2014 IL App (2d) 120712-U
No. 2-12-0712
Order filed February 27, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 09-CF-3744
MARCUS REDDICK,	)	Honorable Mark L. Levitt,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Burke and Justice Schostok concurred in the judgment.

RULE 23 ORDER

¶ 1 *Held*: The trial court correctly allowed statements that the victim had made to Officer Loyda Santiago to be admitted into evidence as spontaneous declarations. Also, any error that the trial court may have made in not suppressing statements defendant made to police on September 17, 2009, was harmless because there was overwhelming evidence of defendant's guilt. However, we agreed with defendant that the trial court incorrectly sentenced him to a six-year MSR term rather than an MSR term of three years to life. Therefore, we affirmed as modified.

¶ 2 Following a jury trial, defendant, Marcus Reddick, was convicted of criminal sexual assault (720 ILCS 5/12-13(a)(1) (West 2008)) and sentenced to seven years' imprisonment. On appeal, defendant argues that: (1) the trial court erred in suppressing only three out of five of his

statements to the police; (2) the trial court abused its discretion in admitting some of the alleged victim's out-of-court statements as spontaneous declarations; and (3) the trial court's order setting his mandatory supervised release (MSR) term at six years is void. We affirm as modified.

¶ 3 I. BACKGROUND

¶ 4 On October 7, 2009, a grand jury indicted defendant on one count of criminal sexual assault. The indictment alleged that on September 16, 2009, defendant put his penis in A.S.'s vagina by the use of force. On January 23, 2012, defendant filed a motion to suppress statements that he had made to police on September 16 and 17, 2009.

¶ 5 A hearing on the motion to suppress took place on April 19, 2012. Lieutenant James Leonard of the Waukegan police department testified as follows. On September 16, 2009, at about 8:30 a.m., he responded to a call regarding a sexual assault in Washington Park. Based on a description of the offender, Leonard stopped defendant, who was one or two blocks away from the park. Defendant gave his name and said that he was coming from his brother's house; he denied having been in the park. Leonard heard over the radio that the victim, A.S., had specifically identified defendant as the perpetrator, so Leonard transported defendant to the police station. Leonard turned him over to Sergeant Brian Mullen, who was in charge of the "Detective Bureau" of the juvenile division.

¶ 6 Officer Michael Jones provided the following testimony. He had been a Waukegan police officer for 24 years. On September 16, 2009, he heard that a young man had been brought in for an alleged sexual assault. Jones knew defendant, who was 17 years old, because Jones had previously been a resource officer at defendant's high school. Jones entered the interview room at the station, where defendant had been placed, at 9:15 a.m. Jones did not recall if Mullen

specifically sent him to talk to defendant or if Jones independently decided to see defendant. Jones reintroduced himself to defendant. Jones did not read defendant his *Miranda* rights because Jones was not involved in the investigation but rather was "trying to see what had happened basically out of concern for the student." Jones did tell defendant he was under no obligation to speak.

¶ 7 Jones asked defendant what had happened. Defendant said that he was stopped by police because they "needed a description." Jones asked open-ended questions about what had transpired. Defendant said that he left home and walked to the apartment complex of his brother. He borrowed a shirt and pants from his brother. Defendant next walked toward school, passing two girls he knew named Lisa and Laquisha. He was then stopped by the police. Jones asked defendant to write out a statement. Jones thought that if defendant was being honest, the statement would be beneficial to him because he did not admit being involved in the offense.

¶ 8 Jones left the room while defendant wrote out the statement on a "WITNESS/VICTIM" form that did not contain pre-printed *Miranda* rights. Defendant signed the statement. The form also contained the signatures of "Mykel" and "Marvin" as witnesses. Marvin was defendant's father, and Jones assumed that Mykel was his mother. While Jones was with defendant, he was informed that defendant's parents were at the front desk and wanted to meet with him. Jones allowed them to come into the interview room. Jones had not tried to contact defendant's parents because 17-year-olds were treated as adults for criminal proceedings. Jones did not recall whether he witnessed defendant's mom and dad sign the form, but the document was complete when Jones signed it. Jones specifically remembered defendant's dad being present, but he did not recall if defendant's mom was there. Jones spoke to defendant for a total of 30 to

40 minutes, and defendant completed the statement by 10 or 10:15 a.m. Jones gave the statement to Mullen and wrote a police report about his questioning of defendant.

¶ 9 We next summarize the testimony of Officer Michael Taylor. Taylor spoke to Mullen, Jones, and some other officers before interviewing defendant at about 10:15 a.m. Taylor read defendant his *Miranda* rights from a pre-printed form and asked if he understood each right. Defendant initialed and signed the form, agreeing to waive his rights. Taylor advised defendant of the allegations against him. Defendant said that he saw A.S. on his way to school; they stopped at his brother's apartment so he could get clothes; they had consensual sex in the apartment; and they had consensual sex a second time in the park. Defendant then left to go to school and was stopped by the police.

¶ 10 The interview lasted until about 12:20 p.m., and defendant agreed to provide a second written statement. Defendant wrote the statement on a "VOLUNTARY STATEMENT" form which included a preprinted paragraph stating that he had been advised of his *Miranda* rights. Defendant's written statement was consistent with what he initially told Officer Taylor. Defendant further wrote that A.S. never said no or told defendant to stop, and that she kissed him when they were finished. He also wrote that A.S.'s shirt ripped when she was taking it off, and then she ripped it all the way. Taylor testified that defendant's father was in the room during the time defendant wrote his statement, and his signature appeared at the bottom of the statement.

¶ 11 Taylor left the police department to investigate defendant's claims, and he returned around 3 p.m. to the interview room. During the interim, defendant was offered food, drink, and the opportunity to use the restroom. Taylor told defendant that he was seen on the security video of his brother's building, but A.S. was not. Defendant wrote a third statement admitting that

A.S. had not been in the building. The form for the statement was identical to the form for defendant's second statement, with preprinted *Miranda* warnings at the top.

¶ 12 Defendant stayed in the lockup over night, where he was fed. The next morning, Taylor escorted defendant to the interview room. He "ask[ed] him if he still understood his *Miranda* rights," and defendant stated that he did.[1] Defendant agreed to speak to Taylor. During the interview, defendant admitted forcing A.S. to have sex with him in the park. At about 10:45 a.m., defendant wrote out a fourth voluntary statement on the same type of form as his second and third statements. Defendant wrote that when he and A.S. were walking to school, he asked her about rumors that he, his brothers, and his cousin had paid her for sex. A.S. denied starting the rumors. Defendant took her hand and walked down to the river with her. A.S. started to walk back because she "didn't want to face into the water" [*sic*], but defendant took her hand and led her back. Defendant and A.S. began kissing. Defendant took A.S.'s shirt off by ripping it, and then he pulled her pants off. A.S. said no because she thought she was pregnant, but defendant still had intercourse with her. Afterwards, A.S. threw her shirt and bra on the ground, and defendant then threw them in the woods across the street.

¶ 13 Taylor also typed a written summary of defendant's interview, with *Miranda* warnings on top. Defendant read the statement, said that there were no changes to make, and signed the statement.

¶ 14 Sergeant Brian Mullen testified as follows. In September 2009, he was specializing in juvenile investigations. Mullen directed Jones to interview defendant when defendant was

[1] On cross-examination, Taylor agreed that he "advised [defendant] verbally" of "his rights from the day before."

brought in to the police station. Jones reported back to Mullen afterwards, and Mullen then assigned Taylor to interview defendant. Mullen did not recall if defendant's parents came to the police station.

¶ 15 Angela Reddick, defendant's mother, testified that she did not go to the police station until after 7 p.m. on September 16, 2009. She testified that Marvin Reddick, Jr., and Mykel Reddick were defendant's brothers.

¶ 16 Marvin Reddick, Sr., defendant's father, testified that he did not go to the police department before 5 p.m. on September 16, 2009. He testified that he never spoke to defendant in an interview room and did not sign any of defendant's statements. He was shown defendant's statements at the hearing and denied that his signature was on the bottom.

¶ 17 The trial court granted defendant's motion to suppress in part and denied it in part, finding as follows. Defendant was in custody when he was taken to the police station. Defendant's first written statement[2] was not knowing and voluntary because he was not advised of his *Miranda* rights. However, Jones did not intentionally circumvent *Miranda* requirements, because Jones had "a very low understanding of what it [was] to interview a Defendant and certainly lack[ed], in [the trial court's] view, any type of savvy to have concocted or undertaken any effort to somehow undermind [*sic*] [defendant's] role." To the contrary, Jones testified that his interest was almost one of curiosity as someone who worked with high school students. Taylor attempted to remedy the wrong by giving defendant his complete *Miranda* rights, but the closeness in time of the warnings to the end of the taking of the first statement made defendant's

[2] While we refer to the written statements in our disposition, the rulings also encompass the conversations preceding each of the written statements.

second statement involuntary. There was additional time before the third statement, but there were no intervening acts and Taylor did not readvise defendant of his *Miranda* rights, making that statement involuntary as well. The fourth and fifth statements took place the next day, over 12 hours later, after defendant had been fed and allowed to sleep with no questioning in the interim. Defendant was "again, advised of his *Miranda* rights." Therefore, the statements made to Taylor on that date were knowingly and voluntarily made.

¶ 18 Defendant subsequently requested to withdraw the motion to suppress as to the first three statements based on trial strategy. In doing so, he still maintained the motion to suppress as to the fourth and fifth statements and objected to their admission at trial. The trial court granted the motion to withdraw, effectively allowing all statements to be admitted at trial.

¶ 19 Prior to trial, the State filed a motion *in limine* seeking to admit hearsay statements A.S. made to Tonya Jarrett, Officer Rolando Villafuerte, and Officer Loyda Santiago shortly after the incident. The State argued that the statements were spontaneous declarations. The defense argued that by the time A.S. spoke to Santiago, her statements were not spontaneous but rather made in response to the officer's questions. The trial court ruled as follows. The first two groups of statements were admissible because they happened soon after the incident, without time to fabricate the statements. The third group of statements occurred later, when A.S. was receiving treatment at or near the scene of the police response, but no lengthy period of time had passed. The fact that A.S. was responding to policy inquiry did not destroy the spontaneity of the statements, and the evidence proffered was that A.S. was still shaking and visibly upset. Therefore, the third group of A.S.'s statements was admissible as well.

¶ 20 Defendant's jury trial began on April 30, 2012. Tanya Jarrett testified as follows. She was walking her son to school at about 8 a.m. on September 16, 2009. She passed defendant and

A.S., who were walking together. On Jarrett's way home, she saw A.S. running and crying. A.S. was holding her face, there were grass and twigs in her hair, and she was wearing only a vest. Jarrett stopped A.S. and asked her what happened. A.S. did not initially respond but then said that she had been raped. A.S. asked Jarrett not to call 911, but Jarrett did anyway. While Jarrett was making the call, she saw defendant running up from the ravine in the park. Jarrett agreed that when she wrote a witness statement for the police, she did not state that she saw defendant running.

¶ 21 The court took a lunch recess, after which the State informed the trial court that it had received new information from A.S. Whereas she had previously told the police that defendant had also sexually assaulted her prior to the September 2009 incident, she now said that the prior encounter had been consensual. The trial court denied defendant's request for a mistrial, but it continued the trial until the next morning to give the parties additional time to prepare.

¶ 22 The next day, A.S. testified as follows. She was currently 19 years old. In 2009, she lived across the street from defendant. At that time, she had known defendant for a number of years and had a friendship and sexual relationship with him. On September 16, 2009, she was walking to school, where she was going to re-enroll; she had previously been expelled for missing too many days. On her way there, she saw defendant and began walking with him. Defendant took an unusual route to school that went past the park. They initially had a normal conversation, but then defendant's attitude changed and he accused her of starting rumors about him and his relatives paying her for sex. A.S. denied starting the rumors, but defendant said that he knew she was lying. Defendant grabbed her arms and pulled her down into a ravine. A.S. slipped and fell to the ground. Defendant got on top of her. A.S. told defendant to stop, but defendant pulled his pants down. A.S. tried to move and continued to tell defendant to stop, but

defendant pulled her pants off and had intercourse with her. He ejaculated inside A.S., got up, and told A.S. that he would kill her if she told anyone. Defendant ran off, taking A.S.'s shirt and bra with him. A.S. identified the shirt and bra, which were ripped, in court. A.S. denied ripping the clothing.

¶ 23 A.S. stayed in the ravine for a minute trying to collect herself. She put on her vest and started walking up the hill. A woman stopped her and called the police. A.S. did not want the police involved because she thought no one would believe her since she was "already out there" with defendant and her "name was out there." The police came about five minutes later, and A.S. told them what had happened.

¶ 24 Defendant had forcibly sexually assaulted A.S. once before, in 2008, about one year before the current incident. A.S. still had consensual sex with defendant more than once after that. A.S. admitted telling investigators the day before her testimony that the 2008 assault had not occurred. She lied because she did not want to tell anyone about it, and she had forgotten that she had previously discussed the 2008 assault with the police. The same day, she gave investigators conflicting accounts that the 2008 incident happened with a different man, not defendant, and that the 2008 incident involved consensual sex with defendant in a park. A.S. was embarrassed that she had consensual sex with defendant after having nonconsensual sex with him in 2008.

¶ 25 Officer Villafuerte testified that he responded to Jarrett's 911 call. A.S. was crying and trembling, and she was not responsive to his questions. When Villafuerte asked if she knew the person who attacked her, she named defendant. Villafuerte asked if she would be more comfortable speaking to a female officer, and A.S. responded affirmatively. Paramedics arrived and took A.S. to an ambulance.

¶ 26 Officer Santiago testified that she arrived at the scene and found A.S. in an ambulance. A.S. was crying and shaking. Santiago was able to "calm her a little bit" and get information. Over a continuing defense objection, Santiago testified that A.S. said that she met defendant and walked with him to school. He confronted her about gossip in the neighborhood about them. Defendant dragged her down to the ravine, ripped off her shirt and bra, pulled down her pants, and choked her. He then raped her, ejaculating inside of her, and said that he would kill her if she told anyone. A.S. feared that she was pregnant from the attack.

¶ 27 Officers Leonard, Jones, and Taylor, and Sergeant Mullen, provided testimony consistent with that from the hearing on defendant's motion to suppress. In particular, Taylor again testified that when he began his interrogation of defendant on September 17, 2009, he asked defendant "if he still understood his rights" from the previous day. Defendant's written statements were admitted into evidence, with the September 17 statements admitted over defendant's continuing objection.

¶ 28 The State presented evidence that A.S.'s shirt and bra were found in the woods near the area where Jarrett had seen defendant. Both articles of clothing were ripped down the front. A.S. arrived at the emergency room around 9:34 a.m. on the date in question. DNA on A.S.'s underwear matched defendant's DNA.

¶ 29 After the State rested, the trial court denied defendant's motion for a directed verdict. Defendant then presented the testimony of family members Marvin Reddick, Sr., Marvin Reddick, Jr., Mykel Reddick, Angela Reddick, and Ashley Reddick. They all testified that they were not at the police station at any time before the evening of September 16, as they were not aware that defendant was arrested until after he failed to show up for bible study at church. They also did not sign defendant's written statements. A defense investigator demonstrated to the jury

that the witness signatures on defendant's statements did not match the signatures on a tax document signed by his parents.

¶ 30 The jury found defendant guilty of criminal sexual assault. Defendant filed a motion for a new trial arguing, among other things, that the trial court erred in denying in part his motion to suppress and in granting the State's motion *in limine* regarding A.S.'s excited utterances. The trial court denied the motion on June 11, 2012. The same day, it sentenced defendant to eight years' imprisonment followed by six years of MSR.

¶ 31 Defendant subsequently filed a motion to reconsider the sentence. The trial court granted the motion on June 14, 2012, and reduced defendant's sentence to seven years' imprisonment. The MSR term remained at six years. Defendant timely appealed.

¶ 32 II. ANALYSIS

¶ 33 A. Spontaneous Declaration

¶ 34 We first address defendant's argument that the trial court improperly ruled that A.S.'s statements to Officer Santiago were sufficiently spontaneous to be admitted as an exception to the hearsay rule.

¶ 35 A prior consistent statement that qualifies as a spontaneous declaration, also called an excited utterance, is admissible as an exception to the hearsay rule. Ill. R. Evid. 803(2) (eff. Jan. 1, 2011). The statement must be "relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." *Id.* There must also be insufficient time for the declarant to fabricate the statement, and the statement must relate to the circumstances of the occurrence. *People v. Sutton*, 233 Ill. 2d 89, 107 (2009). In determining whether a statement is admissible under the spontaneous declaration exception, we employ a totality of the circumstances analysis, considering the time, the declarant's mental and

physical condition, the nature of the event, and the presence or absence of self-interest. *Id.* The amount of time that may pass without affecting a statement's admissibility varies greatly; the central question is whether the declarant made the statement while the excitement of the event predominated. *Id.* at 107-08. We apply an abuse-of-discretion standard in reviewing a trial court's ruling on whether a statement qualifies as a spontaneous declaration. *People v. DeSomer*, 2013 IL App (2d) 110663, ¶ 12.

¶ 36 Defendant summarizes the evidence as follows. Jarrett encountered A.S. near the scene of the alleged assault, within minutes of when it allegedly occurred. A.S. was visibly shaking and crying and could only say that she had been raped and did not want Jarrett to call the police. Officer Villafuerte arrived a few minutes later. A.S. was still trembling and crying. A.S. identified defendant as her attacker and indicated that she would prefer to speak to a female officer. When Officer Santiago arrived on the scene, A.S. was in the back of an ambulance. She was still trembling and crying, and Santiago spent some time calming her down. A.S. eventually gave Santiago a full account of the incident.

¶ 37 Defendant acknowledges that all of the admitted statements followed an alleged criminal sexual assault, which was an event sufficiently startling to produce a spontaneous statement, and pertained to that event. Defendant also concedes that A.S.'s statements to Jarrett and Villafuerte were admissible as spontaneous declarations because they were made before A.S. had time to reflect on the event. Defendant argues, however, that A.S.'s statement to Santiago was inadmissible because it was made after more time had passed, anywhere from several minutes to half an hour, and it was made after A.S. had the opportunity to reflect on the event and craft her statement. Defendant further points to A.S.'s statement to Jarrett that she did not want the police called because people would not consider A.S. credible as evidence that A.S. was immediately

reflecting on how the incident would be perceived by others. Defendant also argues that the detailed nature of A.S.'s statements to Santiago indicated that it was not spontaneous. See *People v. Smith*, 127 Ill. App. 3d 622, 628-29 (1984) (declarant's statements were not spontaneous declarations because he described his actions following the attack in a step by step manner, showing that he reflected on the events). Defendant maintains that the passage of time between the incident and the statements at issue, A.S.'s testimony indicating that she reflected on how her version of events would be perceived, and the high level of detail in her statement all combine to show that A.S.'s statements to Santiago were not spontaneous.

¶ 38 As defendant recognizes, the exact amount of time that has passed between the incident and the statement does not, in itself, determine whether a statement qualifies as a spontaneous declaration. *Sutton*, 233 Ill. 2d at 107-08. Even under defendant's calculations, at most about 30 minutes had passed from the time of the sexual assault, a traumatic event, to her conversation with Santiago. *Cf. People v. Phillips*, 159 Ill. App. 3d 483, 491 (1987), *overruled in part on other grounds*, *People v. Ferguson*, 132 Ill. 2d 86, 99 (1989) (2½-year-old's statements 15 to 17 hours after sexual assault were still spontaneous because the stress caused by event would have lingered long after the acts themselves). Further, although A.S. gave Santiago a complete summary of what occurred, our supreme court has stated that the fact that a declarant describes a simple series of events does not alone demonstrate reflection. See *People v. Williams*, 193 Ill. 2d 306, 356 (2000) (disagreeing with *Smith*, 127 Ill. App. 3d at 628). Considering all of the circumstances, including that A.S. was still shaking and appeared upset when Santiago began talking to her, we conclude that the trial court acted within its discretion in ruling that A.S.'s statements to Santiago were admissible as spontaneous declarations. *Cf. Sutton*, 233 Ill. 2d at 109 (declarant's statements made more than 20 minutes after the crime, while he was receiving

treatment in an ambulance, were admissible as spontaneous declarations because they were made while the excitement of the event predominated); *DeSomer*, 2013 IL App (2d) 110663, ¶ 19 (regardless of exactly how much time had passed, the trial court could reasonably conclude that declarant, who was visibly disturbed and shaking, was still excited by her beating when she made her statement to a police officer).

¶ 39 B. Motion to Suppress

¶ 40 We next turn to defendant's argument that the trial court erred in denying his motion to suppress with respect to his September 17, 2009, statements. Defendant maintains that the trial court ruled that the statements from that day were admissible in part because the trial court believed that defendant was re-advised of his *Miranda* rights prior to that interrogation. Defendant argues that the evidence actually shows that he was not re-advised of his rights, rendering the statements from September 17 involuntary.

¶ 41 The State maintains that any error in admitting the statements was harmless beyond a reasonable doubt. An evidentiary error is harmless beyond a reasonable doubt if there is no reasonable probability that the jury would have acquitted the defendant without the error. *In re E.H.*, 224 Ill. 2d 172, 180 (2006). Our supreme court has identified three approaches for making this assessment: (1) focusing on the error to determine whether it might have contributed to the conviction; (2) determining whether properly-admitted evidence overwhelmingly supports the conviction; or (3) determining whether the improperly-admitted evidence is merely cumulative or duplicative of properly-admitted evidence. *People v. Becker*, 239 Ill. 2d 215, 240 (2010). The State asserts that the second approach applies, in that there was overwhelming evidence of defendant's guilt.

¶ 42 Defendant argues that the evidence was not overwhelming because A.S.'s credibility was impeached by her prior inconsistent statements and admission that she lied numerous times about the nature of a previous sexual encounter with him.

¶ 43 We agree with the State that, even without defendant's statements to the police, the evidence against him was overwhelming. See *People v. Mitchell*, 152 Ill. 2d 274, 326 (2000) (even if the defendant's confession should have been suppressed, it was harmless error because the other evidence of his guilt at trial was overwhelming). Here, the evidence at trial showed that DNA on A.S.'s underwear, taken when A.S. was in the hospital on September 16, 2009, matched defendant's DNA, clearly demonstrating that A.S. and defendant had sexual contact. In his brief, defendant acknowledges that he had sexual intercourse with A.S. and that the only issue was whether it was consensual or forced.

¶ 44 A neutral witness, Jarrett, had seen A.S and defendant walking together at about 8 a.m. on September 16. Soon afterwards, Jarrett saw A.S. near the scene of the sexual encounter, within minutes of when it ended. A.S. had grass and twigs in her hair, was wearing only a vest, and was visibly shaking and crying. A.S. told Jarrett that she had been raped, which matched A.S.'s appearance and demeanor. At that same time, Jarrett saw defendant leaving the ravine in the park.

¶ 45 A.S. was still crying and trembling when Officer Villafuerte spoke to her and when Officer Santiago first spoke to her. A.S. told Santiago that she was walking with defendant to school, which was consistent with Jarrett's observation. A.S. further said that defendant confronted her with gossip about them, pulled her to the ravine, ripped off her shirt and bra, and had forcible intercourse with her. The police correspondingly found A.S.'s shirt and bra in the woods near where Jarrett had seen defendant, with both items ripped down the front.

¶ 46 We recognize that A.S. gave investigators inconsistent statements about an alleged prior sexual encounter with defendant in 2008. Specifically, A.S. stated that defendant did not assault her in 2008, that a different man assaulted her at that time, and that the 2008 incident was a consensual sexual encounter with defendant in a park. However, A.S. provided an explanation for these inconsistencies at trial, testifying that she was embarrassed about having had consensual sex with defendant after having nonconsensual sex with him in 2008. More importantly, A.S. never waivered in her description about what occurred on September 16, 2009, and her description of events was corroborated by: defendant's DNA on her underwear; A.S.'s physical appearance immediately after the incident (grass and twigs in her hair and wearing only a vest); her demeanor (shaking and crying); her torn clothing found in the woods; and defendant's presence in or near the woods. Given the overwhelming evidence of defendant's guilt, any error in admitting defendant's statements to the police from September 17, 2009 was harmless beyond a reasonable doubt, as there is no reasonable probability that the jury would have acquitted defendant even if the statements from September 17 had not been allowed into evidence.

¶ 47 Having determined that any error in admitting the statements was harmless, it is unnecessary for us to decide whether the police deliberately engaged in an improper question first, warn later procedure as outlined in *Missouri v. Seibert*, 542 U.S. 600 (2004).

¶ 48 C. Mandatory Supervised Released

¶ 49 Last, defendant argues that the trial court incorrectly sentenced him to a six-year MSR term. Defendant maintains that that portion of his mittimus is void and should be amended to reflect an MSR term of three years to life. The State concedes that defendant should have been sentenced to an indeterminate MSR term. See 730 ILCS 5/5-8-1(d)(4) (West 2008) (MSR term

for criminal sexual assault "shall range from a minimum of three years to a maximum of the natural life of the defendant."); *People v. Rhinehart*, 2012 IL 111719, ¶ 29 (section 5-8-1(d)(4) requires an indeterminate MSR term for sex offenses). Therefore, pursuant to our authority under Supreme Court Rule 615(b) (eff. Jan. 1, 1967), we amend defendant's mittimus to show an indeterminate MSR term of three years to life.

¶ 50 III. CONCLUSION

¶ 51 For the reasons stated, we affirm defendant's conviction but modify the mittimus to reflect an indeterminate MSR term of three years to life.

¶ 52 Affirmed as modified.