NOTICE
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2016 IL App (5th) 140256-U

NO. 5-14-0256

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party 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,	)	Edwards County.
	)	
v.	)	No. 12-CF-52
	)	
MATTHEW W. MARTIN,	)	Honorable
	)	David K. Frankland,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE SCHWARM delivered the judgment of the court.
Justices Cates and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's judgment convicting the defendant on two counts of predatory criminal sexual assault of a child and two counts of criminal sexual assault of a child is affirmed where there is sufficient evidence to show separate acts supporting all four counts.

¶ 2 On December 7, 2012, the defendant, Matthew W. Martin, was arrested in Albion. That same day, a felony information was filed charging the defendant with two counts of predatory criminal sexual assault of a child and two counts of criminal sexual assault of a child. Count I alleged that, when the defendant was 17 years of age or older and S.M. was under 13 years of age, the defendant placed his mouth on the vagina of S.M. Count II alleged that, when the defendant was 17 years of age or older and S.M. was under 13

years of age, the defendant placed his penis in the vagina of S.M. Count III alleged that the defendant placed his mouth on the vagina of S.M., a family member who was under the age of 18. Count IV alleged that the defendant placed his penis in the vagina of S.M., a family member who was under the age of 18. On March 19, 2013, the defendant filed a waiver of trial by jury.

¶ 3 On May 13, 2013, the court held a bench trial on the charges. Shauna M. Mark, S.M.'s mother, testified. She stated that S.M. was born on December 9, 1997, and that the defendant had been born on November 4, 1971. She further identified the defendant as S.M.'s father. Mark stated that S.M. typically stayed with her. However, S.M. would stay with the defendant every other weekend. Mark detailed the residences in Albion where S.M. would stay with the defendant. She stated that, when S.M. was eight, the defendant lived in "the green trailer on Pine Street." She stated that the defendant later "moved to Elm Street into an apartment with his sister." She clarified that this residence "was a house that was made into apartments." Mark testified that S.M. was "[t]en, maybe 11" when the defendant lived at this residence. She stated that the defendant then "moved to his mother's on 204 Connie Drive," where he stayed in "an enclosed garage *** a garage that was turned into a room." She testified that S.M. was "12 maybe" and definitely under 13 when the defendant lived at this address. Mark testified that the defendant later "moved to a blue house on the corner of Second Street" and that S.M. would have been 12 at the time of this move. She testified that the defendant had finally "moved into a trailer on Industrial Boulevard." Mark testified that the last time S.M. visited the defendant was "around November 7th or 14th."

¶ 4 S.M. also testified at the trial. S.M. stated she was 15 at the time of the trial. She identified the defendant as her father. She stated that, when she was "about eight," the defendant "lived in the bluish, green trailer on Pine Street." She testified that the defendant next lived in "the apartment house on Elm" with "[her] Aunt Chris." She testified that when she was "[a]bout 10 to 12," the defendant lived "with his mom and his mom's boyfriend *** in an enclosed garage." She testified that "it all started" while the defendant was living at this address. S.M. testified that the defendant then "moved to 205 North Second Street," which was "a big blue house," where he lived while S.M. was "[a]bout 12 to 14." She testified that the defendant later moved to Industrial Drive. She testified that all of these residences were in Albion.

¶ 5 S.M. testified that she understood "sex" to mean "someone puts their penis in the vagina." She testified that she understood "oral sex" to mean "[w]hen the mouth is on the penis or the vagina." She testified that she had engaged in these acts with the defendant. She testified that this began "[w]hen [she] was about eight" and happened for the final time in November of 2012 "[a]round [the defendant's] birthday weekend." She testified that this final time occurred "[a]t the blue house on North Second Street." S.M. testified that she would visit the defendant "every other weekend." She testified that, while at 204 Connie Drive, the defendant "would tell [her] that we would play house. And that he would start taking [her] clothes off, and he put his penis in [her] vagina." She testified that "sometimes he would put his mouth on [her] vagina and then he would start in." She testified that this happened more than one time while at 204 Connie Drive "[i]n the enclosed garage, which was his bedroom." She testified that this occurred "[o]n the bed,"

which was "a futon," and testified that the bed "had sheets on it once and then it didn't." S.M. testified that the defendant would ejaculate "on me or on the bed." She testified that the defendant "put a lock on the door" before this would happen. She testified that this would last for "about 10 to 20 minutes maybe" and would occur "[p]ossibly three times" over the course of a weekend visit. She testified that she did tell the defendant she did not want to have sex. When she did, "[the defendant] told [her] that if [she] did, he would give [her] money *** or he would put gas in the four-wheeler so [they] could go out riding." She testified that she was "[a]bout 10 to 12" at the time. She testified that she knew she was around 10 at the time because, when she was 10, "[the defendant] had the S-10 running" at 204 Connie Drive.

¶ 6 S.M. testified that while at the blue house on 205 North Second Street, the defendant continued to engage in sex with her. She stated that this would take place in the bedroom with the doors closed. She testified that the defendant put his penis in her vagina and put his mouth on her vagina. She testified that this occurred on the same bed that was used at 204 Connie Drive. She testified that she would have been "[t]welve to 14" when this occurred. She testified that she knew she was in this age range because "[w]hen [she] was 13, [she] had a birthday party at the blue house." She testified that the last time she had sex with the defendant was in November of 2012 at the blue house. She testified that it would have been around November 4, 2012, because "[i]t was [the defendant's] birthday."

¶ 7 Detective Rick White of the Illinois State Police also testified at the trial. White testified that he had observed an interview with S.M. prior to December 6, 2012. He

testified that he interviewed the defendant on December 6, 2012, "to get his side of the story." White testified that he picked up the defendant from his job, drove him to the courthouse, and interviewed him in the law library. White testified that he "read [the defendant] the Illinois State Police statement of constitutional rights and waiver form, and he initialed each line and signed it." He testified that the defendant was not in handcuffs or otherwise restrained. White testified that "[he] asked [the defendant] if he knew what [White] was there to talk about, and he said that he had heard that his daughter *** was making some accusations that he had touched her inappropriately." White testified that he told the defendant S.M. had said they had engaged in sexual intercourse, to which the defendant "kept saying 'I don't remember. I don't remember that happening.' " White testified that the defendant "didn't say that he didn't do it or that his daughter was lying." White testified that he asked the defendant "how it all got started with his daughter," and the defendant claimed that "it started when she was eight years old" and the defendant "woke up one night and she was humping my leg." White testified that the defendant claimed S.M. has "always been very developed. She developed early." White testified that at one point, the defendant "stood up and pointed out the window *** and he said when we were living over at my sister's *** he would wake up and she would have her vagina on his penis." White said that, when he asked about the times when the defendant woke up like this, the defendant told him "they were in the missionary position, so that would have been him on top of his daughter." White stated that the defendant "thought it was about 13 when she actually started putting her vagina on his penis," and the defendant further admitted to performing oral sex on S.M.

White testified that the defendant "was very adamant that he never, ever forced his daughter to engage in sexual activity with him" and that "he always told her any time you want to stop, just say stop and I will stop." White testified that the defendant said "he didn't use protection" and instead would "ejaculate on the mattress, which didn't have a sheet on it" or onto a rag. White testified that the defendant said the last time he had sexual intercourse with S.M. was "[t]he weekend of his birthday," which was on November 4, 2012.

¶ 8 White testified that the defendant said "that the reason he lied was just because *** [h]e's afraid to go to jail *** charged with something like this." White testified that the defendant wanted to "apologiz[e] to his daughter *** face-to-face, and *** explain it wasn't her fault but they could never have sex again." White testified that the defendant further stated "he was going to make sure it didn't happen by not sleeping in the same bed with her." White testified that, after this interview, he took the defendant back to work and dropped him off. White testified that he arrested the defendant "the very next day."

¶ 9 The defendant's counsel moved for a directed verdict, arguing that the evidence presented contained "nothing with enough specificity *** to pass that test of reasonable doubt." The court denied the motion, at which point the defendant testified. The defendant testified that he was 41 years old at the time of the trial. The defendant testified that "[n]ot never have I touched my daughter in that way." Instead, the defendant testified that White "assumed and accused [the defendant] of it," which, due to the defendant being "in a state of mind, aggravated, depressed *** [the defendant] probably said *** I did that or something in that manner." The defendant testified that he

was not surprised by the allegations because his mother and brother had warned him that S.M. was making these allegations. The defendant speculated that S.M. had made up the allegations to punish him for refusing to let her meet an older boy and that he had heard S.M. tell others that "she was very aggravated with [the defendant]." The defendant testified that the sexual encounters "never happened in none of these *** places," that there was always someone else present when he was around S.M., and that S.M. had never made similar allegations before. The defendant admitted that none of his other family members slept in the same bedroom as him.

¶ 10 On cross-examination, the defendant testified that he told White "I do not remember doing anything like that" but "[the defendant] didn't say I didn't do it." The defendant admitted that he and S.M. had slept in the same bed "[f]or a time *** [until] she was *** probably about 10 or 11." The defendant further admitted that he always slept in the same room as S.M. with the door closed, and no one else would be in the room. The defendant testified that he had told White that S.M. had "humped [his] leg when she was eight years old," but he further stated that he never told White that S.M. ever "put her *** vagina on [the defendant's] penis" and that White "already had it in his mind that that's what [the defendant] did." The defendant testified that he "didn't say that [he] would perform oral sex on [S.M.] prior to intercourse." The defendant testified that he only confessed due to "[his] aggravation, and angerness *** and stuff like that" because White "was already telling [the defendant] that's what [the defendant] did." The defendant admitted that he did not feel threatened by White "[o]ther than his words."

¶ 11 During closing arguments, the State stressed that S.M.'s ability to "[go] through every place that she lived from the time of being eight years old to present day, and what happened at each of those places to the best of her memory," coupled with corroboration by both Mark's testimony and White's testimony, proved the defendant's guilt beyond a reasonable doubt on all counts. The defendant's counsel argued that the lack of any evidence beyond witness testimony, along with the lack of specificity of S.M.'s testimony, showed that there was insufficient evidence to find the defendant guilty beyond a reasonable doubt.

¶ 12 At the end of the trial, the court issued an oral ruling. In making its ruling, the court noted that, for count I and count II, the State needed to prove beyond a reasonable doubt that the defendant knowingly or intentionally committed an act of sexual penetration with S.M., that the defendant was over the age of 17 when the act was committed, and that S.M. was under the age of 13 when the act was committed. For count III and count IV, the court noted that the State must prove the defendant was a family member of S.M., that he committed an act of sexual penetration with S.M., and that S.M. was under the age of 18 when the act was committed. The court noted that, with regards to count III and count IV, "[t]here's no issue" because "[t]he Defendant was over the age of 18." The court later clarified that "[a]s to Counts [III] and [IV], the issue there was S.M. being under the age of 18, which she clearly was." The court noted that "in Counts [I] and [II], it is alleged that from December 9, 2005, until the 7th day of December, 2012, *** that offense was committed." The court held that any offenses on December 7, 2012, could not support count I or count II "because the child would have

been over the age of 13." Therefore, the court stated it "[had] to make the finding beyond a reasonable doubt as to the time period when the child was under 13 as to Counts [I] and [II]."

¶ 13 The court found that, based on the testimony of S.M., Mark, and the defendant, the State had "established the different places the Defendant lived, starting with a bluish, green trailer on Pine Street [when] S.M. was 8 or 9, and moving to [an] Elm Street apartment where he lived with his sister [when S.M.] was 9 or 10." The court found that the defendant then moved "to Connie Drive with the Defendant's mother and the enclosed garage when the minor was 12. [He t]hen [moved] to the blue house on the corner of Second Street when the minor was 12 plus, and then to Industrial Boulevard." The court found that "S.M.'s story or testimony is direct. She is clear as to what happened and where it happened and, in many respects, what she says is corroborated by the Defendant." The court found that "Detective White through his testimony is credible, believable, stated that the Defendant was adamant that no force or threats were utilized against S.M. to accomplish these acts, and S.M. confirmed *** that he used no force or threats against her other than bribing her." The court found that there was "oral sex by the Defendant to S.M." The court explicitly found that, "even though the time period covers a time period when the child wasn't 13, *** the acts occurred at a time when the child was under the age of 13." Based on the evidence, therefore, the court "[found] beyond a reasonable doubt that Defendant is guilty of each and every count as charged." On May 13, 2013, the circuit court confirmed its oral ruling in a docket entry. On June 5, 2014, the defendant filed timely notice of appeal.

¶ 14 ANALYSIS

¶ 15 The defendant does not appeal his convictions under count I and count II. The defendant argues, however, that the circuit court violated the one-act, one-crime doctrine by convicting him on count III and count IV as well. The defendant argues that the circuit court used the same physical acts to find the defendant guilty on count I and count II as it did on count III and count IV. Therefore, the defendant argues his convictions under count III and count IV should be vacated.

¶ 16 "Prejudice results to the defendant only in those instances where more than one offense is carved from the [same] physical act." *People v. King*, 66 Ill. 2d 551, 566 (1977). "The one-act, one-crime doctrine involves a two-step analysis. [Citation.] The first step is to determine whether the defendant's conduct involved multiple acts or a single act. [Citation.] If the defendant's conduct consisted of a single act, multiple convictions are improper. [Citation.] If the defendant's conduct involved multiple acts, then the second step of the analysis is to determine whether any of the offenses are lesser included offenses. [Citation.] If an offense is a lesser included offense, then multiple convictions are improper." *People v. Betance-Lopez*, 2015 IL App (2d) 130521, ¶ 56 (citing *People v. Miller*, 238 Ill. 2d 161, 165 (2010)). An "act" for purposes of this doctrine " 'is intended to mean any overt or outward manifestation which will support a different offense.' " *Miller*, 238 Ill. 2d at 165 (quoting *King*, 66 Ill. 2d at 566). "Whether a defendant has been improperly convicted of multiple offenses based upon the same act and whether a charge encompasses another as a lesser-included offense are questions of law that this court reviews *de novo*." *People v. Nunez*, 236 Ill. 2d 488, 493 (2010).

¶ 17 The defendant admits that his trial counsel did not raise the issue of the one-act, one-crime doctrine as an issue at trial or in a posttrial motion. However, the Illinois Supreme Court recognizes that "a one-act, one-crime violation *** qualif[ies] for review under the second prong of the plain-error rule," under which "a court may disregard forfeiture where a clear or obvious error occurs and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *People v. Artis*, 232 Ill. 2d 156, 165 (2009). Therefore, we may review the defendant's claim of error despite his failure to raise it earlier in the proceedings.

¶ 18 The defendant argues that the circuit court failed to make findings of fact regarding counts III and IV (criminal sexual assault) beyond finding that S.M. was under 18. The defendant argues that the circuit court only made detailed findings with regards to counts I and II (predatory criminal sexual assault of a child) before finding the defendant guilty on all four counts. Therefore, the defendant argues, the circuit court relied on the same acts for all charges, and his convictions under counts III and IV (which the defendant considers to be lesser offenses) should be vacated.

¶ 19 Count I and count II of the information were for predatory criminal sexual assault of a child. "A person commits predatory criminal sexual assault of a child if that person commits an act of sexual penetration, is 17 years of age or older, and the victim is under 13 years of age." 720 ILCS 5/11-1.40(a)(1) (West 2012). Count I alleged that the defendant placed his mouth on the vagina of S.M., while count II alleged that the defendant placed his penis in the vagina of S.M. Count III and count IV of the information were for criminal sexual assault. "A person commits criminal sexual assault

if that person commits an act of sexual penetration and is a family member of the victim, and the victim is under 18 years of age." 720 ILCS 5/11-1.20(a)(3) (West 2012). Count III alleged that the defendant placed his mouth on the vagina of S.M., while count IV alleged that the defendant placed his penis in the vagina of S.M. In order to prove that the defendant was guilty on these counts, the State must present sufficient evidence for each count, meaning that " '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. Sanchez*, 2013 IL App (2d) 120445, ¶ 18 (quoting *People v. Collins*, 106 Ill. 2d 237, 261 (1985)). "In assessing the sufficiency of the evidence, we do not retry the defendant, reweigh the evidence, or substitute our judgment for that of the trier of fact regarding the credibility of a witness." *Id*.

¶ 20 The defendant argues that, because the circuit court made extensive oral findings regarding counts I and II but made few oral findings regarding counts III and IV, the circuit court relied on the same acts for all four counts and, therefore, counts III and IV must be vacated under the one-act, one-crime doctrine. "However, in a bench trial, a court's failure to make specific findings of fact does not constitute reversible error where the evidence sustains the court's decision." *People v. Brent*, 175 Ill. App. 3d 459, 463 (1988). "The trier of fact in a bench trial is not required to mention everything−or, for that matter, anything–that contributed to its verdict." *People v. Curtis*, 296 Ill. App. 3d 991, 1000 (1998). "If the record contains facts that support the trial court's finding, the reviewing court may consider those facts to affirm the finding, even if the trial court did

not state specifically that it relied on them." *People v. Mandic*, 325 Ill. App. 3d 544, 546-47 (2001). Further, "the testimony of a single witness, if positive and credible, is sufficient to convict, even though it is contradicted by the defendant." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009).

¶ 21 The court, in making its ruling, found both S.M. and White to be credible witnesses. Therefore, if either S.M. or White testified regarding an act that could support counts III and IV but not counts I and II, then the circuit court had sufficient evidence to convict the defendant on counts III and IV without violating the one-act, one-crime doctrine. S.M. testified that the final time the defendant engaged in both oral and penile intercourse with her was in November of 2012 "[a]round [the defendant's] birthday weekend." White testified that the defendant said the last time he had sexual intercourse with S.M. was "[t]he weekend of his birthday," which was on November 4, 2012. The testimony at trial further showed that the defendant was S.M.'s father and that S.M. would have been 14 during the weekend of November 4, 2012. Thus, the evidence showed that the sexual acts occurring on or around November 4, 2012, were sufficient to support the circuit court's verdict on counts III and IV, because the defendant was a family member of S.M., the defendant engaged in both oral and penile intercourse with S.M., and S.M. was under the age of 18 at the time the acts were committed. However, the sexual acts occurring on or around November 4, 2012, could not support the defendant's convictions under count I or count II because S.M. was over the age of 13 at that time. Therefore, because counts III and IV were supported by evidence of acts

separate from the circuit court's oral findings, the circuit court's verdict finding the defendant guilty on both counts is affirmed.

¶ 22 CONCLUSION

¶ 23 For the reasons stated, we affirm the decision of the circuit court of Edwards County.

¶ 24 Affirmed.