.)

Ms. Evans moved for a directed verdict on both counts of the indictment. (R. 223-25.) In the course of her argument for a directed verdict on Count II, Ms. Evans noted that the date range for Count II "happens to encompass the dates underlying Count I. *** I think this is confusing to have Count II encompass the dates of Count I." (R. 925-26.) In opposing a directed verdict, ASA Mathew acknowledged the date overlap but argued that juror confusion was irrelevant on a motion for directed verdict. (R. 925-27.) Judge Madonia denied the motion for a directed verdict without discussing the date overlap. (R. 928.)

A short time later, over Ms. Evans's objection, Judge Madonia *sua sponte* changed the Count II date range on all relevant jury instructions and verdict forms:

> "THE COURT: *** I think you need to change the date on these—now, I understand what Ms. Evans is saying. You're including August 29th in both of them, so August 28th, August 29th through August 29th. No, July 1st, 2011 through August 27th, 2016. That makes sense. But you can't overlap those dates because then we would be concerned that they might be convicting him twice.
> MS. EVANS: Judge, a card laid is a card played. At this point make them go with what they've got.
> THE COURT: No, that's not true.
> MS. EVANS: They're running with these two charges, they've picked the dates, and here we are moments before closing, they've made no Motion to Amend in this regard.
> THE COURT: Thank you. July 1st, 2011 through August 27th, 2016. That's the dates I want on these.
> MS. EVANS: Your Honor, what amendment did you just make to the charges?
> THE COURT: To the jury instructions, we're instructing them on the date.
> * * *
> THE COURT: August 27th, July 1st through August 27th. Well, that's the way we're going to know if they're convicting him of one of the 15 that she was talking about before or if they are convicting him of one that happened that night or if they're not convicting him at all. That's what we'll be able to determine if these dates are correct. And dates are approximate. We know this.
> MS. EVANS: This is a problem.
> THE COURT: Well, it's a problem with these type of trials, Ms. Evans.
> MS. EVANS: This needs to be their motion. Why is Your Honor bailing them out of this?
> THE COURT: I'm not bailing them out.
> MS. EVANS: How are you changing the charge that's being offered?
> THE COURT: Don't take that tone with me, Ms. Evans. Don't take it again. I'm not bailing the State out of anything. I'm keeping this record straight so this trial doesn't have to be done twice."

(R. 954-58.) Thus, the date range for Count II of the unamended indictment—July 1, 2011, through August 29, 2016—was changed in all relevant jury instructions and verdict forms to July 1, 2011, through August 27, 2016, eliminating the two-day overlap in the date ranges for Counts I and II. (R. 958; see C. 39-40/A-15–A-16.)

In closing argument, ASA Mathew contradicted the state's evidence by defining "semen indicated" as a substance containing confirmed sperm cells and by relatedly asserting that sperm cells were found on T.F.'s oral swab. (R. 974-76; see R. 886-88.) Ms. Evans's closing argument

emphasized the difference between contact with semen and contact with a penis; Ms. Evans also argued that the state had failed to prove beyond a reasonable doubt that any contact between Mr. Kidd's penis and T.F.'s body was intentional because the evidence allowed a reasonable inference that Mr. Kidd mistook T.F. for Ms. Jennings. (R. 986-88, 990, 994.)

Ultimately, the jury was instructed in relevant part, as to Count I, to determine whether the state proved beyond a reasonable doubt that the defendant "intentionally committed an act of contact, however slight, between the sex organ of one person and *** the part of the body of another for the purposes of sexual gratification of the [d]efendant" between August 28, 2016, and August 29, 2016. (C. 304, 306, 309-310; R. 1007, 1009, 1011.) The jury was instructed in relevant part, as to Count II, to determine whether the state proved beyond a reasonable doubt that the defendant "intentionally committed an act of contact, however slight, between the sex organ of one person and *** the part of the body of another for the purposes of sexual gratification of the [d]efendant" between July 1, 2011, and August 27, 2016. (C. 304, 306, 313-14; R. 1007, 1009, 1011.)

The jury sent out two questions during deliberations. The first was: "What is the legal definition of intent?" (C. 315; R. 1015.) The record suggests that it was answered: "A person acts intentionally to accomplish a result or engage in conduct when his conscious objective or purpose is to accomplish that result or engage in that conduct." (See C. 270; R. 1015-16.) The second was: "What is the significance of July 1, 2011 as starting the time line?" (Sup2 C. 11; see R. 1016.) It was answered: "You have received all of the evidence you will receive. Please continue with your deliberations." (Sup2 C. 11; see R. 1017.)

The jury then found Mr. Kidd guilty on both counts of predatory criminal sexual assault of a child. (C. 316-17; R. 1018-20.) Judge Madonia entered judgment on the verdicts and ordered a pre-sentence investigation (PSI); the PSI report was filed on May 21, 2019. (R. 1020-21; Sec. C. 12-21.) Meanwhile, Mr. Kidd filed three *pro se* motions on April 22, 2019, alleging various pretrial and trial errors and lodging more complaints against Ms. Evans. (C. 337-82.)

As for Ms. Evans, on April 19, 2019, she filed on Mr. Kidd's behalf a motion for acquittal or in the alternative for a new trial, alleging various pretrial and trial errors and expressly adopting a handwritten list of alleged pretrial and trial errors prepared by Mr. Kidd. (C. 329-36.) Mr. Kidd's counseled post-trial motion, as supplemented by his handwritten list, alleged error in the denial of his motions to dismiss the charges for defects in the indictment. (See C. 329-36.)

Mr. Kidd's May 29, 2019 sentencing hearing began with a preliminary inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984); Judge Madonia questioned Mr. Kidd and Ms. Evans and ruled that all the allegations against Ms. Evans were either meritless or related to trial strategy. (R. 1025-40.) After argument, Judge Madonia denied Mr. Kidd's counseled post-trial motion. (R. 1042-48.) Judge Madonia found as factors in aggravation Mr. Kidd's criminal history (see Sec. C. 13-16), the need for deterrence, and Mr. Kidd's position of trust with regard to T.F. (R. 1066-67.) Judge Madonia found "minimal" mitigation from Mr. Kidd's history of substance abuse (see Sec. C. 19-20) and sentenced Mr. Kidd to a 25-year prison term on Count I and a 25-year prison term on Count II, mandatorily consecutive and to be served at 85 percent, with 3 years to life on mandatory supervised release. (R. 1067-68; see C. 398/A-17.) On May 31, 2019, Judge Madonia heard and denied Mr. Kidd's timely motion to reconsider sentence. (C. 388-89, 395; R. 1073-79.)

Mr. Kidd timely appealed. (See C. 395, 409/A-18, 416/A-19; R. 1079.) He argued in relevant part that his convictions must be reversed because the indictment did not strictly comply with section 111-3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/111-3 (2016)), in that it did not set forth every element of the offense charged in Counts I and II: the state alleged the offense of predatory criminal sexual assault by an act of contact but did not allege that the contact was "for the purpose of sexual gratification or arousal of the victim or the accused," 720 ILCS 5/11-1.40(a). (Opening brf. at 24-28; Reply brf. at 1-4.) The state responded that because it had alleged an act of contact between Mr. Kidd's penis and T.F.'s mouth, it did not have to allege that the contact was "for the purpose of sexual gratification

or arousal of the victim or the accused," 720 ILCS 5/11-1.40(a). (See State's brf. at 9-14.) The state alternatively argued that, although the indictment was "formal[ly]" defective for its omission of that allegation, reversal was not warranted because Mr. Kidd was not prejudiced by the omission. (See State's brf. at 13-14.)

The appellate court dispensed with oral argument, though oral argument was requested by Mr. Kidd at every Supreme Court Rule 352(a) opportunity. (See Opening brf. at cover page; Reply brf. at cover page.) And on October 20, 2021, the appellate court filed a Supreme Court Rule 23 order affirming Mr. Kidd's convictions and sentence. *People v. Kidd*, 2021 IL App (4th) 190345-U, ¶¶ 1-2. The appellate court rejected Mr. Kidd's argument that Counts I and II of the indictment did not strictly comply with section 111-3(a)(3)'s mandate to set forth every element of the offense charged, reasoning as follows:

> "Comparing the allegations in the indictment with the language of the statute defining the criminal offense, the indictment, rather than alleging an act of contact for the purpose of sexual gratification or arousal of the accused or the victim, alleged 'an act of sexual contact.' The Oxford English Dictionary Online defines 'sexual' as 'relating to the instincts, physiological processes, and activities connected with physical attraction or intimate physical contact between individuals.' [Citation.] Under this definition, sexual contact is, in effect, contact done for the purpose for the purpose [*sic*] of sexual gratification or arousal. Therefore, we find counts I and II of the indictment did not meaningfully depart from the language of the statute defining the criminal offense of predatory criminal sexual assault of a child. While the better practice would have been to describe the contact with the qualifying statutory language, we agree with the trial court both counts of the indictment sufficiently set forth the elements of the offenses charged therein and, thus, strictly complied with section 111-3(a)(3) of the Code."

Kidd, 2021 IL App (4th) 190345-U, ¶ 57. This Court granted Mr. Kidd leave to appeal on January 26, 2022.

ARGUMENT

Both of Antonio D. Kidd's convictions must be reversed because Counts I and II of the indictment did not set forth every element of the offense charged.

Under section 111-3 of the Code of Criminal Procedure of 1963, to charge a person with a criminal offense, the state must use a written charging instrument, such as an indictment or an information, that alleges the person's commission of the offense by:

> "(1) Stating the name of the offense;
>
> (2) Citing the statutory provision alleged to have been violated;
>
> (3) Setting forth the nature and elements of the offense charged;
>
> (4) Stating the date and county of the offense as definitely as can be done; and
>
> (5) Stating the name of the accused, if known, and if not known, designate the accused by any name or description by which he can be identified with reasonable certainty."

725 ILCS 5/111-3(a) (2016). If the offense is alleged to involve "an illegal sexual act" against a victim, the charging instrument also must "state the identity of the victim by name, initials, or description." 725 ILCS 5/111-3(a-5) (2016).

The timing of a defendant's challenge to a defect in the charging instrument is significant in determining whether the defendant is entitled to reversal of his conviction based on the challenged defect. *People v. Carey*, 2018 IL 121371, ¶ 21. "When an indictment or information is attacked for the first time on appeal, it is sufficient that the indictment or information apprised the accused of the precise offense charged with sufficient specificity to prepare his defense and allow pleading a resulting conviction as a bar to future prosecution arising out of the same conduct," *i.e.*, the question on appeal is "whether the defect in the information or indictment prejudiced the defendant in preparing his defense." (Internal quotation marks omitted.) *People v. Thingvold*, 145 Ill. 2d 441, 448 (1991). "If, however, the information or indictment

is attacked before trial, *** the information must strictly comply with the pleading requirements" of section 111-3, *i.e.*, the question on appeal is, simply, whether the information or indictment had any defect. *Thingvold*, 145 Ill. 2d at 448.

A defendant who was tried and convicted on a charging instrument that had a defect and therefore did not strictly comply with section 111-3 is entitled to reversal of his conviction on appeal, even if the defendant suffered no prejudice from the defect in the charging instrument, so long as he challenged the charging instrument before trial. *People v. Espinoza*, 2015 IL 118218, ¶¶ 23-24; *People v. Cuadrado*, 214 Ill. 2d 79, 87 (2005); *People v. Benitez*, 169 Ill. 2d 245, 259 (1996). Following reversal, the state may "proceed[] against [the] defendant anew with a proper charging instrument" if consistent with double jeopardy principles, *i.e.*, where the state presented sufficient evidence of the defendant's guilt of the offense at the first trial. *Benitez*, 169 Ill. 2d at 260; see generally U.S. Const. amends. V, XIV; Ill. Const. 1970, art. I, § 10. Whether the charging instrument strictly complied with section 111-3 is a question of law subject to *de novo* review. *Espinoza*, 2015 IL 118218, ¶ 15.

The charging instrument must allege every element of the offense charged. 725 ILCS 5/111-3(a)(3) (2016); see *People v. Rowell*, 229 Ill. 2d 82, 93 (2008) (indicating that a charging instrument violated section 111-3(a)(3) where it did not allege the " 'in furtherance of a single intention and design' " element of felony retail theft). The charging instrument fails to allege every element of the offense charged where it meaningfully departs from the language of the statute defining that offense. See *Cuadrado*, 214 Ill. 2d at 84, 88 (concluding that a charging instrument failed to allege every element of the offense of solicitation of murder for hire where it substituted the word " 'solicited' " for the word " 'procured' used in the statutory section defining solicitation of murder for hire").

The statute defining the offense of predatory criminal sexual assault of a child (PCSAC), section 11-1.40 of the Criminal Code of 2012, provides:

> "(a) A person commits predatory criminal sexual assault of a child if that person is 17 years of age or older, and commits an act of contact, however slight, between the sex organ or anus of one person and the part of the body of another for the purpose of sexual gratification or arousal of the victim or the accused, or an act of sexual penetration, and:
>
> (1) the victim is under 13 years of age[.]"

720 ILCS 5/11-1.40 (2016). If the state alleges "an act of sexual penetration," 720 ILCS 5/11-1.40(a) (2016), then "a mental state of either intent or knowledge implicitly is required," *People v. Terrell*, 132 Ill. 2d 178, 209 (1989). If the state alleges "an act of contact, however slight, between the sex organ or anus of one person and the part of the body of another" (sometimes referred to herein as, simply, an act of contact), then a mental state of "for the purpose of sexual gratification or arousal of the victim or the accused" expressly is required. 720 ILCS 5/11-1.40(a).

It follows that the state has two alternative courses to convict an accused of PCSAC: (1) proof beyond a reasonable doubt that the accused intentionally or knowingly committed an act of sexual penetration with the victim; or (2) proof beyond a reasonable doubt that the accused committed an act of contact, however slight, between the sex organ or anus of himself or the victim and any body part of the other, and proof beyond a reasonable doubt that the act of contact was for the purpose of sexual gratification or arousal of himself or the victim. See 720 ILCS 5/11-1.40(a); *Terrell*, 132 Ill. 2d at 209-10. Where the state alleges PCSAC by an act of contact, then, the state also must allege that the act of contact was for the purpose of sexual gratification or arousal of the accused or the victim, because that mental state is an element of the offense of PCSAC by an act of contact. See 720 ILCS 5/11-1.40(a) (providing that the offense of PCSAC may be committed by "an act of contact, however slight, between

the sex organ or anus of one person and the part of the body of another for the purpose of sexual gratification or arousal of the victim or the accused"); *cf. People v. Kolton*, 219 Ill. 2d 353, 364 (2006) (indicating that the mental state of "for the purpose of sexual gratification or arousal" is "an element of the offense of criminal sexual abuse" by an act of sexual conduct).

This was not always so. Prior to 2014, PCSAC could only be committed by an act of sexual penetration. 720 ILCS 5/11-1.40(a) (2013); see P.A. 98-370, § 5, eff. Jan. 1, 2014 (amending section 11-1.40 to provide that a person also may commit PCSAC by "an act of contact, however slight[,] between the sex organ or anus of one person and the part of the body of another"). And from January 1, 2014, to August 14, 2014, section 11-1.40 did not include any express mental-state element for PCSAC by an act of contact. 720 ILCS 5/11-1.40(a) (2014); see P.A. 98-903, § 5, eff. Aug. 15, 2014 (further amending section 11-1.40 to provide that PCSAC by an act of contact must be "for the purpose of sexual gratification or arousal of the victim or the accused"). The legislative history here is perhaps instructive but less than fully illuminating.

As to House Bill 804, which ultimately was enacted as Public Act 98-370, the legislative history indicates that the addition of the act-of-contact language to section 11-1.40 was intended "to be more inclusive with male victims." 98th Ill. Gen. Assem., House Proceedings, May 29, 2013, at 70 (statements of Representative McAsey); see also 98th Ill. Gen. Assem., Senate Proceedings, May 23, 2013, at 43 (statements of Senator Silverstein) (substantively same). The bill originally sought to amend section 11-0.1 of the Criminal Code of 2012 (720 ILCS 5/11-0.1 (2013)) by significantly broadening the statutory definition of "sexual penetration," as that phrase is used anywhere in Article 11 of Part B of Title III of the Criminal Code, as follows:

> " 'Sexual penetration' means any contact, however slight, between the sex organ or anus of the victim or the accused ~~one person~~ and an object or body part, including but not limited to, ~~or~~ the sex organ, mouth, or anus of the victim or the accused ~~another person~~, or any intrusion, however slight, of any part of

> the body of the victim or the accused ~~one person~~ or of any animal or object into the sex organ or anus of the victim or the accused ~~another person~~, including, but not limited to, cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration."[3]

Ill. Senate Journal, 2013 Reg. Sess. No. 49, May 14, 2013, at 13; see also 98th Ill. Gen. Assem., House Proceedings, Apr. 14, 2013, at 236-37 (statements of Representative McAsey) (indicating that the proposed amendments to the sexual-penetration definition were intended "to allow for latitude in charging cases regardless of whether a victim is male or female").

But then House Bill 804 was changed to replace the proposed amendments to the definition of "sexual penetration" with the following proposed amendments to section 11-1.40:

> "(a) A person commits predatory criminal sexual assault of a child if that person commits an act of sexual penetration or an act of contact, however slight between the sex organ or anus of one person and the part of the body of another, and the accused; is 17 years of age or older, and:
>
> (1) the victim is under 13 years of age[.]"

Ill. Senate Journal, 2013 Reg. Sess. No. 56, May 23, 2013, at 21. So changed, the bill was passed and enacted into law, amending section 11-1.40 but not section 11-0.1. See P.A. 98-370, § 5, eff. Jan. 1, 2014.

The available legislative history does not appear to address why House Bill 804 was changed in this way. And the history does not elucidate how either the proposed amendments to the statutory definition of "sexual penetration," or the enacted amendments to section 11-1.40, made Illinois criminal law more inclusive of male victims. After all, "sexual penetration" was already defined to include anal intrusion and penis-to-mouth, penis-to-anus, and object-to-anus contact, see 720 ILCS 5/11-0.1 (2013), and the proposed and enacted amendments dramatically lengthened the reach of the criminal law in ways that were just as applicable to female victims as to male by newly encompassing, *e.g.*, a touching by the hand of the external genitals or external anus. In any event, the history shows that the legislature explicitly considered and

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[3] Underlined text denotes additional material; crossed-out text denotes stricken material.

rejected an expansion of the definition of "sexual penetration" to include an act of contact between the sex organ or anus of one person and any body part of another.

As to House Bill 4516, which ultimately was enacted as Public Act 98-903, it was introduced about one month after the effective date of Public Act 98-370. Ill. House Journal, 2014 Reg. Sess. No. 88, Feb. 3, 2014, at 7. The bill sought to further amend section 11-1.40 as follows:

> "(a) A person commits predatory criminal sexual assault of a child if that person is 17 years of age or older, and commits ~~an act of sexual penetration or~~ an act of contact, however slight, between the sex organ or anus of one person and the part of the body of another for the purpose of sexual gratification or arousal of the victim or the accused, or an act of sexual penetration, ~~and the accused is 17 years of age or older,~~ and:
>
> (1) the victim is under 13 years of age[.]"

98th Ill. Gen. Assem., House Bill 4516, 2014 Reg. Sess. Those amendments to section 11-1.40 were explained as

> "essentially a technical change to clean up a concern that was raised after legislation passed last spring. We passed a parity Bill with predatory criminal sexual assault of a child to make sure that male and female victims were able to be treated [*sic*] under the law. There was a concern raised about innocent conduct being criminalized. So, this is a technical change to make sure that that's not the case."

98th Ill. Gen. Assem., House Proceedings, Apr. 3, 2014, at 114 (statements of Representative McAsey); see also 98th Ill. Gen. Assem., Senate Proceedings, May 20, 2014, at 112 (statements of Senator Cunningham) ("Essentially, it's a cleanup bill that clarifies what constitutes criminal intent for the charge of predatory sexual assault of a child."). The available history thus shows that the legislature understood itself to be adding an express mental-state element to PCSAC by an act of contact.

"It is well settled that when statutes are enacted after judicial opinions are published, it must be presumed that the legislature acted with knowledge of the prevailing case law." *People v. Cole*, 2017 IL 120997, ¶ 30. One may deduce, then, that having declined to stretch the statutory definition of "sexual penetration" to include an act of contact between the sex organ

or anus of one person and any body part of another, and having instead provided that PCSAC may be committed by such an act of contact, the legislature belatedly recognized that the mental state of knowledge or intent, which is implicit in an act of sexual penetration under *Terrell*, 132 Ill. 2d at 209, is not implicit in an act of contact. Responding to that recognition, the legislature quickly closed the statutory gap by adding an express mental-state element to section 11-1.40, making clear that in order for PCSAC to be committed by an act of contact, the contact must be for the purpose of sexual gratification or arousal of the victim or the accused.

In this case, as to both counts of PCSAC, the indictment alleged that Mr. Kidd committed "an act of sexual contact, however slight, with T.F., in that [he] placed his penis in contact with the mouth of T.F." (C. 39-40/A-15–A-16.) Count I alleged that the act of contact took place on August 28 or 29, 2016, *i.e.*, after section 11-1.40 was amended to include an express mental-state element for PCSAC by an act of contact. (C. 39/A-15.) And Count II alleged that the act of contact took place at some point during a five-year period that included: (1) a 30-month range of dates before section 11-1.40 was amended to provide that PCSAC may be committed by an act of contact, namely, July 1, 2011, to December 31, 2013;[4] (2) an 8-month range of dates after section 11-1.40 was amended to provide that PCSAC may be committed by an

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[4] The jury was instructed that "[a] person commits the offense of predatory criminal sexual assault of a child when he *** intentionally commits an act of contact, however slight, between the sex organ or anus of one person and the part of the body of another for the purposes of sexual gratification of the defendant." (C. 304; R. 1009; see also C. 306.) The jury was not instructed as to PCSAC by an act of sexual penetration. (See C. 304, 306; R. 1009.) And the jury found Mr. Kidd guilty of committing PCSAC between the dates of July 1, 2011, and August 27, 2016. (C. 317; R. 1018; see also R. 1011.) It follows that the jury hypothetically could have found Mr. Kidd guilty of an offense that did not exist: PCSAC by an act of contact between the dates of July 1, 2011, and December 31, 2013. (See C. 304, 306, 317; R. 1009, 1011, 1018.) However, the jury did not hear any evidence that an act of contact occurred between July 1, 2011, and December 31, 2013. (See C. 361; R. 655, 719-22, 730-31, 799-800, 839-40, 842, 844-45; State's ex. 4 at 11:33 - 12:06, 13:36 - 13:43, 17:00 - 17:12.) Mr. Kidd therefore did not argue in the appellate court, and does not now argue, that the unpreserved instructional error entitles him to reversal of his conviction on Count II. (Reply brf. at 8-9; see Opening brf. at 25-40.)

act of contact but before section 11-1.40 was amended to include an express mental-state element for PCSAC by an act of contact, namely, January 1, 2014, to August 14, 2014; and (3) a 24-month range of dates after section 11-1.40 was amended to include an express mental-state element for PCSAC by an act of contact, namely, August 15, 2014, to August 29, 2016. (C. 40/A-16.) Yet the indictment did not allege that Mr. Kidd committed the acts of contact with the mental state of "the purpose of sexual gratification or arousal" of T.F. or himself, 720 ILCS 5/11-1.40(a) (2016). (See C. 39-40/A-15–A-16.)

In other words, the state confused the two courses to conviction of PCSAC, alleging neither in full. It could have charged Mr. Kidd with committing PCSAC by an act of sexual penetration and omitted any mental-state element from the indictment. See 720 ILCS 5/11-1.40(a); *Terrell*, 132 Ill. 2d at 209. But it did not. (See C. 39-40/A-15–A-16.) Or it could have charged Mr. Kidd with committing PCSAC by an act of contact and included in the indictment an allegation that the act of contact was committed for the purpose of sexual gratification or arousal of T.F. or himself. See 720 ILCS 5/11-1.40(a); *cf. Kolton*, 219 Ill. 2d at 364. But it did not. (See C. 39-40/A-15–A-16.) Mr. Kidd persistently challenged the indictment on this basis well before trial. (C. 99-108, 113-19, 135-70; R. 104-27, 218-19.) The state stood by the indictment, repeatedly representing to the trial court and to Mr. Kidd that its allegations were exactly as they should be. (R. 108, 144.) And the trial court agreed with the state. (R. 111, 145-47.)

The state and the trial court were mistaken: as to both Counts I and II, the indictment failed to allege every element of the offense of PCSAC by an act of contact. (See C. 39-40/A-15–A-16.) Even when the state sought to amend the defective indictment on the eve of trial, it apparently still did not understand the mental-state element for each of the two courses, for it sought to add the mental state of "knowingly," which is the minimum required mental state for PCSAC by an act of sexual penetration rather than the required mental state for PCSAC by an act of contact, and which need not be alleged in any event insofar is it is implied, see *Terrell*, 132 Ill. 2d at 209-10. (Sup2 C. 8-9.) On the morning of trial, the state finally recognized

that the indictment failed to allege the mental-state element for PCSAC by an act of contact—"for the purpose of sexual gratification or arousal of the victim or the accused," 720 ILCS 5/11-1.40(a)—and sought to add that element as well. (See R. 369-76.) Mr. Kidd, through Ms. Evans, objected to any amendment and again moved to dismiss the defective indictment. (R. 371-72.)

The trial court denied the state's eleventh-hour attempts to amend the indictment. (R. 374, 376.) Yet it also denied Mr. Kidd's cross-motion to dismiss the indictment, reasoning that the defective charges did not "surprise[]" Mr. Kidd, as evidenced by his much earlier challenges to the indictment based on the failure to allege the mental-state element in Counts I and II. (R. 375-76.) The court thereby turned on its head the rule that a defendant is entitled to dismissal—without *any* regard to prejudice or a lack thereof—if he raises a pretrial challenge to a charging instrument that does not strictly comply with section 111-3. See, *e.g.*, *Espinoza*, 2015 IL 118218, ¶¶ 5, 9, 24 (concluding that "the defendants were not required to show that they were prejudiced by defects in the charging instruments" and that "the trial courts properly dismissed the charging instruments against defendants for failure to comply with the pleading requirements of section 111-3" where the defendants challenged the defective charging instruments before trial).

In essence, the trial court concluded that Mr. Kidd's pretrial challenges to the defective indictment failed absent a showing of prejudice from the defect and simultaneously rendered impossible a showing of prejudice by demonstrating that Mr. Kidd was aware of the defect before trial. (See R. 375-76.) This is not, and cannot be, the law. See *Espinoza*, 2015 IL 118218, ¶¶ 23-24; *Cuadrado*, 214 Ill. 2d at 87; *Benitez*, 169 Ill. 2d at 259.

The trial court later instructed the jury that the state had to prove not one but two mental-state elements: (1) that the act of contact was "intentional[]," *i.e.*, committed with general intent, see 14A Ill. L. and Prac. *Criminal Law* § 28 (2022) (" 'General intent' exists when a prohibited

result may reasonably be expected to follow from an offender's voluntary act even without any specific intent by the offender."), which actually was not required to be separately proved; and (2) that the act of contact was "for the purposes of sexual gratification of [Mr. Kidd]," *i.e.*, committed with specific intent, see *id.* (" 'Specific intent" exists where from the circumstances, the offender must have objectively desired the prohibited result."), which indeed was required to be proved. (C. 304, 306; R. 916-21, 1009.) But at all times Counts I and II of the unamended indictment continued to omit the required mental-state element that the act of contact was for the purpose of sexual gratification or arousal. (See C. 39-40/A-15–A-16; R. 373-76.) Mr. Kidd therefore is entitled to reversal of both of his convictions. See *Espinoza*, 2015 IL 118218, ¶¶ 23-24; *Cuadrado*, 214 Ill. 2d at 87; *Benitez*, 169 Ill. 2d at 259.

The appellate court avoided this outcome by repeating the trial court's error in subtler form, acknowledging the strict-compliance standard but actually applying a kind of substantial-compliance standard silently centered on the lack of prejudice to the defense. Citing one dictionary definition of the word "sexual," the appellate court reasoned that "sexual contact is, in effect, contact done for the purpose for the purpose [*sic*] of sexual gratification or arousal," such that the indictment "sufficiently set forth the elements of the offenses charged therein and, thus, strictly complied with section 111-3(a)(3)." *People v. Kidd*, 2021 IL App (4th) 190345-U, ¶ 57. The analysis here suffers from at least two fatal flaws.

One, "sexual" has meanings that are both far broader and far narrower than the meaning assigned to it by the appellate court, see *Kidd*, 2021 IL App (4th) 190345-U, ¶ 57. "[S]exual" may mean "[r]elating to, involving, or characteristic of sex or sexuality" broadly, or it may have the much more limited meaning of relating to "the sex organs and their functions." American Heritage Dictionary of the English Language 1606 (5th ed. 2011); see also XV The Oxford English Dictionary 115-16 (2d ed. 1989) (providing no fewer than 11 definitions of "sexual,"

including "[r]elative to the *** gratification of sexual appetites" but also including "[o]f or pertaining to the organs of sex"); Webster's New World College Dictionary 1332 (5th ed. 2018) (defining "sexual" as an adjective meaning "of, characteristic of, or involving sex, the sexes, the organs of sex and their functions, *or* the instincts, drives, behavior, etc. associated with sex" (emphasis added)).

In fact, the online dictionary cited by the appellate court provides at least nine possible meanings of an adjectival use of the word "sexual," some broad and some narrow, and the definition quoted by the court no longer appears at the web address provided by the court. *Kidd*, 2021 IL App (4th) 190345-U, ¶ 57; see Oxford English Dictionary Online, entry for "sexual," available by subscription at http://www.oed.com/view/Entry/177084 (last visited Mar. 2, 2022)/A-45–A-60.[5] Among those definitions are two that, if combined, are similar to the definition quoted by the court: (1) "Characterized by sexual instincts or feelings, or the capacity for these," or "possessing or displaying sexuality" (A-48); and (2) "Relating to, tending towards, or involving sexual intercourse, or other forms of intimate physical contact" (A-47). But among those definitions are others that are quite different from the definition quoted by the court, such as: "Relating to or affecting the genitals or reproductive organs." (A-47.)

Even the definition to which the appellate court pointed—" 'relating to the instincts, physiological processes, and activities connected with physical attraction or intimate physical contact between individuals,' " *Kidd*, 2021 IL App (4th) 190345-U, ¶ 57 (quoting The Oxford English Dictionary Online)—is not at all *equivalent to* "for the purpose of sexual gratification or arousal," 720 ILCS 5/11-1.40(a), though the former may *encompass* the latter. It follows from all the above that "sexual contact" (C. 39-40/A-15–A-16) is not interchangeable with

[5] A PDF file uploaded at the alternate "perma.cc" address provided by the court, see *Kidd*, 2021 IL App (4th) 190345-U, ¶ 57, depicts only the Oxford English Dictionary Online's May 12, 2021 entry for "publication."

contact "for the purpose of sexual gratification or arousal," 720 ILCS 5/11-1.40(a). See *Cuadrado*, 214 Ill. 2d at 88 (concluding that the indictment was defective in its "substitution of the word 'solicited' for the word 'procured' used in the statutory section defining solicitation of murder for hire" because the two terms were not "interchangeable"); American Heritage Dictionary, *supra*, at 1405, 1666 (defining "procure" as "[t]o get by special effort" or "obtain or acquire" and defining "solicit" as "[t]o seek to obtain by persuasion, entreaty, or formal application").

Two, by treating "sufficient[]" pleading of an offense as pleading of an offense in strict compliance with section 111-3, *Kidd*, 2021 IL App (4th) 190345-U, ¶ 57, the appellate court destroyed the boundary between charging-instrument defects raised for the first time on appeal and charging-instrument defects raised before trial. Because Mr. Kidd raised the missing-element defect in the indictment before trial (C. 99-108, 113-19, 135-70; R. 104-27, 218-19), it does not matter whether the indictment "apprised [him] of the precise offense charged with sufficient specificity to prepare his defense and allow pleading a resulting conviction as a bar to future prosecution arising out of the same conduct." (Internal quotation marks omitted.) *Thingvold*, 145 Ill. 2d at 448. All that matters is that the indictment was defective. See *Espinoza*, 2015 IL 118218, ¶¶ 23-24 ("Given the [pretrial] timing of defendants' challenges to the charging instruments, the defendants were not required to show that they were prejudiced by the defects in the charging instruments.").

That the trial court found it necessary to depart from the language of the indictment and instruct the jury on the missing mental-state element that the act of contact was for the purpose of sexual gratification or arousal (R. 916-21; see C. 304, 306; R. 1009) underscores the indictment's lack of strict compliance with section 111-3(a)(3). For if the appellate court was correct that the language of the unamended indictment is "in effect" equivalent to the language of section 11-1.40, *Kidd*, 2021 IL App (4th) 190345-U, ¶ 57, then the trial court would

have had no reason to instruct the jury using the statutory language instead of the indictment language. *Cf. People v. Fuller*, 205 Ill. 2d 308, 340 (2002) (comparing a jury instruction given by the trial court with the relevant statutory language in concluding that the instruction was erroneous for its departures from the statutory language). Yet the appellate court apparently did not consider that instructional cue in excusing the defect in Mr. Kidd's indictment as no more than a departure from the "better practice" of charging offenses using "the qualifying statutory language." See *Kidd*, 2021 IL App (4th) 190345-U, ¶ 57.

The odious offenses of which Mr. Kidd was convicted have no bearing on the relief to which he is entitled under this Court's caselaw. The state chose to charge Mr. Kidd with PCSAC by an act of contact rather than an act of sexual penetration, yet the indictment did not set forth the mental-state element of PCSAC by an act of contact, *i.e.*, that the act of contact was "for the purpose of sexual gratification or arousal," 720 ILCS 5/11-1.40(a). Mr. Kidd gave the state pretrial notice that it needed to bring the indictment into strict compliance with the "clear requirements of section 111-3(a)," see *Carey*, 2018 IL 121371, ¶ 22, and the state repeatedly failed to do so. Perhaps the state reflexively defended its work instead of just double-checking the indictment against the language of section 11-1.40 as twice amended in 2014, or perhaps the state persistently misunderstood that statute and its two alternative courses to convict an accused of PCSAC. For whatever reason, the state did not attempt to correct the missing-element defect in the indictment until the morning of trial, at which time it was not permitted to do so. Because Counts I and II the indictment were never amended to include the missing mental-state element of PCSAC by an act of contact, Mr. Kidd's convictions must be reversed.

CONCLUSION

For the foregoing reasons, Antonio D. Kidd, defendant-appellant, respectfully requests that this Court reverse both of his convictions and remand for further proceedings consistent with double jeopardy principles.

Respectfully submitted,

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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 or words contained in 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, the certificate of service, and those matters to be appended to the brief under Rule 342, is thirty-two pages.

/s/Amy J. Kemp
AMY J. KEMP
Assistant Appellate Defender

APPENDIX TO THE BRIEF

Antonio D. Kidd, No. 127904

Table of Contents

APPEAL TO THE APPELLATE COURT OF ILLINOIS

FOURTH JUDICIAL DISTRICT

FROM THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT

SANGAMON COUNTY, ILLINOIS

STATE OF ILLINOIS

Plaintiff/Petitioner

Reviewing Court No: 4-19-0345
Circuit Court No: 2017CF000556
Trial Judge: JOHN MADONIA

v.

ANTONIO KIDD

Defendant/Respondent

COMMON LAW RECORD - TABLE OF CONTENTS

Page 1 of 6

COMMON LAW RECORD - TABLE OF CONTENTS

Table of Contents

COMMON LAW RECORD - TABLE OF CONTENTS

Page 3 of 6

Table of Contents

COMMON LAW RECORD - TABLE OF CONTENTS

Page 4 of 6

Table of Contents

COMMON LAW RECORD - TABLE OF CONTENTS

Page 5 of 6

COMMON LAW RECORD - TABLE OF CONTENTS

Table of Contents

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

STATE OF ILLINOIS
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Reviewing Court No: 4-19-0345
Circuit Court No: 2017CF000556
Trial Judge: JOHN MADONIA

v.

ANTONIO KIDD
Defendant/Respondent

COMMON LAW RECORD - TABLE OF CONTENTS

Page 1 of 1

Table of Contents

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

STATE OF ILLINOIS
Plaintiff/Petitioner

Reviewing Court No: 4-19-0345
Circuit Court No: 2017CF000556
Trial Judge: JOHN MADONIA

v.

ANTONIO KIDD
Defendant/Respondent

COMMON LAW RECORD - TABLE OF CONTENTS

Page 1 of 1

Report of Proceedings

APPEAL TO THE APPELLATE COURT OF ILLINOIS

FOURTH JUDICIAL DISTRICT

FROM THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT

SANGAMON COUNTY, ILLINOIS

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Trial Judge: JOHN MADONIA

v.

ANTONIO KIDD

Defendant/Respondent

EXHIBITS - TABLE OF CONTENTS

Page 1 of 2

Table of Contents

EXHIBITS - TABLE OF CONTENTS

Page 2 of 2

Table of Contents

APPEAL TO THE APPELLATE COURT OF ILLINOIS

FOURTH JUDICIAL DISTRICT

FROM THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT

SANGAMON COUNTY, ILLINOIS

STATE OF ILLINOIS

Plaintiff/Petitioner

Reviewing Court No: 4-19-0345
Circuit Court No: 2017CF000556
Trial Judge: JOHN MADONIA

v.

ANTONIO KIDD

Defendant/Respondent

EXHIBITS - TABLE OF CONTENTS

Page 1 of 2

Table of Contents

EXHIBITS - TABLE OF CONTENTS

Page 2 of 2

Party	Exhibit #	Description/Possession	Page No.
PEOPLE'S	6	PEOPLE S SEALED EXHIBIT 6 ADMITTED - CAC INTERVIEW CONSENT	SEC E 47

IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT OF ILLINOIS
SANGAMON COUNTY, SPRINGFIELD, ILLINOIS
CRIMINAL DIVISION

COUNT I

THE GRAND JURORS chosen, selected and sworn, in and for the County of Sangamon and State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths, present that between the 28th day and the 29th day of August, in the year Two Thousand and Sixteen, in the County of Sangamon, in the aforesaid State of Illinois, **ANTONIO D. KIDD** committed the offense of **PREDATORY CRIMINAL SEXUAL ASSAULT**, in that said defendant, who was over the age of 17, committed an act of sexual contact, however slight, with T.F., in that said defendant placed his penis in contact with the mouth of T.F. and T.F. was under the age of 13 years old, in violation of the Criminal Code of 2012, as amended, Chapter 720 ILCS 5/11-1.40(a)(1) and against the peace and dignity of the same People of the State of Illinois.

State's Attorney in and for said Sangamon County

FILED
JUN 14 2017
14
Clerk of the Circuit Court

ORIGINAL

THE GRAND JURORS chosen, selected and sworn, as aforesaid, in and for the County of Sangamon aforesaid, in the name and by the authority of the People of the State of Illinois aforesaid, upon their oaths aforesaid, do further present that in the County of Sangamon, in the aforesaid State of Illinois, that between the 1st day of July, in the year Two Thousand and Eleven and the 29th day of August, in the year Two Thousand and Sixteen, **ANTONIO D. KIDD,** committed the offense of **PREDATORY CRIMINAL SEXUAL ASSAULT**, in that said defendant, who was over the age of 17 committed an act of sexual contact, however slight, with T.F., in that said defendant placed his penis in contact with the mouth of T.F., and T.F. was under the age of 13 years old, in violation of the Criminal Code of 2012, as amended, Chapter 720 ILCS 5/11-1.40(a)(1), and against the peace and dignity of the same People of the State of Illinois.

State's Attorney in and for said Sangamon County

FILED
JUN 14 2017
14
Clerk of the Circuit Court

ORIGINAL

IN THE CIRCUIT COURT OF SANGAMON COUNTY, ILLINOIS
SEVENTH JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS)
) **Case No.: 17-CF-556**
Vs.)
)
ANTONIO D. KIDD,)
Defendant

Date of Sentence: 5/29/19
Date of Birth: 10/30/88
(Defendant)
Victim DOB:

FILED
JUN 04 2019
29
Clerk of the Circuit Court

JUDGMENT – SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

WHEREAS the above-named defendant has been adjudged guilty of the offenses enumerated below; IT IS THEREFORE ORDERED that the defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the term of years and months specified for each offense.

COUNT	OFFENSE	DATE OF OFFENSE	STATUTORY CITATION	CLASS	SENTENCE	MSR
I	Predatory Criminal Sexual Assault	8/28/16-8/29/16	720 ILCS 5/11-1.40(a)(1)	X	25 years	3 years-natural life
To run consecutively to Count						
II	Predatory Criminal Sexual Assault	7/1/11-8/29/16	720 ILCS 5/11-1.40(a)(1)	X	25 years	3 years-natural life
And served at 85%, pursuant to 730 ILCS 5/3-6-3						

This Court finds that the defendant is:

_____Convicted of a class _____ offense but sentenced as a Class X offender pursuant to 730 ILCS 5/5-4.5-95(b) on count(s) _____.

____X___The Court further finds that the defendant is entitled to receive credit for time actually served in custody of 733 days as of the date of sentencing (5/27/17-5/29/19). The defendant is also entitled to receive credit for the additional time served in custody from the date of this order until defendant is received at the Illinois Department of Corrections.

___X___The defendant remained in continuous custody from the date of this order.

_____The defendant did not remain in continuous custody from the date of this order (less _____ days from a release date of _____ to a surrender date of _____).

_____The Court further finds that the conduct leading to conviction for the offenses enumerated in counts _____resulted in great bodily harm to the victim. (730 ILCS 5/3-6-3(a)(2)(iii)).

_____The Court further finds that the defendant meets the eligibility requirements for possible placement in the Impact Incarceration Program. (730 ILCS 5/5-4-1(a)).

_____The Court further finds that offense was committed as a result of the use of, abuse of, or addiction to alcohol or a controlled substance and recommends the defendant for placement in a substance abuse program. (730 ILCS 5/5-4-1(a)).

_____The defendant successfully completed a full-time (60-day or longer) Pre-Trial Program ____Educational/Vocational ___ Substance Abuse ___ Behavior Modification ___ Life Skills ___ Re-Entry Planning – provided by the county jail while held in pre-trial detention prior to this commitment and is eligible for sentence credit in accordance with 730 ILCS 5/3-6-3(a)(4) for _____ total number of days of program participation, if not previously awarded.

_____The defendant passed the high school level test for General Education and Development (GED) on _____ while held in pre-trial detention prior to this commitment and is eligible to receive Pre-Trial GED Program Credit in accordance with 730 ILCS 5/3-6-3(a)(4.1). THEREFORE IT IS ORDERED that the defendant shall be awarded 60 days of additional sentence credit, if not previously awarded.

_____IT IS FURTHER ORDERED the sentence(s) imposed on count(s) _____ be (concurrent with) (consecutive to) the sentence imposed in case number _____ in the Circuit Court of _____ County.

_____IT IS FURTHER ORDERED that _____

The Clerk of the Court shall deliver a certified copy of this order to the Sheriff. The Sheriff shall take the defendant into custody and deliver defendant to the Department of Corrections which shall confine said defendant until expiration of this sentence or until otherwise released by operation of law.

This order is effective immediately.

DATE: 6-3-19 ENTER: _____
Judge John Madonia

Approved by Conference of Chief Judges 6/20/14 (rev. 10/23/2015)

In The Circuit Court
For The Seventh Judicial Circuit of Illinois
Sangamon County, Springfield, Illinois

FILED
JUN 04 2019
28
Clerk of the Circuit Court

State of Illinois
(PLAINTIFF)

VS.

ANTONIO D. KIDD
(DEFENDANT)

Date: June 05, 2019

Case No.: 2017 CF 000556

Trial Judge: JOHN MADONIA

NOTICE OF APPEAL

1. The Court to which the appeal is taken: Fourth Appellate Court of Illinois, Springfield, Illinois 62701.

2. Name of Appellant and address to which Notice shall be sent:
ANTONIO D. KIDD
1 SHERIFF'S PLAZA
SPRINGFIELD, IL 62701

3. Name and address of Appellant's Attorney(s) on appeal:

4. Date of Judgment or Order: May 31, 2019

5. Offense of which convicted: CRIMINAL SEXUAL ASSAULT

6. Sentence:

Days	Months	Years	Days	Months	Years

7. Nature of Appeal: Denial of Motion to Reconsider

7th JUDICIAL CIRCUIT SEAL SANGAMON COUNTY, ILLINOIS

CLERK OF THE CIRCUIT COURT

LCH

INT11

No. 4-19-0345

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- ANTONIO D. KIDD, Defendant-Appellant.	)	Appeal from the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois No. 17-CF-556 Honorable John Madonia, Judge Presiding.

AMENDED NOTICE OF APPEAL

An appeal is taken to the Appellate Court, Fourth Judicial District:

Appellant(s) Name:	Mr. Antonio D. Kidd
Appellant's Address:	Sangamon County Jail #1 Sheriff's Plaza Springfield, IL 62701
Appellant(s) Attorney:	Office of the State Appellate Defender
Address:	400 West Monroe Street, Suite 303 Springfield, IL 62704
Offense of which convicted:	Two Counts of Predatory Criminal Sexual Assault
Date of Judgment or Order:	May 31, 2019
Sentence:	25 years in the Illinois Department of Corrections on both counts
Nature of Order Appealed:	Conviction, Sentence, and Denial of Motion to Reconsider Sentence

John M. McCarthy

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COUNSEL FOR DEFENDANT-APPELLANT

2021 IL App (4th) 190345-U

NO. 4-19-0345

FILED
October 20, 2021
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ANTONIO D. KIDD, Defendant-Appellant.	))))))))	Appeal from the Circuit Court of Sangamon County No. 17CF556 Honorable John M. Madonia, Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices DeArmond and Turner concurred in the judgment.

ORDER

¶ 1 Held: The appellate court affirmed, concluding (1) counts I and II of the indictment sufficiently set forth the elements of the offenses charged therein, (2) count II of the indictment sufficiently set forth a date range upon which the charged offense allegedly occurred, (3) the denial of defendant's second pretrial motion for independent deoxyribonucleic acid testing was a reasonable and appropriate exercise of the trial court's authority to manage its docket while ensuring the purposes of the discovery rules were met, and (4) the State presented sufficient evidence to sustain defendant's conviction on count II of the indictment.

¶ 2 Following a jury trial, defendant, Antonio D. Kidd, was found guilty of two counts of predatory criminal sexual assault of a child and then sentenced to two consecutively imposed terms of 25 years' imprisonment. Defendant appeals, arguing (1) the trial court erroneously denied his pretrial motions to dismiss the indictment, (2) the trial court erroneously denied his second pretrial motion for independent deoxyribonucleic acid (DNA) testing, and (3) the State failed to

prove him guilty beyond a reasonable doubt of one of the charges. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Indictment

¶ 5 In June 2017, a grand jury returned a true bill of indictment charging defendant with two counts of predatory criminal sexual assault of a child. Both counts of the indictment alleged defendant, a person over the age of 17, "committed an act of sexual contact, however slight, with T.F.," a person under the age of 13, "in that said defendant placed his penis in contact with the mouth of T.F." Count I alleged the contact occurred "between" August 28, 2016, and August 29, 2016, and count II alleged the contact occurred "between" July 1, 2011, and August 29, 2016.

¶ 6 B. Pretrial Motions to Dismiss the Indictment

¶ 7 Prior to trial, defendant filed various *pro se* motions seeking the dismissal of the indictment, either in total or in part. In support, defendant alleged, amongst others claims, (1) counts I and II of the indictment failed to set forth the elements of the offenses charged therein and (2) count II of the indictment failed to "adequately narrow down the time and date" of the offense. The trial court, the Honorable Brian T. Otwell presiding, conducted multiple hearings on defendant's *pro se* motions, where defendant had the opportunity to argue his motions *pro se*, and the State had the opportunity to respond.

¶ 8 With respect to his request for dismissal of the indictment based upon his claim that counts I and II failed to set forth the elements of the offenses charged therein, defendant argued counts I and II improperly alleged sexual contact instead of sexual penetration, an element of the offense of predatory criminal sexual assault of a child. The State, in response, contended counts I and II properly charged defendant with sexual contact, as the offense of predatory criminal sexual of a child could be proven by showing either sexual contact or sexual penetration. When

responding to the State's contention, defendant asserted, if the State desired to charge him based upon an alleged contact, it had to allege the contact occurred for the purpose of sexual gratification or arousal of the victim or the accused. After considering the arguments, the trial court denied defendant's request to dismiss the indictment, finding counts I and II "sufficiently set forth the offense of predatory criminal sexual assault [of a child]."

¶ 9 With respect to his request for dismissal of the indictment based upon his claim that count II failed to "adequately narrow down the time and date" of the offense, defendant did not provide any supporting argument. The State, on inquiry by the trial court, stated count II was based upon statements made by T.F. in a recorded interview. The court, after noting it had previously reviewed T.F.'s recorded interview, denied defendant's request to dismiss count II of the indictment.

¶ 10 Immediately before trial, the State made an oral motion to amend counts I and II of the indictment to include language indicating the "sexual contact" occurred "for the purpose of the sexual gratification of the Defendant or victim." Defendant, through recently appointed counsel, objected to the State's motion and made an oral motion to dismiss the indictment on the grounds it was so defective it denied him an opportunity to prepare a defense. The trial court, honorable John M. Madonia presiding, denied the motions from both the State and defendant. In denying defendant's motion, the court found dismissal was not warranted as the allegation that the contact was sexual sufficiently apprised defendant and indicated the contact occurred for the purpose of sexual gratification or arousal. In denying the State's motion, the court indicated it would nevertheless ensure the jury was instructed with the statutory language.

¶ 11 C. Pretrial Motions for Independent DNA Testing

¶ 12 Prior to trial, defendant made two *pro se* oral motions for independent DNA testing.

The trial court, Judge Otwell presiding, denied defendant's motions. The following is gleaned from the record as it relates to defendant's motions.

¶ 13 On May 31, 2018, defendant expressed a desire for "someone to go over and redo the lab report." The State, in response, indicated it believed defendant was referring to a laboratory report which indicated "a sperm fraction" having a DNA profile consistent with defendant's DNA profile discovered on a "cheek swab" taken from T.F. Defendant, on inquiry by the trial court, confirmed he desired "that swab to be retested by another lab." The court inquired as to whether the cheek swab was consumed during testing, to which the State indicated it would have to follow up with the laboratory which conducted the testing. The court directed the State to do so and reserved ruling until it had that information.

¶ 14 On June 18, 2018, the State averred it had contacted the laboratory which conducted the testing in this case and a forensic scientist indicated one-half of the cheek swab taken from T.F. was not consumed during testing. The State also averred the forensic scientist noted the existence of a swab taken from T.F.'s right shoulder. The swab was found to have semen, but no DNA testing was done on that sample following the result from the DNA testing on the cheek swab. In response, defendant averred he gave a sample for a DNA profile to be included in a state database prior to being released from prison on a prior offense. The DNA testing in this case did not match his profile in the state database but rather a profile obtained from a recent buccal swab he voluntarily gave to law enforcement as part of their investigation. Defendant, believing the profile obtained from his buccal swab may have been "messed up" because it was not transferred to the laboratory for several months, requested independent DNA testing on any items which implicated him but did not match his DNA profile in the state database. The State, in responding to defendant's averment, indicated it was unsure if defendant's profile was in the state database or

whether the laboratory ran any DNA profiles found in this case against the state database. The court took the matter under advisement.

¶ 15 On June 26, 2018, the trial court directed defendant to file a written motion "specifying exactly what it is that you want with respect to DNA analysis." Specifically, the court instructed defendant to include in his motion "what comparisons you want to be made with what items of evidence in this case, where you propose that those analyses be conducted, [and] whether you want analysis done with regard to the state DNA Index." The court, recognizing the difficulty in preparing such a motion, indicated it would reconsider a request previously made by defendant for the appointment of standby counsel should defendant still desire that counsel. The following exchange then occurred:

> "THE DEFENDANT: Just strike that. You ain't have to go through all of that. I'm not even going to worry about it.
>
> THE COURT: You're not going to worry about it?
>
> THE DEFENDANT: No.
>
> THE COURT: You don't want any additional DNA testing done?
>
> THE DEFENDANT: No.
>
> THE COURT: You don't want an appointment of—or authorization of fees for that?
>
> THE DEFENDANT: No. You ain't got to—
>
> THE COURT: All right.
>
> THE DEFENDANT: —take it up.
>
> THE COURT: All right, so show the Defendant's oral

Motion for Independent DNA Analysis withdrawn at this time."

¶ 16 On September 4, 2018, defendant filed, amongst other pro se motions, (1) a motion to suppress the results from the DNA testing in this case, arguing its prejudicial effect substantially outweighed its probative value, (2) a motion requesting a copy of the DNA procedure manual and DNA testing protocols used by the laboratory which conducted the DNA testing in this case, and (3) a motion for chain of custody documents related to a sexual assault kit administered to T.F. and defendant's buccal swabs.

¶ 17 On September 10, 2018, the State expressed to the trial court its concern with the delays in bringing the matter to trial, suggesting the delays were caused by defendant as a stall tactic.

¶ 18 On September 14, 2018, the trial court, after hearing arguments, denied defendant's motion to suppress the results from the DNA testing. With respect to defendant's request for a copy of the DNA procedure manual and the DNA testing protocols, the court directed the State, to the extent it had not already done so, to provide defendant with the requested items. As to defendant's request for chain of custody documents, defendant expressed concern with information he had indicating his buccal swabs were not taken to the laboratory for several months. The State asserted it had previously tendered the chain of custody documents but, in an abundance of caution, it had requested any and all evidence receipts and indicated it would tender them to defendant once available, and it would set up a time to meet with defendant to review any physical evidence which had attached chain of custody documents. The court reserved ruling pending receipt by the State of further chain of custody documents and set up a hearing for defendant to review any physical evidence which had attached chain of custody documents.

¶ 19 On September 18, 2018, defendant reviewed physical evidence which had attached

chain of custody documents.

¶ 20 On September 21, 2018, the State filed an additional answer to discovery, which indicated it had submitted, "Chain of Evidence Possession and Property Detail Report pgs. 374-394."

¶ 21 On September 26, 2018, the trial court conducted a final pretrial hearing. At the time, a jury trial was set to commence on October 1, 2018. Defendant made another *pro se* oral motion for independent DNA testing. Defendant asserted he was requesting the testing because of issues he noticed with the chain of custody documentation as well as his belief the physical evidence which he reviewed had insufficient "tape to satisfy the handling." The State objected to defendant's motion, arguing any issue with the sufficiency of the tape was a matter for cross-examination. The court ruled:

> "All right. Well, I've ruled upon a request for independent examination in the past and denied that request. I don't see that whatever problems you perceive with respect to the packaging of those two exhibits has called into question the lab analysis to add any merit to your prior motion, which again, I've already ruled on a prior request and so that request will be denied at this time.
>
> This case has been pending for quite some time now and I suspect that there may be a hidden agenda to your request at this point on the eve of trial. That request will be denied."

¶ 22 On September 28, 2018, defendant requested the reappointment of counsel. The trial court, over the State's objection, granted defendant's request. The scheduled jury trial was then continued several times to allow defendant's counsel to become familiar with the case.

¶ 23 D. Jury Trial

¶ 24 In March 2019, the trial court, Judge Madonia presiding, conducted a jury trial. The State moved to admit into evidence documents indicating defendant's birthdate was June 6, 1977, which the court granted over no objection.

¶ 25 Gaila C. testified she was the grandmother to T.F. and mother to Megan J. In 2016, Gaila C. would care for some of Megan J.'s children, including T.F., during the week. On the weekends, T.F. and her siblings would return to the care of Megan J. Megan J. lived with her boyfriend, defendant, at a residence on Keys Avenue in Springfield, Illinois. Megan J. and defendant had three children together, the three youngest of Megan J.'s nine children. Around 6 a.m. on Monday, August 29, 2016, Gaila C. picked up T.F., who was nine years old at the time, and some of her siblings from the Keys Avenue residence. When doing so, T.F. asked Gaila C. what was on T.F.'s arm and said she needed to speak with her mother. Gaila C. observed a light white streak on T.F.'s upper arm. T.F. told Gaila C. that defendant had put his penis in her mouth and it tasted terrible. Gaila C. took T.F. to the hospital. Gaila testified T.F. did not eat or drink anything before they went to the hospital. Gaila C. described T.F. that morning as being quiet, unlike her normal, very talkative self. Gaila C. testified Megan J., defendant, and the children had lived with her for about a year before they moved to the Keys Avenue residence. She did not, however, recall what year they lived with her.

¶ 26 Dr. Janda Stevens, an emergency room doctor, testified she treated T.F. when T.F. arrived at the hospital around 8 a.m. on August 29, 2016. When asked what T.F. reported, Dr. Stevens testified: "She told me—she indicated that in the middle of the night her mother's boyfriend came into the room and placed his penis in her mouth. She also said he put semen into her mouth. Uhm, she stated this was not the first time that this had happened." Dr. Stevens

documented that T.F. specifically reported her mother's boyfriend " 'put sperm in my mouth.' " Dr. Stevens observed a dried white substance on T.F.'s shoulder and face. Dr. Stevens testified T.F. told her that she had something to drink and eat that morning.

¶ 27 Kayla Teich, an emergency room nurse, testified she assisted in providing treatment to T.F. at the hospital on the morning of August 29, 2016. She met T.F. around 7:30 a.m. Teich documented T.F. reported her mother's boyfriend came into her room in the middle of the night, took out his penis, and put it in her mouth. Teich also documented T.F. reported defendant " 'put semen' " in her mouth. T.F. said this was not the first time this had occurred. Teich observed a white stain on T.F.'s right shoulder and a white stain on her right cheek area. Teich obtained and administered a sexual assault kit. In doing so, she collected an oral sample by swabbing inside T.F.'s mouth, under her tongue. Teich also collected samples by swabbing the white substances on both T.F.'s cheek and right shoulder. Teich collected a blood sample from T.F. Teich testified T.F. told her that she had something to drink and eat.

¶ 28 Detective Andrew Brashear testified he collected the sexual assault kit from the hospital after it was administered to T.F. The sexual assault kit was then logged and placed in an evidence locker at the Sangamon County Sheriff's Office.

¶ 29 Sergeant Nancy Finley testified she was the "primary" detective investigating the allegations in this case. On September 8, 2016, T.F. was interviewed at the Child Advocacy Center. On September 22, 2016, defendant was interviewed. Defendant denied having any contact with T.F. and asserted his DNA would not be found on the samples collected from T.F. Defendant agreed to samples being collected from his mouth with buccal swabs for the purpose of obtaining his DNA profile. Sergeant Finley packaged and sealed the buccal swabs and then placed them in a temporary evidence locker at the Sangamon County Sheriff's Office. She observed at trial the

tape she used to seal the package had not been altered and the package was in the same or substantially the same condition. Sergeant Finley eventually asked for the package to be sent to a laboratory for testing. In May 2017, Sergeant Finley received laboratory results and arrested defendant. On cross-examination, Sergeant Finley acknowledged she was aware "that this was not the first time that [T.F.] had made such a complaint about [defendant]" and that T.F. had told her mother "at some point in the past" that this had happened before. Sergeant Finely did not find any police reports about the prior accusation.

¶ 30 Jennifer Davis, a former evidence custodian with Sangamon County Sheriff's Office, testified she obtained the sexual assault kit from the evidence locker and took it to the evidence vault on August 29, 2016. She then obtained it from the vault and took it to a laboratory on September 20, 2016. Davis testified she obtained the package containing the buccal swabs from the evidence locker on September 26, 2016. Davis testified she "retrieved it from the locker, put the tags on it, signed it in and out and took it to the Crime Lab." Davis testified she took it to the laboratory on January 5, 2017. The sexual assault kit and package containing the buccal swabs appeared in the same or substantially the same condition as when she had possession of them.

¶ 31 T.F., who at the time of trial was 11 years old, testified about an incident occurring in August 2016 which resulted in her going to the hospital. T.F. testified the incident occurred when she was at the Keys Avenue residence sleeping on the couch in the living room with her baby brother, who was asleep on her shoulder. She woke up to defendant's private part on her mouth, not in it. Defendant then ran back to his room. T.F. testified this happened that night more than once. At some point during one of the encounters something came out of defendant's penis. T.F. was then asked when that happened, to which T.F. testified, "Like all nights that happened." T.F. testified it went outside her mouth when it happened on the specific night discussed. She

testified that whatever came out of defendant's penis tasted "[d]isgusting." T.F. told her grandmother what defendant did to her after she picked her up and then they went to the hospital. T.F. testified she told her grandmother "[t]hat he put his private part on my mouth and sperm came out." When asked how long between the last time defendant did that and her grandmother showing up, T.F. testified, "Many, probably about a year."

¶ 32 The following inquiry occurred by the State:

> "Q. Okay. So, we talked about the time that this happened on Keys. Were there any other times that this happened where Antonio placed his mouth or his, sorry, his private parts either on or in your mouth?
>
> A. Other times?
>
> Q. Yes.
>
> A. Yeah.
>
> Q. Where were you living when that happened?
>
> A. My grandma.
>
> Q. And when that happened, can you tell us whether he placed his private parts in your mouth or on your mouth?
>
> A. On.
>
> Q. And did stuff come out?
>
> A. Yes."

¶ 33 On cross-examination, T.F. testified she and her baby brother were asleep on the couch, covered up with blankets, and some of her other siblings were also sleeping in the living room. T.F. acknowledged previously seeing her mother take naps on the couch. T.F. testified she

woke up when "it all happened" and she could not fall back to sleep "because he kept coming." T.F. later testified defendant did not bother her more than once that night "but just like more than once in all." She then stated she could not fall back asleep because defendant kept coming into the living room. After expressing difficulty with the defense's questions, T.F. testified she did not count how many times it happened the night before she went to the hospital but that it happened more than once. T.F. testified she told her grandmother she was woken up by liquid stuff on her face and she did not have anything to eat or drink prior to going to the hospital "because my grandma didn't want me to *** mess up the DNA." T.F. agreed she reported at the hospital that defendant had put "semen" in her mouth. She testified she reported at the hospital that she was asleep in the living room. T.F. acknowledged previously telling her mother about a similar act committed by defendant but did not recall when that occurred. When asked if she changed her story shortly after telling her mother and reported her brother, as opposed to defendant, had committed the act, T.F. testified, "No, I never told her that."

¶ 34 Megan J. testified, on August 28, 2016, she and defendant had an argument about him wanting to take their vehicle while he was "drunk and high." That evening, defendant was not at home when she went to bed but was then in her bed when she woke up the next morning. Megan J. testified defendant was a great father but had memory issues while under the influence of alcohol and drugs. She acknowledged she usually slept on the couch in the family room. Megan J. testified T.F. reported defendant doing something inappropriate to her in 2015 but, within a matter of 10 minutes, said it was in fact her brother. At the time of that report, they were living with Gaila C.

¶ 35 Denise Johnson, a forensic interviewer with the Child Advocacy Center, interviewed T.F. on September 8, 2016. At that time, T.F. was nine years old. Johnson explained a typical nine-year-old is able to remember an event and some episodic detail but may have a hard

time remembering exact times or even exact places. Johnson testified T.F. reported her mother's boyfriend had put his "part in her mouth and liquidy stuff came out" when she was sleeping on a couch in her front room with some of her other siblings. When asked about the "liquidy stuff," T.F. said it was "nasty." When asked if she felt the liquid stuff go anywhere on her, T.F. said it went "in her mouth." T.F. said she was asleep prior to feeling the "liquidy stuff" in her mouth. Upon waking, she saw defendant running away. T.F. told Johnson that it had happened more than once. She stated similar instances involving defendant had occurred 15 times. When asked if T.F. was able to provide any specificity about the other 15 times, Johnson testified T.F. stated it occurred at her grandmother's home and at the home where they were then living. A recording of part of the interview was admitted into evidence and published to the jury.

¶ 36 The parties stipulated to the following, which was read to the jury. Kelly Biggs is a forensic scientist qualified to testify as an expert in the field of "Forensic Science—Biology analysis." On September 20, 2016, the sexual assault kit was submitted for testing. On February 14, 2017, Biggs obtained the sexual assault kit and prepared samples from the items therein for testing. Biggs "identified semen in the swabs from the cheek and shoulder" and "indicated semen in the oral swab." Biggs preserved and submitted the samples for further testing. It was stipulated the sexual assault kit "was kept properly, and there was a true and complete chain of custody."

¶ 37 Dr. Sangeetha Srinivasan, a forensic scientist, was qualified to testify as an expert in DNA forensic analysis. Dr. Srinivasan received the package containing the buccal swabs, which she used to determine defendant's DNA profile. Dr. Srinivasan observed at trial the package containing the buccal swabs was in the same or substantially the same condition as when it was in her possession. She noted the package had an extra seal which indicated it was chosen by a quality review coordinator for a quality assurance check, which she explained was a randomized analysis

to assure quality guidelines are followed. Dr. Srinivasan also received the samples from the sexual assault kit prepared by Biggs as well as T.F.'s blood sample, which she used to determine T.F.'s DNA profile.

¶ 38 Dr. Srinivasan was examined about Biggs's apparent differentiation between semen identified and semen indicated. She explained Biggs would have made the differentiation based upon two tests, a preliminary test and confirmatory test. The preliminary test looks for the presence of semen and the results indicate the presence of semen but does not identify the presence of semen. The confirmatory test identifies the presence of semen based upon the identification of sperm cells. Dr. Srinivasan explained if no sperm cell was identified, it would be a semen indicator, but if a sperm cell was identified, it would be a semen identified.

¶ 39 Dr. Srinivasan testified about performing DNA extraction and analysis on the sample from the oral swab, where semen was indicated, and the cheek swab, where semen was identified. She extracted DNA from two fractions, the sperm fraction, which contained "mostly parts or cells that are coming from semen," and the non-sperm fraction, which contained "epithelial cells." She then analyzed the DNA from those fractions with defendant's and T.F.'s DNA profiles.

¶ 40 With respect to her analysis on the sperm fraction of the sample from the oral swab, Dr. Srinivasan testified defendant was included as a contributor. Dr. Srinivasan explained, "[a]nd with relation to the statistics, it is estimated that *** around 1 in 44 billion African-Americans, 1 in 200 trillion Caucasian[s][,] and 1 in 30 trillion Hispanics *** selected at random would be included as contributor." As to her analysis on the non-sperm fraction of the sample from the cheek swab, defendant was also included as a contributor. Dr. Srinivasan explained "this profile would be expected to occur in 1 in 7.6 octillion African[-]American[s], 1 in 680 nonillion Caucasian[s][,] and 1 in 67 nonillion Hispanic[s]."

¶ 41 Following closing arguments, the jury was instructed a person commits the offense of predatory criminal sexual assault of a child when "he is 17 years of age or older and intentionally commits an act of contact, however slight, between the sex organ or anus of one person and the part of the body of another for the purposes of sexual gratification of the Defendant and the victim is under 13 years of age." The jury was also instructed, to sustain the charge of predatory criminal sexual assault of a child, the State must prove, inter alia, "the Defendant intentionally committed an act of contact, however slight, between the sex organ of one person and *** the part of the body of another for the purposes of sexual gratification of the Defendant."

¶ 42 With respect to the dates upon which the charged offenses were alleged to have occurred, the jury, based upon a ruling by the trial court, was instructed: "The indictment states that the offenses charged were committed between August 28th, 2016[,] through August 29th, 2016[,] and July 1st, 2011[,] through August 27th, 2016. If you find the offenses charged were committed, the State is not required to prove that they were committed on the particular dates charged." The jury was given, again based upon a ruling by the court, verdict forms finding defendant guilty or not guilty for his conduct occurring on "August 28, 2016[,], through August 29, 2016" and "July 1, 2011[,] through August 27, 2016."

¶ 43 During its deliberations, the jury asked, "What is the significance of July 1, 2011 as starting the timeline?" The trial court informed the jury, "You have received all of the evidence you will receive. Please continue with your deliberations."

¶ 44 The jury returned two guilty verdicts.

¶ 45 E. Posttrial Proceedings

¶ 46 In April 2019, defendant, through counsel, filed a motion for acquittal or, in the alternative, a new trial, arguing, in part, (1) the trial court erroneously denied his pro se motions

seeking the dismissal of the indictment, (2) the court erred when it denied his pro se request for independent DNA testing, and (3) he was not proven guilty beyond a reasonable doubt. Following a hearing, the court denied defendant's motion.

¶ 47 In May 2019, the trial court held a sentencing hearing. Based on the evidence and recommendations presented, the court sentenced defendant to two, consecutively-imposed terms of 25 years' imprisonment. Defendant later filed a motion to reconsider the sentences imposed, which the court denied after a hearing.

¶ 48 This appeal followed.

¶ 49 II. ANALYSIS

¶ 50 On appeal, defendant argues (1) the trial court erroneously denied his pretrial motions to dismiss the indictment, (2) the trial court erroneously denied his second pretrial motion for independent DNA testing, and (3) the State failed to prove him guilty beyond a reasonable doubt of the offense charged in count II of the indictment.

¶ 51 A. Pretrial Motions to Dismiss the Indictment

¶ 52 Defendant argues the trial court erroneously denied his pretrial motions to dismiss the indictment where (1) counts I and II of the indictment did not set forth every element of the offenses charged therein and (2) count II of the indictment did not state the date of the offense as definitely as could be done. The State disagrees, contending the court properly denied defendant's motions.

¶ 53 "A criminal defendant has a fundamental right to be informed of the nature and cause of criminal accusations made against him." People v. Carey, 2018 IL 121371, ¶ 20, 104 N.E.3d 1150; see U.S. Const., amend. VI; Ill. Const. 1970, art. I, § 8. In Illinois, this right is implemented by section 111-3 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS

5/111-3 (West 2016)), which sets forth specific pleading requirements for a criminal charge. Carey, 2018 IL 121371, ¶ 20. Where, as here, a charging instrument is challenged in a pretrial motion, "the charging instrument must strictly comply with the requirements in section 111-3(a)." Carey, 2018 IL 121371, ¶ 21. The issue of whether a charging instrument strictly complied with section 111-3(a) is a question of law, subject to de novo review. People v. Espinoza, 2015 IL 118218, ¶ 15, 43 N.E.3d 993.

¶ 54 First, defendant argues, contrary to the finding of the trial court, counts I and II of the indictment failed to strictly comply with section 111-3(a)(3) of the Code in that they did not set forth the element of the offense of predatory criminal sexual assault of a child that the alleged contact was for the purpose of sexual gratification or arousal of him or T.F. The State disagrees, contending counts I and II of the indictment did not have to allege the contact was for purpose of sexual gratification or arousal of defendant or T.F. because the factual allegations in the indictment constitute an act of "sexual penetration" as defined by section 11-0.1 of the Code (720 ILCS 5/11-0.1 (West 2016)) or, alternatively, the allegation of "sexual" contact in both counts sufficiently described the contact as being for the purpose of sexual gratification or arousal.

¶ 55 Section 111-3(a)(3) of the Code (725 ILCS 5/111-3(a)(3) (West 2016)) states any criminal charge must set "forth the *** elements of the offense charged." A criminal charge fails to allege every element of the offense charged where it meaningfully departs from the language of the statute defining the criminal offense. See People v. Cuadrado, 214 Ill. 2d 79, 88, 824 N.E.2d 214, 219 (2005) (disagreeing with the State that the term "solicited" in the indictment was interchangeable with the term "procured" in the statute setting forth the offense of solicitation of murder for hire).

¶ 56 In this case, the indictment alleged, in relevant part, defendant committed the offense of predatory criminal sexual assault of a child in that he "committed an act of sexual contact, however slight, with T.F." The statute defining the criminal offense, in turn, states, in relevant part, a person commits predatory criminal sexual assault of a child where that person "commits an act of contact, however slight, *** for the purpose of sexual gratification or arousal of the victim or the accused." 720 ILCS 5/11-1.40(a)(1) (West 2016).

¶ 57 Comparing the allegations in the indictment with the language of the statute defining the criminal offense, the indictment, rather than alleging an act of contact for the purpose of sexual gratification or arousal of the accused or the victim, alleged "an act of sexual contact." The Oxford English Dictionary Online defines "sexual" as "relating to the instincts, physiological processes, and activities connected with physical attraction or intimate physical contact between individuals." See Oxford English Dictionary Online, www.oed.com/view/Entry/177084 (last visited October 19, 2021) [https://perma.cc/35H3-UF7N]. Under this definition, sexual contact is, in effect, contact done for the purpose for the purpose of sexual gratification or arousal. Therefore, we find counts I and II of the indictment did not meaningfully depart from the language of the statute defining the criminal offense of predatory criminal sexual assault of a child. While the better practice would have been to describe the contact with the qualifying statutory language, we agree with the trial court both counts of the indictment sufficiently set forth the elements of the offenses charged therein and, thus, strictly complied with section 111-3(a)(3) of the Code.

¶ 58 Second, defendant argues, contrary to the finding of the trial court, count II of the indictment failed to strictly comply with section 111-3(a)(5), in that it did not state the date of the offense as definitely as could be done. The State disagrees, highlighting the fact count II involved a sex offense committed against a young child.

¶ 59 Section 111-3(a)(4) of the Code (725 ILCS 5/111-3(a)(4) (West 2016)) states any criminal charge must state "the date *** of the offense as definitely as can be done." This requirement is accorded a degree of flexibility in cases involving a sex offense committed against a child. People v. Guerrero, 356 Ill. App. 3d 22, 27, 826 N.E.2d 485, 489 (2005); see People v. Bishop, 218 Ill. 2d 232, 247, 843 N.E.2d 365, 374 (2006) (recognizing "that it is often difficult in the prosecution of child sexual abuse cases to pin down the times, dates, and places of sexual assaults, particularly when the defendant has engaged in a number of acts over a prolonged period of time"). "As long as the crime occurred within the statute of limitations and prior to the return of the charging instrument, the State need only provide the defendant with the best information it has as to when the offenses occurred." Guerrero, 356 Ill. App. 3d at 27.

¶ 60 In this case, defendant did not provide any supporting argument before the trial court concerning his claim that count II of the indictment failed to "adequately narrow down the time and date" of the offense. The State, on inquiry by the trial court, stated count II was based upon statements made by T.F. in her recorded interview. Defendant now, for the first time on appeal, contends the State could have alleged a much more precise offense date range of just over one year, late 2014 to early 2016, based upon T.F.'s recorded interview as well as a June 20, 2017, police report—a report which he first attached to his posttrial motion—detailing an interview of Gaila C.

¶ 61 In the recorded interview, nine-year-old T.F. described an incident of contact or contacts by defendant which resulted in her going to the hospital. T.F. then stated similar instances involving defendant had occurred 15 times. T.F. indicated those instances occurred at her grandmother's home and where she was currently living. In the police report, it was reported Gaila C. stated Megan J., defendant, and the children lived with her for about a year. The police report

does not, however, mention Gaila C. reporting a specific year that occurred. Further, it was reported Gaila C. stated Megan J. "had been with [defendant] for approximately five years." Even considering the interview and police report in tandem, we are unconvinced the date range provided in count II of the indictment failed to state the date of the offense as definitely as could be done. We find count II sufficiently set forth a date range upon which the charged offense allegedly occurred and, thus, strictly complied with section 111-3(a)(5).

¶ 62 B. Second Pretrial Motion for Independent DNA Testing

¶ 63 Defendant argues the trial court erroneously denied his second pretrial motion for independent DNA testing, where (1) the court's decision was based upon its mistaken belief that it denied his first pretrial motion for independent DNA testing and (2) the record shows discrepancies in the State's DNA evidence which were likely to be resolved by independent DNA testing. The State disagrees, contending the issue is forfeited, the trial court did not err when it denied defendant's motion, and any error was harmless.

¶ 64 At the outset, we must address the State's assertion that the issue is forfeited. The State argues "defendant has forfeited this issue where he withdrew his first motion for independent DNA examination and did not file a written second motion after the [trial] court requested he do so." Defendant disagrees.

¶ 65 A criminal defendant generally "preserves an issue for review by (1) raising it in either a motion in limine or a contemporaneous trial objection, and (2) including it in the posttrial motion." People v. Denson, 2014 IL 116231, ¶ 11, 21 N.E.3d 398. The "[f]ailure to do either results in forfeiture." People v. Sebby, 2017 IL 119445, ¶ 48, 89 N.E.3d 675. "The forfeiture rule protects (i) respect for the trial court as the tribunal with the primary responsibility to make findings of fact and render initial judgments, (ii) time and judicial resources by heading off appeals of

nonmeritorious claims, and (iii) against unfair surprise to the State who may otherwise hear of an issue for the first time on appeal." People v. Clifton, 2019 IL App (1st) 151967, ¶ 53, 144 N.E.3d 508.

¶ 66 In this case, the record shows defendant made an oral pretrial motion for independent DNA testing. Defendant then, after the trial court directed him to place his motion in writing, withdrew his motion. Later, defendant made a second oral pretrial motion for independent DNA testing. The State, rather than objecting on grounds that the motion was not in writing, addressed the merits of the motion. The court, in turn, entertained and then denied defendant's motion. Following the trial, defendant included a claim in his posttrial motion that the court erroneously denied his motion for independent DNA testing.

¶ 67 Based upon this record, the issue concerning the independent DNA testing was raised by defendant both before and after trial, the State had the opportunity to respond to the issue, and the trial court had the opportunity to make both factual and legal rulings on the issue. We find defendant has sufficiently preserved for review the issue of whether the trial court erroneously denied his second pretrial motion for independent DNA testing.

¶ 68 Turning to the merits, "[t]here can be no question that [a] defendant has a constitutional right to conduct his own tests on physical evidence." (Internal quotations marks omitted.) People v. Peeples, 155 Ill. 2d 422, 477, 616 N.E.2d 294, 319 (1993). That right is guarded by Illinois Supreme Court Rule 412(e) (eff. Mar. 1, 2001), a rule of discovery which requires the State to make physical evidence available for testing.

¶ 69 A defendant's right to conduct his own tests on physical evidence is not, however, "absolute." Peeples, 155 Ill. 2d at 477. The committee comments to Rule 412(e) explain:

> "Access to material by a defense expert must be permitted, sufficient to allow him to reach conclusions regarding the State's examining or testing techniques and results. Where feasible, defense counsel should have the opportunity to have a test made by his chosen expert, either in the State's laboratory or in his own laboratory using a sufficient sample." (Emphasis added.) Ill. S. Ct. R. 412, Committee Comments (rev. Mar. 1, 2001).

¶ 70 Defendant, citing People v. Galiano, 2019 IL App (1st) 160570, ¶ 26, 147 N.E.3d 912, argues we should review the trial court's denial of his second pretrial motion for independent DNA testing de novo, asserting it concerns the court's compliance with a supreme court rule. Conversely, the State, citing People v. Sutton, 349 Ill. App. 3d 608, 619, 812 N.E.2d 543, 551 (2004), argues we should review the court's denial for an abuse of discretion, asserting it concerns a discovery ruling reserved to its sound discretion.

¶ 71 Regardless of how the issue is framed, we find the trial court did not erroneously deny defendant's second pretrial motion for independent DNA testing. Shortly before the start of the scheduled jury trial, defendant made his second oral motion for independent DNA testing. Defendant made his motion shortly after the State had suggested to the court that defendant's recent motions were a stall tactic. In denying defendant's motion, the court indicated its decision was based, at least in part, on its suspicion "that there may be a hidden agenda to your request at this point on the eve of trial." Based upon this record, we cannot say the trial court's ruling constituted a complete failure to comply with Rule 412 or an abuse of discretion. To the contrary, the trial court's ruling was a reasonable and appropriate exercise of its authority to manage its docket while ensuring the purposes of the discovery rules were met.

¶ 72 Moreover, we are unconvinced defendant was prejudiced by the denial of his second pretrial motion for independent DNA testing. No evidence was presented indicating the DNA test results contained possible discrepancies which additional independent testing could likely resolve. Defendant highlights the possibility the DNA found on the samples from the sexual assault kit may not have matched his DNA profile which was allegedly contained within a state database. However, it is unclear an independent laboratory would have access to the State database to resolve this issue, and even if the independent laboratory did determine the profile in the state database did not match the profiles obtained from samples in the sexual assault kit, that does not call into question the DNA analysis based upon the sample from defendant's recent buccal swabs. Defendant also highlights the possibility the DNA on the buccal swabs was altered during the several-month period after the swabs were removed from the evidence locker and before they were transferred to the laboratory. However, Davis, the evidence technician who handled the package containing the buccal swabs during that period, testified at trial the package appeared in the same or substantially the same condition as when she had possession of them. Ultimately, this was not a case which hinged on the DNA evidence. Rather, defendant's guilt was established by the testimony from the victim, herself, along with her prior statements to her grandmother, the emergency room doctor, the emergency room nurse, the forensic interviewer, and her mother.

¶ 73 C. Sufficiency of the Evidence

¶ 74 Last, defendant argues the State failed to prove him guilty beyond a reasonable doubt of the offense charged in count II of the indictment. Specifically, defendant contends the evidence presented at his trial was insufficient to show "he committed an act of contact between his penis and a part of T.F.'s body for the purpose of his sexual gratification on an unknown date between July 1, 2011, and August 27, 2016." The State disagrees.

¶ 75 When presented with a challenge to the sufficiency of the evidence, "the question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis and internal quotation marks omitted.) People v. McLaurin, 2020 IL 124563, ¶ 22, 162 N.E.3d 252. "The trier of fact remains responsible for resolving conflicts in the testimony, weighing the evidence, and drawing reasonable inferences from the facts." People v. Harris, 2018 IL 121932, ¶ 26, 120 N.E.3d 900. "A criminal conviction will not be reversed for insufficient evidence unless the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt." People v. Gray, 2017 IL 120958, ¶ 35, 91 N.E.3d 876.

¶ 76 At trial, T.F., after describing an incident of contact or contacts by defendant occurring sometime between the night of August 28, 2016, and early morning hours of August 29, 2016, testified about similar acts of contact by defendant occurring while she and her family lived with her grandmother. T.F.'s testimony was consistent with the statements she made during her recorded interview. Gaila C. testified Megan J., defendant, and the children resided with her for a period of about a year. Megan J. testified T.F. had made an accusation against defendant in 2015, when they were living with Gaila C. T.F. confirmed on the stand that she made a prior accusation against defendant. While Megan J. testified T.F. recanted her prior accusation against defendant, T.F. flatly denied any recantment. While defendant attempts to discredit T.F.'s testimony and statements by highlighting inconsistencies, the jury was in the best position to make credibility determinations, and we find nothing to suggest T.F.'s testimony or statements were inherently unbelievable. From the testimony presented, we find a rational trier of fact could have found defendant committed an act of contact between his penis and a part of T.F.'s body for the purpose

of his sexual gratification when T.F. and her family were living at T.F.'s grandmother's home in 2015.

¶ 77 III. CONCLUSION

¶ 78 We affirm the trial court's judgment.

¶ 79 Affirmed.

sexual, *adj.* and *n.*

Pronunciation: Brit. /ˈsɛkʃʊəl/, /ˈsɛkʃ(ʊ)l/, /ˈsɛksjʊ(ə)l/, U.S. /ˈsɛkʃ(əw)əl/

Forms: 1600s **sexuall**, 1600s– **sexual**.

Frequency (in current use):

Origin: A borrowing from Latin. **Etymon:** Latin *sexualis*.

Etymology: < post-classical Latin *sexualis*...

A. *adj.*

†**1.** Characteristic of or peculiar to the female sex; feminine. Cf. SEX *n.*[1] 3. *Obsolete.*

1622 T. ADAMS *Eirenopolis* 124 That blessed Queene..who, as by her Sexuall graces shee deserued to bee the Queene of women, so by her masculine vertues to bee the Queen of men.

1779 W. ALEXANDER *Hist. Women* I. 11 The sex might easily have discouraged, this, but they rather gave it countenance; and the consequence was, that all sexual decorum being nearly extinguished, the familiarity allowed to the men, in time, began to be productive of contempt.

1792 M. WOLLSTONECRAFT *Vindic. Rights Woman* ii. 59 A mistaken education, a narrow uncultivated mind, and many sexual prejudices, tend to make women more constant than men.

1815 *Sporting Mag.* **46** 74 Her looks, her turns, her whole manner of speaking and acting is sexual.

1839 T. DE QUINCEY *Lake Reminisc.* in *Tait's Edinb. Mag.* Apr. 252/1 To ingraft, by her sexual sense of beauty, upon his masculine austerity that delicacy [etc.].

2.

a. Of, relating to, or arising from the fact or condition of being either male or female; predicated on biological sex; (also) of, relating to, or arising from gender, orientation with regard to sex, or the social and cultural relations between the sexes.

In quot. 1879: according to sex.

1650 W. CHARLETON tr. J. B. van Helmont *Ternary of Paradoxes* (new ed.) 128 There was no sexual impress [L. *nota sexualis*] [in the soul itself], but onely in the cortex or shrine.

1651 N. BIGGS *Matæotechnia Medicinæ Praxeωs* ¶69 The same simple rotteth, and is changed into little animals, these are..of both sexes, which truly would not come to passe if those simples had already a sex or sexuall powers within them.

1760 J. LEE *Introd. Bot.* Pref. vi. The Honor of having first suggested the true sexual Distinctions in Plants appears to be due to..Sir Thomas Millington.

1794 R. J. SULIVAN *View of Nature* II. 222 One only single sexual pair of every species of living things.

1799 C. B. BROWN *Ormond* xx. 234 The timidity that commonly attends women, gradually vanished. I felt as if embued by a soul that was a stranger to the sexual distinction.

1826 W. KIRBY & W. SPENCE *Introd. Entomol.* III. 316 Of all the organs of the head, none seem so little subject to sexual variation as the under-jaws.

1874 A. H. Sayce *Princ. Compar. Philol.* vii. 249 We may take, by way of illustration, the question of gender. What..was the source..of the sexual relation of nouns?

1877 T. H. Huxley *Man. Anat. Invertebrated Animals* ii. 81 These extremely simple organisms have not yet reached the stage of sexual differentiation.

1879 *St. George's Hosp. Rep.* **9** 719 The sexual distribution of this disease.

1899 *N. Amer. Rev.* June 723 The..succession of attacks made by distinguished women on the exaggerations of the feminine thesis..are not liable to suspicion as the outcome of sexual prejudice.

1946 *Mod. Lang. Rev.* **41** 268 The attempt to erect an educational psychology on the notion of innate sexual qualities of mind she characterized as 'so puerile as not to merit a serious refutation'.

1957 H. M. Hacker in *Marriage & Family Living* **19** 232/1 Individuals who..feel inadequate in fulfilling their part of the sexual division of labor may become confused in their sexual identification.

1981 N. Tucker *Child & Bk.* vii. 212 Children's perceptions of their sexual roles are built up from many different sources.

1998 *Cosmopolitan* (U.K. ed.) Sept. 88/2 I don't like sexual stereotypes, but men just don't get shopping.

2006 *Woman's Art Jrnl.* **26** 23 Her exposure of the social construction of sexual difference..challenged the traditional paradigm of analysis.

b. *Biology*. Of an animal, plant, or other organism: characterized by sex; sexed, sexuate; capable of sexual reproduction; having distinct male and female reproductive organs, often (though not necessarily) in separate individuals. Opposed to *asexual*.

1830 J. Lindley *Introd. Nat. Syst. Bot.* Introd. 18 Plants are naturally and primarily divided into two great divisions, called Sexual and Asexual.

1861 R. T. Hulme tr. C. H. Moquin-Tandon *Elements Med. Zool.* ii. vii. 329 The Linguatulæ are at first asexual... They pass..into the bodies of the carnivora.., where they complete their development, and become sexual.

1880 C. E. Bessey *Bot.* 361 They [*sc.* vascular cryptogams] present an alternation of sexual and asexual generations.

1882 S. H. Vines tr. J. von Sachs *Text-bk. Bot.* (ed. 2) 273 It is only towards the close of the period of growth that sexual individuals make their appearance.

1917 H. W. Conn *Bacteria, Yeasts, & Molds in Home* (rev. ed.) xv. 216 (*caption*) Malarial organism... The crescent bodies become the sexual bodies..which develop in the mosquito.

1940 *Amer. Jrnl. Bot.* **23** 8 The gametophyte is a sexual plant in that it bears..antheridia and archegonia which produce respectively sperms and eggs.

1994 K. Maxwell *Sex Imperative* vi. 93 There was a progressive decrease in fecundity in succeeding asexual generations of the aphids until the final, sexual form was produced.

3.

a. Designating those organs or anatomical structures concerned in sexual reproduction or (esp.) in sexual intercourse, as ***sexual organ*** (often in *plural*), ***sexual parts***.

1753 *Ess. Celibacy* 53 Leachery is really such a monster, as..to be no less than a strong inclination to transform the whole bodily frame into sexual organs, and employ them in one continued act of lewdness and debauchery.

1757 J. H. GROSE *Voy. E.-Indies* ii. 35 The common people have no cloathing but a piece of coarse wrapper, which goes round their loins, and often barely covers their sexual parts.

1772 C. MILNE *Inst. Bot.* II. 203 This separation and this union of the sexual organs of plants offers nothing contrary to what is observed in animals.

1797 J. STACKHOUSE *Nereis Britannica* (1801) II. p. vi In plants whose sexual parts were so small as to elude even microscopic observation unless with compound magnifiers, [etc.].

1828 J. STARK *Elements Nat. Hist.* II. 407 Worms..with..the sexual organs separate.

1884 *Amer. Naturalist* **18** 779 The same portion of primary tissue develops into one sexual organ in one of the sexes and into a different organ in the other sex.

1915 *Man* **15** 115 He was naked, but the sexual organ was covered with an apron of palm leaves.

1928 L. T. TROLFAND *Fund. Human Motivation* vii. 117 The preliminary stages of erection, or tumescence, in both male and female, depend mainly upon vasomotor reflexes which result naturally from irritation of the sexual parts.

1965 *Taxon* **14** 258 They [*sc.* bryophytes] have..a female sexual organ called archegonium.

1990 D. BOLGER *Journey Home* (1991) i. 25 Between them Shay sat, egging them on as they mocked the size of each other's sexual parts.

2003 *Science* 19 Dec. 2050/1 Each year, a few babies are born with a male set of chromosomes and female sexual organs.

b. Relating to or affecting the genitals or reproductive organs.

1825 *Zool. Jrnl.* **1** 405 These three states of genital products require three distinct situations, which in the normal mammifera are found within the sexual canal.

1836–9 *Todd's Cycl. Anat. & Physiol.* II. 695/1 In attempting to determine the true sex in such doubtful instances of sexual formation.

1859 *Jrnl. Soc. Arts* **7** 222/2 Apparatus, for curing..sexual diseases.

1888 *Amer. Naturalist* **22** 278 The genital sacks are laid bare by a longitudinal slit in the body-wall, opposite the sexual aperture.

1940 K. YOUNG *Personality & Probl. of Adjustm.* 32 The sexual glands produce not only the necessary cells for reproduction..but also important hormones.

2006 *Company* Nov. 71/3 HPV is very contagious, and is spread during any form of sexual or skin-to-skin contact.

4.

a. Relating to, tending towards, or involving sexual intercourse, or other forms of intimate physical contact.

1753 *Ess. Celibacy* 101 Sexual commerce is natural, and, when it is the consequence of marriage, virtuous.

1800 W. WORDSWORTH in W. Wordsworth & S. T. Coleridge *Lyrical Ballads* (ed. 2) I. p. xxxii From this principle the direction of the sexual appetite, and all the passions connected with it take their origin.

1861 R. W. EMERSON *Society & Solitude* in *Wks.* (1906) III. 133 To insure the existence of the race, she [*sc.* Nature] reinforces the sexual instinct.

1872 R. LUDLAM *Lect. Dis. Women* 265 A sexual orgasm..may be followed by a severe attack of this peculiar form of headache.

1876 J. S. BRISTOWE *Treat. Theory & Pract. Med.* II. ii. 326 It [*sc.* acne] has a special connection with the period of development and maturation of the sexual functions.

1880 C. E. Bessey *Bot.* 206 Whether the sexual act occurs or not [in Protophytes] is somewhat doubtful.

1897 H. Ellis & J. A. Symonds *Sexual Inversion* 117 The sexual relationship rarely goes beyond close physical contact, or at most mutual masturbation.

1974 H. R. F. Keating *Underside* xi. 108 She must know..that men had sexual urges, that they could not live without any sexual experience of any sort.

1980 D. Newsome *On Edge of Paradise* 382 He had no sexual life; all his sexual instincts had to be sublimated.

2007 *Chicago Tribune* (Midwest ed.) 10 June xiii. 6/3 Reports of sexual behavior while asleep have become so common that experts have released a classification system.

b. Of or relating to sexuality as a social or cultural phenomenon; regarding sexual conduct.

1809 R. Tyler *Yankey in London* 162 The Italians [are characterized] as effeminate, jealous, and lost to every sense of sexual virtue.

1840 T. De Quincey *Style* in *Blackwood's Edinb. Mag.* July 7/1 The interesting class of women unmarried upon scruples of sexual honour.

1852 R. Browning *Introd. Ess.* in P. B. Shelley *Lett.* 34 Mistaking Churchdom for Christianity, and for marriage, 'the sale of love' and the law of sexual oppression.

1911 *Contemp. Rev.* Sept. 383 Berlin is outbidding Paris in its sexual immorality.

1934 A. Huxley *Beyond Mexique Bay* 44 Places where people..obey other sexual taboos.

1968 A. Diment *Bang Bang Birds* ii. vi. 81 You'd think his life work was spreading American sexual mores around the world.

1975 G. Howell *In Vogue* 62 The sexual education of the jazz age.

1986 S. Churcher *N.Y. Confid.* ix. 223 Yes, sexual liberation lives.

2003 L. Peirce *Morality Tales* 372 A more serious community dispute over rules of sexual propriety.

c. Characterized by sexual instincts or feelings, or the capacity for these; possessing or displaying sexuality.

1839 G. Dennis *Summer in Andalucia* II. xvi. 403 From the cradle she seems to suck in the idea, that she is a sexual being; and the little miss not yet in her teens..coquets with her little beau.

1898 *Amer. Anthropologist* **11** 234 Among all lowest hunting savages..the woman is not merely a sexual being.

1916 B. M. Hinkle tr. C. G. Jung *Psychol. Unconscious* ii. viii. 459 The incest prohibition places an end to the childish longing for the food-giving mother, and compels the libido, gradually becoming sexual, into the path of the biological aim.

1959 W. L. Warner *Living & Dead* xi. 364 The moral life of man as a sexual creature is a constant struggle between the spirit and the flesh.

2005 *Elle Girl* (U.K. ed.) Feb. 14/3 She's way more overtly sexual than me... I'd be scared of having her voluptuousness.

5. *Biology*. Of reproduction in animals, plants, and other organisms: taking place by means of a physical connection or fusion between two cells (usually distinct male and female reproductive cells or gametes) and the recombination of their genetic material to produce a new cell with a genotype containing elements from each. Esp. in ***sexual reproduction***. Opposed to *asexual* or *agamic*.

1794 E. DARWIN *Zoonomia* I. xxxix. 514 Many flying insects..seem to undergo a general change of their forms solely for the purpose of sexual reproduction.

1800 E. DARWIN *Phytologia* i. 7 It [*sc.* a bud] contains the rudiments of organs adapted to lateral generation or the production of new buds; or to sexual propagation and the consequent production of seeds.

1872 H. C. WOOD *Contrib. Hist. Freshwater Algæ* 100 The propagation is both sexual and non-sexual.

1882 S. H. VINES tr. J. von Sachs *Text-bk. Bot.* (ed. 2) 251 Conjugation is the simplest form of sexual reproduction.

1889 A. W. BENNETT & G. R. M. MURRAY *Handbk. Cryptogamic Bot.* 272 The only known sexual mode of reproduction [in the Confervoideae] is an isogamous one between two masses of protoplasm.

1934 J. A. THOMSON & E. J. HOLMYARD *Biol. for Everyman* I. i. 11 Sexual multiplication by means of special germ-cells or sex-cells is much more economical.

1953 R. W. FAIRBROTHER *Text-bk. Bacteriol.* (ed. 7) ii. 11 The fungi and moulds are multicellular and possess a sexual phase of reproduction.

1978 *Fortune* (Nexis) 19 June 100 The trouble with sexual reproduction, from a cloner's viewpoint, is that it involves a genetic reshuffle, producing offspring that are not an exact match of either parent.

2006 *Nature* 2 Mar. p. xi The origin and persistence of sexual reproduction in living organisms remains one of the deepest mysteries of biology.

B. *n.*

Biology. An organism which is capable of sexual reproduction; a sexuale or sexual form (usually as contrasted with an asexual, parthenogenetic, or vegetative form).

1919 *Lancet* 10 May 783/2 (*table*) Type of infection... *P*[*lasmodium*] *falciparum*. Asexual parasites numerous in the blood. No sexuals.

1939 *Amer. Jrnl. Bot.* **26** 105/2 A greater number of successful combinations are possible among apomicts than among sexuals because their F^1 hybrids..circumvent the exacting test of sexual reproduction.

1977 O. W. RICHARDS & R. G. DAVIES *Imms's Gen. Textbk. Entomol.* (ed. 10) II. 722 Suppression of sexuals can..occur in holocyclic species.

2004 *Nature* 4 Mar. 35/1 Social parasite queens exploit the resources and workers of a host colony to produce reproductive offspring (sexuals) without investing in a large worker force of their own.

COMPOUNDS

C1. With the sense 'relating to biological sex or gender'.

sexual cell *n.* now chiefly *Botany* a reproductive cell or gamete which is either male or female.

1860 T. LAYCOCK *Mind & Brain* II. 207 The male sexual cells are termed antherozoids in plants, and spermatozoa in animals.

1936 W. SEIFRIZ *Protoplasm* ii. 40 Most of the lower plants (algae, mosses, ferns, etc.) have motile (swimming) male sexual cells.

1952 F. L. WYND tr. E. A. Gäumann *Fungi* 60 Copulation therefore does not occur between true sexual cells, but between the gametangia.

2004 D. R. WALLACE *Beasts of Eden* viii. 95 Weismann concluded that the sexual cells that transmit inheritance are isolated from the rest of the body, and that only changes in the former could be inherited.

sexual character *n.* (usually in *plural*) any feature that is characteristic of or peculiar to one sex or the other.

primary sexual characters, the gonads and genitals; *secondary sexual characters*, sexual characters other than the gonads and genitals, such as the beard in human males and the distinctive plumage of many birds.

1774 J. HILL *Veg. Syst.* XXV. 9 In all the Daffodills, six Filaments, with their yellow heads, are conspicuous enough in the natural Flowers; here there are but three: but this only seems to break in upon the sexual character.

1834 *Trans. Amer. Philos. Soc.* **4** 318 Mr Titian R. Peale..suggested to Dr Godman that the tusks in the lower jaw might be merely a sexual character.

1926 J. R. BAKER *Sex in Man & Animals* ii. 26 The primary sexual characters are..the testes and ovaries. The accessory sexual characters are the obviously useful sex characters other than the testes and ovaries, such as the vas deferens..and the vagina... The secondary sexual characters are those which seem not to be directly concerned in reproduction, such as beards, antlers, and crests.

1998 *Isis* **89** 463 Neither the somatic nor the psychobehavioral sexual characters, then, were laid down irreversibly *ab ovo*.

sexual characteristic *n.* = *sexual character n.*

1797 *Encycl. Brit.* VII. 348/2 The neuters or working ants which have no sexual characteristics.

1867 *Philos. Trans.* (Royal Soc.) **152** 297 In the skull of a young male Chimpanzee..the pterygoids have already almost met in the middle line... Most probably this is a sexual characteristic.

1938 *Biol. Bull.* **75** 283 The activation of the male constituents of the primary ambisexual gonad always precedes the development of such secondary..behaviouristic sexual characteristics.

2003 *Church Times* 16 May 11/1 Lord Nicholls..listed the indicia of human gender as chromosomes, gonads, internal sex organs, external genitalia, hormonal patterns and secondary sexual characteristics such as facial hair and body shape.

sexual dimorphism *n.* the condition in which there exist marked differences in size, form, or appearance between the sexes of a species in addition to differences in the reproductive organs themselves.

1853 A. GRAY *Plantæ Wrightianæ Texano-Neo-Mexicanæ* in *Smithsonian Contrib. Knowl.* **5** 25 The 'purple' flowers are twice the size of those of O[xalis] stricta... There is probably a sexual dimorphism.

1877 *Proc. Amer. Acad. Arts & Sci. 1876–7* **12** 150 (*title*) Antigeny, or sexual dimorphism in butterflies.

1902 *Encycl. Brit.* XXVII. 625/2 *Bonellia* and *Hamingia* are very interesting examples of sexual dimorphism... The male is reduced to a minute..organism, which passes its life..in a special recess of the nephridia of the

female.

1970 *Cambr. Anc. Hist.* (ed. 3) I. I. v. 156 Even allowing for marked sexual dimorphism it is still obvious that more than one species [of australopithecine] demands recognition.

2000 K. DEAUX & B. MAJOR in M. S. Kimmel & A. Aronson *Gendered Society Reader* 81 Taking sexual dimorphism as a starting point, investigators have tried to establish, or in some cases refute, the existence of differences between women and men.

sexual discrimination *n.* *(a)* (chiefly *Biology*) differentiation or distinction between the sexes; *(b)* discrimination against a person, typically a woman, on the grounds of sex, esp. in employment.

1669 W. SIMPSON *Hydrologia Chymica* 273 An humane embryo..without sexual discrimination, onely an umbratilous figuration of the microcosme.

1934 *Biometrika* **26** 228 It may be doubted, too, whether the simotic index is of much value in aiding sexual discrimination.

1955 *Times* 12 May 14/4 A conference on human rights which discussed racial and sexual discrimination.

1974 *Amer. Zoologist* **14** 18/1 Since in so many species there is virtually no sexual dimorphism, other than the size relationship *after* pairing, it is likely that sexual discrimination is chemical.

2003 J. P. STERBA in C. Cohen & J. P. Sterba *Affirmative Action & Racial Preference* II. 227 The U.S. Supreme Court has advanced a number of arguments for treating sexual discrimination differently than racial discrimination.

sexual method *n. Botany* (now *historical* and *rare*) = *sexual system n.*

1738 J. F. GRONOVIUS *Let.* 22 July in *Select. Corr. Linnaeus & other Naturalists* (1821) II. 173 We resigned him to Mr. Cliffort, to make a Catalogue of his garden, according to the sexual method, which is now printed, though not yet distributed.

1760 P. MILLER *Gardener's Kalendar* (ed. 12) 376 The sexual method of classing plants, established by doctor Linnæus, is much preferable to all the systems of Botany which have yet appeared.

1839 *London Encycl.* X. 323/1 at *Gramina* In Tournefort they constitute part of the fifteenth class, termed apetali; and in Linnæus's sexual method they are mostly contained in the second order of the third class.

1955 J. CLEUGH tr. H. Wendt *I looked for Adam* ii. 44 The system worked excellently in the case of plants... But in the case of animals difficulties arose. The sexual method was inappropriate here. And other methods were inapplicable.

sexual-political *adj.* of, relating to, or concerning sexual politics.

1970 K. MILLETT *Sexual Politics* II. iii. 110 The sexual-political predilections of each faction.

1984 *Boundary 2* **12** 340 This analytic strategy..assumes men and women are already constituted as sexual-political subjects *prior* to their entry into the arena of social relations.

1999 C. BROOKMYRE *One Fine Day in Middle of Night* (2000) 30 Ally tended to take most of Jake's sexual-political theories with a pinch of post-modernism.

sexual politician *n.* a person versed or engaged in sexual politics.

1970 K. MILLETT *Sexual Politics* II. iv. 233 So we proceed to the counterrevolutionary sexual politicians themselves—Lawrence, Miller and Mailer.

1999 G. JONES *Deconstructing Starships* vii. 100 The..world-wide creation of wealth has been making insidious attacks, finally far more damaging than anything sexual-politicians can achieve, on the concept of sexual gender.

2007 *Business Wire* (Nexis) 18 Oct. The generation that came of age with Sex and the City..are well-versed sexual politicians with a future-forward view of masculinity, femininity and everything in between.

sexual politics *n.* attitudes governing the interaction between men and women; relations between the sexes regarded in terms of power.

1946 T. P. WOLFE tr. W. Reich *Mass Psychol. Fascism* viii. 163 The industrial mode of production made the contradictions of reactionary sexual politics obvious.

1981 J. MONACO *How to read Film* (rev. ed.) iv. 229 The question of sexual politics in film.

2007 J. WEEKS in *Sexualities & Communication in Everyday Life* ii. 42/2 I want to explore in some detail..the trouble that radical sexual politics can cause.

sexual selection *n.* the evolutionary theory, originally proposed by Darwin, of the preferential reproduction of male organisms with characteristics that favour their success in competition with other males, either directly or through mate choice by females, intended to account for the development of features such as large size, elaborate horns, ornamental coloration, etc.

1859 C. DARWIN *Origin of Species* iv. 88 And this leads me to say a few words on what I call Sexual Selection. This depends, not on a struggle for existence, but on a struggle between the males for the possession of the females; the result is not death to the unsuccessful competitor, but few or no offspring.

1932 T. H. MORGAN *Sci. Basis Evol.* vii. 154 The theory of sexual selection..assumes that the female continues to select in successive generations the more ornamental males.

2002 M. D. GREENFIELD *Signalers & Receivers* iv. 225 Were..males performing a stereotypical leg or wing movement for visual display or evaporation of pheromones, sexual selection may have favored stridulatory, tymbal, or percussional devices by which the movements yielded sound.

sexual system *n.* [after post-classical Latin *systema sexuale* (Linnaeus *Systema Naturæ* (1735))] *Botany* (now *historical*) the Linnaean classification of plants, in which plants are grouped according to the number of stamens and pistils in each flower.

1754 tr. C. Alston *Diss. Bot.* 69 According to the sexual system, where trees are confounded with herbs, a methodical Syntax or Construction of Plants in a garden is impossible.

1760 J. LEE *Introd. Bot.* Pref. iii. Dr. Linnæus; whose Labors..and whose Invention of the Sexual System in particular are well known.

1825 T. K. CROMWELL *Hist. Colchester* 352 The herbaceous collection will be arranged according to the sexual system of Linnæus.

1952 P. MANN *Systematics Flowering Plants* I. 9 Linnaeus chose as his main criteria of classification the reproductive parts of plants (stamens and carpels), and his is therefore referred to as the Sexual System of

Classification.

2003 *Bryologist* **106** 27/2 Many botanists used the artificial sexual system of Linnaeus, while others preferred the natural method that was largely advocated by Augustin Pyramus De Candolle.

C2. With the sense 'relating to sexual contact or activity'.

sexual assault *n.* the action or an act of forcing an unconsenting person to engage in sexual activity; a rape; (*Law*) a crime involving forced sexual contact, variously defined as inclusive or exclusive of rape.

1883 E. C. MANN *Man. Psychol. Med.* viii. 127 There may be suicidal or homicidal impulses.., or sexual assaults may be made.

1944 *Times* 23 May 2/7 In making a sexual assault, the apellant's intention in pulling the girl's scarf around her neck was to keep her from struggling or screaming.

1977 *Off our Backs* (Electronic ed.) 31 Aug. 3 The case involved a youth who pleaded no contest to a charge of second-degree sexual assault (fondling/touching) of a girl.

1989 *St. Louis (*Missouri*) Post-Dispatch* (Nexis) 19 Mar. 11 D [The girl] became pregnant in a rape... Two suspects have been charged with first-degree criminal sexual assault.

2003 *Independent on Sunday* 29 June 15/1 Use of the drug dubbed 'liquid ecstasy', which has been used in numerous drug-assisted rapes and sexual assaults, will be outlawed.

sexual assault kit *n. North American* = *rape kit n.* at RAPE *n.*[3]
Compounds 2.

1980 *Globe & Mail (*Toronto*)* 3 Nov. 5/2 All hospitals in the province will be supplied with a standardized 'sexual assault kit' that will make the examination easier and more effective.

1996 *N.Y. Times* 10 Nov. (Late ed.) XIII. 9/1 A team of nurses..would be trained in administering the sexual-assault kit.

2001 A. MICHAUD in M. M. Houck *Mute Witnesses* iii. 53 The task force quickly gathered the victim's clothing, along with a sexual assault kit, and sent it to the laboratory for examination.

sexual athlete *n.* a person characterized by a high degree of vigour or skill in the practice of sex.

1911 H. ELLIS *Stud. Psychol. Sex* (new ed.) VI. xi. 537 The rare men who possess a genital potency which they can exert to the gratification of women without injury to themselves have been, by Professor Benedikt, termed 'sexual athletes', and he remarks that such men easily dominate women.

1939 R. PEARL *Nat. Hist. Population* 293 Present-day examples of sexual athletes who make Casanova, the traditional star, seem a somewhat puny performer.

1963 *Times* 8 Feb. 14/1 The self-destructive career of a late romantic hero—drunkard, sexual athlete and *poète maudit*.

2007 *Chicago Tribune* (Nexis) 11 July More and more American women expect to be gorgeous and sexual athletes into their 80s, says social historian Joan Jacobs Brumberg.

sexual athleticism *n.* vigorous or skilful sexual performance, or the capacity for this.

1939 R. PEARL *Nat. Hist. Population* 293 I thought you might be interested in some cases of—as it seems to me —prodigious sexual athleticism.

1970 *Guardian* 12 Nov. 10/3 Would he have to do anything awful in the way of sexual athleticism?

1999 P. LUNNEBORG *Chosen Lives Childfree Men* xiv. 134 People used to equate the ability to father children with the size of your dick or your sexual athleticism.

sexual athletics *n.* sexual acts or activities performed with a high degree of vigour or skill.

1961 K. E. MEYER *New Amer.* xi. 143 This egoism is orgiastic, filled with suggestions of dope, sexual athletics, and mystic visions.

1976 *Jrnl. Royal Soc. Arts* June 351/2 The 4,500 magazines dealing in specialized trades or tastes from ironmongery to sexual athletics.

2002 S. HOME *69 Things to do with Dead Princess* 172 The craze for amateur porn, which many intellectuals view as 'non-exploitative', thanks to the participants' supposedly eager and unpaid engagement in sexual athletics.

sexual attraction *n.* sexual allure; (an) attraction based on sexual instinct or sexual desire.

?1798 H. B. DUDLEY *Passages on Trial Vortigern & Rowena* (ed. 4) IV. 119 I'll shape..The Paphian Queen so witchinglie to life, With all Love's sexual attractions, that the full pulse of him who gazes on it Shall rise, and beat in tumult of delight!

1855 A. J. DAVIS *Great Harmonia* IV. xii. 302 It is a better thing to marry through deep friendship than from sexual attraction.

1890 *Amer. Jrnl. Psychol.* **3** 102 The matter of sexual attraction, either between individuals or more especially between sexual pronuclei producing 'prepotency'.

1968 S. HYNES *Edwardian Turn of Mind* vi. 195 The biological facts of sexual attraction and the urge to reproduce.

2005 *N.Y. Mag.* 7 Mar. 58/1 The least visible sexual minority is asexuals, who do not experience sexual attraction at all.

sexual excitement *n.* sexual stimulation or arousal.

1819 *Medico-Chirurg. Trans.* **10** 252 The external genitals of these animals were turgid with blood, and the sexual excitement of some was remarkably lively.

1849 *London Med. Gaz.* **9** 934/1 The regular menstrual flow in the human female..has no connection with sexual excitement.

1988 M. COHEN *Living on Water* 141 Maurice felt so dizzy with sexual excitement that he found himself hanging onto the door-frame to steady himself.

2002 *Guardian* 23 Feb. (Saturday section) 8/1 The frustrations of being a thirtysomething woman with children and not enough sexual excitement.

sexual experience *n.* experience of sexual activity; (also) a sexual encounter.

1855 G. DRYSDALE *Physical, Sexual & Nat. Relig.* II. 220 [A woman's] mind, if she have had little sexual experience, is generally..much occupied with the unpleasantness of revealing her disease.

1855 G. DRYSDALE *Physical, Sexual & Nat. Relig.* II. 248 These unfortunates [*sc.* prostitutes], whose sexual experiences with the other sex have been so painful and degrading.

1988 M. YORKE *Spirit of Place* iv. 160 Often they were in search of sexual experiences in the more permissive European capitals.

2007 *Guelph (*Ont.*) Mercury* (Nexis) 24 July (Life section) B2 I'm a male, 23... By this age, sexual experience is usually expected, isn't it?

sexual harassment *n.* harassment (typically of a woman by a man) in a workplace or other professional or social situation, involving the making of unwanted sexual advances, obscene remarks, etc.

1971 *Yale Daily News* 19 Apr. 1/5 'We insist,' said one of the women, 'that sex harassment is an integral component of sex discrimination.' 'Men perceive women in sexual categories and not in professional categories,' she continued. The complaint of sexual harassment was apparently a 'new idea' to the H.E.W. team.

1973 *Appleton (*Wisconsin*) Post-Crescent* 13 Oct. 1 Katie Miller of the Division of Equal Opportunities said she does not know how many verbal complaints the agency receives on sexual harassment of employes.

1989 *Independent* (BNC) 18 Dec. 5 Preventing sexual harassment is part of good management because good managers will wish to ensure that their employees are treated with respect and dignity.

2001 M. BLAKE *24 Karat Schmooze* xxv. 285 Surprisingly, he had made it to the end of term without courting any sexual harassment cases.

sexual intercourse *n.* sexual relations or union between the sexes (in early use often with *the*), copulation, coition; (now esp.) intimate sexual contact between two individuals involving penetration (PENETRATION *n.* 1b) and typically leading to orgasm, which serves (between a male and a female of various species) as the means of sexual reproduction, and (in humans) typically expresses feelings of love or desire; = INTERCOURSE *n.* 2d; an instance of this; (also in later use more generally) any form of sexual contact of this kind between members of the same sex; cf. SEX *n.*[1] 4b and *social intercourse* at SOCIAL *adj.* 5e.

1753 *Ess. Celibacy* 12 Man might have been made hermaphroditical, like some of the less perfect animals, as snails and worms, which however have sexual intercourse with one another.

1787 J. WHITAKER *Mary Queen of Scots Vindicated* III. 82 At the Queen's journey to Stirling, no sexual intercourse had taken place between Bothwell and her at all.

1812 *Morning Chron.* 31 Mar. 2/5 There is no question likely to arise respecting the nature and consequences of the sexual intercourse, which is not fully considered.

1841 T. R. JONES *Gen. Outl. Animal Kingdom* xv. §331. 285 [In Aphides] a single sexual intercourse is sufficient to impregnate..the female parent.

1868 H. MAUDSLEY *Physiol. & Pathol. of Mind* (ed. 2) II. iii. 405 Acute dementia..connected, he believes, with the effect produced on the nervous system by sexual intercourse.

1929 D. H. LAWRENCE *Pornogr. & Obscenity* 18 The young man and the young woman went and had sexual intercourse together.

1948 A. C. KINSEY et al. *Sexual Behavior Human Male* xvii. 548 Scientifically, popularly, and legally, the term 'sexual intercourse' refers to genital union, and it is in that sense that the term is used here.

1969 H. RAYMONT in *N.Y. Times* 24 Mar. 56/2 In addition to graphic, though simulated, scenes of sexual intercourse there is a frenzy of homosexual and other unorthodox sexual acts.

1975 L. B. HOBSON *Exam. of Patient* ix. 360 A man castrated in later life is still able to have sexual intercourse; that is, he remains potent.

1990 *Independent on Sunday* 18 Feb. 4 (*advt.*) We know for certain that HIV, the virus which causes AIDS, can be spread by sexual intercourse from man to man, man to woman and from woman to man.

sexual interference *n. euphemistic* sexual molestation or assault.

1932 *Times* 23 June 4/4 When Mrs Swift's body was found there..was no indication of sexual interference.

1968 'A. GILBERT' *Night Encounter* iv. 45 Quite a young girl... No attempt at sexual interference, no signs of pregnancy.

1993 *Canad. Living* July 54/3 Tom McConnell pleaded guilty to three counts of sexual interference with a minor.

sexual inversion *n. Psychiatry* and *Psychology* (now *disused*) a theory according to which homosexuality is the result of abnormally close identification in early life with role models of the opposite sex; the process described by this theory; (also more narrowly) homosexuality regarded as a pathology or perversion: see INVERSION *n.* 10.

1883 A. M. HAMILTON *Man. Med. Jurispr.* iii. 185 A great many arrests have been made..of men dressed in women's clothes who were engaged in soliciting for a purpose too vile to mention. This sexual inversion has been described by several German writers.

1897 H. ELLIS & J. A. SYMONDS *Sexual Inversion* ii. 27 It seems to have been in Italy that the convenient term 'sexual inversion' was first used.

1901 J. A. GODFREY *Sci. Sex* v. 206 Sexual inversion—that is, the turning-in of the sex instinct towards individuals of the same sex—is an abnormal phenomenon.

1958 *Amer. Jrnl. Orthopsychiatry* **28** 424 Many workers fail to distinguish between homosexuality and sexual inversion, or more accurately, sex-role inversion. Freud..himself..equated the two terms.

2002 *Michigan Law Rev.* **100** 2070 The depiction of sexual inversion, public indecency, and cross-dressing were not even subject to serious constitutional challenge at the turn of the twentieth century.

sexual morality *n.* morality relating to or governing the conduct of sexual behaviour; a moral code of this kind.

1803 *Monthly Rev.* July 330 This change or evolution in sexual morality has taken place.

1885 *Cent. Mag.* July 390/1 The large number of offenses against sexual morality..make one suspect that this was not a merely puritanic scruple.

1941 *Horizon* Sept. 161 All societies, as the price of survival, have to insist on a fairly high standard of sexual morality.

2003 K. L. GACA *Making of Fornication* i. 8 To investigate the formation of Christian sexual morality without considering the Greek biblical norms that inform it is like trying to understand Moby Dick while setting the whale aside.

sexual offence *n.* a legal transgression relating to or involving sex, *esp.* a sexual assault or misdemeanour.

1840 *Jrnl. Statist. Soc. London* **3** 346 The offences which preponderate among the class of instructed criminals are, malicious offences against persons and property, frauds and forgery, rioting and sexual offences.

1882 *Athens (*Ohio*) Messenger* 7 Sept. 1/3 Red colors in architecture, dress and decorations exert a powerful influence in exciting crime, particularly murder and sexual offenses.

1977 *Evening Gaz. (*Middlesbrough*)* 11 Jan. 3/4 Sexual offences, mainly indecent assault on females, increased by 17.

2001 P. D. James *Death in Holy Orders* (2002) 41 He had been convicted of sexual offences against two boy servers in the church of which he was priest.

sexual offender *n.* a person who commits a sexual offence or sexual offences.

1893 *Daily Nevada State Jrnl.* 20 July The amnesty granted by ex-President Harrison to relieve sexual offenders in Utah from prior disability to vote.

1924 *Internat. Jrnl. Psycho-anal.* **5** 95 (*heading*) The sexual offender.

1965 A. Prior *Interrogators* iii. 28 He knew the nut-cases, the convicted sexual offenders.

2007 *N.Y. Times* (National ed.) 4 Mar. I. 1/5 About 2,700 pedophiles, rapists and other sexual offenders are already being held indefinitely, mostly in special treatment centers.

sexual partner *n.* a person who or animal which engages in sexual intercourse with another.

1847 O. Smith *Outl. Nature* 90 Just as animals change now and then their sexual partners.

1948 A. C. Kinsey et al. *Sexual Behavior Human Male* xxi. 632 A homosexually experienced male could undoubtedly find a larger number of sexual partners among males than a heterosexually experienced male could find among females.

2008 *Daily Tel.* (Nexis) 22 Jan. (Features section) 21 Some studies show that the more sexual partners a person has before marriage, the more likely she or he is to cheat on a spouse.

sexual perversion *n.* sexual development or behaviour regarded as abnormal or deviant; an instance of this.

1857 A. J. Davis *Magic Staff* lvi. 477 The yet unmarried must resist every impulse toward sexual perversion.

1881 *Chicago Med. Rev.* **4** 379/2 Sexual perversion, a symptom of the hereditary and degenerative mental states, is divided into four groups.

1977 E. J. Trimmer et al. *Visual Dict. Sex* (1978) i. 12 The common paraphilias that we choose to call sexual perversions today, were defined by the Greeks as being parallel to love.

2002 M. J. Kehily *Sexuality, Gender & Schooling* iv. 84 Freud's discussion of sexual perversions regard the perversions of scopophilia and exhibitionism as psychical opposites.

sexual pervert *n.* a person whose sexual development or behaviour is regarded as abnormal or deviant.

1883 J. G. KIERNAN in J. N. Katz *Gay/Lesbian Almanac* (1983) 195 The sexual pervert had an enlarged clitoris two and one-half inches when erect.

1898 *Amer. Jrnl. Sociol.* **4** 328 We din the neuropathic family..the moral imbecile, the sexual pervert, the kleptomaniac.

1958 'J. BYROM' *Or be he Dead* iii. 37 Essays about sexual perverts.

1997 K. REICHS *Déjà Dead* xii. 147 Anecdotes of Peeping Toms and other sexual perverts.

sexual preference *n.* (originally) a preference with respect to an object of sexual desire, potential mate, partner, etc.; (later chiefly) a person's sexual identity in relation to the gender or genders to whom he or she is usually attracted; (broadly) the fact of being heterosexual, bisexual, or homosexual (cf. SEXUAL ORIENTATION *n.*).

Now sometimes regarded as offensive when used to refer to a person's sexual identity or orientation, with *preference* viewed as implying that a person's sexual identity is chosen rather than inherent.

In early use probably not a fixed collocation.

1822 J. FLEMING *Philos. Zool.* I. xv. 430 There is no example of individuals of one species giving a sexual preference to those of another.

1894 C. G. CHADDOCK in A. M. Hamilton & L. Godkin *Sys. Legal Med.* II. 566 This display of sexual preference may have for its object the physical (corporeal) characteristics of the opposite sex or objects artificially associated with them.., such as articles of wearing-apparel.

1944 *Mind* **53** 154 We say, for instance, that it shows an undeveloped moral sense to blame a man for some involuntary but abnormal sexual preference.

1968 *Brit. Jrnl. Psychiatry* **114** 722/2 Seven subjects expressed a primary sexual preference other than heterosexual.

1994 *Weekly World News* 4 Jan. 6/2 We..measure their sexual preference by observing the dilation of the pupils of their eyes, their body language and their behavior. When we find the male that excites a high level of interest in the female, we arrange to mate the two [animals].

2010 *Hoosier Times (*Bloomington, Indiana*)* 25 Apr. (Herald-Times ed.) (Parade section) 14/1 After more than a decade of keeping his sexual preference under wraps, he's recently come out of the closet.

sexual psychopath *n.* a person who displays symptoms characteristic of sexual psychopathy.

1922 *Amer. Jrnl. Sociol.* **27** 627 Probably influenced also by a prevalence of sexual psychopaths among his patients, Freud bases this 'unconscious' upon a presumed sex instinct.

1950 *Amer. Jrnl. Sociol.* **56** 142/2 The concept of the 'sexual psychopath' is so vague that it cannot be used for judicial and administrative purposes.

2001 *Jrnl. Criminal Law & Criminol.* **91** 1139 A probation/parole officer filed a petition against a sex offender alleging that he was a sexual psychopath and a sexually dangerous person.

sexual psychopathy *n.* mental disease characterized by abnormal (esp. antisocial or illegal) sexual behaviour.

1895 *Cent. Mag.* Oct. 938/1 A sort of sexual psychopathy..causes Zola to abuse smells, to see women's linen in an erotic sense.

1954 B. KARPMAN *Sexual Offender* xii. 224 Determination of the question of sexual psychopathy is by a superior court and commitment is for an indefinite period.

1994 *Law & Society Rev.* **28** 754 Sentence was suspended on condition he participate in the sexual psychopathy program.

sexual relations *n.* sexual contact or activity, *esp.* sexual intercourse.

1897 'S. GRAND' *Beth Bk.* xliv. 452 The sex question..is the stock in trade of every author, as if there were nothing..in the lives of men and women but their sexual relations.

1916 A. A. BRILL tr. S. Freud *Leonardo da Vinci* ii. 39 Passive homosexuals who play the feminine part in sexual relations.

1948 A. C. KINSEY et al. *Sexual Behavior Human Male* xxii. 674 A fair number of city boys have sexual relations with animals.

1998 *Daily Tel.* 20 Aug. 12/5 A Time/CNN poll showed that 87 per cent of Americans believed that oral sex amounted to sexual relations.

2004 'J. JAMESON' & N. STRAUSS *How to make Love like Porn Star* III. i. 192 This is probably too much information, but we had sexual relations. When it was over, we lay in bed together, side by side.

sexual repression *n.* originally *Psychology* repression of sexual desire or sexual instincts.

1885 E. B. FOOTE *Replies Alphites* xvi. 88 These diseases are induced by sexual repression and secret indulgences as well as by intemperance in the exercise of the natural function.

1910 tr. S. Freud in *Amer. Jrnl. Psychol.* **21** 218 The claims of our civilization make life too hard for the greater part of humanity..without producing an excess of cultural gain by this excess of sexual repression.

1961 R. F. C. HULL tr. C. G. Jung *Freud & Psychoanal.* in *Coll. Wks.* IV. IV. 321 As soon as we enter the field of neurosis, this antithesis is stretched to the limit. God becomes the symbol of the most complete sexual repression.

2003 R. HERRING *Talking Cock* 72 It may seem strange that Queen Victoria and her reign are associated with sexual repression. After all, she did have nine children.

sexual revolution *n.* [after German *sexuelle Revolution* (*c*1919 or earlier; Otto Gross (1877–1920), Austrian psychiatrist and anarchist, is credited with coining the phrase (by F. Werfel in 1929)); compare French *revolution sexuelle* (1934)] any significant shift in attitudes to sex and conventions of sexual behaviour; *spec.* the liberalization of social and moral approaches to sex often held to have taken place in Western societies in the late 1960s and 1970s.

1930 *Amer. Jrnl. Sociol.* **35** 662 William McDougall undertakes to reduce libertarian dogmas to a logical absurdity, and Samuel D. Schmalhausen supplies affective palpitations on behalf of the new sexual revolution.

1957 *Marriage & Family Living* **19** 307/2 Hirsch's 'sexual revolution of 1930-55' has been going on since Ellis, Freud, Kraft-Ebbing, Plotz, et cetera, and long before.

1967 *Times* 6 Jan. 11/2 Before debating the Bill [*sc.* on state aid for contraception], the Commons should clear their minds of cant about the 'sexual revolution' and remember, with Macaulay, an equally permissive

period, [etc.].

1977 'C. FREMLIN' *Spider-orchid* viii. 61 In spite of Permissiveness and the Sexual Revolution..nothing had changed!

1981 V. STOLCKE in K. Young et al. *Of Marriage & Market* (1984) viii. 163 The relatively greater sexual freedom in some Western countries in recent times has shown that a sexual revolution does not necessarily entail a social revolution.

2006 *N.Y. Times* 27 Aug. (T: Style Mag.) 104/2 The same energy that brought on the 1960's sexual revolution is stirring up today's randy reawakening.

No. 127904

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- ANTONIO D. KIDD, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, Fourth Judicial District, No. 4-19-0345. There on appeal from the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois, No. 17-CF-556. Honorable John M. Madonia, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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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 March 23, 2022, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Springfield, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Rachel A. Davis
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