United States v. Vineyard, No. 5:17-cr-00383-RDP-JHE-1 (N.D. Ala. Dec. 13, 2017) (denying motion to dismiss indictment)

Appendix A

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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

UNITED STATES OF AMERICA,	}	
	}	
v.	}	**Case No.: 5:17-cr-00383-RDP-JHE-1**
	}	
NATHAN RICHARD VINEYARD,	}	
	}	
Defendant.	}	

MEMORANDUM OPINION

In this case, the court is asked to resolve a dispute about the meaning of a federal statutory term and compare certain anatomical terms which Congress and the Tennessee Legislature have used to describe people's private parts. Defendant Nathan Vineyard contends he was not required to register as a sex offender because the Tennessee sexual battery statute he was convicted under in 2012 contained a categorically broader definition of "sexual contact" than that provided by the Sex Offender Registration and Notification Act ("SORNA"). To assess his argument, the court must examine the provisions of two statutes and look to the language of anatomy.

This matter is before the court on Defendant's Motion to Dismiss Indictment, or in the Alternative, Motion in Limine to Exclude Evidence of Conviction under Tenn. Code § 39-13-505(a)(3). (Doc. # 11). The Motion (Doc. # 11) has been fully briefed. (Docs. # 11, 12, 14). On November 29, 2017, the Government filed a Supplement to Response in Opposition to Defendant's Motion to Dismiss, to which Defendant replied on December 1, 2017. (Docs. # 15, 17). For the reasons explained below, the Motion (Doc. # 11) is due to be denied.

I. Background

In March 2012, Defendant Nathan Richard Vineyard ("Defendant" or "Vineyard") was charged with rape and false imprisonment in Campbell County, Tennessee. (Doc. # 12 at p. 2). On May 7, 2012, Vineyard pleaded guilty to sexual battery in violation of Tenn. Code § 39-13-505 and aggravated assault in violation of Tenn. Code § 39-13-102. (Doc. # 15-2 at p. 4). Vineyard was sentenced to a total effective sentence of eight years imprisonment. (Doc. # 12 at p. 2). On September 5, 2017, a grand jury charged Vineyard with failing to register as a sex offender under SORNA, 34 U.S.C. § 20911, *et seq*., in violation of 18 U.S.C. § 2250(a). (Doc. # 1). According to the Indictment, between July 8, 2017 and August 9, 2017, Vineyard was required to register under SORNA, traveled in interstate commerce, and knowingly failed to register and update his registration as required by SORNA. (*Id.*).

On November 3, 2017, Defendant moved to dismiss his indictment, arguing that his conviction for Tennessee sexual battery is not a "sex offense" under 34 U.S.C. § 20911(5)(A) and, therefore, he is not required to register as a sex offender under SORNA. (Doc. # 11). The court evaluates the merits of Defendant's arguments, in turn.

II. Law and Discussion

Under SORNA, a sex offender must comply with certain registration requirements, and failure to do so is a criminal offense. *See* 34 U.S.C. § 20913; 18 U.S.C. § 2250(a). A "sex offender" is "an individual who was convicted of a sex offense." 34 U.S.C. § 20911(1). A "sex offense" includes "a criminal offense that has an element involving a sexual act or *sexual contact* with another." *Id.* at § 20911(5)(A)(i) (emphasis added).

A. The Categorical Approach Applies Here

Because SORNA requires courts to compare a defendant's prior conviction to criteria set forth in a federal statute, the court must first determine whether to consider the prior conviction under the categorical, modified categorical, or circumstance-specific approach. *See, e.g.*, *United States v. Berry*, 814 F.3d 192, 195 (4th Cir. 2016); *United States v. White*, 782 F.3d 1118, 1130-31 (10th Cir. 2015). Under the categorical approach, the court examines only the elements of the crime of conviction and does not consider the facts underlying the conviction. *See Taylor v. United States*, 495 U.S. 575, 588-89 (1990). And, if the statute under which the defendant was convicted "sweeps more broadly than the generic crime," the underlying conviction does not categorically match the generic crime. *Descamps v. United States*, 133 S. Ct. 2276, 2283 (2013). The modified categorical approach allows a court to use the categorical approach when a defendant was convicted of violating a divisible statute by permitting "a court to determine which statutory phrase was the basis for the conviction." *Id.* at 2284-85. Under the circumstance-specific approach, the court focuses on the facts, rather than the elements, of the prior conviction. *See Nijhawan v. Holder*, 557 U.S. 29, 34 (2009). When a federal statute refers to a generic crime, the categorical approach applies; however, when a federal statute refers to the specific way in which an offender committed the crime on a specific occasion, the circumstance-specific crime applies. *See id.*

In this case, both parties agree that the categorical approach applies (Docs. # 11, 12, 14), and the court agrees that the phrase "element involving a sexual act or sexual contact with another" found in 34 U.S.C. § 20911(5)(A)(i) signals a categorical analysis. *See Johnson v. United States*, 135 S. Ct. 2551, 2562 (2015) ("This emphasis on convictions indicates that 'Congress intended the sentencing court to look only to the fact that the defendant had been

convicted of crimes falling within certain categories, and not to the facts underlying the prior convictions.'"); *see also United States v. Price*, 777 F.3d 700, 708 (4th Cir. 2015), *cert. denied*, 135 S. Ct. 2911 (2015) ("Congress expressly referenced the 'elements' of the offense in subsection (5)(A)(i), providing that one such element must involve 'a sexual act or sexual contact with another.'"); *United States v. Gonzalez-Medina*, 757 F.3d 425, 430 (5th Cir. 2014) ("The definition's focus on the "element[s]" of the predicate offense strongly suggests that a categorical approach applies to (5)(A)(i)."); *United States v. George*, 223 F. Supp. 3d 159, 165 (S.D.N.Y. 2016) (holding that "the categorical approach applies to § 16911(5)(A)(i) of SORNA"). As such, the court compares the elements of Vineyard's Tennessee sexual battery offense to SORNA's definition of "sex offense" and does not consider the facts underlying Vineyard's sexual battery conviction. *See, e.g.*, *Descamps*, 133 S. Ct. at 2283; *Taylor*, 495 U.S. at 588-89.

B. The Court Considers the Plain Meaning of "Sexual Contact," Not the Definition of "Sexual Contact" Found in Title 18

The parties' principal disagreement relates to the federal definition of "sexual contact" as used in SORNA. *See* 34 U.S.C. § 20911(5)(A)(i); *see also* (Docs. # 11, 12, 14). The Government argues that sexual battery under Tenn. Code § 39-13-505 is a "sex offense" under 34 U.S.C. § 20911(5)(A)(i), making Defendant a "sex offender" under § 20911(1) and, thus, subject to the SORNA registration requirements. (Doc. # 12). Conversely, Defendant maintains that sexual battery under Tennessee law does not qualify as a "sex offense" under SORNA because the Tennessee definition of "sexual contact" is broader than the federal definition of that term in Title 18. (Docs. # 11, 14).

Originally, Defendant raised a question as to whether sexual battery under Tennessee law qualifies as a "sex offense" under SORNA because sections 39-13-501 and 39-13-505(a) of the

Tennessee Code define "sexual battery" to include the intentional "touching of semen and vaginal fluid, which are not body parts." (Doc. # 14 at p. 5). As the Government pointed out in its Supplement to Response in Opposition to Defendant's Motion to Dismiss, however, "semen" and "vaginal fluid" were added to Tennessee's definition of "sexual contact" in 2013, which was *after* Defendant pleaded guilty to sexual battery. *See* Tenn. Code § 39-13-501(2) (2013). (*See also* Doc. # 15-4). Thus, as both parties agree, Defendant's argument regarding the inclusion of "semen" and "vaginal fluid" in Tennessee's definition of "sexual contact" is off the mark. (Docs. # 15, 17). Nonetheless, Defendant continues to urge that Tennessee's definition of "sexual contact" is categorically broader than SORNA's use of that term because the former definition includes contact with the "primary genital area." (Doc. # 17).

Section 39-13-505(a) of the Tennessee Code defines "sexual battery" as

> unlawful *sexual contact* with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances: (1) Force or coercion is used to accomplish the act; (2) The sexual contact is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the contact that the victim did not consent; (3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or (4) The sexual contact is accomplished by fraud.

(emphasis added). "Sexual contact" under Tennessee law "includes the intentional touching of the victim's, the defendant's, or any other person's intimate parts, or the intentional touching of the clothing covering the immediate area of the victim's, the defendant's, or any other person's intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification." Tenn. Code § 39-13-501(6). As of the date of Vineyard's conviction (in 2012), Tennessee law defined "intimate parts" to include "the primary genital area, groin, inner thigh, buttock or breast of a human being." *Id.* at § 39-13-501(2) (2012).

SORNA does not define "sexual contact." Defendant argues that in defining "sexual contact" under SORNA, the court should look to 18 U.S.C. § 2246(3). That subsection defines "sexual contact" as "the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person."[1] (Doc. # 11 at p. 3, 6-7). More specifically, Defendant argues that the court should consider 18 U.S.C. § 2246(3) and 34 U.S.C. § 20911(5)(A)(i) *in pari materia* and, in doing so, incorporate § 2246(3)'s definition of "sexual contact" into SORNA. (Doc. # 14 at p. 3-4). This argument fails for two main reasons. First, the court must apply the plain meaning of a statute unless the "language is ambiguous or leads to absurd results." *United States v. McLymont*, 45 F.3d 400, 401 (11th Cir. 1995). As explained below, the plain, everyday meaning of the language of this provision of SORNA is inconsistent with Defendant's argument. Second, § 20911 is filled with cross-references to Title 18 and incorporates a number of definitions from Title 18. *See, e.g.*, 34 U.S.C. § 20911(3)(A), (4)(A), (5)(A)(iii), (7)(F), (8). Section 20911(5)(A)(iii) even specifically mentions Chapter 109A of Title 18. These references to Title 18 plainly illustrate that Congress was aware of the definitions contained in Chapter 109A and certainly was capable of incorporating them, but chose not to incorporate § 2246(3) into § 20911(5)(A)(i). *Cf. Bloate v. United States*, 559 U.S. 196, 211 n.13 (2010) (comparing subsections in a statute, noting that Congress included language referring to "preparation time" in one subsection but not in the subsection in question, and finding that this difference was intentional and the court was "bound to enforce only the language that Congress and the President enacted").

[1] Tennessee's 2012 definition of "sexual contact" included the intentional touching of the "primary genital area," whereas, Title 18's definition of "sexual contact" includes the intentional touching of the "genitalia." *Compare* Tenn. Code §§ 39-13-501(2) (2012), (6) *with* 18 U.S.C. § 2246(3).

In urging the court to hold that the generic federal definition of "sexual contact" incorporates the Title 18 definition of "sexual contact," Defendant cites *United States v. George*, 223 F. Supp. 3d 159, 165 (S.D.N.Y. 2016). (Doc. # 11 at p. 5-7). However, this case does not provide any explanation (much less analysis) as to why the district court incorporated § 2246(3) into § 20911(5)(A)(i). *See George*, 223 F. Supp. 3d at 161-62. In *United States v. Westerman*, on the other hand, the District Court of Montana considered whether Chapter 109A definitions should be incorporated into § 16911(5)(A)(i) and found that the court should instead use the ordinary meaning of the statutory words. *See United States v. Westerman*, No. CR 15-14-H-CCL, 2016 WL 843255, at *2-3 (D. Mont. Mar. 1, 2016) ("The Court concludes that the criminal offense of 'sexual battery' under K.S.A. 21-5505(a) categorically matches the SORNA definition of a 'criminal offense that has an element involving a sexual act or sexual contact with another.' 42 U.S.C. § 16911(5)(A)(i). Congress could have referred to and incorporated the Title 18, Chapter 109A definitions in defining sex offenses under § 16911(5)(A)(i), but it did not."). Consistent with the Government's position on this issue (Doc. # 12 at p. 8), this court agrees with the *Westerman* court's analysis and finds it persuasive.

Because SORNA does not expressly define "sexual contact," the court "interpret[s] that phrase using the normal tools of statutory interpretation," and "'[o]ur analysis begins with the language of the statute.'" *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562, 1569 (2017) (quoting Leocal v. Ashcroft, 543 U.S. 1, 8 (2004)). Furthermore, "[t]he plain meaning of the statute controls unless the language is ambiguous or leads to absurd results." *United States v. McLymont*, 45 F.3d 400, 401 (11th Cir. 1995); *see also Lopez v. Gonzales*, 549 U.S. 47, 53 (2006) (explaining that, when a statute does not define a term, the court uses the "everyday understanding" of that term "to see what Congress probably meant"). Consequently, the court

next considers the definition of "sexual contact" and whether sexual battery under Tennessee law qualifies as a "sex offense" under SORNA.

C. As of the Date of Defendant's Conviction, Sexual Battery under Tenn. Code § 39-13-505 Qualified as a "Sex Offense" under SORNA

As the Eleventh Circuit recently noted, "Webster's first definition of 'contact' is 'union or junction of body surfaces: a touching or meeting.'" *United States v. Johnson*, 681 F. App'x 735, 740 (11th Cir. 2017) (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 490 (1986)). Therefore, the common meaning of "sexual contact" includes a touching or meeting of a sexual nature.[2] Defendant argues that the use of "primary genital area" in Tennessee's definition of "sexual contact" is overly broad. (Doc. # 11, 14). However, using the common meaning of "sexual contact," the court finds that "the intentional touching of the victim's, the defendant's, or any other person's [primary genital area] if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification" -- as defined by Tenn. Code § 39-13-501 in 2012 -- falls squarely within the common meaning of the term "sexual contact." A ruling otherwise would frustrate the central purpose of SORNA "to protect the public from sex offenders" because it would undermine our "comprehensive national system for the registration of those offenders." 34 U.S.C. § 20901. Because Congress clearly intended for SORNA to apply to both federal and state sex offenders, a ruling in Defendant's favor would create an unintended loophole in SORNA for some state sex offenders. *See United States v. Rivers*, 588 F. App'x 905, 908 (11th Cir. 2014) ("[I]t [is] 'clear that SORNA was designed to create an interstate system to counteract the danger posed by sex offenders who slip through the cracks or exploit a weak state registration system . . . .'"). Nonetheless, it is unnecessary for the

[2] Tenn. Code § 39-13-501(6) requires that an intentional touching "be reasonably construed as being for the purpose of sexual arousal or gratification." Therefore, that statute undoubtedly includes a sexual element, and the court finds it is unnecessary to accept Defendant's invitation to explore whether sexual battery under Tennessee law is indeed "sexual."

court to explore the policy implications of such a ruling because the plain language of SORNA clearly applies to Tennessee's 2012 sexual battery statute. *See* 34 U.S.C. § 20911.

Defendant urges the court to reference other states' definitions of "sexual contact" in considering the generic definition of the term. (Doc. # 14 at p. 4). In comparing Tennessee's state code to that of other states, it is evident that Tennessee's definition of "sexual contact" is not an outlier. Other jurisdictions also use the term "primary genital area" to define "sexual contact" or "sexual battery." *See, e.g.*, Ga. Code § 16-6-22.1; 9 Gu. Code § 25.10; Mich. Comp. Laws § 750.520a; Minn. Stat. § 609.341; S.C. Code § 16-3-651; 14 V.I. Code § 1721. In fact, many state codes arguably define "sexual contact" even more broadly than the Tennessee Code. *See, e.g.*, Conn. Gen. Stat. § 53a-65 (using the term "genital area," rather than "primary genital area" to define "sexual contact"); N.J Stat. § 2C:14-1 (same). Ultimately, including "primary genital area" in a statutory definition of "sexual contact" does not run contrary the ordinary meaning of "sexual contact."

D. Alternatively, Even If the Court Incorporated the Title 18 Definition of "Sexual Contact," Tenn. Code § 39-13-505 (2012) Would Nevertheless Qualify as a "Sex Offense" under SORNA

Title 18 of the United State Code defines "sexual contact" to include "the intentional touching . . . of the genitalia, anus, groin, breast, inner thigh, or buttocks," whereas "sexual contact" under Tennessee law includes the intentional touching of "the primary genital area, groin, inner thigh, buttock or breast." *Compare* 18 U.S.C. § 2246(3) *with* Tenn. Code § 39-13-501(2), (6) (2012). Defendant argues that, because the Tennessee definition uses the term "primary genital area," the Tennessee definition is broader than the definition contained in Title 18. (Doc. # 17). The court disagrees.

Congress's use of the disjunctive "or" and inclusion of the terms "groin" and "inner thigh" suggest that Congress intended Title 18's definition of "sexual contact" to encompass a larger area than merely the "genitalia." *See* 18 U.S.C. § 2246(3). The *Merriam-Webster Dictionary* defines "groin" as "the fold or depression marking the juncture of the lower abdomen and the inner part of the thigh." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 551 (11th ed. 2004). Similarly, the *American Heritage Dictionary of the English Language* defines "groin" as "the crease or hollow at the junction of the inner part of each thigh with the trunk, together with the adjacent region and often including the external genitals." AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 798 (3d ed. 1992). To the extent that "primary genital area" is a more expansive term than "genitalia," the "primary genital area" is encompassed by Title 18's inclusion of the term "groin." In the court's view, the broadest term of description which should be considered "categorically" in relation to Defendant's Tennessee conviction, may be "groin," a term that appears in both statutes. As such, Tennessee's definition of "sexual contact" is a categorical match with Title 18's definition and, even if the court incorporated the Title 18 definition of "sexual contact" into SORNA (which it has not), sexual battery under Tennessee law would qualify as a "sex offense" under SORNA and the categorical approach.

III. Conclusion

For the reasons stated above, the court concludes that, as of the date of Vineyard's conviction in 2012, sexual battery under Tenn. Code § 39-13-505 qualified as a "sex offense" under SORNA as it categorically matched the SORNA definition of "a criminal offense that has an element involving a sexual act or sexual contact with another."[3] 34 U.S.C. § 20911(5)(A)(i).

[3] To be clear, the court need not -- and does not -- decide whether the current definition of sexual battery under Tennessee law qualifies as a "sex offense" under SORNA.

Accordingly, Defendant's Motion is due to be denied. An Order consistent with this Memorandum Opinion will be entered.

DONE and **ORDERED** this December 13, 2017.

R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE

United States v. Vineyard, No. 18-11690 (11th Cir. 2019)
(affirming conviction)

Appendix B

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-11690

D.C. Docket No. 5:17-cr-00383-RDP-JHE-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NATHAN RICHARD VINEYARD,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Alabama

(December 20, 2019)

Before MARCUS, JULIE CARNES, and KELLY,* Circuit Judges.

JULIE CARNES, Circuit Judge:

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* Honorable Paul J. Kelly, Jr., United States Circuit Judge for the Tenth Circuit, sitting by designation.

Defendant Nathan Vineyard appeals from the district court's denial of his motion to dismiss an indictment charging him with failing to register as a sex offender under the Sex Offender Registration and Notification Act ("SORNA") in violation of 18 U.S.C. § 2250(a). The charge is predicated on Vineyard's prior conviction for sexual battery in violation of Tennessee Code Annotated § 39-13-505. Vineyard argues he is not required to register as a sex offender because his Tennessee sexual battery conviction is not a qualifying sex offense as defined by SORNA. After a careful review of the record and with the benefit of oral argument, we conclude that sexual battery, as defined by the Tennessee statute under which Vineyard was convicted, qualifies as a sex offense under SORNA. Accordingly, we affirm.

BACKGROUND

In March 2012, Vineyard was charged with rape and false imprisonment in Campbell County, Tennessee. The charges were related to Vineyard's rape of an adult female victim at a Caryville, Tennessee motel after holding the victim in a motel room for several hours against her will. Vineyard ultimately pled guilty to sexual battery in violation of Tennessee Code Annotated § 39-13-505 and aggravated assault in violation of Tennessee Code Annotated § 39-13-102(a). He was sentenced to two years for the sexual battery and six years for the aggravated assault, to be served consecutively.

Upon being paroled from prison in September 2016, Vineyard signed an instruction form acknowledging that he was subject to the federal sex offender registration requirements of SORNA. The form instructed Vineyard that, pursuant to SORNA, he was required to register as a sex offender in the jurisdiction of his residence and in any jurisdiction in which he was employed. The form also advised Vineyard that SORNA required him to notify any jurisdiction in which he was required to register within three business days after a change of residence, and that Tennessee law required him to register with the appropriate law enforcement agency within 48 hours of his release from any subsequent incarcerations. Pursuant to the instructions he received, Vineyard registered as a sex offender with a residence in Harriman, Tennessee.

On April 11, 2017, Vineyard was released from the Anderson County, Tennessee jail after being charged with public intoxication and evading arrest. The charges were filed after an incident in March 2017, during which Vineyard failed to stop for police officers who had been notified that Vineyard was driving his vehicle at a speed close to 100 miles per hour. The officers lost track of Vineyard but eventually located him at his girlfriend's house, at which time Vineyard fled on foot. When the officers finally apprehended Vineyard, they discovered he was intoxicated.

When he was released from jail on the evading and intoxication charges, Vineyard was advised to report to the Tennessee Department of Corrections and to update his sex offender registration within 48 hours as required by state law. Arrest warrants were issued for Vineyard about a week later when he failed to report and register. Vineyard's whereabouts were unknown at the time, but he was arrested on August 9, 2017 at a residence in Jackson County, Alabama. Vineyard admits that he began living at the Alabama residence on or about July 8, 2017, and that he did not register as a sex offender in Alabama or otherwise update his SORNA registration to indicate his change of address.

In September 2017, Vineyard was indicted on a charge of failing to register as a sex offender under SORNA, in violation of 18 U.S.C. § 2250(a).[1] The indictment alleged that Vineyard, a person required to register under SORNA because of his Tennessee sexual battery conviction, failed to update his sex offender registration and failed to register as a sex offender in the jurisdiction in which he resided from July 8, 2017 through August 9, 2017.

[1] Section 2250(a) "provides criminal penalties for anyone subject to the registration requirements" of SORNA "who travels in interstate commerce and then knowingly fails to register or update [his] registration as required by the Act." *United States v. Kopp*, 778 F.3d 986, 988 (11th Cir. 2015) (internal quotation marks omitted and alterations adopted). "To keep his registration current, a sex offender must" notify the relevant jurisdiction within three days after a "change of name, residence, employment, or student status[.]" *Id.* (internal quotation marks omitted).

Vineyard moved to dismiss the indictment, arguing that he was not required to register under SORNA because his Tennessee sexual battery conviction was not a qualifying sex offense under the Act. As will be discussed in more detail below, SORNA imposes certain registration requirements on individuals "who [have been] convicted of a sex offense." 34 U.S.C. §§ 20911(1), 20913. In relevant part, SORNA defines "sex offense" to include "a criminal offense that has an element involving . . . sexual contact with another[.]" *Id.* § 20911(5)(A)(i). The parties agreed that the categorical approach applies to determine if a state conviction satisfies SORNA's definition of a sex offense. Vineyard argued that Tennessee sexual battery did not categorically qualify as a SORNA sex offense because Tennessee's sexual battery statute defines sexual contact to encompass more conduct than the generic definition of sexual contact that applies under SORNA.

The district court denied Vineyard's motion. Defining the term sexual contact by its plain meaning, the court determined that SORNA's sexual contact provision encompasses offenses that have as an element "a touching or meeting of a sexual nature." The court concluded that Vineyard's Tennessee sexual battery conviction fell squarely—and categorically—within that definition because his conviction required that there be an "intentional touching" of a person's "primary genital area, groin, inner thigh, buttock or breast" specifically "for the purpose of sexual arousal or gratification." *See* Tenn. Code Ann. § 39-13-501 (2), (6) (2012).

Vineyard subsequently pled guilty to one count of failing to register as a sex offender under SORNA in violation of 18 U.S.C. § 2250(a). He was convicted and sentenced to serve 24 months, followed by 360 months of supervised release. Vineyard's plea agreement included an appeal waiver, but it preserved his right to appeal the district court's adverse ruling on his motion to dismiss the indictment against him. Pursuant to the agreement, Vineyard has filed an appeal limited to the sole issue argued in the motion to dismiss: whether his Tennessee sexual battery conviction is a qualifying sex offense under SORNA, such that he was required to register as a sex offender under SORNA and violated 18 U.S.C. § 2250(a) by failing to do so.

DISCUSSION

I. Standard of Review

We generally review the district court's denial of a motion to dismiss an indictment under the abuse of discretion standard. *United States v. Farias*, 836 F.3d 1315, 1323 (11th Cir. 2016). However, the district court's determination that Vineyard's Tennessee sexual battery conviction categorically qualifies as a sex offense under SORNA is an issue of statutory interpretation that we review *de novo*. *See United States v. Ambert*, 561 F.3d 1202, 1205 (11th Cir. 2009) (noting that a district court's denial of a motion to dismiss an indictment ordinarily is reviewed under the abuse of discretion standard, but that the defendant's appeal of

his conviction for failing to register as a sex offender under SORNA raised "a number of issues concerning statutory interpretation and constitutional law, which we review *de novo*").

II. Legal Background

A. SORNA

Vineyard's appeal raises several issues of first impression in this Circuit regarding the interpretation of SORNA, a federal statute enacted in 2006 "to protect the public from sex offenders . . . by establishing a comprehensive national system for the registration of those offenders." *Id.* (citing 42 U.S.C. § 16901[2] (internal quotation marks omitted)). Before SORNA, sex offenders registered under "a patchwork" of federal and state registration systems "with loopholes and deficiencies that had resulted in an estimated 100,000 sex offenders becoming missing or lost." *United States v. Kebodeaux*, 570 U.S. 387, 399 (2013) (internal quotation marks omitted). SORNA was intended to correct that problem by creating a "more uniform and effective" national sex-offender registration system. *Reynolds v. United States*, 565 U.S. 432, 435 (2012). Criminal penalties for individuals who violate SORNA's registration requirements are set out in 18 U.S.C. § 2250(a) (stating that an individual who is required to register as a sex

[2] When *Ambert* was decided, SORNA was codified at 42 U.S.C. § 16901. *See Ambert*, 561 F.3d at 1205. Effective September 1, 2017, SORNA was moved to 34 U.S.C. § 20901, without substantive change.

offender under SORNA and "knowingly fails to register or update a registration as required" by SORNA "shall be fined under this title or imprisoned not more than 10 years, or both").

Consistent with the goals of the Act, SORNA's registration requirements apply to state and federal "sex offender[s]." *See* 34 U.S.C. §§ 20911, 20913. SORNA defines "sex offender" to mean "an individual who [has been] convicted of a sex offense." *Id.* § 20911(1). With certain exceptions not applicable here, SORNA defines "sex offense" to include:

> (i) a criminal offense that has an element involving a sexual act or sexual contact with another;
>
> (ii) a criminal offense that is a specified offense against a minor;
>
> (iii) a Federal offense (including an offense prosecuted under section 1152 or 1153 of Title 18) under section 1591, or chapter 109A, 110 (other than section 2257, 2257A, or 2258), or 117, of title 18;
>
> (iv) a military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note); or
>
> (v) an attempt or conspiracy to commit an offense described in clauses (i) through (iv).

34 U.S.C. § 20911(5)(A). Only the first provision is relevant to this case, and only to the extent it defines a qualifying sex offense to include an offense that has an element involving "sexual contact with another." *Id.* § 20911(5)(A)(i).[3]

[3] The parties agree that none of the other provisions apply, and that Tennessee sexual battery does not have "an element involving a sexual act." *See* 34 U.S.C. § 20911(5)(A)(i).

B. Tennessee's Sexual Battery Statute

The ultimate question presented by Vineyard's appeal is whether his Tennessee sexual battery conviction "has an element involving . . . sexual contact with another" and thus qualifies as a sex offense under SORNA. *See id.* In relevant part, the Tennessee statute under which Vineyard was convicted defines sexual battery as "unlawful sexual contact with a victim" under any of the following circumstances:

> (1) Force or coercion is used to accomplish the act;
>
> (2) The sexual contact is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the contact that the victim did not consent;
>
> (3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or
>
> (4) The sexual contact is accomplished by fraud.

Tenn. Code Ann. § 39-13-505(a). For purposes of the statute, Tennessee law defines "sexual contact" to mean:

> the intentional touching of the victim's, the defendant's, or any other person's intimate parts, or the intentional touching of the clothing covering the immediate area of the victim's, the defendant's, or any other person's intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification[.]

Tenn. Code Ann. § 39-13-501(6). At the time of Vineyard's conviction in 2012, "intimate parts" was defined to include "the primary genital area, groin, inner

thigh, buttock, or breast of a human being." Tenn. Code Ann. § 39-13-501(2) (2012).[4]

III. Analysis

A. The categorical approach applies to determine whether Vineyard's Tennessee sexual battery conviction is a qualifying sex offense under SORNA's sexual contact provision.

To resolve the substantive issue raised by Vineyard's appeal, we must first decide whether our analysis is governed by a categorical or a circumstance-specific approach. *See United States v. Dodge*, 597 F.3d 1347, 1353 (11th Cir. 2010) (describing the difference between the categorical approach and the circumstance-specific approach in the context of SORNA). The parties agree that the categorical approach applies. If that is true, then we may only consider the fact of Vineyard's conviction and the elements of Tennessee's sexual battery statute to determine whether Vineyard's conviction qualifies as a sex offense under SORNA's sexual contact provision. *See id.* On the other hand, if we are not restricted by the categorical approach, then we may consider whether the conduct underlying Vineyard's conviction satisfies SORNA's definition of "sexual contact with another." *See id.* at 1354.

[4] Tennessee expanded its definition of intimate parts in 2013 to include contact with "semen" and "vaginal fluid." *See* Tenn. Code Ann. § 39-13-501(2) (2013). Vineyard initially argued that Tennessee's definition of sexual contact was overbroad because it included contact with semen and vaginal fluid, but he abandoned that argument when the Government pointed out that the words semen and vaginal fluid were not added to the statute until after Vineyard was convicted.

As noted, SORNA defines a sex offender as "an individual who [has been] convicted of a sex offense." 34 U.S.C. § 20911(1) (emphasis added). Further, the specific provision of SORNA at issue in this case requires an offense to have "an element involving . . . sexual contact with another" to qualify as a sex offense. *Id.* § 20911(5)(A)(i) (emphasis added). The statutory focus on an individual having been convicted of an offense with a specified element makes it clear that "Congress intended the sentencing court to look only to the fact that the defendant had been convicted of crimes falling within certain categories, and not to the facts underlying the prior convictions." *Johnson v. United States*, 135 S. Ct. 2551, 2562 (2015) (quoting *Taylor v. United States*, 495 U.S. 575, 600 (1990) (internal quotation marks omitted)). That is, Congress intended courts to apply a categorical approach to determine whether a conviction qualifies as a sex offense under the sexual contact provision of SORNA. *Compare Dodge*, 597 F.3d at 1354–55 (holding that a non-categorical approach applies to SORNA's definition of a "specified offense against a minor" because the definition does not refer to the elements of an offense and emphasizes instead the conduct underlying the offense).

Thus, based on SORNA's plain language, we hold that a categorical approach must be applied to determine whether Vineyard's sexual battery conviction "has an element involving . . . sexual contact with another" such that it qualifies as a SORNA sex offense. *See United States v. Rogers*, 804 F.3d 1233,

1237 (7th Cir. 2015) ("Based on the statutory language, it's clear that a categorical approach applies to the threshold definition of the term 'sex offense' in [34 U.S.C. § 20911] (5)(A)(i); the use of the word 'element' suggests as much."); *United States v. Gonzalez-Medina*, 757 F.3d 425, 430 (5th Cir. 2014) ("The definition's focus on the 'element[s]' of the predicate offense strongly suggests that a categorical approach applies to [34 U.S.C. § 20911](5)(A)(i)."); *United States v. Mi Kyung Byun*, 539 F.3d 982, 991 (9th Cir. 2008) ("The specific reference to an 'element' requires an analysis of the statutory elements, rather than an examination of the underlying facts.").

B. The Tennessee sexual battery statute under which Vineyard was convicted categorically satisfies SORNA's sexual contact provision.

Under the categorical approach, Vineyard's conviction will only qualify as a sex offense under SORNA if the Tennessee sexual battery statute under which he was convicted covers the same conduct as—or a narrower range of conduct than—SORNA. *See Descamps v. United States*, 570 U.S. 254, 257 (2013) (explaining how the categorical approach works in the context of the Armed Career Criminal Act ("ACCA")); *Welch v. United States*, 136 S. Ct. 1257, 1262 (2016) ("Under the categorical approach, a court assesses whether a crime qualifies as a [predicate offense] in terms of how the law defines the offense and not in terms of how an individual offender might have committed it on a particular occasion." (internal

quotation marks omitted)). More specifically, as the issue has been framed in this case, Vineyard's conviction will only qualify as a sex offense under SORNA if the sexual contact required by Tennessee's sexual battery statute is materially the same as—or less encompassing than—the definition of the term sexual contact as used in SORNA. If Tennessee's definition of sexual contact "sweeps more broadly" than SORNA's, Vineyard's sexual battery conviction cannot qualify as a sex offense under the sexual contact provision of SORNA regardless of Vineyard's actual conduct in committing the offense.[5] *See Descamps*, 570 U.S. at 261.

1. The term sexual contact as used in SORNA means a touching or meeting of body surfaces where the touching or meeting is related to or for the purpose of sexual gratification.

As is evident from the above discussion, the meaning of the term sexual contact as used in SORNA is essential to our analysis under the categorical approach. SORNA's definition of a sex offense to include an offense that has sexual contact as an element potentially encompasses Tennessee sexual battery, which prohibits "unlawful sexual contact" under certain circumstances. *See* Tenn. Code Ann. § 39-13-505(a). But to determine whether the Tennessee sexual battery

[5] There is an exception to the categorical approach that applies when the statute that defines the offense is overbroad and "divisible"—meaning that it sets out different offenses with alternative elements, some of which are qualifying offenses and some which are not. *See Mathis v. United States*, 136 S. Ct. 2243, 2249 (2016) (describing the modified categorical approach and clarifying when it is applicable). As will be discussed *infra*, we conclude that Tennessee's sexual battery statute categorically satisfies SORNA's definition of a qualifying sex offense. Accordingly, we have no occasion to consider whether the modified categorical approach applies here.

statute categorically satisfies SORNA's sexual contact provision, we must compare the definition of sexual contact as used in SORNA to the definition of that term as used in the Tennessee statute.

SORNA does not define sexual contact. *See* 34 U.S.C. § 20911 (expressly defining certain terms for purposes of SORNA, but not sexual contact). Thus, "we interpret that phrase using the normal tools of statutory interpretation." *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562, 1569 (2017) (defining the term "sexual abuse of a minor" as used in the Immigration and Nationality Act ("INA")). We begin our analysis with the text of SORNA, and with a presumption that Congress intended the words used in the text to be given their common, ordinary meaning. *See id.* (quoting *Leocal v. Ashcroft*, 543 U.S. 1, 8 (2004) and citing additional authority for the principle that the "everyday understanding" and "regular usage" of an undefined statutory term is important in determining "what Congress probably meant" when it used the term (internal quotation marks omitted)). The plain meaning of the text "controls unless the language is ambiguous or leads to absurd results." *United States v. Carrell*, 252 F.3d 1193, 1198 (11th Cir. 2001) (internal quotation marks omitted)); *see also Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1010 (2017) ("We . . . begin and end our inquiry with the text [of the statute], giving each word its ordinary, contemporary, common meaning." (internal quotation marks omitted)).

Relying on a dictionary definition of the word contact and on a general understanding of the word sexual, the district court determined that the ordinary meaning of the term sexual contact as used in SORNA is "a touching or meeting of a sexual nature." We agree with the district court's essential analysis—that is, that the plain meaning of the term sexual contact is easily derived from common definitions of the words sexual and contact, and that this plain meaning is controlling here because it is not "ambiguous" and does not lead to "absurd results." *See Carrell*, 252 F.3d at 1198. Further, we define sexual contact similarly to the district court, with a slight refinement to the sexual component of the definition.

As the district court pointed out, the word contact is generally understood to mean the "union or junction of body surfaces: a touching or meeting." *See* Webster's Third New International Dictionary 490 (1986); *see also* Webster's II New Riverside University Dictionary 303 (1988) (defining contact to mean "[t]he touching of two objects or surfaces"). This Court has defined the word sexual to mean "of or relating to the sphere of behavior associated with libidinal gratification." *See United States v. Padilla-Reyes*, 247 F.3d 1158, 1163 (11th Cir. 2001) (quoting Webster's Third New International Dictionary 2082 (1981)).[6]

[6] Other circuit courts likewise have defined the word sexual to mean "of or relating to the sphere of behavior associated with libidinal gratification." *See United States v. Diaz-Ibarra*, 522 F.3d 343, 349 (4th Cir. 2008) (defining the term sexual as used in the phrase sexual abuse of a minor);

Combining these two definitions, we conclude that the term sexual contact as used in SORNA means: a touching or meeting of body surfaces where the touching or meeting is related to or for the purpose of sexual gratification.

2. Tennessee's sexual battery statute categorically requires sexual contact as that term is used in SORNA, thus satisfying SORNA's definition of a sex offense to include an offense that has an element involving sexual contact.

Applying the common meaning of sexual contact set out above, there is no question that Tennessee's sexual battery statute "has an element involving . . . sexual contact with another" person, such that Vineyard's conviction under the statute qualifies as a sex offense under SORNA. *See* 34 U.S.C. § 20911(5)(A)(i). The Tennessee sexual battery statute prohibits "unlawful sexual contact" with a victim under several circumstances, including the use of force, coercion, or fraud to accomplish the contact, lack of the victim's consent to the contact, or incapacitation of the victim. Tenn. Code Ann. § 39-13-505(a). As used in the Tennessee statute, the term sexual contact requires an "intentional touching" of the victim's or another's person's "intimate parts" (or the "clothing covering the immediate area" of those parts) "for the purpose of sexual arousal or gratification." *Id.* § 39-13-501(6). When Vineyard was convicted in 2012, "intimate parts" was

United States v. Mateen, 806 F.3d 857, 861 (6th Cir. 2015) ("Sexual is commonly understood to mean of or relating to the sphere of behavior associated with libidinal gratification." (internal quotation marks omitted)).

defined to include "the primary genital area, groin, inner thigh, buttock, or breast of a human being." *Id.* § 39-13-501(2) (2012). Thus, at the time of Vineyard's conviction, Tennessee's sexual battery statute required that there be an unlawful and intentional touching of one of five specified body parts (or the clothing immediately covering those parts) for the specific purpose of sexual gratification. Considered together, those requirements categorically match the plain meaning of the term sexual contact as used in SORNA.

Indeed, Vineyard does not dispute that Tennessee's sexual battery statute categorically requires sexual contact as that term is commonly understood. Nevertheless, Vineyard argues that his conviction does not qualify as a sex offense under SORNA because Tennessee law defines sexual contact more broadly than that term is defined in an entirely separate federal statute: 18 U.S.C. § 2246. According to Vineyard, sexual contact is a legal term of art that must be defined by a special, technical meaning rather than by its plain meaning. But Vineyard cites no authority to support this argument, and we are unpersuaded by it. *See Med. Transp. Mgmt. Corp. v. Comm'r*, 506 F.3d 1364, 1368 (11th Cir. 2007) (describing a legal term of art as a term "in which [is] accumulated the legal tradition and meaning of centuries of practice" (citation omitted)); *Garcia v. Vanguard Car Rental USA, Inc.*, 540 F.3d 1242, 1246 (11th Cir. 2008) ("When statutory terms are undefined, we typically infer that Congress intended them to have their common

and ordinary meaning, unless it is apparent from [the] context that the disputed term is a term of art." (emphasis added)).

Furthermore, Vineyard's argument that the definition of sexual contact used in 18 U.S.C. § 2246 should be imported into SORNA conflicts with the language and structure of both statutes. Section 2246 defines certain terms for purposes of the federal sexual crimes set out in Chapter 109A of Title 18, including, for example, sexual crimes that occur in the special maritime jurisdiction of the United States or in a federal prison, or when a perpetrator crosses state lines with the intent to engage in a sexual act with a child. *See* 18 U.S.C. §§ 2241–2246. Section 2246 expressly limits its application to terms used "in this chapter"—that is, in Chapter 109A. *See* 18 U.S.C. § 2246. SORNA is not codified in the same chapter—or indeed, even in the same Title—of the United States Code as § 2246. Neither does § 2246 cross-reference SORNA or otherwise indicate that its definitions should be used when interpreting SORNA. *See id.*

In fact, SORNA has its own definitions, which are set out in language suggesting that Congress did not intend for other definitions to be incorporated into SORNA without a clear reference. *See* 34 U.S.C. § 20911 (stating that "[i]n this subchapter the following definitions apply"). Many of SORNA's definitions cross-reference and expressly incorporate specific definitions from Title 18, including certain definitions used in Chapter 109A. *See* 34 U.S.C. § 20911(3)(A), (4)(A),

(5)(A)(iii), (7)(F), (8). These references show that Congress was aware of the definitions contained in Title 18—and more specifically, it was aware of the definitions related to federal sexual crimes set out in Chapter 109A—and that it was capable of incorporating those definitions into SORNA but chose not to incorporate § 2246(3)'s definition of sexual contact.

Neither does the Supreme Court's analysis in *Esquivel-Quintana* require us to discard the plain meaning of sexual contact in favor of § 2246(3)'s definition of that term, as Vineyard suggests. On the contrary, the Court in *Esquivel-Quintana* cited authority suggesting that the "everyday understanding" of an undefined statutory term often provides the most important guidepost in determining what Congress intended the term to mean. *See Esquivel-Quintana*, 137 S. Ct. at 1569 (citing *Lopez v. Gonzales*, 549 U.S. 47, 53 (2006)). The undefined term at issue in *Esquivel-Quintana* was "sexual abuse of a minor" as used in a provision of the INA listing the "aggravated felon[ies]" that permit removal of an alien after admission to the United States, and the question presented by the case was whether the petitioner's conviction under a state statute criminalizing consensual sexual intercourse between a 21-year-old and a 17-year-old qualified as sexual abuse of a minor. *See id.* at 1567 (citing 8 U.S.C. § 1101(a)(43)(A)). The Court held that the conviction did not qualify, explaining that "in the context of statutory rape offenses that criminalize sexual intercourse based solely on the age of the participants, the

generic federal definition of sexual abuse of a minor requires that the victim be younger than 16." *Id.* at 1568.

The Court in *Esquivel-Quintana* consulted multiple sources to arrive at a generic definition of the term sexual abuse of a minor, including dictionary definitions, the surrounding provisions of the INA, and state criminal codes. *See id.* at 1569–72. Among those sources was the "federal definition of sexual abuse of a minor" set out in a "closely related federal statute, 18 U.S.C. § 2243." *See id.* at 1570. Noting that § 2243's definition of the term sexual abuse of a minor implies an age of consent of 16, the Court explained that the definition was enacted as part of "the same omnibus law that added [the] sexual abuse of a minor [provision] to the INA, which suggests that Congress understood" the phrase sexual abuse of a minor as used in the INA "to cover victims under age 16." *Esquivel-Quintana*, 137 S. Ct. at 1570–71. Even so, the Court declined to import § 2243's definition "wholesale into the INA." *Id.* at 1571. Here, there is no reason to import any part of § 2246(3)'s definition of sexual contact into SORNA because there is no legislative relationship between SORNA and § 2246, as there was between the INA and § 2243.

Finally, even if the Court were to use § 2246(3)'s definition of sexual contact, Vineyard's Tennessee sexual battery conviction still would categorically

qualify as a sex offense under SORNA. Section § 2246(3) defines sexual contact to mean:

> the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person[.]

18 U.S.C. § 2246(3). There is no material difference between this definition of sexual contact and Tennessee's definition of sexual contact to require the intentional touching of a person's "primary genital area, groin, inner thigh, buttock, or breast" where the touching is "for the purpose of sexual gratification." *See* Tenn. Code Ann. § 39-13-501(6), (2) (2012). Both definitions prohibit the intentional touching of the same areas of the body with the intent of arousing or gratifying sexual desire. If anything, Tennessee's definition is narrower than the definition set out in § 2246(3) because the Tennessee definition does not include touching for purposes other than sexual gratification, such as abusing, humiliating, harassing, or degrading a person. *See* 18 U.S.C. § 2246(3).

Vineyard's primary argument with respect to § 2246(3) is that Tennessee's definition of sexual contact is overbroad because it includes contact with the "primary genital area" rather than just the genitals. This argument borders on the absurd. The plain meaning of the term "primary" suggests that the "primary genital area" covers essentially the same area of the body as the genitals. *See* Webster's II New Riverside University Dictionary 934 (1988) (defining primary,

in relevant part, to mean "[b]eing a basic or fundamental part of . . . [a] whole"). But in any event, the definition of sexual contact set out in § 2246(3) goes beyond the genitals to include the "anus, groin, breast, inner thigh, [and] buttocks." 18 U.S.C. § 2246(3). We agree with the district court that, to the extent the primary genital area is broader than the genitals, it is encompassed by § 2246(3)'s inclusion of the groin as an area of the body with which contact may be deemed sexual contact. *See* Webster's II New Riverside University Dictionary 549 (1988) (defining groin to mean "[t]he crease at the junction of the thigh and the trunk, together with the adjacent region").

Vineyard also argues that Tennessee has judicially expanded its definition of intimate parts to include the lower back and abdomen, citing *State v. Graham*, 1992 WL 300889 (Tenn. Crim. App. 1992) and *State v. Williams*, 2001 WL 741935 (Tenn. Crim. App. 2001). A fair reading of *Graham* and *Williams* shows that neither case expanded Tennessee's definition of intimate parts. In *Graham*, the court upheld the defendant's conviction for sexual battery based on the victim's testimony that the defendant had put his hands inside the bikini-type panties the victim was wearing and "rubb[ed] up and down right at where it starts." *See Graham*, 1992 WL 300889, at *5 (internal quotation marks omitted). The record showed that "it" referred to the victim's "private area" and that the victim had demonstrated to the jury the area the defendant had touched. *See id.* at *2, 5. The

court concluded that the evidence was sufficient to support the jury's finding that the defendant had touched the victim's intimate parts, as defined by the Tennessee statute and without the need for an expansion of the terms used in the statute. *Id.* at *4–5.

Likewise, in *Williams*, victim testimony established that the defendant had put his hands underneath the victim's shorts and panties on one occasion, pulled her shorts below her buttocks and placed his hands under her shorts and panties on another occasion, and rubbed the victim's legs above the knee in an area she demonstrated to the jury on a third occasion. *See Williams*, 2001 WL 741935, at *4, 7. Based on the victim's testimony and demonstration, the court upheld three sexual battery convictions against the defendant, concluding that there was enough evidence to support the jury's finding that the defendant had touched the victim's "primary genital area, groin, inner thigh, or buttock" on these three occasions. *See id.* at *7. But the court did not indicate that it was expanding Tennessee's definition of intimate parts. And in fact, the court vacated one of the defendant's convictions based on the victim's testimony that, as relevant to that conviction, the defendant had only "rubbed her legs to about the knee." *See id.* Although the victim had demonstrated to the jury where the defendant had touched her, the court concluded that it was unclear from the record whether the defendant had touched

the victim's "thigh, or any of her other intimate parts" as required by the Tennessee statute. *See id.*

In short, the case law cited by Vineyard does not support his argument that Tennessee has expanded its definition of sexual contact to include contact with the back or abdomen. Furthermore, the term sexual contact as defined in Tennessee's sexual battery statute categorically matches the plain meaning of sexual contact as used in SORNA. And finally, although it is clear to us that the definition of sexual contact used in 18 U.S.C. § 2246(3) is inapplicable here, it is equally clear that Tennessee's statutory definition of sexual contact categorically matches § 2246(3) as well.

CONCLUSION

For the foregoing reasons, we **AFFIRM** the district court's denial of Vineyard's motion to dismiss the indictment filed against him in this case.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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December 20, 2019

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 18-11690-HH
Case Style: USA v. Nathan Vineyard
District Court Docket No: 5:17-cr-00383-RDP-JHE-1

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Christopher Bergquist, HH at 404-335-6169.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna H. Clark
Phone #: 404-335-6151

OPIN-1 Ntc of Issuance of Opinion

United States v. Vineyard, No. 5:17-cr-00383-RDP-JHE-1 (N.D. Ala. Apr. 17, 2018) (judgment)

Appendix C

FILED
2018 Apr-17 AM 09:47
U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
Northern District of Alabama

UNITED STATES OF AMERICA

v. Case Number 5:17-CR-383-RDP-JHE-1

NATHAN RICHARD VINEYARD,

Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, NATHAN RICHARD VINEYARD, was represented by Deanna L. Oswald.

The defendant pleaded guilty to Count 1 of the Indictment. Accordingly, the defendant is adjudged guilty of the following count, involving the indicated offense:

Title & Section	Nature of Offense	Count Number
18 U.S.C. § 2250(a)	Failure to Register as a Sex Offender	1

As pronounced on April 11, 2018, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of $100.00, for Count 1, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this 11th day of April, 2018.

R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE

Defendant: NATHAN RICHARD VINEYARD
Case Number: 5:17-CR-383-RDP-JHE-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of TWENTY-FOUR (24) months.

The Court recommends to the Bureau of Prisons that the defendant **not** be assigned to the institution at FCI Marianna, or any institution where David Aaron Becker is also assigned. The court also recommends that the defendant be assigned to any substance abuse treatment program(s) for which he may be eligible. Further, the court recommends that the defendant be assigned to an institution as close as possible to Knoxville, Tennessee.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____ at _____ _____, with a certified copy of this Judgment.

_____
United States Marshal

By _____
Deputy Marshal

Defendant: NATHAN RICHARD VINEYARD
Case Number: 5:17-CR-383-RDP-JHE-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 360 months. The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

STANDARD CONDITIONS OF SUPERVISED RELEASE

While the defendant is on supervised release pursuant to this Judgment:

1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of the time you were sentenced (if placed on probation) or released from custody (if supervised release is ordered), unless the probation officer instructs you to report to a different probation office or within a different time frame.
2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when to report to the probation officer, and you must report to the probation officer as instructed.
3) You must not commit another federal, state, or local crime.
4) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified, for the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers). Revocation of supervision is mandatory for possession of a firearm.
5) You must not unlawfully possess a controlled substance.
6) You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court. You must contribute to the cost of drug testing unless the probation officer determines you do not have the ability to do so. Based upon a court order entered during the period of supervision for good cause shown or resulting from a positive drug test or evidence of excessive use of alcohol, you shall be placed in the Substance Abuse Intervention Program (SAIP) (or comparable program in another district).
7) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
8) You must follow the instructions of the probation officer related to the conditions of supervision.
9) You must answer truthfully the questions asked by the probation officer.
10) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change. (If you have been convicted of a crime of violence or a drug trafficking offense, the probation office is responsible for complying with the notice provisions of 18 U.S.C. § 4042(b) and (c) if you change your residence.)
11) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
12) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment, you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as the position or the job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
13) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
14) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
15) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
16) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk, and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
17) You must fully and truthfully disclose financial information as requested by the probation officer related to the conditions of supervision. Financial information may include, but is not limited to, authorization for release of credit information, bank records, income tax returns, documentation of income and expenses, and other financial information regarding personal or business assets, debts, obligations, and/or agreements in which the defendant has a business involvement or financial interest.
18) You must support all dependents.

Defendant: NATHAN RICHARD VINEYARD
Case Number: 5:17-CR-383-RDP-JHE-1

CONTINUATION OF STANDARD CONDITIONS OF SUPERVISED RELEASE

19) You must comply with the probation office's Policies and Procedures Concerning Court-Ordered Financial Obligations to satisfy the balance of any monetary obligation resulting from the sentence imposed in the case. Further, you must notify the probation officer of any change in your economic circumstances that might affect your ability to pay a fine, restitution, or assessment fee. If you become more than 60 days delinquent in payments of financial obligations, you may be: (a) required to attend a financial education or employment preparation program under the administrative supervision of the probation officer; (b) placed on home detention subject to location monitoring for a maximum period of 90 days under the administrative supervision of the probation officer (and you must pay the cost of monitoring unless the probation officer determines you do not have the ability to do so); and/or (c) placed in a community corrections center for up to 180 days under the administrative supervision of the probation officer (and you must pay the cost of subsistence unless the probation officer determines you do not have the ability to do so).

Defendant: NATHAN RICHARD VINEYARD
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SPECIAL CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this Judgment:

1) You must cooperate in the collection of DNA under the administrative supervision of the probation officer.
2) You must not use or possess alcohol.
3) You must participate in the Substance Abuse Intervention Program (SAIP) (or comparable program in the district of supervision) under the administrative supervision of the probation officer, and you must comply with the requirements and rules of the program. This program includes the following components: (a) testing by the probation officer or an approved vendor to detect prohibited drug or alcohol use; (b) substance abuse education; (c) outpatient substance abuse treatment, which may include individual or group counseling, provided by the probation office or an approved vendor, and/or residential treatment; (d) placement in a community corrections center (halfway house) for up to 270 days; and/or (e) home confinement subject to electronic monitoring for up to 180 days. You must contribute to the costs of participation unless the probation officer determines you do not have the ability to do so.
4) You must participate in an anger management treatment program under the administrative supervision of the probation officer, and you must comply with the requirements and rules of the program. You must contribute to the cost of treatment unless the probation officer determines you do not have the ability to do so.
5) You must participate in an educational services program under the administrative supervision of the probation officer, and follow the requirements and rules of the program. Such programs may include high school equivalency preparations, English as a Second Language classes, and other classes designed to improve your proficiency in skills such as reading, writing, mathematics, or computer use. You must contribute to the cost unless the probation officer determines you do not have the ability to do so.
6) You must comply with the requirements of the Sex Offender Registration and Notification Act(34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the locations where you reside, work, are a student, and were convicted of a qualifying offense.
7) You must participate in an approved sex offense-specific treatment program under the administrative supervision of the probation officer, and you must comply with the requirements and rules of the program. This program may include: a psycho-sexual evaluation; family, group, and/or individual counseling; and psychological and clinical polygraph testing. The results of the polygraph examinations may not be used as evidence in court for the purpose of revocation of supervision, but may be considered in a hearing to modify conditions of release. While participating in treatment, you must abide by all rules and requirements of the program. You must notify the probation officer prior to canceling or rescheduling a treatment or polygraph session. You must contribute to the cost of treatment and polygraph testing unless the probation officer determines you do not have the ability to do so.
8) You must submit your person, property, house, residence, vehicle, office, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, to a search conducted by the probation officer. Failure to submit to a search may be grounds for revocation of supervision. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of supervision and the areas to be searched contain evidence of this violation. Any search must be conducted in a reasonable time and in a reasonable manner.