

21-5063

No.

ORIGINAL

IN THE
Supreme Court of the United States

Sammy Cano, Reg. No. M40291

v.

The People of the State of Illinois

Supreme Court, U.S.
FILED

JUN 24 2021

OFFICE OF THE CLERK

On Petition For Writ Of Certiorari

To The Illinois Supreme Court

PETITION FOR WRIT OF CERTIORARI

Sammy Cano M40291 Pro se,
251 North Illinois Highway 37
Ina, IL. 62846

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

1. Whether or not the State failed to prove Sammy Cano guilty beyond a reasonable doubt where the only witness to the crime directly contradicted her prior statements about which body parts of the defendants touched hers, her response to that contact, or whether she was threatened during that incident; and where the witness claimed that her cousin was touched during the same incident, but the cousin flatly that the incident occurred.
2. Whether Chicago Police Officers unconstitutionally seized Sammy Cano in a home depot parking lot when he neither committed nor witnessed a crime, contrary to the circuit court's ruling on Sammy's motion to quash arrest.
3. Whether or not the circuit court should have provided Sammy Cano with new council to assess his claim that trial council ineffectively failed to present evidence showing an inculpatory statement was coerced.
4. Whether or not the circuit court excessively sentenced Sammy Cano to three times the minimum term even though Sammy had not committed any crimes in the decade since the incident and that he had established himself as a productive member of society and caring father to two young children.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is reported at 2020 IL App (1st) 182100-U (Unpublished Order)

The opinion of the Illinois Supreme Court appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was March 24th, 2021.

A copy of that decision appears at Appendix B.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (a).

CONSTITUTIONAL AND STAUTORY PROVISIONS INVOLVED

1. Whether Sammy Cano received a fair trial, where there was conflicting and contradictory testimony from the victim herself about what body parts were used in the alleged contact between the two, and where there was direct contradiction of the victim's testimony that she wasn't the only victim, that her cousin was also abused, and that cousin denied any abuse whatsoever.

2. Whether Chicago Police Officers violated the Fourth Amendment rights of Sammy Cano when they seized him in a Home Depo Parking lot when he had neither witnessed nor committed a crime.

3. Whether there was an abuse of discretion by the trial Judge for not providing Sammy Cano council to assess whether or not trial council was ineffective for failing to present evidence showing an inculpatory statement to police was coerced.

4. Whether or not Sammy Cano's sentence is excessive despite his history of no arrests in the ten year time frame after the alleged crimes occurred.

[redacted]
STATEMENT OF FACTS

In 2012, the State charged Sammy Cano with predatory criminal sexual assault of a child and aggravated criminal sexual abuse for alleged incidents involving Sammy's younger cousin Jocelyn Gutierrez 10 years earlier. (C.20,23) Sammy maintained his innocence throughout trial, insisting that he never touched Jocelyn and that Jocelyn's account contradicted her cousin Gabriella Gutierrez's testimony. (R.325-29, 337-41, 354-57)

Motion to Quash Arrest

Prior to trial, Sammy filed a motion to quash his warrantless arrest outside of a Home Depot and to suppress statements that were the fruits of that unlawful arrest. (C.54-56)

At a hearing on that motion to quash, Sammy testified that at 10:00 a.m. on January 17, 2012, he was at Home Depot at 47th Street and Western in Chicago buying a sponge. (C.84) When he left the store, he saw several acquaintances who were looking for work; although Sammy was employed and not seeking a job, he joined the group briefly. (C.85-86, 90) Sammy admitted that, in the past, he had approached cars in that area seeking work, but on that day he was employed and on his way to his job. (C.88, 90) Two officers approached the group and stopped them, asking for identification. (C.84-84) Sammy, who testified he did not feel free to leave and was not shown any warrant, produced his ID card. (C.85-86) This card stated that his name was Sammy Cano; Sammy denied providing giving any false names or birth dates to the officers. (C.86, 89) One of the officers told Sammy that the officers wanted to speak to him. (C.89) The officers then handcuffed Sammy, searched him, and placed him in the back of their cruiser before driving him to the police station. (C.87)

Officer Dennis Conway, one of the arresting officers, testified that he and his partner traveled to the parking lot of Home Depot to respond to "complaints."

of loitering" that had been filed in the past six months.(C.102)The officers did not receive any complaints that day. (C.103) Conway and his partner approached a group of individuals they did not know in that parking lot;Conway's partner spoke to them in spanish.(C.104-105)Conway admitted that he did not have a warrant and was not investigating a crime at the time he approached the group.(C.106)

Conway saw Sammy in the group;although Conway saw the men approaching cars in the parking lot,he did not initiate any charges against Sammy based on that activity.(C.107)Conway's partner asked Sammy his name.(C.108)Sammy said his name was Sammy Lopez and supplied two different birth dates.(C.108,113)The officers attempted to search that name in their computer, but did not find any matches. (C.114.)At that time, the officers"placed[Sammy] in custody for obstruction of identification."(C.108)Conway reiterated that the officers placed Sammy in custody after he provided a false name and birthday.(C.108)

Conway then conducted a "custodial search" of Sammy and recovered an ID card with the name SamMy Cano on it.(C.108)The officers then did a name check on the computer in their car,which revealed an investigatory alert.(C.109)They did not learn of the investigative alert until after Sammy was in custody.(C.114)

That alert provided Sammy's name,an alert number, and the name of the detective who created the alert.(C.110) Conway did not recall whether the investigative alert indicated that there was probale cause for Sammy's arrest.(C.110)According to Conway,detectives issue such alerts when they would like to speak to someone regarding a crime,(C.111)Such alerts do not contain statements by the victim, alleged facts,or the nature of the potential charges against the subject.(C.111)

Detective Manuel De La Torre then testified that he questioned Sammy between 7:00 p.m. and 11:00 p.m. that night.(C91-92) De La Torre did not record Sammy's statements.(C.93) De La Torre testified that an investigative alert for Sammy had been issued based upon a 2004 incident between Sammy and his younger cousin Jocelyn;however,De La Torre did not know when the alert was submitted and

did not testify as to the alert's contents.(C.94-96) De La Torre testified that he did not know what information about the allegations against Sammy,if any, would have been visible to the arresting officers at the time of arrest.(C.99) However,when shown a printout of an investigative alert pertaining to Sammy, De La Torre acknowledged that it did show that the alert was initially rejected when filed.(C.99)

Defense counsel argued that the officers were not investigating any crime at the time they stopped Sammy.(C.115)Nor did Sammy commit any crime by giving false identification to the officers,that is only illegal where a person has been lawfully arrested or detained,or if an officer has "good cause" to believe the subject is a witness to a criminal offense.(C.115)

Without asking the State if it wanted to argue,the circuit court issued its ruling.(C.117)The court claimed that the officers could arrest Sammy for giving two seperate names and birthdays, and that once the officers found an investigative alert they[had] to follow police procedures and send him to the detective.(C.118)Thus, the court denied the motion to quash.(C.118)

Defnse counsel filed a motion to reconsider,which the court likewise denied, noting that the detention was not lengthy and that when Sammy gave a false name, "the investigation grew from there."(R.54)

Jocelyn's Trial Testimony

At the jury trial,Jocelyn,who was then an 18-year-old student at Harper College,testified about an incident involving Sammy in 2002.(R.222-23)In 2002, Jocelyn was 6 years old and lived in a high-rise apartment with her parents;her cousin Dany,who had three children,also lived in the building.(R.223) Dany is Sammy's sisiter.(R.226) Dany often babysat Jocelyn before scholl when Jocelyn's mother had to work.(R.224)

Jocelyn testified that on the date of the incident,she was playing in the living room of Dany's apartment with her cousin Gabriela,who is two years

younger, and her cousin Jackie, who is younger than Gabriela. (R.224, 226) The living room was only five feet away from the bedroom that Dany's children shared. (R.233-34)

Jocelyn testified that she was not sure whether Dany was home that day; when defense counsel confronted Jocelyn with her 2004 statement to investigators that Dany was home at that time, Jocelyn claimed she could not recall making that statement. (R.234, 238) Jocelyn's mother also testified that Dany was in the living room watching television throughout the incident. (R.253, 256)

According to Jocelyn, Sammy was in the apartment and called Jocelyn and Gabriela into the children's bedroom. (R.226) Sammy closed the door and took Jocelyn and Gabriela behind the bunk bed. (R.227) Sammy made Jocelyn lay on the floor, pulled down her pants and panties, and used his tongue to lick between the lips of her vagina for a "couple of minutes." (R.227) Jocelyn testified that Gabriela was in the room during the entire incident. (R.236) Although Jocelyn testified that she could not remember what "interaction" Sammy and Gabriela had in the room, she admitted that in 2004 she told both her mother and investigators that Sammy had touched Gabriela in the same way. (R.236-38, 244, 256, 267)

Jocelyn did not tell anyone about the incident at the time because she thought that she had done something wrong. (R.228) Two years later, she decided to tell one of her teachers about the incident; that teacher then told Jocelyn's mother. (R.228-29) When Jocelyn's mother asked her about the incident, Jocelyn said that Sammy used his fingers, not his tongue, to touch her. (R.229) She would repeat the claim that Sammy used his fingers to investigators at the Children's Advocacy Center in Chicago in 2004, when she specifically recalled feeling Sammy's fingernails touching her. (R.244, 268) Jocelyn did not tell anyone that Sammy touched her with his tongue until ten years later, and did not tell that version of her story until after Sammy had given a statement to police about the incident. (R.244, 315)]

Jocelyn testified that she did not remember whether Sammy threatened her and admitted that she told investigators that Sammy did not threaten her; however,

she did tell her mother that Sammy had threatened her.(R.238-39,245,253)An investigator who observed Jocelyn's 2004 interview at the Children's Advocacy Center also testified that Jocelyn said she screamed throughout the incident.(R.269) According to Jocelyn's 2004 interview,Dany was in the living room five feet away from the children's bedroom the entire time, but never responded to her screams. (R.269,275)

Sammy's Alleged Statements

Detective De LA Torre testified at trial that he interviewed Sammy in Spanish around 7:00 the night of Sammy's arrest.(R309-10)On cross-examination, De La Torre admitted that he made no audio,video,or handwritten notes contemporaneously with this interview;nor did he ever prepare a typewritten statement for Sammy to sign.(R.316)

According to De La Torre,Sammy said that ten years earlier he visited his sister Dany frequently,sometimes while her kids and Jocelyn were in the apartment.(R.312)Sammy said he was there one day when the other adults were gone.(R.312)Sammy said that while he was playing with Jocelyn that day,he took her clothes off,then put his tongue between her vagina lips and kissed it. (R.313)In his later testimony at trial,Sammy would deny making this statement. (R.338)

On cross-examination,defense counsel confirmed that De La Torre did not record the statement.(R.317)Additionally,Sammy never said that Gabby was in the room during the incident or that Jocelyn screamed during the incident.(R.317) Sammy also never said that he used his fingers to touch Jocelyn.(R.318)Counsel did not ask De La Torre about the conditions of this interrogation or the specific questions that De La Torre posed to Sammy during this interview.

Defense Evidence at Trial

Gabriela testified for the defense.(R.325)Gabriela confirmed that when she 4 years old,her older cousin Jocelyn often came to visit her apartment,

where Gabriela's mother Dany would watch them as well as Gabriela's two siblings. (R.326) Gabriela also identified Sammy as her uncle, whom she saw a few times a year around the holidays. (R.328) Gabriela did not remember ever being left alone with Sammy. (R.328) She specifically denied recalling Sammy ever touching her inappropriately. (R.328) Furthermore, Gabriela never saw Sammy touch Jocelyn inappropriately, never heard Jocelyn screaming for Sammy to stop touching her, and never heard Jocelyn complain that Sammy had touched her inappropriately. (R.329)

Dany Cano then testified that, although she often babysat Jocelyn and sometimes her brother Sammy visited at the same time, she never left Jocelyn or her own children alone with Sammy. (R.330-32) Dany did not allow any men to watch her children alone when they were that age. (R.335) She also explained that the small apartment she lived in at the time of the alleged incident had only two bedrooms. (R.331) The children's bedroom was directly connected to the living room. (R.331) Thus, Dany testified that if someone screamed from the children's bedroom it would be audible in the living room. (R.331)

Testifying in his own defense, Sammy denied that he ever touched Jocelyn's vagina, and specifically denied touching her with his finger, fingernail or mouth. (R.337) At the time of the trial, Sammy was married and had two children of his own, a five-year-old daughter and a three-year-old son. (R.337)

Defense counsel did not ask Sammy any questions about his statement to police or the circumstances under which it was taken. However, during his cross-examination, Sammy specifically denied ever telling officers that he touched Jocelyn's vagina with his tongue. (R.338) Sammy was surprised by the questions that officers asked him during their interrogation. (R.341) Also on cross-examination, Sammy denied ever being alone with Jocelyn in Dany's apartment. (R.338)

Verdict

The jury found Sammy guilty of both counts. The circuit court continued the

the case for a hearing on Sammy's post-trial motion and sentencing.

Post-Trial Motion and Sentencing Hearing

At a subsequent hearing, Sammy indicated that he had prepared a handwritten pro se motion in addition to the motion prepared by his counsel. (R.381) The circuit court accepted Sammy's pro se motion and read its allegations aloud, including an allegation that trial counsel was ineffective. (R.382)

The court then asked Sammy "in what way, shape or form were you denied effective assistance of counsel?" (R.383) Sammy responded by asking "[i]n what way?", and the court stated "[y]eah, how?" (R.383) Sammy then said that counsel "was not-he was not pending. He didn't defend me the way he should have." (R.383) When the court asked how this was so, Sammy responded that "[i]n regards to the police officer, the officer said that I had said some things to him; that I was only supposed to say yes or no without going into details or other things where I could say and explain things that were in my favor, too." (R.383) The court then began admonishing Sammy that he could have exercised his right to testify at trial before realizing that Sammy did testify at trial. (R.384) Then the court insisted that his counsel's cross-examinations were "vigorous" and "[a]ny impeachment or, you know, possible mistakes were brought out by your attorney." (R.384)

Defense counsel then requested that he be discharged and a public defender appointed. (R.384) The court denied the motion, saying "[y]ou've been on this case for years, counsel. This is a motion that was prepared by a friend of [Sammy's] in the jail." (R.384) The court added that it "asked [Sammy] specifically what his problems were with his defense and his answer was he didn't like what the police officer said, So if you were somehow going to accept responsibility to withdraw for what a police officer said, I will entertain your motion to withdraw." (R.384) Defense counsel insisted that new counsel should be appointed to at least

explore the possibility that counsel gave ineffective assistance at trial.(R.385)

The court responded that Sammy "can always explore your ineffectiveness to a higher court."(R.385)According to the court,"[e]very right of the defendant has been protected through the representation by able-bodied attorneys for over a year,"and "[j]ust because he didn't like the fact that the answers a police officer gave at his trial are not a basis not only for a new trial but for you to attempt to leave prior to sentencing."(R.386)The court then denied Sammy's post-trial motion and proceeded to sentencing.(R.386)

The State introduced Jocelyn's victim impact statement,which noted her difficult childhood following the alleged incident.(R.387-88)The State then claimed a harsh sentence was necessary to deter others from committing a similar crime.(R.390) Finally, the State added that a long sentence was necessary because of the possibility of recidivism,even though Sammy had not been accused of any crime in the intervening 10 years between the alleged crime and the trial.(R.391)

In mitigation,defense counsel noted that for the past 12 years, Sammy had lived a productive life without any contact with the police.(R.392)Sammy married seven years earlier, and was now raising two children,a five-year-old daughter and a three-year-old son.(C.170;R337,392)Sammy was the sole bread-winner for that family before his arrest;he had completed two years of high school and was earning \$300 per week in the construction industry.(C.170;S.C.9)After his arrest,his wife and children lost their apartment and did not have a place to sleep.(C.178)

Furthermore,since Sammy stopped using drugs or alcohol 12 years earlier, Sammy had not committed any crime at all.(R.393)Sammy had only two prior possession convictions in his criminal history,neither of which required a prison sentence.(S.C.8)

Defense counsel also introduced letters from Sammy's wife,mother and sister describing the role he plays as a husband and father actively raising his children

and supporting his household.(R.392;C.173,176,179,181) Additionally, defense counsel introduced several letters from Sammy's friends from an Alcoholics Anonymous group, each of whom described how Sammy helped them overcome their own addiction issues to become productive members of society.(R.392;C.183-86) Sammy's active participation in Alcoholics Anonymous rendered him a changed man.(C.170)

The circuit court stated that it believed that Sammy wanted to change his ways and lead a productive life.(R.394) However, the court felt that a harsh sentence was necessary "for the protection of society."(R.395) Thus, the court sentenced Sammy to 18 years' imprisonment for the Class X offense of predatory criminal sexual assault and merged his remaining conviction.(R.395;C.187)

[REDACTED]
ARGUMENT

I. The State failed to prove Sammy Cano Guilty beyond a reasonable doubt where the only witness to the crime directly contradicted her prior statements about which of Sammy's body parts contacted her, her response to the contact, and whether she was threatened during the incident; and where that witness claimed that her cousin was touched during the same incident, but the cousin flatly denied that the incident occurred.

The only witness to the crimes Sammy Cano allegedly committed provided inconsistent statements about the incident and was contradicted by another witness she claimed was present. In 2004, Jocelyn Gutierrez alleged that she was inappropriately touched by Sammy Cano's fingers and fingernails in 2002. (R.229,244,268) However, ten years later-and just hours after officers obtained a statement from Sammy that did not match Jocelyn's earlier accusations-Jocelyn suddenly claimed that Sammy touched her with his mouth. (R.244,315) In 2004, Jocelyn also claimed that her cousin Dany was in the living room immediately adjacent to the bedroom where the incident allegedly happened but did not respond to Jocelyn's screams; at trial, however, Jocelyn claimed not to remember making these statements. (R.234, 238,253,256,269,275) Jocelyn also changed her story about alleged threats that Sammy made during the incident, denying such threats to investigators while telling her mother that she was threatened. (R.238-39,245,253) Jocelyn was consistent, however, in claiming that her cousin Gabriela was present during the incident and was the victim of a similar sexual assault. (R.226-27,236-38,244,256,267) But Gabriela flatly denied that any such incident occurred in her own trial testimony. (R.328-29)

These inconsistent and contradictory accounts, combined with an entirely unmemorialized statement that Sammy denied making to police, were insufficient to

demonstrate Sammy's guilt beyond a reasonable doubt. This court should reverse Sammy's conviction.

Due process protects an accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. U.S.CONST., Amend.XIV; ILL.CONST.1970,art.I,§ 2; In re Winship 397 U.S.358,364 (1970). In reviewing a challenge to the sufficiency of the evidence the reviewing court must determine 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. People v. Smith,185 Ill.2d 532,541(1999). If a reviewing court finds the evidence so unsatisfactory that it creates a reasonable doubt of the defendant's guilt, it must set aside the conviction. People v. Davis,278, Ill.App.3d 532(1st Dist.1996); Smith,185 Ill. 2d at 542.

To convict a defendant of predatory criminal sexual assault of a child, the State must prove three elements beyond a reasonable doubt:(1) that the defendant was over 17 years old;(2) that the victim was under 13 years old; and (3) that the defendant committed an act of sexual penetration upon the victim. 720 ILCS 5/12-14.1(a)(1) (2002); People v. Stull,2014 IL App(4th) 120704, ¶ 58. Sexual penetration means "any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth, or anus of another person." 720 ILCS 5/12(f) (2002). To convict a defendant for aggravated criminal sexual abuse, the State must prove beyond a reasonable doubt:(1) that the defendant committed an act of sexual conduct with the victim;(2) that the victim was under 18 years old at the time; and (3) that the victim was a family member. 720 ILCS 5/12-16(b) (2002); Stull,2014 IL App (4th) at ¶59. Sexual conduct means "any intentional or knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus or breast of the victim or accused...for the purpose of sexual gratification or arousal of the victim or

the accused."720 ILCS 5/12-12(e) (2002).

The evidence was insufficient to prove that Sammy touched Gabriela's vagina with his mouth in 2002. Jocelyn's inconsistent and contradictory accounts of the alleged crime, along with a dubious claim about an entirely unmemorialized statement that Sammy denied making to police, did not prove the crime beyond a reasonable doubt.

Jocelyn's account of the alleged incident changed several times between her initial outcry in 2004 and her trial testimony in 2013. To begin, Jocelyn inconsistently described Sammy's body part that allegedly made contact with her vagina. In 2004, two years after the alleged incident, Jocelyn told her mother that Sammy used his fingers, not his tongue, to touch her vagina. (R.229) Jocelyn described the same finger-to-vagina contact in an interview with the Children's Advocacy Center days later. (R.244) During the interview, Jocelyn vividly described the feeling of Sammy's fingernails touching her. (R.244,268) Despite these detailed descriptions, Jocelyn suddenly altered her story in 2012, when she told investigators that Sammy touched her vagina with his mouth. (R.244,315) this change in her account came just hours after Sammy had given a statement to police that included a description of mouth-to-vagina contact. (R.313-15)

Jocelyn also changed her account of who was present during this alleged incident. In 2004, Jocelyn claimed in both an interview with investigators and in her statements to her mother that, while Sammy touched her in the bedroom, her adult cousin Dany sat in the living room just five feet away. (R.233-34,238,253, 256) Jocelyn also claimed in her 2004 interview with investigators that she screamed throughout the incident, yet somehow Dany never heard her screams. (R.269, 275) Dany herself testified at trial that she never left Sammy home alone with the girls, and that she never heard anyone screaming in her small apartment. (R.330-32).

Jocelyn also changed her story about alleged threats from Sammy during

the incident. At trial, Jocelyn testified that she did not remember whether Sammy threatened her and admitted that she told investigators that Sammy did not threaten her. (R.238-39) However, in 2004 Jocelyn told her mother that Sammy had threatened her, and thus she was afraid to tell anyone about the incident for two years. (R.245,253.)

Jocelyn's account was also significantly undermined by the testimony of her cousin Gabriela, who contradicted Jocelyn's persistent claims that Gabriela was both a witness and a victim during the incident. From her initial outcry to her trial testimony, Jocelyn consistently alleged that Gabriela was in the room during the incident and was also a victim of inappropriate contact by Sammy. In 2004, Jocelyn told both her mother and investigators that Sammy touched Gabriela during the same incident wherein he touched Jocelyn. (R.236-38,244,256,267) At trial, Jocelyn reiterated that Gabriela was in the room during the entire incident, although she claimed that she could not recall what "interaction" Gabriela had with Sammy at that time. (R.236-37) However, Gabriela herself testified that she was never left alone with Sammy. (R.328) Gabriela specifically denied seeing Sammy touch Jocelyn inappropriately, hearing Jocelyn screaming for Sammy to stop touching her, and or hearing Jocelyn later complain that Sammy had touched her inappropriately. (R.329) Gabriela's unimpeached denial that the incident never happened thus discredited Jocelyn's account.

Nor was the conviction supported by any physical evidence whatsoever. Although Jocelyn was taken to a doctor shortly after her outcry in 2004, the State did not present any physical evidence tending to show that Sammy had touched Jocelyn in 2002.

Aside from Jocelyn's inconsistent, contradicted testimony, the only proof the State offered that the incident occurred was dubious testimony that Sammy made an unmemorialized inculpatory statement to the police shortly after his arrest. Officer De La Torre's account of Sammy's statements strained credulity.

De La Torre claimed that when he interviewed Sammy, he did not make any audio, video, or handwritten notes of their conversation. (R.309-10, 316) Yet during this unmemorialized interview, De La Torre claimed that Sammy admitted that he took Jocelyn's clothes off and put his tongue between her vagina lips. (R.313)

De La Torre admitted that Sammy never said that Gabby was in the room during the incident, that Jocelyn screamed, or that Sammy used his fingers to touch Jocelyn—all details that Jocelyn, to that point, had included in her own account of the events. (R.317-18) And only after Sammy allegedly made these unmemorialized statements did Jocelyn suddenly change her story to claim that Sammy touched her with his mouth, not his fingers. (R.244, 313-15) This unmemorialized statement, which Sammy denied making (R.338), hardly supported a guilty verdict.

The State failed to prove Sammy Cano guilty beyond a reasonable doubt. The conviction was based upon a series of inconsistent statements by Jocelyn which were contradicted by Gabriela's and Dany's testimonies. It drew little support from a supposed confession that was unmemorialized and which Sammy denied making. Because the evidence was insufficient to prove beyond a reasonable doubt that Sammy touched Jocelyn's vagina with his mouth, this Court should reverse his conviction.

II. Officers unconstitutionally seized Sammy Cano in a Home Depot parking lot when Sammy neither committed nor witnessed any crime, contrary to the circuit court's ruling on Sammy's motion to quash arrest.

When officers arrested Sammy Cano in a Home Depot parking lot, they lacked probable cause to believe he had either committed a crime or witnessed one. Officers merely saw a group of men approaching cars in the parking lot and allegedly seeking work. That is simply not an illegal act. Furthermore, even if Sammy provided a false name and inconsistent birthdays in response to the officers' questions, that was not a crime because Sammy was neither lawfully detained nor a witness to a criminal offense. Officers thus unconstitutionally arrested Sammy, and only later connected him to the charges in this case and obtained an inculpatory statement. Because that statement was the fruit of Sammy's unconstitutional arrest, it should have been suppressed at trial, contrary to the circuit court's ruling. This Court should reverse that ruling and remand for a new trial absent the statement.

"An arrest occurs when the circumstances are such that a reasonable person, innocent of any crime, would conclude that he was not free to leave." People v. Lopez, 229 Ill.2d 322, 346 (2008) (quoting In re D.G., 144 Ill.2d 404, 409 (1991)). To make such an arrest without a warrant, a police officer must have probable cause. People v. Love, 199 Ill. 2d 269, 278 (220); see also People v. Buss, 187 Ill.2d 144, 204 (1999). Probable cause exists where all of the facts officers knew at the time of the arrest would "lead a reasonably cautious person to believe that the arrestee had committed a crime." Love, 199 Ill.2d at 278.

There is no doubt that officers arrested Sammy Cano when they "placed [him] in custody for obstruction of identification." (C.108) A reasonable innocent person would conclude that he was not free to leave once he was placed in custody. Lopez, 229 Ill. 2d at 346. Additionally, there is no doubt that officers

lacked an arrest warrant for Sammy when they placed him in custody. (C.106) Thus, officers could only constitutionally effectuate that arrest if they had probable cause to believe that Sammy committed a crime. As discussed below, no such probable cause existed.

Under the Illinois Vehicle Code, a person commits a class A misdemeanor if they "stand on a highway for the purpose of soliciting employment or business from the occupant of any vehicle." 625 ILCS 5/11-1006(b) (2012). The vehicle Code defines a highway to include "every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel." 625 ILCS 5/1-126 (2012) Thus, for a parking lot to qualify as a highway, it must be publicly maintained. People v. Relwani, 2019 IL 123385, ¶ 12. Additionally, Section 10-8-515 of the Chicago Municipal Code prohibits use of a public way to solicit "unlawful business," defined as an "exchange of goods or services... where the nature of the goods or services, or the exchange thereof, is unlawful." Chicago Municipal Code § 10-8-515 (a), (b) (quoted in People v. Grant, 2013 IL 112734, ¶ 9.)

Under Illinois's obstructing identification statute, providing an officer a false name, address, or birthday is only a crime if, at the time the officer requested that information, the officer has "(1) lawfully arrested the person; (2) lawfully detained the person; or (3) requested the information from a person the peace officer has good cause to believe is a witness to a criminal offense." 720 ILCS 5/31-4.5 (2012); People v. Espino-Juarez, 2018 IL App (2d) 150966, ¶ 13. It is not enough to speculate that the officer's investigation might subsequently reveal that a crime has been committed." Id.

In this case, the arresting officers did not have probable cause to believe that Sammy or anyone else committed a crime before they arrested Sammy. The officers admittedly approached a group of men, including Sammy, within a Home Depot parking lot. (C.103-06) The officers had no reason to believe that such a

parking lot was publicly maintained so as to constitute a "highway" where the solicitation of employment would be a misdemeanor.625 ILCS 5/11-1006(b)(2012); Relwani,2019 IL 123385 at ¶ 12.When officers allegedly observed some of the men "approach...vehicles" in the parking lot,they had no basis to believe that the men had committed a crime.

Nor did the officers testify that they saw or heard anyone soliciting any illegal items or unlawful transactions from drivers in that parking lot.Only such solicitation of unlawful business constitutes a crime under the Chicago Municipile Code.Chicago Municipile Code§ 10-8-515 (a),(b)(quoted in Grant,2013 IL 112734 at ¶ 9).The officers had no probable cause to believe this crime had been committed.

Nor did the officers have probable cause to arrest Sammy for obstructing identification,even if he did provide a false name and birthday.Providing such false information is only a crime if,at the time that officers request that information,the subject has lawfully been arrested or detained or the officer has the equivalent of probable cause to believe the subject witnessed a criminal offense.720 ILCS 5/31-4.5 (2012);Espino-Juarez,2018 IL App (2d) 150966 at ¶ 13. Again,the officers could not lawfully arrest or detain Sammy because they had not seen him,or anyone else commit any crime in that parking lot.Nor had the officers received any reports of such crimes that day;they only travelled to the Home Depot parking lot in response to loitering in that area in the prior six months,not in response to any complaints at all that morning.(C.102-03) Furthermore,the officers did not have any reason to believeSammy was a witness to a criminal offense.The others in the group with him were not acting unlawfully. Nor did the officers learn of the investigative alert until after they placed Sammy in custody.(C.109,114) Even if that investigative alert contained information amounting to probable cause-an issue that Sammy does not concede given the lack of evidence in the suppression hearing regarding the contents of

of the alert-it could not have justified the officers' arrest made before they ever saw it.

The officers lacked probable cause to believe that Sammy either committed or witnessed a crime.Thus,they could not warrantlessly arrest him.The circuit court erred in denying Sammy's motion to quash that arrest.

Yet the unconstitutional arrest yielded a primary piece of evidence the State relied upon in its case-in-chief.Just hours after arresting Sammy and discovering the investigative alert,the arresting officers delivered Sammy to Detective De La Torre,who would later testify that Sammy made an inculpatory statement in the station.Although,as noted in Issue I above,that statement was unmemorialized and wholly denied by Sammy,the State relied upon it heavily when presenting its case.That statement was the fruit of Sammy's illegal arrest; it should have been suppressed at trial,which may have affected the outcome of the trial.

Officers arrested Sammy Cano when they placed him in custody for "obstruction of identification" after asking for his name in a Home Depot parking lot.At that time,officers had no probable cause that Sammy or anyone else had committed a crime;thus they likewise had no probable cause that Sammy was violating any laws by providing an incorrect name and birthday.It was not until after that unconstitutional arrest that officers located an investigatory alert that connected Sammy to the crime at issue in this case and obtained an inculpatory statement.Such fruits of that arrest should have been suppressed at trial.This Court should reverse the circuit court's ruling on Sammy's motion to quash arrest and remand for a new trial absent the statement that was the fruit of that arrest.

III. The circuit court should have provided Sammy Cano new counsel to assess his claim that trial counsel ineffectively failed to present evidence showing an inculpatory statement to the police was coerced.

When the circuit court read Sammy Cano's pro se post-trial allegation that his counsel was ineffective, it asked Sammy just a few cursory questions. (R.382-85) Though those questions revealed that Sammy's counsel may not have sufficiently questioned Sammy about the context surrounding his inculpatory statement to reveal possible misconduct or coercion, the court rushed the case to sentencing. (R.383) Such a truncated discussion, without any specific questions asked of counsel about his questioning of Sammy and possible coercion of Sammy's statement, is not the inquiry into pro se allegations of ineffective assistance that People v. Krankel, 102 Ill.2d 181 (1984) requires. Had the court conducted that inquiry, it would have learned that new counsel was needed to independently assess and present Sammy's ineffectiveness claims. This Court should reverse and remand with instructions to appoint such counsel for arguments on Sammy's claims.

When a defendant makes a pro se claim of ineffective assistance of trial counsel at sentencing, the trial court must examine the factual matters underlying that claim. People v. Robinson, 157 Ill.2d 68, 86 (1993); People v. Sanchez, 329 Ill.App.3d 59, 66 (2002). The claim then can be denied if it lacks merit, while if the allegations suggest that defense counsel has neglected the case, new counsel should be appointed. Robinson, 157 Ill. 2d at 86; Sanchez, 329 Ill.App.3d at 66; see also People v. Nitz, 143 Ill.2d 82 (1991).

This Court has held that this evaluation usually necessitates "some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the alleged ineffective representation." People v. Moore, 207 Ill.2d 68, 78 (2003) (adding that [a] brief discussion between the trial

court and the defendant " is sometimes sufficient.) The trial court can also rely upon its knowledge of defense counsels performance at trial in this evaluation. Id. However, "[t]he trial court should afford a defendant the opportunity to specify and support his complaints and not 'precipitously and prematurely' deny the motion." Sanchez, 329 Ill.App 3d 66 (quoting Robinson, 157 Ill.2d at 86). reviewing courts consider whether the trial court adequately considered a defendant's post-trial claim of ineffective assistance of counsel de novo. People v. Taylor, 237 Ill.2d 68, 75 (2010); Moore, 207 Ill.2d at 75.

Under both the United States and Illinois constitutions, a defendant has the right to the effective assistance of counsel. People v. Hale, 2013 IL 113140, ¶ 15. U.S. CONST., amends.VI, XIV; ILL.CONST.1970, art.I, §8. A defendant is deprived of the effective assistance of counsel when: (1) counsel's performance was deficient in that it fell below an objective standard of reasonableness; and (2) the deficient performance prejudiced the defense in that counsel's errors deprived the defendant of a fair trial with a reliable result. Strickland v. Washington, 466 U.S. 668, 687 (1984). When determining prejudice, the question is whether there exists "a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different." People v. Cano, 220 Ill App.3d 725, 729 (1st Dist. 1991) (reversing for ineffective assistance of sentencing counsel).

The circuit court's truncated exchange after reading Sammy Cano's pro se ineffectiveness allegation failed Krankel's requirements. Instead of consulting with trial counsel to determine the facts and circumstances surrounding counsel's failure to question Sammy about his inculpatory statement to police, the court assumed counsel was effective based upon unrelated cross-examinations. The court should have conducted a Krankel inquiry with counsel and appointed a new attorney to independently evaluate and present Sammy's allegations.

To begin, the Court's cursory discussions with Sammy did not meet Krankel's

requirements. Sammy told the court that his counsel has not explored the fact that, during his interrogation and inculpatory statement, Sammy "was only supposed to say yes and no without going into any details of other things where I could say and explain things that were in my favor, too. (R.383) The court, seemingly ignoring Sammy's claim, began to improperly admonish him about failing to exercise his right to testify. (R.384) Had the court recalled Sammy's testimony, it would have known that defense counsel did not ask Sammy any questions about his statement to police or the circumstances under which it was taken, even though Sammy denied ever making those unmemorialized statements. (R.338) Thus, the possibility that counsel ineffectively failed to ask Sammy about police efforts to coerce his statements or overbear his will remained unexplored.

Next the court did not have the kind of "interchange" with counsel "regarding the facts and circumstances surrounding the allegedly ineffective representation" that Krankel usually necessitates. People v. Moore, 207 Ill.2d at 78. Instead, the court was determined to proceed to sentencing no matter what counsel did or said. Even though counsel stated his belief that a new attorney was necessary to investigate counsel's own possible ineffectiveness, the court demurred. The court then insisted that because trial counsel's cross-examinations were "vigerous" he must have done a good job in all aspects of the trial. (R.384-85) Rather than asking counsel why he wanted to be discharged, the court insisted that counsel was effective because he had "been on this case for years." (R.384)

At the end of its cursory discussion of Sammy's ineffective assistance allegations, the circuit court noted that Sammy "can always explore your ineffectiveness to a higher court." (R.385) This Court should do exactly that. The circuit court failed to conduct a proper Krankel inquiry into Sammy's allegations of ineffectiveness tied to his counsel's failure to question him about the circumstances of his interrogation. This Court should reverse and remand for the appointment of counsel to fully present Sammy's claims.

IV. The circuit court excessively sentenced Sammy Cano to three times the minimum term even though Sammy had not committed any crimes in the decade since the incident and had established himself as a productive member of society and caring father of two young children.

Between the alleged incident in 2002 and Sammy Cano's arrest in 2012, Sammy committed no crimes and had no contact whatsoever with police. In that decade, he became a changed man, committing to sobriety and becoming a pillar of the Alcoholics Anonymous community. Sammy obtained well-paying employment in the construction industry and provided loving support to his wife, five-year-old daughter and three-year-old son. (R.337) Yet at sentencing, the circuit court insisted that it had to sentence Sammy to triple the minimum sentence "for the protection of society." (R.395) That 18-year sentence did not protect society; instead, the sentence removed one of society's contributing members for nearly two decades. This Court should reduce it.

Illinois Supreme Court Rule 615(b)(4) grants a reviewing court the power to reduce the sentence imposed by the circuit court. IL.Su.Ct.R.615(b)(4). Illinois courts have exercised this power when the circuit court's sentence constitutes an abuse of discretion, even if it falls within the statutory range for the offense. People v. Stacy, 193 Ill.2d, 209-10 (2000); People v. McGee, 398 Ill.App.3d 789, 795 (1st Dist. 2010). "[A] sentence within the statutory limits will be deemed excessive and the result of an abuse of discretion by the trial court where the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." Stacy, 193 Ill.2d 2d at 210. This Court has also reduced a sentence within the statutory range where fundamental fairness in sentencing required it. See People v. Jones, 118 Ill.App.2d 189, 198 (1st Dist. 1969).

The Illinois Constitution requires that a sentence "shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." ILL.CONST.1970 art.I,§ 11. Thus, a trial court "must not only consider rehabilitative factors in imposing a sentence, it must also make rehabilitation an objective of the sentence." People v. Wendt, 163 Ill.2d 346, 353(1994). The statutory minimum sentence often can be sufficient to provide "adequate retribution." People v. Steffens, 131 Ill. App.3d 141, 151(1st Dist.1985). This Court has noted that "[l]ong periods of confinement have little, if any, value in a rehabilitative strategy." People v. Kosanovich, 69 Ill. App.3d 748, 752(1st Dist.1979). Courts throughout Illinois have repeatedly found sentences excessive where there were few or no aggravating factors and the sentence exceeded the statutory minimum. See e.g., People v. Williams, 196 Ill. App.3d 851, 867-68(1st Dist. 1990); People v. Colter, 181 Ill. App.3d 392, 393-96(3rd Dist.1989); Steffens, 131 Ill. App.3d at 151-53; People v. Bailey, 88 Ill. App.3d 416, 424-25(3rd Dist.1980).

The evidence adduced at sentencing showed that Sammy Cano could be restored to useful citizenship after a minimum Class X sentence of six years. By the time of sentencing, Sammy had already changed his life to become an upstanding member of his community.

In the decade between the alleged offense and his arrest, Sammy had lived a productive life without any contact with the police. (R.392) Sammy was married three years after the incident; that marriage produced two children, a five-year-old daughter and a three-year-old son, whom Sammy supported financially and emotionally until his arrest. (C.170; R.337, 392) Sammy was the sole bread-winner for his family, earning \$300 per week in the construction industry. (C.170; S.C.9) After his arrest, his wife and children lost their apartment and did not have a place to sleep. (C.178)

Sammy also played an impressive role in the recovering alcoholic

community in Chicagoland. Defense counsel introduced several letters from Sammy's friends, each of whom described how Sammy helped them overcome their own addiction issues to become productive members of society. (R.392;C.183-86)

After sobriety led Sammy to lead a crime-free, fulfilling life, he passed on that possibility to others for whom he acted as sponsor. (C.170) As Sammy's presentence investigation report noted, his only criminal convictions preceded his sobriety; since that time, he had been crime-free and contributed consistently to his community. (S.C. 8)

Sammy's family also attested to the active role he played in their lives. Letters from Sammy's wife, mother, and sister described his enthusiasm in raising his children and supporting his household. (R.392;C.173,176,179,181)

There was no need for an extended sentence to protect society, as the circuit court claimed. (R.395) The court's 18-year sentence meant Sammy would have no opportunity to continue demonstrating his rehabilitation and guiding others to a changed, substance-free life for nearly two decades. Nor did the nature of the crime suggest that such an extended sentence was necessary. According to recent longitudinal data compiled by the Department of Justice's Bureau of Justice Statistics, those who served time for rape or sexual assault were almost 20% less likely to be rearrested than those incarcerated for other crimes.

U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, Recidivism of Sex Offenders Released from State Prison: A 9-year Follow-Up (2005-14), May 2019, available at <https://www.bjs.gov/content/pub/pdf/rsorosp9yfu0514.pdf>. Furthermore, only half of those who served sentences for rape or sexual assault had a new arrest that led to a conviction for any offense, compared to 69% of all individuals released in the same time period. Id. Neither national trends nor the individual circumstances of this case justify a lengthy sentence to protect society.

There is little doubt that Sammy Cano can be a productive member of

society; he proved that much in the decade between this alleged incident and his arrest. He has stayed clear of criminal activity and became a father, husband, and a mentor to others struggling with addiction. In light of that proof of Sammy's rehabilitation, the circuit court's 18-year sentence "for the protection of society" was excessive. This Court should reduce it to the statutory minimum of six years.

VI.

CONCLUSION

Wherefore, your petitioner respectfully requests this Honorable Court to grant his petition for leave to appeal.

Respectfully submitted,

Sammy Cano,

Pro se.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

Sammy Cano

June 16th, 2021