

NOTICE
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2026 IL App (5th) 241280-U
NO. 5-24-1280
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Franklin County.
	)	
v.	)	No. 21-CF-162
	)	
CHARLES PARVIN,	)	Honorable
	)	Evan L. Owens,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE CATES delivered the judgment of the court.
Justices Barberis and Vaughan concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to find the defendant guilty of predatory criminal sexual assault of a child on count VII. There was no plain error where the circuit court was not required to include descriptive language of the defendant’s conduct in the jury instructions.

¶ 2 After a jury trial, the defendant, Charles Parvin, was found guilty of seven counts of predatory criminal sexual assault of a child and sentenced to mandatory life in prison. The defendant challenges one of the seven convictions on appeal claiming that the evidence failed to support a conviction for predatory criminal sexual assault because there was no evidence of skin-to-skin contact. The defendant additionally argues that jury instructions, regarding four of the seven counts, were inadequate and deprived the defendant of his right to be found guilty of proof

beyond a reasonable doubt of every element of the offense and he was deprived of a unanimous jury verdict. For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4 The defendant, Charles Parvin, is the father of Travis Parvin. Travis and his ex-wife, Jessica Summers, had a daughter, A.L.P., born November 14, 2012. Summers had another daughter, M.L.M., born March 27, 2007, from a prior relationship. During the marriage between Travis and Jessica, the defendant would often watch the girls. Travis and Jessica divorced, and after their separation, Travis was in a dating relationship with Jessica Gibson, who also had a daughter, N.R.G., born September 7, 2012. The defendant would watch the children for Travis at the defendant's house. Specifically, the defendant watched N.R.G. and his granddaughter, A.L.P. on Fridays during the Covid pandemic during a time of remote learning. N.R.G. informed her mother that the defendant had been sexually inappropriate with A.L.P. and N.R.G., while in the defendant's care. The defendant told A.L.P. not to say anything, but once N.R.G. told on the defendant, an investigation began. Gibson approached M.L.M., who also disclosed sexual assault by the defendant several years prior, when she was of a similar age as A.L.P. and N.R.G. Travis and Gibson reported the defendant to law enforcement after speaking with the children.

¶ 5 On April 30, 2021, the defendant was charged with seven counts of predatory criminal sexual assault of a child under section 11-1.40(a)(1) of the Criminal Code of 2012 (720 ILCS 5/11-1.40(a)(1) (West 2018)). Count I alleged that the defendant committed an act of sexual penetration with M.L.M., where the defendant had touched her vagina with a dildo on or about August 2014, to on or about May 2015. Counts II and III also involved sexual penetration with M.L.M. during the same time frame. Count II alleged that the defendant placed his penis into her mouth, and count III alleged that the defendant used his mouth on M.L.M.'s vagina. Counts IV and V alleged sexual

penetration and contact with N.R.G, during the time period of April 2020, and April 2021. Count IV alleged that the defendant touched N.R.G,'s vagina with a dildo, and Count V alleged that the defendant touched her vagina and buttocks with his penis. Counts VI and VII alleged sexual penetration with A.L.P, during the time period of April 2020, and April 2021. Count VI alleged that the defendant knowingly committed an act of sexual penetration between the defendant's mouth and her vagina, and count VII alleged that the defendant knowingly committed an act of contact with A.L.P. in that he touched her hand with his penis for the purpose of sexual gratification.

¶ 6 During the investigation, the three children were interviewed at the Children's Advocacy Center (CAC) where their interviews were recorded. The State filed a motion to admit the out-of-court statements that were made by the children during the recorded interviews conducted at the CAC. The State also sought to admit the statements made by A.L.P. to Travis and the statements made by N.R.G. to her mother, Gibson. The circuit allowed the admission of the CAC videos, as well as the other statements, provided that the requirements of section 115-10 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10 (West 2018)) had been met.

¶ 7 The circuit court held a jury trial from September 3, 2024, to September 6, 2024. A.L.P. and N.R.G. testified at the trial before their CAC videos were admitted into evidence and published for the jury. M.L.M. also testified during the trial.

¶ 8 A.L.P. was 11 years old when she testified at trial, and was 8 years old, in the second grade, when she spent time at the defendant's house with N.R.G. A.L.P. testified that they would go on scavenger hunts with the defendant, and he would also make her and N.R.G. "do the sexual part." A.L.P. was afraid to tell anyone about the defendant's behavior because she was afraid that they would get in "big trouble." At some point, N.R.G. had told her mother about the defendant, and

the visits with the defendant stopped. A.L.P. testified that she had been interviewed at the CAC as to what occurred at the defendant's house. She could not remember the details of the interview, but knew that she told the truth during her interview. A.L.P. confirmed that she had never spoken to the State about what had happened to her, and that she never watched the video of her interview.

¶ 9 On cross-examination, A.L.P. testified that she had witnessed the defendant sexually abuse N.R.G. When asked about the specifics, A.L.P. responded that she saw the defendant do the same things to N.R.G. as he did to her. The defendant would make A.L.P. and N.R.G. dress in "sexy outfits;" he had sex toys that he used "whenever he made us do sex;" and he made them watch "sex" on television. "The sex part" would occur when she was in the living room with N.R.G. She was asked to describe what occurred in more detail, and A.L.P. responded that she did not feel comfortable with providing a description. No further questions were asked of A.L.P.

¶ 10 N.R.G., who was also 11 years old at that time of the trial, testified after A.L.P. N.R.G. explained that her mother had been dating A.L.P.'s father, Travis, and they lived together. The defendant would watch N.R.G. and A.L.P. on Fridays when school had remote learning. N.R.G. testified that the defendant would make them do "treasure hunts" and "that was just to get us to do things we didn't want to do." She explained that the defendant made them "play with toys, sex toys, and he would touch us in our private areas." The defendant would tell N.R.G. and A.L.P. that if they told anyone, then they would go to jail. N.R.G. eventually told her mother and was interviewed at the CAC soon thereafter. N.R.G. testified that she had told the truth during the CAC interview.

¶ 11 On cross-examination, N.R.G. testified that her mother was no longer in a relationship with Travis, but she used to share a bedroom with A.L.P. when they lived with Travis. N.R.G. and A.L.P. sometimes had disagreements. Defense counsel questioned N.R.G. on an order of

protection entered against her biological father. N.R.G. no longer had contact with her father because he “pulled out a pistol and told me that he was going to shoot my mom in the head.” The order of protection was in place before N.R.G. stopped going to the defendant’s house.

¶ 12 Jessica Gibson, N.R.G.’s mother, testified and described N.R.G. as “very outgoing” and “very bubbly.” In 2021, when N.R.G. was eight years old, Gibson noticed that N.R.G.’s behavior changed. N.R.G. became “very reclusive,” “angry,” and “very combative.” Gibson recalled that one day after N.R.G.’s dance class, N.R.G. told Gibson that someone was making her feel uncomfortable. N.R.G. was hesitant to say who at first, but she told Gibson that it was the defendant. N.R.G. had been going to the defendant’s house for a few months. N.R.G. additionally told Gibson that she did not want A.L.P. to go to the defendant’s house alone.

¶ 13 Gibson indicated that she told Travis about the conversation with N.R.G. After she talked with Travis, he immediately left to speak with A.L.P. The following day, the defendant was reported to law enforcement. Travis and Gibson went to the police station to provide statements while the children were at school. N.R.G. was subsequently interviewed at the CAC.

¶ 14 Travis testified that in late 2020, A.L.P. and N.R.G. appeared reluctant to visit the defendant’s house. He later learned about what had allegedly been reported to have occurred at the defendant’s house. Gibson told Travis about her conversation with N.R.G. Travis testified that he was shocked, but he immediately called A.L.P.’s mother, Jessica Summers, to speak to A.L.P. When Travis spoke with A.L.P., he asked if the defendant had inappropriately touched her in a way that was not accidental. Travis testified that A.L.P. “immediately started crying and said, Dad, I couldn’t tell you because he said I would get in trouble.” Travis testified that was the end of the conversation, A.L.P. was in tears and could “barely speak.” Gibson and Travis then called to make a police report. They went to the police department the following morning to give their statements.

On cross-examination, Travis testified that, in addition to crying, during his conversation with A.L.P., she told him that the defendant had touched her inappropriately.

¶ 15 Hilary Chandler, a forensic interviewer at the CAC, testified that she conducted the interviews of the three children involved in this case. Chandler testified to N.R.G.'s interview first. N.R.G. had described multiple instances of sexual abuse by the defendant during her interview recorded on April 29, 2021. N.R.G.'s interview was admitted into evidence as exhibit 1 and played for the jury.

¶ 16 The CAC interview revealed that N.R.G. was seven years old when the defendant began to watch her and A.L.P. at the defendant's house. The defendant made the children play with "toys." N.R.G. described the toys as purple and blue colored, shaped like "a boy bad part" or "a wiener," and they vibrated. The toys were kept in a white bag.

¶ 17 N.R.G. emphasized that she did not like the toys because they made her "feel really gross." The defendant would have her sit with him in the living room on his chair that rocked and reclined when he used the toys. N.R.G. explained that the defendant would put a toy "on her bad spot" over her clothes, but sometimes her clothes were off. He would use another toy on "his wiener," while in his underwear. N.R.G. and A.L.P. would flip a coin to decide who went first. The girl who went second would sit on the couch and wait. Sometimes, he would make them "restart" meaning that they would have to "take another turn."

¶ 18 The defendant would dress N.R.G. and A.L.P. in outfits. N.R.G. described the outfit as a "fancied up nightgown" and as a "sexy doctor gown." She believed that he bought it for "granny," but the defendant would adjust the outfit to make it fit N.R.G. or A.L.P.

¶ 19 N.R.G. also stated that the defendant "licked their bad spot" and used his "wiener" on their "bad spot." She described having to go onto the floor on a rug in the living room and sit with her

“butt up in the air.” The defendant then “rubbed it on the bad spot” when her clothes were off. She confirmed that his skin touched her skin. The defendant had also used his hands “on her bad spot,” he would use his finger and rub it on her skin. A.L.P. had to do the same things as N.R.G. The defendant would go to the toilet after, and “white stuff comes out.”

¶ 20 During the CAC interview, N.R.G. additionally stated that the defendant also watched videos on his phone of “putting the wiener in the butt” or “bad spot.” N.R.G. and A.L.P. sometimes had to watch the videos. N.R.G. told her mother about the defendant’s behavior the Tuesday before her CAC interview.

¶ 21 After N.R.G.’s interview was published to the jury, Chandler’s testimony resumed and she focused on A.L.P.’s interview at the CAC. Chandler explained that A.L.P. was not able to give as many details as N.R.G. about what had happened. A.L.P. had identified the defendant as the person that did something to her. The CAC interview video, exhibit 3A, given by A.L.P. was admitted into evidence and played for the jury.

¶ 22 A.L.P. stated during her CAC interview that the defendant “tried to touch their bottoms,” and that N.R.G. and A.L.P. did not want him to touch them. The defendant had “touched her a couple times.” The defendant also tried to “lick her bottom.” Chandler asked A.L.P. about the word “bottom” and A.L.P. pointed to her vaginal area. He would tell her to take her clothes off and A.L.P. indicated that he would touch her directly on her skin. A.L.P. stated that it occurred in the living room of the defendant’s home, and that she had to sit on the couch. The defendant would watch pornography on his television. A.L.P. watched one or two times, but she tried not to watch. A.L.P. additionally stated that the defendant wanted A.L.P. to touch his body, and that “he kept telling me to, and I just did, had to do it at least once.” She discussed an incident where she put on

yellow or clear gloves, and she touched the defendant while they were in the living room. A.L.P. explained that she touched his “front” and tried not to look. She “just touched it,” “one poke.”

¶ 23 Chandler then showed A.L.P. diagrams of a girl and a boy, and asked A.L.P. to identify the body parts on the drawing. A.L.P. called the “private” area the “front.” The defendant had touched her “private parts” with his hands. A.L.P. also saw the defendant touch N.R.G.’s “private parts.” He touched both A.L.P. and N.R.G. on their skin. The defendant told A.L.P. to keep what happened at his house a secret, and A.L.P. was worried about getting into trouble.

¶ 24 After the video played, Chandler testified that she had shown diagrams to A.L.P. during the interview for the purpose of making sure Chandler understood the parts of the body that A.L.P. was referring to during the interview. The girl and boy diagram where A.L.P. identified body parts were entered into evidence. A.L.P. had identified the penis on the boy diagram as the “front” and as the “private.”

¶ 25 On cross-examination, Chandler was asked about statements made by N.R.G. compared to A.L.P. N.R.G. stated that a coin was flipped to see who had to go first, but A.L.P. did not mention a coin. Both girls stated that they took baths at the defendant’s house. A.L.P. did not mention sex toys during her interview. A.L.P. was soft spoken during the interview and Chandler noted that A.L.P. wore a mask, which added a barrier, making it difficult to hear some of her statements.

¶ 26 Amy Tipton, a detective captain with the Franklin County Sheriff’s Office, testified that a search warrant was executed for the defendant’s home. She participated in the search and described the house as “unorganized, disarray” and “difficult to search” because there were items piled up in the house. Two videos of the house were admitted into evidence. Tipton testified that during the search, they found a dildo, a vibrator, lingerie, a yellow glove, cell phones, and computers. They had been looking for these items because one of the victims had disclosed that she wore a yellow

glove when she was sexually abused, and another victim described that the defendant sexually abused her with the vibrating egg. The victims had also described the chairs, couch, and rug in the living room. The vibrator and a purple dildo were found inside of a white bag on the front porch of the house. Photographs had been taken of those items, and those photographs were admitted into evidence. Lingerie was found inside of a bag that also contained a bottle of outdoor colored bubbles. Tipton testified that she took a photograph of the bubbles because she “honestly thought it was odd that bubbles and lingerie were in the same bag.”

¶ 27 A.L.P.’s mother, Jessica Summers, testified that when A.L.P. was seven years old she started wetting the bed, had trouble sleeping at night, and she had yeast infections. Summers testified that A.L.P. “had, like, redness in the vaginal area. Just her whole demeanor changed. She went from the happy child to the scared child.” Summers had confronted the defendant about the irritation that A.L.P. experienced, and he responded that they played in the mud and would get dirty.

¶ 28 Summers was also M.L.M.’s mother. When M.L.M. was in the second grade the defendant watched her on Tuesdays. M.L.M. also experienced irritation in the vaginal area and her demeanor changed after spending time with the defendant. Summers had also confronted the defendant about M.L.M. and the defendant explained that M.L.M. played in the mud and they would come home dirty. Summers did not have a reason not to believe the defendant’s response at that time. M.L.M. stopped spending time with the defendant in 2015. After M.L.M. stopped going to the defendant’s house, the yeast infections stopped.

¶ 29 Summers additionally testified that she spoke to M.L.M. after learning about A.L.P. M.L.M. disclosed information about the defendant that Summers found concerning. Summers did not observe M.L.M. and A.L.P. discuss anything about the defendant before their CAC interviews.

A.L.P. stayed with Travis the day after A.L.P. disclosed information about the defendant and was not around M.L.M. before their CAC interviews.

¶ 30 M.L.M., who was 17 years old at the time of the trial, testified to her interactions with the defendant. M.L.M. explained that when she was 8 years old, and in the second grade, she would spend Tuesday afternoons at the defendant's house. M.L.M. testified that the defendant would "touch my breast, my vagina, my mouth" with "his mouth, his hands, his penis, and ice." He also used multiple dildos and vibrators. M.L.M. testified that the defendant would put ice in his mouth and put his mouth on her vagina. The defendant would take M.L.M.'s clothes off and sometimes the defendant's clothes would be off. He would also make M.L.M. wear lingerie. The defendant would have M.L.M. sit on him while she was naked and the defendant wore underwear. She could feel his penis when she sat on him. The defendant would lock M.L.M. in a bedroom with him while A.L.P. and their brother were in the living area. M.L.M. additionally testified to an incident that occurred in the defendant's car where the defendant made her put her "mouth on his penis."

¶ 31 M.L.M. testified that she did not tell anyone about the defendant because she was scared. The defendant made her feel like his behavior was normal; she did not understand what was happening; and that no one would believe her. She eventually told her mother, after being asked if anything had happened to her. M.L.M. never talked to N.R.G. or A.L.P. about what happened. When all three girls appeared at the CAC for interviews, M.L.M. knew that something had happened to N.R.G. and A.L.P. as well.

¶ 32 After M.L.M.'s testimony concluded, the defense made a motion for a directed verdict, which was denied by the circuit court. The defense gave an opening statement after the State rested.

¶ 33 Chandler was recalled as a witness for the defense and she testified to the CAC interviews. Chandler was asked why follow-up questions were not made regarding N.R.G.'s statements on a

few topics. Chandler acknowledged that she had not asked additional questions. The defense attempted to have Chandler testify to her opinion on N.R.G.'s behavior, but the circuit court did not allow this line of questioning as Chandler was not testifying as an expert witness.

¶ 34 The defendant testified on his own behalf. He denied sexually abusing and denied any touching of the children. The defendant denied all of the allegations.

¶ 35 After the defense rested, the jury instruction conference took place. The parties discussed Illinois Pattern Jury Instruction Criminal No. 11.104 (approved April 29, 2016) (hereinafter IPI Criminal 11.104) on issues in predatory criminal sexual assault of a child. Seven sets of jury instructions based on IPI Criminal 11.104 were tendered, one for each count charged against the defendant. Three charges involved M.L.M., and for counts I, II, and III, the first proposition included that the defendant “knowingly committed an act [of] sexual penetration with [M.L.M.]” and contained the brief description of the act for each of the three counts, including “vagina with dildo,” “mouth with penis,” and “vagina with mouth.” The remaining counts did not have the equivalent descriptive language. The first proposition for counts IV and VI included the language “that the defendant knowingly committed an act [of] sexual penetration” and included the name of the minor child. The first proposition for counts V and VII included the language “that the defendant knowingly committed 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 purposes of sexual gratification of the defendant.”

¶ 36 The defense objected to each of the seven instructions because the dates of the alleged crimes were not included. The instructions were given over the objection by the defense. The defendant did not propose alternate instructions that included descriptions of the acts for counts

IV through VII. Additional jury instructions were discussed during the jury instruction conference. After the jury instruction conference concluded, the parties presented closing arguments.

¶ 37 During the State’s closing argument, the State addressed that predatory criminal sexual assault of a child was charged on all counts but there were two definitions within the charge. The State first explained that there was a definition for an “act of contact,” which occurs where “a person commits the offense of predatory criminal sexual assault of a child when he is 17 years or older and knowingly commits an act of contact, however slight, between the sex organ or anus of one person and a part of body of another for the purpose of sexual gratification of the defendant and the victim is under 13 years of age.” The second definition for predatory criminal sexual assault of a child occurs when a defendant who was over 17 years of age and “knowingly committed an act of sexual penetration and the victim was under 13 years of age.”

¶ 38 The State then discussed the factual allegations associated with each count based on the evidence presented at trial. The State identified that counts I through III involved M.L.M., counts IV and V pertained to N.R.G., and counts VI and VII pertained to A.L.P. When discussing counts IV and V, the State incorrectly identified IV as the defendant knowingly committed an act of sexual penetration and V as knowingly committed an act of contact where the factual allegations were reversed in counts IV and V of the information.

¶ 39 The jury found the defendant guilty on all seven counts of predatory criminal sexual assault of a child. The defendant submitted a posttrial motion that was denied by the circuit court. The defendant was subsequently sentenced to mandatory life in prison under section 11-1.40(b)(1.2) of the Criminal Code of 2012 (720 ILCS 5/11-1.40(b)(1.2) (West 2018)) where the defendant was convicted of predatory criminal sexual assault of a child against two or more persons. This appeal followed.

¶ 40

II. ANALYSIS

¶ 41 On appeal, the defendant argues that the evidence presented was insufficient to sustain a conviction for predatory criminal sexual assault of a child on count VII. The defendant additionally argues that his rights were violated where the jury instructions failed to outline the specific separate acts of sexual penetration by the defendant in counts IV, V, VI, and VII.

¶ 42

A. Sufficiency of the Evidence

¶ 43 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. The standard for reviewing the sufficiency of the evidence is “ ‘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.’ ” (Emphasis in original.) *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318 (1979)). “It is the trier of fact’s responsibility to determine the witnesses’ credibility and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence; we will not substitute our judgment for that of the trier of fact on these matters.” *People v. Brooks*, 187 Ill. 2d 91, 132 (1999).

¶ 44 A jury found the defendant guilty of seven counts of predatory sexual assault of a child for incidents involving three children who were all seven or eight years old when the sexual assaults occurred. The defendant was convicted based on the testimony of the three minor victims at trial and through their video-recorded interviews at the CAC. Evidence demonstrated that A.L.P. and N.R.G. were together with the defendant and that he would perform similar acts on both children. The defendant only challenges the sufficiency of the evidence on one count, count VII, where the

information alleged that the defendant “touched the hand of A.L.P. with the defendant’s penis for the purpose of sexual gratification.”

¶ 45 According to section 11-1.40(a)(1) of the Criminal Code of 2012,

“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 2022).

¶ 46 The defendant relies on *People v. Currie*, 2023 IL App (2d) 220114, and argues that the evidence was insufficient to prove predatory criminal sexual assault on count VII because there was no “skin-to-skin” contact. Because the defendant had A.L.P. wear a yellow or clear glove touch the defendant’s bare penis, the defendant argues that he should have been charged with the lesser charge of aggravated criminal sexual abuse of a child under 13 (720 ILCS 5/11-1.6(c)(1)(i) (West 2022)).

¶ 47 “A person commits aggravated criminal sexual abuse if: (1) that person is 17 years of age or over and: (i) commits an act of sexual conduct with a victim who is under 13 years of age.” 720 ILCS 5/11-1.60(c)(1)(i) (West 2022). Sexual conduct is defined by the Code as:

“any 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 the accused, or any part of the body of a child under 13 years of age, or any transfer or transmission of semen by the accused upon any part of the clothed or unclothed body of the victim, for the purpose of sexual gratification or arousal of the victim or the accused.” 720 ILCS 5/11-0.1 (West 2022).

¶ 48 In *Currie*, the minor child testified at trial that they “both kept their clothes on,” and indicated multiple times during a CAC interview that the defendant had been wearing underwear. *Currie*, 2023 IL App (2d) 220114, ¶¶ 4, 13. The Second District in *Currie*, considered that aggravated criminal sexual abuse (720 ILCS 5/12-12(e) (West 2000)) can occur through clothing,

but predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2018)) is silent on this issue. *Currie*, 2023 IL App (2d) 220114, ¶ 41. *Currie* considered the two statutory provisions together and determined that “the inclusion of the phrase ‘through clothing’ in the aggravated criminal sexual abuse statute and not in the predatory criminal sexual assault of a child statute implies that predatory criminal sexual assault of a child cannot be done through clothing.” *Currie*, 2023 IL App (2d) 220114, ¶ 41. The Second District concluded that the State was required to prove “skin-to-skin” contact for the charge of predatory criminal sexual assault of a child. *Currie*, 2023 IL App (2d) 220114, ¶ 42.

¶ 49 The term “contact” has been interpreted to mean “any touching” based on the plain language of the statute. *People v. Kitch*, 2019 IL App (3d) 170522, ¶ 51. Our supreme court determined that “contact” in the context of the predatory criminal sexual assault of a child requires “direct contact between the sex organ or anus of one person and any part of the body of another.” *People v. Johanson*, 2024 IL 129425, ¶ 12.

¶ 50 *Johanson* considered the difference between predatory criminal sexual assault of a child and aggravated criminal sexual abuse, stating:

“The plain language of these statutes demonstrates a clear difference between the two offenses. Although both require the victim to be under the age of 13, aggravated criminal sexual abuse concerns any touching or fondling for purposes of sexual gratification or arousal, whereas predatory criminal sexual assault of a child requires direct contact with the sex organ or anus. While acts that satisfy the contact element of predatory criminal sexual assault of a child also satisfy the element of sexual conduct, the opposite is not always true.

For example, a defendant who massages the back of a naked six-year-old for purposes of sexual gratification can be convicted of aggravated criminal sexual abuse, but without an allegation that the touching concerned a sex organ or anus, the defendant cannot also be convicted of predatory criminal sexual assault of a child.” (Internal quotation marks omitted.) *Johanson*, 2024 IL 129425, ¶ 14.

Johanson additionally considered that “the legislature could have reasonably believed that contact between the sex organ or anus of the defendant and a child victim required a more severe penalty.” *Johanson*, 2024 IL 129425, ¶ 14. *Johanson* distinguished predatory criminal sexual assault from aggravated criminal sexual assault based on whether there was “direct contact with the sex organ or anus.” *Johanson*, 2024 IL 129425, ¶ 14.

¶ 51 In this case, the evidence demonstrated that A.L.P. was directed by the defendant to touch his bare penis. During A.L.P.’s CAC interview, A.L.P. stated that the defendant wanted her to touch his body and that he “kept telling me to, and I just did, had to do it at least once.” The defendant found yellow gloves for A.L.P. to wear when she made direct contact with the defendant’s penis. A.L.P. described the gloves used and law enforcement found what appeared to be yellow latex gloves in the defendant’s home.

¶ 52 Interpreting the predatory criminal sexual assault statute to require a finding of skin-to-skin contact in every case would produce an absurd result. For example, a defendant would be able to avoid conviction of predatory criminal sexual assault of a child by wearing a condom. We consider the yellow or clear gloves used when touching the defendant’s penis was more akin to wearing a condom, than what was found to be less offensive contact through clothing, as discussed in *Currie*. See *Currie*, 2023 IL App (2d) 220114, ¶ 41.

¶ 53 Thus, we must conclude that a child under 13, given what appeared to be latex gloves to make direct contact with the defendant’s sex organ for his sexual gratification is sufficient to find the defendant guilty of predatory criminal sexual assault of a child. We affirm the defendant’s conviction on count VII.

¶ 55 We turn next to the defendant’s argument that the jury instructions were insufficient. A defendant is entitled to “ ‘a jury determination that [he] is guilty of every element of the crime with which he is charged, beyond a reasonable doubt.’ ” *Apprendi v. New Jersey*, 530 U.S. 466, 477 (2000) (quoting *United States v. Gaudin*, 515 U.S. 506, 510 (1995)). The defendant argues that this right was violated where four instructions omitted a description of the specific acts committed by the defendant.

¶ 56 “The function of jury instructions is to convey to the jurors the law that applies to the facts so they can reach a correct conclusion.” *People v. Hopp*, 209 Ill. 2d 1, 8 (2004). A jury instruction should not be confusing or misleading. *People v. Herron*, 215 Ill. 2d 167, 187-88 (2005). “ ‘We must determine whether the instructions, taken as a whole, fairly, fully, and comprehensively apprised the jury of the relevant legal principles.’ ” *People v. Hartfield*, 2022 IL 126729, ¶ 51 (quoting *People v. Parker*, 223 Ill. 2d 494, 501 (2006)). Illinois Pattern Jury Instructions shall be used in criminal cases, unless the circuit court determines that the instruction “does not accurately state the law.” Ill. S. Ct. R. 451(a) (eff. Apr. 8, 2013). *De novo* review is applied when considering whether the applicable law was correctly conveyed by the instructions to the jury. *People v. Fonder*, 2013 IL App (3d) 120178, ¶ 19.

¶ 57 A defendant who fails to object to an alleged error at trial and fails to raise the issue in a posttrial motion, does not preserve an issue for appeal. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). The defendant acknowledges that the jury instruction issue was forfeited and seeks plain error review.

¶ 58 “The plain error rule is a well-established exception to forfeiture principles, allowing reviewing courts discretion to excuse a defendant’s procedural default.” *People v. Moon*, 2022 IL

125959, ¶ 19. A court of review may examine forfeited errors when clear or obvious error occurred and (1) the evidence is so closely balanced the error alone “threatened to tip the scales of justice against the defendant” or (2) the error is so serious it affected the fairness of the trial and challenged the integrity of the judicial process. *People v. Belknap*, 2014 IL 117094, ¶ 48. “Under both prongs of the plain-error doctrine, the defendant has the burden of persuasion.” *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). “The first step of any plain error review is to determine whether any error occurred at all.” *In re N.H.*, 2016 IL App (1st) 152504, ¶ 76.

¶ 59 To sustain a charge of predatory criminal sexual assault of a child according to IPI Criminal 11.104 states:

“*First Proposition*: That the defendant [(intentionally) (knowingly) (recklessly)] committed [(an act of contact, however slight, between the [(sex organ) (anus)] of one person and the part of the body of another for the purposes of [(sexual gratification) (arousal)] of _____) (sexual penetration with ____)].

Second Proposition: That the defendant was 17 years of age or older when the act was committed; and

Third Proposition: That ____ was under 13 years of age when the act was committed.”

¶ 60 In this case, the first proposition in the jury instructions read as follows:

Count IV: “*First Proposition*: That the defendant knowingly committed an act sexual penetration with [N.R.G.]”

Count V: “*First Proposition*: That the defendant knowingly committed 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 purposes of sexual gratification of the defendant.”

Count VI: “*First Proposition*: That the defendant knowingly committed an act of sexual penetration with [A.L.P.]”

Count VII: “*First Proposition*: That the defendant knowingly committed 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 purposes of sexual gratification of the defendant.”

The third proposition for counts IV and V identified N.R.G. and counts VI and VII identified A.L.P. for the proposition that the child “was under 13 years of age when the act was committed.” Therefore, the jury instructions identified which count was applicable to a particular child.

¶ 61 The defendant relies on *People v. Cardamone*, 381 Ill. App. 3d 462 (2008) and argues that the jury should have been instructed to unanimously find defendant guilty beyond a reasonable doubt as to each charged act. In *Cardamone*, there were over two dozen charges of sex offenses committed by a gymnastics coach against 14 different gymnasts, and between 158 and 257 uncharged acts. *Cardamone*, 381 Ill. App. 3d at 464, 491. The defendant relies on the following quote from *Cardamone*,

“The jury received separate instructions for each complainant and for each crime pertaining to that complainant. ***. Nevertheless, while the instructions set forth the elements of the charges and the general instruction that the jury had to find the elements of each crime beyond a reasonable doubt, the instructions did not, for example, provide *** a description of the conduct charged such that it was clear that the jury had to unanimously find that all elements were proved regarding charged allegations. *** As a result, one or more jurors could have convicted defendant of other crimes.” *Cardamone*, 381 Ill. App. 3d at 499.

Notably, the defendant is disingenuous in his argument as *he omitted* the following sentence, “We do not hold that specificity regarding dates or a description of the conduct was required.” See *Cardamone*, 381 Ill. App. 3d at 499.

¶ 62 The defendant also relies on *People v. Filipiak*, 2023 IL App (3d) 220024. The defendant in *Filiapiak* was charged with two counts based on the same type of sexual contact (finger in the vagina) committed at two different times against the same victim. The jury instructions did not differentiate between the two counts, and the jury did not receive an instruction that they needed to be unanimous as to the specific conduct for each count. *Filiapiak*, 2023 IL App (3d) 220024, ¶ 9. *Filiapiak* noted that when the evidence supports multiple counts of the same offense, that the jury instructions must be tailored to differentiate the counts. *Filiapiak*, 2023 IL App (3d) 220024, ¶ 17.

Filipiak suggested that “to avoid the unanimity issue here, the State could have specified in the verdict forms which count related to which specific conduct.” *Filipiak*, 2023 IL App (3d) 220024, ¶ 18.

¶ 63 We find *Filipiak* factually distinguishable from this case. The instructions for the charges related to M.L.M. based on IPI Criminal 11.104 IPI included additional descriptive language for the three predatory criminal sexual assault charges involving sexual penetration. The descriptive language was not included for charges regarding N.R.G. and A.L.P. because the charges related to these children were for different types of sexual conduct. The jury verdict forms identified the name of the minor child associated with each of the seven counts. The jurors were also instructed that a verdict must be unanimous, and the jury returned unanimous guilty verdicts on each of the seven counts of predatory criminal sexual assault of a child.

¶ 64 Accordingly, the circuit court did not err where there was sufficient identifying information that provided the jury with a basis on which to find the defendant guilty beyond a reasonable doubt as to each child, based on different conduct. IPI Criminal 11.104 does not require descriptive language of the defendant’s conduct, and the defense did not offer instructions with additional language at trial. The circuit court does not have an obligation to give an instruction *sua sponte* where the defendant failed to offer an instruction that included specified acts of physical conduct. *People v. Musitief*, 201 Ill. App. 3d 872, 877 (1990). Thus, the defendant has not demonstrated plain error, as no error occurred.

¶ 65 III. CONCLUSION

¶ 66 For the foregoing reasons, the judgment of the circuit court of Franklin County is affirmed.

¶ 67 Affirmed.