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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 13-CF-720
	)	
ESTEBAN MARCOS-TILAPA,	)	Honorable
	)	George D. Strickland,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE SCHOSTOK delivered the judgment of the court.  
Presiding Justice Hudson and Justice Zenoff concurred in the judgment.

**ORDER**

¶ 1 *Held:* The defendant was properly convicted of four counts of aggravated criminal sexual abuse.

¶ 2 Following a bench trial, the defendant, Esteban Marcos-Tilapa, was convicted of one count of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2012)) and four counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(b), (c)(1)(i) (West 2012)). He was sentenced to 17 years' imprisonment for predatory criminal sexual assault and 4 concurrent terms of 5 years' imprisonment for the aggravated criminal sexual abuse convictions, to be served consecutively to the term for predatory criminal sexual assault. On appeal, the

defendant argues that two of his convictions for aggravated criminal sexual abuse should be vacated. We affirm.

¶ 3

### BACKGROUND

¶ 4 On April 17, 2013, the defendant was charged in a nine-count indictment with sexually abusing his niece, L.C. (born July 27, 2002), between March 1, 2012, and February 1, 2013. As pertinent to this appeal, count 4 of the indictment alleged that the defendant knowingly touched the sex organ of the victim for the purpose of his sexual gratification. Count 5 of the indictment alleged that the defendant knowingly touched the buttocks of the victim for the purpose of his sexual gratification. Count 7 of the indictment alleged that the defendant knowingly touched the sex organ of the victim for the purpose of his sexual gratification. Count 8 of the indictment alleged that the defendant knowingly touched the buttocks of the victim for the purpose of his sexual gratification.

¶ 5 On February 19, 2015, at a pretrial conference, defense counsel acknowledged that the State was alleging that the defendant had committed a series of acts against the same victim over a range of time. On February 23, 2015, the day of trial, the State informed the trial court that the victim had described the defendant sexually abusing her on four separate occasions. During opening arguments, the State then indicated that the evidence would show that the defendant had committed acts of sexual abuse and predatory criminal sexual assault against the victim on “multiple occasions.” The State further indicated that an investigator would testify that the victim had “described [to him] with great detail up to five incidents of sexual abuse and sexual assault including multiple occasions of the defendant putting his penis in her butt, including putting his penis up to her lips.” The State also indicated that it would introduce the defendant’s

statement in which he acknowledged that he had touched the victim's vagina on "possibly three different occasions."

¶ 6 At trial, the victim testified about five incidents of physical contact with the defendant, four of which ended with sexual contact. Angela Nowak, a classmate of the victim's at Hawthorne Middle School North in Vernon Hills, and April Foley, a school social worker, both testified that the victim had complained to them about being sexually abused by the defendant. Karen Stramich, a registered nurse at Advocate Condell Medical Center, testified that the victim had reported the abuse to her. James Magna, an investigator with the Lake County State's Attorney's Office, testified that he had conducted an interview with the victim at the Children's Advocacy Center. A video recording of that interview was admitted into evidence. The victim's allegations against the defendant in that interview were consistent with her testimony at trial. Mark Hergott and Juan Gil, both of the Mundelein police department, testified that they had interviewed the defendant regarding the victim's allegations. The defendant acknowledged that on three separate occasions in the summer of 2012, he had put his hand under the victim's shorts and touched her vagina.

¶ 7 At the close of the trial, the trial court found the defendant guilty of one count of predatory criminal sexual assault and four counts of aggravated criminal sexual abuse. As to the four counts of aggravated criminal sexual abuse, the trial court found that the defendant, for his sexual gratification, had touched the victim's (1) vagina while in the kitchen; (2) buttocks while in the kitchen; (3) buttocks while in the bedroom and (4) vagina while in a van.

¶ 8 Following the denial of his motion for a new trial, the trial court sentenced the defendant to 17 years' imprisonment for predatory criminal sexual assault and 4 concurrent terms of 5 years' imprisonment for the aggravated criminal sexual abuse convictions, to be served

consecutively to the term for predatory criminal sexual assault. Following the denial of his motion to reconsider sentence, the defendant filed a timely notice of appeal.

¶ 9

#### ANALYSIS

¶ 10 Relying on *People v. Crespo*, 203 Ill. 2d 335 (2001), the defendant argues that his convictions for aggravated criminal sexual abuse as charged in counts 7 and 8 of the indictment must be vacated because the indictment failed to distinguish between separate acts that could support multiple convictions and instead merely offered alternative theories of criminal liability for the same acts and offenses charged in counts 4 and 5.

¶ 11 The defendant acknowledges that he did not raise this issue at trial. He therefore asks that we review it under the plain-error doctrine. The plain-error doctrine is a familiar one. It permits a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Sargent*, 239 Ill. 2d 166, 189–90 (2010). Prior to undertaking a plain-error analysis, this court must first determine whether any error occurred at all. *Id.*

¶ 12 Where a defendant challenges the sufficiency of an indictment or information for the first time on appeal, a reviewing court need only determine whether the charging instrument apprised the defendant of the precise offense charged with enough specificity to prepare his or her defense and allow pleading a resulting conviction as a bar to future prosecution arising out of the same conduct. In making this determination, the reviewing court may resort to the record. *People v. Bishop*, 218 Ill. 2d 232, 241 (2006).

¶ 13 We agree with the State that *Crespo* does not control the outcome of the instant case. The concern in *Crespo* was the State's treatment of three closely related acts as one act in the indictment and at trial, then changing course on appeal to contend that the three acts were separate and would support three separate convictions. *Crespo*, 203 Ill. 2d at 343. It was this action that the *Crespo* court found prejudicial to the defendant. *Id.* Here, in contrast, the State's treatment of the charges against the defendant has been consistent throughout the pendency of these proceedings. The State has not suddenly changed its position to the defendant's detriment, as was the case in *Crespo*.

¶ 14 Prior to opening arguments, the State informed the trial court that the victim had described four separate incidents of the defendant sexually assaulting her. The State then described those incidents. During opening arguments, the State emphasized that the defendant had abused the victim on multiple occasions. The State argued that the evidence would show several incidents in which the defendant touched the victim's vagina, put his penis on her mouth, and touched her buttocks. The State indicated that it would introduce into evidence a DVD of the victim's interview in which she described up to five incidents of criminal sexual abuse that the defendant had committed against her. The State also referenced the defendant's statement in which he acknowledged that he had touched the victim's vagina on "possibly three occasions." During its case-in-chief, the State then presented evidence that the defendant had sexually abused the victim on four separate occasions. In closing arguments, the State then asked that the defendant be convicted of the four counts of criminal sexual abuse at issue. These actions by the State demonstrate that it intended to treat the four counts as being based on distinct acts, not alternate theories.

¶ 15 In so ruling, we reject the defendant's argument that the indictment was insufficient because the State failed to specifically allege when the incidents of abuse occurred. The defendant points out that when he requested that information through a bill of particulars, the State objected, claiming that it had pled the dates of the offenses "as definitely as can be done." Our supreme court has observed that "it is often difficult in the prosecution of sexual abuse cases to pin down the times, dates, and places of sexual assaults, particularly when the defendant has engaged in a number of acts over a prolonged period of time." *Bishop*, 218 Ill. 2d at 247. As such, the date of the offense is not an essential element in child sex offense case, and the State is afforded flexibility regarding the date requirements under the Code of Criminal Procedure. *People v. Guerrero*, 356 Ill. App. 3d 22, 27 (2005). Thus, the State's failure to give specific dates as to when the defendant sexually abused the victim did not render the indictment vague.

¶ 16 We also find the defendant's reliance on *People v. Palmer* to be misplaced. In that case, this court vacated two of the defendant's convictions following a jury trial because not only did the charging instrument not differentiate between different acts, the defendant was not notified prior to trial that the State intended to proceed on a theory of separate acts which could support separate convictions. *Palmer*, 346 Ill. App. 3d at 953. As explained above, here, during pre-trial proceedings, the defendant was informed that the charges were for separate incidents. Further, the defendant had a bench trial in this case, not a jury. See *People v. Span*, 2011 IL App (1st) 083037, ¶ 88 (explaining that in a bench trial the judge would know that there had to be sufficient evidence to conclude that each of the charged actions would support separate offenses). Accordingly, *Palmer* does not require a different result in this case.

¶ 17 As we determine that there was no error in this case, we necessarily reject the defendant's claim of plain error. His contention on appeal is therefore forfeited. See *People v. Hillier*, 237 Ill. 2d 539, 545 (2010).

¶ 18 **CONCLUSION**

¶ 19 For the reasons stated, the judgment of the circuit court of Lake County is affirmed. As part of our judgment, we grant the State's request that the defendant be assessed \$50 as costs for this appeal. 55 ILCS 5/4–2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 20 Affirmed.