2025 IL App (4th) 241044

NO. 4-24-1044

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 2, 2025
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. BENJAMIN McBROOM, Defendant-Appellant.	))))))))	Appeal from the Circuit Court of Logan County No. 21CF133 Honorable Jonathan C. Wright, Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court, with opinion.
Justices Doherty and Knecht concurred in the judgment and opinion.

OPINION

¶ 1 In May 2024, a jury convicted defendant, Benjamin McBroom, of seven counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2020)). The trial court sentenced him to seven consecutive life sentences.

¶ 2 Defendant was originally charged by information with three of the counts alleging he committed the crimes by sexual contact or penetration but did not allege the contact was for purposes of sexual arousal or gratification. After 120 days passed, the State filed added additional charges and amended the charges to allege the crimes were committed by sexual contact for purposes of sexual arousal or gratification. Defendant moved to dismiss the charges, arguing his right to a speedy trial was violated based on principles of compulsory joinder because the State filed new and additional charges based on the same acts. The trial court dismissed some of the charges but held some were not new and additional charges. Two other

charges alleged the same conduct occurred during two different date ranges of February 1, 2020, to March 26, 2020, and March 26, 2020, to December 31, 2020. Defendant did not raise any issues concerning those charges in the trial court.

¶ 3 On appeal, defendant contends (1) he was deprived of his statutory right to a speedy trial on three counts under section 103-5(a) of the Code of Criminal Procedure of 1963, known as the speedy trial statute (725 ILCS 5/103-5(a) (West 2020)) because the charges were new, additional charges were subject to compulsory joinder, and the State added the charges after 120 days had passed and (2) two charges violated the one-act, one-crime rule when they shared an overlapping date of March 26, 2020. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In June 2021, defendant was arrested and taken into custody on a five-count information, each alleging defendant, who was 17 years of age or older, committed an act of sexual penetration or contact with either P.L. or O.L., children who were under 13 years of age, between the dates of March 25, 2019, and March 24, 2021. Count I alleged defendant's penis contacted or was inserted into P.L.'s vagina. Count II alleged defendant's mouth contacted or was inserted into P.L.'s vagina. Count III alleged defendant's finger contacted or was inserted into P.L.'s vagina. Count IV alleged defendant's hand contacted O.L.'s penis. Finally, count V alleged defendant touched O.L.'s penis for the purpose of defendant's sexual gratification. For each count, the State listed a violation of section 11-1.40(a)(1) of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/11-1.40(a)(1) (West 2018)). The trial court appointed the public defender's office to represent defendant.

¶ 6 On October 12, 2021, defendant told the trial court he demanded a speedy trial. Defense counsel told the court they would not be ready for trial in the immediate future. On June

28, 2022, defendant sought to proceed *pro se*, expressing concern that was the only way he would receive a speedy trial. The court allowed defendant to proceed *pro se*.

¶ 7 On July 7, 2022, defendant filed a motion for a bill of particulars, asking the State to specifically distinguish between the discrete acts charged in each count and any similar alleged conduct on any other occasion that the State might seek to introduce as other-crimes evidence at trial. The State responded the sexual assaults occurred over a long period of time and specific dates for each offense could not be presented. The State also argued the information sufficiently notified defendant of the nature of the charges and allowed him to prepare a defense.

¶ 8 At the hearing on the matter, the trial court inquired whether an adult witness to the assaults, Sadie Johnson, could provide a narrower window of time. The State expressed concern that Johnson was charged with similar offenses and was represented by counsel. Defendant, meanwhile, argued he could not tell if he was facing duplicate charges. The court asked the State to try to narrow the window of time charged and the circumstances of the specific aspects of the charges that would put defendant on additional notice of what he was defending against.

¶ 9 On August 22, 2022, defendant filed a motion to quash the information, alleging the charges were void because each count encompassed multiple alleged offenses without particularization and failed to definitively state the dates of the offenses. On August 26, 2022, the State filed an amended information, alleging 13 counts of predatory criminal sexual assault during three different time frames. Counts I through III alleged, between February 1, 2020, and March 26, 2020, defendant knowingly committed an act of sexual contact with P.L.'s sex organ for purposes of sexual arousal or gratification by (1) penial contact in count I, (2) mouth contact in count II, and (3) finger contact in count III. Count IV alleged, between February 1, 2020, and March 26, 2020, defendant knowingly committed an act of sexual contact with P.L. for purposes

of sexual gratification by making contact with his penis to P.L.'s mouth.

¶ 10 Counts V through VII mirrored counts I through IV with a new date range, alleging, between March 26, 2020, and December 31, 2020, defendant knowingly committed an act of sexual contact with P.L.'s sex organ for purposes of sexual arousal or gratification by (1) penial contact in count V, (2) mouth contact in count VI, and (3) finger contact in count VII. Count VIII alleged, between March 26, 2020, and December 31, 2020, defendant knowingly committed an act of sexual contact with P.L. for purposes of sexual gratification by making contact with his penis to P.L.'s mouth.

¶ 11 Counts IX through XII repeated the pattern, alleging, between January 1, 2021, and March 24, 2021, defendant knowingly committed an act of sexual contact with P.L.'s sex organ for purposes of sexual gratification by (1) penial contact in count IX, (2) mouth contact in count X, and (3) finger contact in count XI. Count XII alleged, between January 1, 2021, and March 24, 2021, defendant knowingly committed an act of sexual contact with P.L. for purposes of sexual arousal gratification by making contact with his penis to P.L.'s mouth. Finally, count XIII alleged, between January 1, 2021, and March 24, 2021, defendant knowingly committed an act of sexual contact with O.L. for purposes of sexual arousal or gratification by touching O.L.'s sex organ. As with the original information, all of the charges alleged a violation of section 11-1.40(a)(1) of the Criminal Code (720 ILCS 5/11-1.40(a)(1) (West 2020)).

¶ 12 Defendant filed a supplemental motion to quash the amended information, arguing the charges were vague and duplicitous. The trial court allowed the State to file the amended information and noted counts IV, VIII, and XII were new allegations because they alleged new specific acts, and the court found the remaining counts included a new mental state. As a result, the court set the matter for a new preliminary hearing. The court denied the motion to quash,

finding the amended information provided sufficient notice of the crimes charged and the charges were not duplicitous on the face of the information.

¶ 13 On September 29, 2022, both the State and defendant were not ready to proceed, and the preliminary hearing was continued. On October 14, 2022, the State filed a 13-count indictment with the same charges as the amended information. On August 23, 2023, defendant asked to be reappointed counsel, and the court reappointed the public defender's office as counsel.

¶ 14 On March 4, 2024, defense counsel moved to dismiss counts IV through XII of the indictment for violating defendant's right to a speedy trial. The motion alleged defendant had been in custody since June 17, 2021, and the indictment, filed on October 14, 2022, was filed more than 120 days after defendant had been in custody and must be dismissed because it was subject to compulsory joinder. Defendant argued counts IV through XII were new and additional charges involving acts known to the State at the time of the original information and thus could not toll the speedy trial term. On May 15, 2024, defendant filed a *pro se* motion to also dismiss counts I through III, stating those, too, were new and additional charges subject to compulsory joinder.

¶ 15 In April and May 2024, the trial court held a hearing on a motion by the State to offer out-of-court statements P.L. and O.L. made to interviewers, investigators, and medical professionals. The court also addressed defendant's speedy trial motion. Noting the charges had to be new charges based on the same act as alleged in the original information to be subject to compulsory joinder, the court found counts IV, VIII, and XII covered the same time period and alleged the same course of conduct as counts I through III of the information. However, the court found those counts also alleged separate and distinct acts from the original charges and thus were not subject to compulsory joinder. The court found the remaining counts at issue, counts V through XI, arose from the same time and acts as counts I through III of the original information and were

not separate and distinct acts. As a result, the court dismissed counts V through XI.

¶ 16 On May 20, 2024, defendant, through counsel, moved to dismiss counts I through III of the indictment, arguing those counts were new and additional charges subject to compulsory joinder. Defendant argued the trial court had found the charges to be substantive when it required a new preliminary hearing. That hearing was never held because the State then filed the indictment. Defendant argued the State, by filing the indictment, opted to dismiss the charges and replace them with a new theory of culpability based on contact made for purposes of sexual arousal or gratification, and because it was aware of the acts at the time it filed the original information, the charges were new and additional charges subject to compulsory joinder. The court found, although the charges alleged a different theory of culpability based on the addition of a mental state, they were sufficiently similar to the initial information that defendant was sufficiently on notice of the charged conduct. Thus, the charges were not new and additional charges. Accordingly, the court denied the motion to dismiss.

¶ 17 P.L., who was nine years old at the time of trial, testified she previously lived with her mother and defendant, who was her mother's boyfriend, at three different houses. She was four years old when she lived at the first house, five at the second, and over six at the third. P.L. testified defendant touched her "down in private areas" and put his fingers inside of her when she was four. She stated it happened more than one time and "once a week maybe." The acts occurred at both the first and second house.

¶ 18 P.L. testified defendant "put his front part into mine" at the second and third houses. She said it felt very uncomfortable and hurt. She also provided additional descriptions of the acts.

¶ 19 P.L. stated defendant put his "private part" into her mouth and said it happened "probably like half a month" at the third house and "once or twice" at the first and second houses.

When asked to clarify, she testified it happened at all of the houses and gave additional details describing the acts.

¶ 20 O.L., who was 11 at the time of trial, testified defendant inappropriately touched O.L.'s penis. O.L. stated it happened mostly at the first house and sometimes at the third house. He could not recall if it happened at the second house. O.L. also testified about instances involving his mother.

¶ 21 Statements the children made to investigating adults about the sexual assaults were entered into evidence. Johnson testified under a cooperation agreement and testified she witnessed or took part in sexual assaults against P.L. and O.L. She testified she lived with defendant and the children at the first house from about April 2016 to the end of 2019 or early 2020. They lived at the second house for about a year and then moved to the third house around February 2021.

¶ 22 Johnson stated defendant began sexually assaulting P.L just after P.L. tuned four and when they lived at the first house. Johnson testified the assaults happened frequently and involved penetration with defendant's fingers and penis. During that time, defendant also placed his penis in P.L.'s mouth at least once per month. Defendant also put his month on P.L.'s vagina.

¶ 23 Johnson testified the same acts took place at all three houses. She also testified she saw defendant touch O.L. "in a sexual way" at the first two houses but did not witness that at the third house. She testified sometimes defendant would touch O.L.'s penis to clean it, but she could tell the difference between those occurrences and when defendant did so for sexual gratification.

¶ 24 During its closing argument, the State discussed counts IV and VIII with the jury. Regarding count IV, the State told the jury:

> "The fourth count relates to between February 1, 2020, and March 26, 2020, the defendant's penis made contact with [P.L.'s] mouth. We have proven that. That

was the time frame right before P.L. turned five years old, the month and a half leading up to it. That's the second house they were in."

Regarding count VIII, the State told the jury:

"[Count VIII] relates to the defendant placing his penis in P.L.'s mouth. Again, that's a different time frame. We're talking about after P.L. turned five, but still at that second house throughout that period."

¶ 25 The jury found defendant guilty on all counts. Defendant filed a posttrial motion, arguing the jurors could not distinguish between when P.L. stated the acts happened and the dates alleged in the indictment. The trial court denied the motion and sentenced defendant to seven consecutive life sentences.

¶ 26 This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 On appeal, defendant contends (1) he was deprived of his statutory right to a speedy trial on three counts under section 103-5(a) of the speedy trial statute (725 ILCS 5/103-5(a) (West 2020)), because the charges were new and additional charges subject to compulsory joinder and the State added the charges after 120 days had passed and (2) two charges violated the one-act, one-crime rule when they shared an overlapping date of March 26, 2020.

¶ 29 A. Speedy Trial

¶ 30 Defendant first contends he was deprived of his statutory right to a speedy trial on counts I through III under the speedy trial statute. He argues counts I through III of the indictment were new and additional charges the State knew of at the time it filed the original information. Thus, he argues the charges were subject to compulsory joinder and, because they were not filed until after the speedy trial term had expired, they should have been dismissed. The State argues

the charges were not new and merely alleged a different theory of culpability.

¶ 31 Under the speedy trial statute, a defendant who is in custody must be tried within 120 days after arrest, excluding certain enumerated delays. "Section 103-5(a)'s 120-day period commences automatically." *People v. Resor*, 2024 IL App (4th) 230208, ¶ 34 (citing *People v. McBride*, 2022 IL App (4th) 220301, ¶ 38).

¶ 32 Normally, application of the speedy trial statute is a straightforward counting exercise when the defendant is charged with a single offense. *Id.* However, its application becomes more complicated when the defendant is charged with multiple, but factually related, offenses at different times. *Id.*

¶ 33 Section 3-3 of the Criminal Code (720 ILCS 5/3-3 (West 2020)) addresses the joinder of charges and provides:

> "(a) When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense.
>
> (b) If the several offenses are known to the proper prosecuting officer at the time of commencing the prosecution and are within the jurisdiction of a single court, they must be prosecuted in a single prosecution, except as provided in Subsection (c), if they are based on the same act.
>
> (c) When 2 or more offenses are charged as required by Subsection (b), the court in the interest of justice may order that one or more of such charges shall be tried separately."

¶ 34 When later-filed charges are subject to compulsory joinder with the original charges, the time in which trial is to begin on the new and additional charges is subject to the same statutory limitation that is applied to the original charges. *Resor*, 2024 IL App (4th) 230208, ¶ 35.

Further, any continuances obtained in connection with the trial of the original charges cannot be attributed to the defendant with respect to the new and additional charges because the new and additional charges were not before the court when those continuances were obtained. *Id.* This has come to be known as the *Williams* rule. *People v. Isbell*, 2020 IL App (3d) 180279, ¶ 14 (citing *People v. Williams*, 94 Ill. App. 3d 241, 248-49 (1981)).

¶ 35 " '[I]t is possible that a trial involving multiple charges can be timely as to certain counts and untimely as to others.' " *Resor*, 2024 IL App (4th) 230208, ¶ 35 (quoting *McBride*, 2022 IL App (4th) 220301, ¶ 40). However, our supreme court has clarified the *Williams* rule is applicable only when the initial and subsequent charges are subject to compulsory joinder. *People v. Phipps*, 238 Ill. 2d 54, 67 (2010). "An appellate court conducts a *de novo* review to determine whether charges are subject to compulsory joinder and whether a defendant's statutory right to a speedy trial has been violated." *Resor*, 2024 IL App (4th) 230208 ¶ 36.

¶ 36 Notably, the *Williams* rule does not apply where the new charge is not a " 'new and additional charge[ ].' " See *Phipps*, 238 Ill. 2d at 66-70 (quoting *Williams*, 94 Ill. App. 3d at 248-49). The purpose of the rule is to prevent "trial by ambush," wherein the State might "lull [a] defendant into acquiescing to pretrial delays on pending charges, while it prepared for a trial on more serious, not-yet-pending charges." (Internal quotation marks omitted.) *Id.* at 67. "The question for a speedy-trial analysis is whether defendant had adequate notice of the subsequent charges to allow him to prepare and present a defense." *People v. Mays*, 2012 IL App (4th) 090840, ¶ 45. "If the original charging instrument gives a defendant adequate notice of the subsequent charges, the ability to prepare for trial on those charges is not hindered in any way." *Phipps*, 238 Ill. 2d at 67. "In those circumstances, the rationale for declining to attribute to the defendant delays in connection with the original charges does not apply." *Id.* at 68. Thus, in determining whether

the *Williams* rule will be applied, courts must compare the original charge to the new charge and discern whether the former provided sufficient notice of the latter, such that the defendant would not be subject to the "trial by ambush" meant to be remedied by the *Williams* rule. *Id.* at 68-70; *People v. Staake*, 2017 IL 121755, ¶¶ 40-45.

¶ 37 The issue is not whether defendant had adequate notice of his or her charges before trial. *People v. Dryer*, 2021 IL App (2d) 190187, ¶ 20. "A defendant can be presumed to have received sufficient notice of subsequent charges when the later charges allege " 'the same conduct' " as the original charging instrument. *Id.* (quoting *Phipps*, 238 Ill. 2d at 68). "Such a situation is evident where the original and subsequent charges contain the same essential elements and penalties as one another." *Id.* However, variances in elements or penalties between the original charging instrument and subsequent charges do not automatically render the latter "new and additional" charges. *Id.*

¶ 38 For example, in *People v. Moffett*, 2019 IL App (2d) 180964, ¶ 5, the defendant was originally charged by complaint with aggravated battery for allegedly causing bodily harm to a correctional officer by biting the officer's fingers. The State later filed an indictment charging the defendant with two counts resulting from the same incident. *Id.* ¶ 9. Although the first count of the indictment was identical to the aggravated battery charge from the complaint, the second count of the indictment differed by alleging the defendant's contact with the officer was of an insulting or provoking nature. *Id.* The defendant sought to dismiss the second count of the indictment, arguing she had not been tried on that charge within the statutory 120-day period. *Id.* ¶ 12. According to the defendant, the second count was a "new and additional" charge, and any delays in the speedy trial period attributed to her on count I of the complaint could not be attributed to her on count II of the indictment. *Id.*

¶ 39 The Appellate Court, Second District, determined count II of the indictment was not a "new and additional" charge because both charges were based on the same conduct. *Id.* ¶¶ 43, 50. The court noted the premise that "not all variances in the elements between original and subsequent charges will render the latter new and additional charges." *Id.* ¶ 41. The court held, despite the fact count II added contact of an insulting or provoking nature as an element not described in the original aggravated battery charge, that element was nonetheless inherent in the original charge because "imagination strains to conjure a scenario in which the deliberate infliction of bodily harm is not insulting or provoking." *Id.* ¶ 43. The court also noted both charges had the same classification and penalty. *Id.* ¶ 44. Thus, the defendant was provided with sufficient notice of count II. *Id.* ¶¶ 43-44.

¶ 40 Here, defendant was charged in all counts with violating section 11-1.40(a)(1) of the Criminal Code. That section provides:

> "(a) A person commits predatory criminal sexual assault of a child if that person is 17 years of age or older, and commits an act of contact, however slight, between the sex organ or anus of one person and the part of the body of another for the purpose of sexual gratification or arousal of the victim or the accused, or an act of sexual penetration, and:
>
> (1) the victim is under 13 years of age[.]" 720 ILCS 5/11-1.40(a)(1) (West 2020).

¶ 41 When we compare the charges in the original information with the charges in the indictment, we determine the *Williams* rule does not apply because defendant was not charged with a "new and additional" offense. Thus, defendant's right to a speedy trial was not violated. All of the counts in each charging instrument alleged the same offense of predatory criminal sexual

assault of a child under section 11-1.40(a)(1). The only difference between the charges was the theory of culpability. The original information alleged defendant committed predatory sexual assault of a child by penetration or contact, alleging (1) penial contact or penetration in count I, (2) mouth penetration or contact in count II, and (3) finger penetration or contact in count III. The indictment, instead of charging contact or penetration without reference to the purpose of the act, alleged defendant committed predatory criminal sexual assault of a child through contact for purposes sexual arousal or gratification by (1) penial contact in count I, (2) mouth contact in count II, and (3) finger contact in count III. Thus, the State was not adding a new charge of predatory criminal sexual assault but was seeking to prove the same previous charge under an alternate or clarified theory of culpability. All the charges against defendant were brought under the same statutory provision and had the same classification and penalty.

¶ 42 As illustrated by *Moffett*, despite the fact that the indictment added contact for purposes of sexual arousal or gratification as a theory of culpability not described in the original charges, that theory was nonetheless contemplated by the original charge, which alleged conduct of contact or penetration. Similar to *Moffett*, imagination strains to conjure a scenario in which the acts of sexual penetration or contact alleged in the original charges were not also contact for purposes of sexual arousal or gratification. We note "[a] defendant's intent to arouse or gratify himself sexually can be inferred solely from the nature of the act." *People v. Burton*, 399 Ill. App. 3d 809, 813 (2010). Thus, defendant was provided with sufficient notice of counts I through III in the indictment, and defendant was not hindered in his ability to prepare a defense.

¶ 43 Nevertheless, defendant argues *People v. Kidd*, 2022 IL 127904, requires a different conclusion. We disagree. In *Kidd*, the defendant filed a motion to dismiss an indictment during pretrial proceedings for insufficiently stating the elements of the charged offense when the

indictment alleged sexual contact but did not include allegations the contact was either penetration or done for purposes of sexual arousal or gratification. *Id.* ¶ 5. The trial court denied the motion. *Id.* Before trial, the State filed a motion to amend the indictment to allege the defendant made sexual contact for the purpose of sexual gratification. *Id.* ¶ 7. Defendant moved to dismiss the amended indictment. *Id.* The court denied both the State's motion to amend and the defendant's motion to dismiss. *Id.* The court determined the defendant suffered no prejudice because the indictment sufficiently informed him the State would prove he made the contact with the victim for the purpose of sexual gratification. *Id.* The Illinois Supreme Court reversed because the indictment charged sexual contact but failed to allege the contact was made for the purpose of sexual arousal or gratification. *Id.* ¶¶ 20, 31. The court rejected the argument sexual contact was always made for the purpose of sexual gratification or arousal. *Id.* ¶ 29.

¶ 44 *Kidd*, however, dealt only with the question of a pretrial motion attacking the sufficiency of the indictment, which required strict compliance with the rule that an indictment must set forth the nature and elements of the offense. *Id.* ¶ 17; 725 ILCS 5/111-3(a)(3) (West 2016). There, the indictment alleged neither penetration nor contact for purposes of sexual arousal or gratification. Thus, it failed to state an offense. See *Kidd*, 2022 IL 127904, ¶ 17. *Kidd* did not address whether a change or clarification of the theory of culpability would be a new and additional charge for application of the *Williams* rule. While *Kidd* rejected an argument that sexual contact would always be made for purposes of sexual arousal or gratification, and thus should have been read into in the indictment, we do not read that holding so broadly as to require us to hold that a change or clarification of the theory of culpability for the same charge is a new and additional charge. Indeed, in *Kidd*, the supreme court specifically noted that the same charge could be proved two different ways. *Id.* ¶ 21. The problem there was the State failed to include either of them.

¶ 45 Our supreme court has rejected arguments that the meaning of terms relevant to compulsory joinder must be construed based on holdings from other contexts. See *People v. Hunter*, 2013 IL 114100, ¶¶ 21-22 (declining to construe whether charges were based on the same act for compulsory joinder using an elements-based analysis consistent with the one-act, one-crime doctrine). The court has also stated the legislature did not intend to impose joinder on offenses arising from a series of acts which are closely related with respect to the offender's single purpose or plan. *Id.* ¶ 23. Thus, when addressing application of the *Williams* rule, whether the elements of the charges or the theories of culpability are the same is not dispositive. Instead, the "critical point" in the analysis is "whether the original indictment gave defendant adequate notice to prepare his defense to the subsequent charge." *Phipps*, 238 Ill. 2d at 68-69. It is clear from *Phipps* that the *Williams* rule should be applied only in those situations in which the underlying rationale for the rule is applicable. Reaching that determination here contemplates analyzing the material allegations concerning defendant's conduct more than it contemplates an analysis of the elements of the crimes or the alternate theories of culpability.

¶ 46 Here, when defendant was originally charged with sexual conduct involving contact or penetration, he knew the conduct he was defending against was a form of sexual contact or penetration that was not accidental, unintentional, or for a proper purpose. That same conduct was at issue in the subsequent charges, which merely clarified or added the theory of culpability that the contact was for purposes of sexual arousal or gratification. Thus, we find the original charges provided sufficient notice to defendant of the subsequent charges. This is not a case in which defendant was ambushed by the new charges. Accordingly, the *Williams* rule does not apply, and defendant was not deprived of his right to a speedy trial on those counts.

¶ 47 B. One-Act, One-Crime Challenge

¶ 48 Defendant next contends his convictions of counts IV and VIII violated the one-act, one-crime rule. Count IV alleged defendant contacted P.L.'s mouth with his penis for purposes of sexual arousal or gratification between February 1, 2020, and March 26, 2020. Count VIII alleged the same conduct but between March 26, 2020, and December 31, 2020. Defendant argues, because both counts allege the same conduct with an overlapping date of March 26, 2020, in the date range, it is impossible to determine whether the jury found only one or two acts of the same conduct.

¶ 49 At the outset, we note defendant concedes he failed to raise the issue in the trial court but argues plain error applies. Both an objection at trial and raising the issue in a posttrial motion are necessary to preserve an issue for appellate review. See *People v. Herron*, 215 Ill. 2d 167, 175 (2005). However, this court will review forfeited challenges under the plain-error doctrine 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; or (2) a clear or obvious error occurred, and the error is so serious that it affected the fairness of the defendant's trial and the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Taylor*, 2011 IL 110067, ¶ 30.

The defendant has the burden of persuasion under both prongs of the plain-error analysis. *People v. Lewis*, 234 Ill. 2d 32, 43 (2009). When addressing a claim of plain error, appellate courts first consider whether the defendant has established a clear or obvious error. Absent a clear or obvious error, the doctrine of plain error does not afford the defendant any relief. *People v. Gilker*, 2023 IL App (4th) 220914, ¶ 78.

¶ 50 The one-act, one-crime rule prohibits multiple convictions which arise from the

same physical act. *People v. Miller*, 238 Ill. 2d 161, 165 (2010); *People v. King*, 66 Ill. 2d 551, 566 (1977). When evaluating whether a conviction violates the one-act, one-crime rule, we must determine (1) whether the defendant committed multiple acts and (2) if so, whether any of the charges are lesser-included offenses. *King*, 66 Ill. 2d at 566; *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996). We review *de novo* whether a defendant's convictions violate the one-act, one-crime rule. *People v. Csaszar*, 375 Ill. App. 3d 929, 943 (2007).

¶ 51 Our supreme court has "defined 'act' as 'any overt or outward manifestation which will support a different offense.' " *People v. Price*, 2011 IL App (4th) 100311, ¶ 26 (quoting *King*, 66 Ill. 2d at 566). A defendant may be convicted of two offenses when a common act is part of both offenses. *Id.* As long as there are multiple acts as defined in *King*, the interrelationship of the offenses does not preclude multiple convictions. *Id.* However, when it is not possible to determine whether the jury found multiple instances of the charged conduct or whether the jury found one instance of the charged conduct based on overlapping dates, the one-act, one-crime rule may apply. See *People v. Strawbridge*, 404 Ill. App. 3d 460, 463 (2010).

¶ 52 Defendant relies on *Strawbridge*. There, the defendant was charged with predatory criminal sexual assault of a child for placing his penis in the victim's vagina. The victim testified to numerous incidents of sexual contact with the defendant, occurring three to four times per week beginning when she was nine years old and continuing until a few months before her thirteenth birthday. *Id.* at 469. The victim also described various sex acts, including intercourse and oral sex. *Id.* However, she also testified about a specific act of intercourse that occurred on March 17, 2000, which was within the period described in both counts. *Id.* at 463. Count I of the indictment alleged the conduct occurred between June 24, 1999, and March 20, 2000, while count II alleged the conduct occurred on or about March 20, 2000. The defendant was convicted of both counts. *Id.* at

461-62.

¶ 53 The Second District vacated one of the defendant's convictions, holding the multiple convictions violated one-act, one-crime principles. *Id.* at 463. The court first found guidance from the case of *People v. Wasson*, 175 Ill. App. 3d 851 (1988). There the defendant was convicted of committing aggravated criminal sexual assault between January 1, 1983, and April 24, 1985, but the statutory provision under which the defendant was charged became effective on July 1, 1984. *Id.* at 853. The *Wasson* court determined, absent a limiting instruction stating the defendant could not be convicted of conduct occurring before July 1, 1984, it was impossible to know whether the jury instead convicted the defendant for an act performed during the period which predated the statute under which he was charged. As a result, the *Wasson* court invalidated the entire charging instrument and resulting conviction. *Strawbridge*, 404 Ill. App. 3d at 463-64 (citing *Wasson*, 175 Ill. App. 3d at 859-60).

¶ 54 Applying *Wasson*, the *Strawbridge* court noted it was not possible to determine whether the jury found multiple instances of the charged conduct or whether the jury found one instance of the charged conduct yet found the defendant guilty on both counts because the one instance took place within the count I period but also happened to occur on or about the count II period. *Id.* at 463. The court further noted:

> "The State points out that there is adequate evidence in the record to support convictions on multiple counts. We do not disagree; however, it is not our prerogative to place ourselves in the position of the jurors and try to determine how they arrived at their verdict. The problem here is that we cannot tell what the jury based its verdict on, and it is that verdict that is challenged on appeal. It is, after all, the jury that must convict the defendant." *Id.*

¶ 55 This court has applied *Strawbridge* when the State charged two counts that could constitute two ways of describing the same act and the State did not apportion multiple instances of conduct between the two counts. *People v. Scott*, 2024 IL App (4th) 230812-U, ¶ 63. However, courts have distinguished *Strawbridge* when the record showed the fact finder could distinguish among separate offenses.

¶ 56 In particular, in *People v. Foster*, 2022 IL App (2d) 210556-U, the State charged the defendant with two identical counts of aggravated criminal sexual abuse. The victim's testimony supported a finding of multiple acts. After the defendant's conviction on both counts, the defendant argued on appeal that one of the convictions should be vacated because the State failed to distinguish between the counts. *Id.* ¶ 109. The appellate court disagreed and distinguished the case from *Strawbridge*, finding the evidence and the State's closing argument sufficiently distinguished the different counts, in part because the State apportioned the charges during closing argument. *Id.* ¶ 112-14. The jury, therefore, was informed that the State treated defendant's conduct as separate acts. *Id.* ¶ 114; see *People v. Campos*, 2019 IL App (1st) 152613, ¶ 41 (distinguishing *Strawbridge* because in a bench trial, a judge would understand the need to find separate offenses); *People v. Alhmdan*, 2021 IL App (2d) 200759-U, ¶ 79 (distinguishing *Strawbridge* where the State told the jury the counts related to distinct, separate acts).

¶ 57 Here, the State specifically apportioned the charges in counts IV and VIII. The State told the jury count IV pertained to just before P.L. turned five years old. Then the State told the jury count VIII pertained to after P.L. turned five. The State specifically said, "that's a different time frame." Thus, the jury was explicitly told the counts related to distinct offenses on different dates. We have no reason to believe the jury ignored the State's explanation that different counts related to distinct acts. See *Alhmdan*, 2021 IL App (2d) 200759-U, ¶ 79. Accordingly, *Strawbridge*

does not apply here, and there was no violation of the one-act, one-crime rule.

¶ 58 III. CONCLUSION

¶ 59 For the reasons stated, we affirm the trial court's judgment.

¶ 60 Affirmed.

Decision Under Review:	Appeal from the Circuit Court of Logan County, No. 21-CF-133; the Hon. Jonathan C. Wright, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Christopher McCoy, and Ann Fick, of State Appellate Defender's Office, of Elgin, for appellant.
Attorneys for Appellee:	Bradley Hauge, State's Attorney, of Lincoln (Patrick Delfino, Edward R. Psenicka, and Miles J. Keleher, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.