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FIRST DIVISION
FILED: December 28, 2012

No. 1-11-2083

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07 CR 12001
	)	
SHAUN BRAME,	)	Honorable
	)	Angela Munari Petrone,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

O R D E R

¶ 1 Held: The defendant's conviction for criminal sexual assault based on accountability was reversed where the principal did not commit the offense. However, the defendant's conviction for indecent solicitation of an adult was affirmed, where other-crimes evidence was not improperly admitted, he was not prejudiced by his counsel's failure to propose an accomplice witness jury instruction, he forfeited an objection to the prosecution's closing argument, and the trial court did not rely on an improper sentencing factor.

¶ 2 The defendant, Shaun Brame, appeals from his jury trial convictions and subsequent sentence for criminal sexual assault based on an act of sexual penetration on a family member under 18 years of age (720 ILCS 5/12-13(a)(3) (West 2004)) and indecent solicitation of an adult (720 ILCS 5/11-6.5(a)(1)(ii) (West 2004)). On appeal, the defendant argues that (1) his criminal sexual assault conviction must be reversed because the act of penetration was not committed by a family member;

(2) his trial was rendered unfair by the admission of improper other-crimes evidence; (3) he received ineffective assistance of counsel because his attorney failed to request that the jury be instructed to view his accomplice's statement with suspicion; (4) his convictions were tainted by the prosecution's improper closing argument; and (5) his sentences were excessive. For the reasons that follow, we reverse the defendant's criminal sexual assault conviction and sentence, but we affirm his conviction and sentence for indecent solicitation of an adult.

¶ 3 The complainant, the defendant's biological daughter, testified as the State's first witness at trial. She testified that she was 15 years old in July 2005. She recalled that, one night during that month, she and the defendant viewed a movie and then "drove around" while smoking marijuana and drinking alcohol. At some point, she said, the defendant told her to go to the back seat of the car, drove her to an area known for prostitution, and "pretty much told [her] that either he was going to [have oral sex with her] or [she] was going to have to choose somebody to do it." The complainant testified that the defendant then summoned a prostitute to the car and "asked, did she do females." When the prostitute responded affirmatively, the two talked, and then the defendant "told [the complainant] to *** take one pant leg out." The prostitute then performed oral sex on the complainant for "[a]bout 15 minutes," while the complainant cried and the defendant held her hand. The complainant testified that the defendant later convinced her not to relay the story to her mother; he told her that she would not be believed and that she was culpable because she had used marijuana with him. She said that she ran away from home approximately one year later, then contacted her aunt.

¶ 4 The State next introduced the deposition testimony of Mariann Partridge, a deceased witness. In her deposition, Partridge stated that she worked as a prostitute in July 2005. She recalled encountering a man who drove up to her with a girl in his car and asked her to perform sexual acts on the girl. Partidge testified that she may have fondled the girls breasts and nothing more, but she said that another prostitute entered the car afterwards. Partridge denied having told prosecutors in a previous interview that she performed oral sex on the girl. Partridge acknowledged having

identified the defendant as the man whom she encountered, but, during her deposition, she stated that the identification photograph did not resemble the defendant. She also acknowledged having signed a written statement for police, but she stated that the prosecutor who wrote out the statement "ad libbed" some elements of it. The written statement indicated that Partridge performed oral sex on the girl. The prosecutor who took Partridge's statement testified at the trial that the written statement matched Partridge's oral statements during an interview.

¶ 5 The complainant's aunt testified that the complainant contacted her in Ocotber 2006 and that the complainant told her something that led to her contacting the complainant's mother and, eventually, police. Detective Pamela Childs-Laughlin testified that she began investigating this case in October 2006. She said that she interviewed the complainant's aunt, whom she characterized as an "outcry witness," as well as Partridge. She testified that she also interviewed the defendant in October 2006, but, when she attempted to re-interview him in late November, she was unable to locate him. She eventually learned that the defendant had gone to California, and she had him extradited to Illinois.

¶ 6 The State's next witness, S.T., testified that, in 1994, when she was six years old and living with the defendant, the defendant blindfolded her, had her open her mouth, and then guided her head down so that she was performing oral sex on him. S.T. testified that the defendant had her perform oral sex on him several times afterwards, until the day she told her mother about the incidents. The State rested its case after S.T.'s testimony, and the defendant presented no testimony.

¶ 7 During the State's closing rebuttal argument, the prosecutor made the following statement to the jury:

> "[Y]ou can't attack the fact that after being interviewed by the Chicago police detectives in October of 2006, where does the defendant go, he goes to sunny California. That is circumstantial evidence of guilt right there."

After the trial court overruled a defense objection, the prosecutor continued:

> "The evidence or the testimony of [the complainant] is enough by itself to convict.

> *** [B]ut we have more. And the fact that this defendant, who knew that [he] was a suspect in this case fled to California is circumstantial evidence of guilt."

For her part, defense counsel used part of her closing argument to attempt to discredit Partidge's statement. Counsel argued that Partidge made the statement only after extended time in police custody and thus that she made the statement in hopes of being set free. Counsel also noted that Partridge was not charged in this case.

¶ 8 After closing arguments, the case was submitted to the jury. Defense counsel had argued for a jury instruction stating that the testimony of witnesses with drug addictions (such as Partridge) should be viewed warily, but the court declined to tender the instruction. Counsel sought no instruction stating that testimony of accomplices should be viewed with suspicion. Following deliberation, the jury returned a verdict finding the defendant guilty, on an accountability theory, of criminal sexual assault of a family member. The jury also found him guilty of indecent solicitation of an adult.

¶ 9 In announcing the defendant's sentence, the trial court found several aggravating factors, among them:

> "The defendant's conduct did cause or threaten serious harm. It caused serious emotional harm to his daughter, and he caused serious physical harm to the proof of other crimes [witness, S.T., whom he had infected with a sexually transmitted disease.]

With respect to the criminal sexual assault conviction, the trial court also noted that the defendant held a position of trust or supervision over the complainant. After considering these factors, the trial court sentenced defendant to consecutive 15-year terms of imprisonment for his two convictions. The defendant now appeals.

¶ 10 The defendant's first argument on appeal is that his conviction for criminal sexual assault of a family member cannot stand, because the actual assault was not perpetrated by a family member. As a prefatory matter, we agree with the defendant that we must review this issue de novo. The State points out, correctly, that we must review challenges to the sufficiency of evidence by considering

whether, after considering all of the evidence in a light most favorable to the prosecution, any rational trier of fact could have found all of the elements of the crime to have been proven beyond a reasonable doubt. People v. Collins, 214 Ill. 2d 206, 217, 824 N.E.2d 262 (2005). However, the defendant all but concedes the sufficiency of the evidence to support the State's theory of the case here; his argument is that, as a matter of law, he could not be convicted of the charged offense under the State's theory. This argument asks us to interpret the charged offense, not the evidence. That is, the defendant asks us to resolve an issue of law, not an evidentiary dispute. See People v. Smith, 191 Ill. 2d 408, 411, 732 N.E.2d 513 (2000) (argument that does not challenge the evidence, but asks the court to interpret a statute, presents a question of law). We review such questions de novo. Smith, 191 Ill. 2d at 411; People v. Chirchirillo, 393 Ill. App. 3d 916, 921, 913 N.E.2d 635 (2009).

¶ 11 On its merits, the defendant's first argument is straightforward and persuasive. The defendant observes that he was convicted of criminal sexual assault predicated on an attack on a family member. The relevant statute defines that offense as follows:

> "The accused commits criminal sexual assault if he or she:
>
> * * *
>
> (3) commits an act of sexual penetration with a victim who was under 18 years of age when the act was committed and the accused was a family member." 720 ILCS 5/12-12(a)(3) (West 2004).

The State agrees that the defendant did not himself perform an act of sexual penetration with the complainant, but it argues that he could nonetheless be convicted of this form of sexual assault based on a theory of accountability. Under Illinois law, a person is legally accountable for another's criminal conduct when, "[e]ither before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid such other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2004); see Chirchirillo, 393 Ill. App. 3d at 922. The evidence certainly established that the defendant aided and solicited Partridge's sexual assault on the claimant, who was under 18 years of age. However, the

sexual assault charge at issue criminalizes acts of sexual penetration of minors by family members. The defendant's argument is that, since Partridge was not the complainant's family member, she did not commit the offense, and he cannot have been an accomplice to an offense that was not committed.

¶ 12 The defendant's argument finds direct support in our precedents, and in longstanding tenets of criminal law. For example, in People v. Griffin, 247 Ill. App. 3d 1, 616 N.E.2d 1242 (1993), the defendant was convicted of, among other things, criminal sexual assault based on an act of sexual penetration by someone over 17 years old against a victim less than 13 years old. The State's theory of the case was that the defendant had facilitated sexual assaults perpetrated by two other men, Calhoun and Jackson. The trial court's instruction to the jury informed them that the defendant could be found guilty of the sexual assaults if he, or one for whose conduct he was accountable, was 17 years of age or older and the victim was under 13. Griffin, 247 Ill. App. 3d at 14. We concluded that the accountability instruction was erroneous:

> "It is hornbook law that one cannot be held vicariously liable for an act committed by others which did not constitute an offense at the time of its commission. [Citations.] Consequently, if Calhoun and/or Jackson were under the age of 17, no illegal conduct occurred for which defendant could have been criminally responsible." Griffin, 247 Ill. App. 3d at 15.

We have since applied this reasoning several times to hold that a felon could not be convicted of unlawful possession of a weapon by a felon based on his aiding someone who possessed a gun but was not shown to be a felon. Chirchirillo, 393 Ill. App. 3d at 925-26; People v. Gibson, 403 Ill. App. 3d 942, 950, 934 N.E.2d 611 (2010); People v. McIntyre, 2011 IL App (2d) 100889, ¶12-13. Thus, the law now stands in Illinois that, "[i]n order for a defendant to be found guilty under an accountability theory, the State must first establish a prima facie case against the principal." McIntyre, 2011 IL App (2d) 100889, ¶12 (citing Chirchirillo, 393 Ill. App. 3d at 925).

¶ 13 The State argues that these decisions are factually inapposite, but it offers no principled basis

why their statements of law, that an accomplice cannot be convicted of a crime that the principal did not commit, should not control our result. The State also asks that we depart from these decisions and announce a new rule of law, that an accomplice may be held liable for crimes not committed by his principal. We decline to do so, in deference both to stare decisis and to the principles upon which the current rule was originally based. Put simply, we agree with Illinois law that an accomplice should not be convicted of aiding a principal in committing a crime unless that principal actually committed the crime. For these reasons, we agree with the defendant that he could not be convicted, based on an accountability theory, of criminal sexual assault of a family member, and we reverse his conviction for that crime.

¶ 14 Anticipating this holding, the State asks that we substitute a conviction for another, uncharged offense: aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2004)). As the defendant observes, out of deference to a defendant's right to a jury trial, an appellate court can substitute a conviction that was not presented to a jury only where the jury's verdict necessarily included a finding of guilt on all of the elements of the new offense. Franks v. Alford, 820 F.2d 345, 347 (2nd Cir. 1987); see also Sullivan v. Louisiana, 508 U.S. 275, 279-80 ("to hypothesize a guilty verdict that was never in fact rendered–no matter how inescapable the findings to support that verdict might be–would violate the jury-trial guarantee.") The State would have us substitute a criminal sexual abuse conviction that requires the State to prove that he "committ[ed] an act of sexual penetration or sexual conduct with a victim who was at least 13 years of age but under 17 years of age and the accused was at least 5 years older than the victim." 720 ILCS 5/12-16(d) (West 2004). The defendant's conviction of criminal sexual assault demonstrates that a jury found beyond a reasonable doubt that the victim was under 18 years of age and that an act of sexual penetration occurred, but it does not require a showing that the perpetrator was at least 5 years older than the victim. See 720 ILCS 5/12-13(a)(3) (West 2004). Thus, the jury's verdict for the charged offense did not necessarily include a finding that all the elements of criminal sexual abuse had been proven beyond a reasonable doubt, and we cannot enter a conviction for that crime. Accordingly, we decline

the State's request to substitute a criminal sexual abuse conviction for the criminal sexual assault conviction we now reverse.

¶ 15 Because this holding leaves intact the defendant's conviction of indecent solicitation of an adult, and its related sentence, we must consider his remaining arguments on appeal. The defendant's second argument on appeal is that the trial court erred in allowing the State to present evidence of his assaults of S.T. in order to prove his propensity to commit this type of crime. In the defendant's view, this other-crimes evidence was insufficiently relevant to justify its admission, and its introduction to his case caused him unfair prejudice.

¶ 16 Evidence regarding a defendant's other crimes is normally inadmissible if offered to demonstrate the defendant's bad character or his propensity to commit crime. People v. Walston, 386 Ill. App. 3d 598, 609-10, 900 N.E.2d 267 (2008). However, section 115-7.3 of the Code of Criminal Procedure (Code) (725 ILCS 5/115-7.3 (West 2008)) provides an exception to this rule in prosecutions for certain sex-related crimes. Walston, 386 Ill. App. 3d at 610. In prosecutions for such crimes, "evidence of the defendant's commission of another offense or offenses [listed in the statute] *** may be admissible *** and may be considered for its bearing on any matter to which it is relevant." 725 ILCS 5/115-7.3 (West 2008). However, in order to be admitted into evidence, this other-crimes evidence must pass threshold tests of relevance, and the undue prejudice it causes must not outweigh its probative value. People v. Donoho, 204 Ill. 2d 159, 178, 788 N.E.2d 707 (2003). This latter test is explained in section 115-7.3, which directs as follows:

> "In weighing the probative value of the evidence against undue prejudice to the defendant, the court may consider:
>
> (1) the proximity in time to the charged or predicate offense;
>
> (2) the degree of factual similarity to the charged or predicate offense; or
>
> (3) any other relevant facts and circumstances." 725 ILCS 5/115-7.3(c) (West 2008).

In addition, our supreme court has explained, other-crimes evidence must bear " 'some threshold similarity to the crime charged' " in order to be admissible. Donoho, 204 Ill. 2d at 184 (quoting

People v. Bartall, 98 Ill. 2d 294, 310, 456 N.E.2d 59 (1983)). However, where the other-crimes evidence is not presented to establish modus operandi, " 'mere general areas of similarity will suffice' to support admissibility." Donoho, 204 Ill. 2d at 184 (quoting People v. Illgen, 145 Ill. 2d 353, 372-73, 583 N.E.2d 515 (1991)).

¶ 17 The parties agree that we may not disturb the trial court's ruling on this point unless the trial court abused its discretion. See Donoho, 204 Ill. 2d at 182. A reviewing court will find no abuse of discretion unless the trial court's decision is arbitrary, fanciful or unreasonable, or where no reasonable person would take the trial court's view. Dohono, 204 Ill. 2d at 182.

¶ 18 Here, the trial court allowed the State to present its other-crimes evidence of propensity under section 15-7.3, based on a finding that the crimes were sufficiently similar. The trial court reasoned that both crimes involved "oral copulation" as well as the defendant's abuse of a relationship that gave him supervisory authority over his victim.

¶ 19 The defendant argues that the threshold requirement of similarity was not met, because the defendant's crimes against S.T. were almost entirely dissimilar. The defendant observes differences in the victims' ages (6 years old and 15 years old), the perpetrator of the act (the defendant against S.T., and a prostitute against the complainant here), the nature of the sexual act (S.T.'s oral sex performed on him versus oral sex performed on our complainant), and the use of force. On the last point, we disagree with the defendant that use of force distinguishes this case from S.T.'s: the complainant here testified that the defendant held her hand during the assault. As for the remaining points, we do not see the differences as undercutting the trial court's finding that a threshold similarity existed between the two crimes. Although the defendant's victims were 9 years apart in age, they were both minor girls. Although the direct perpetrator of the act, and the specific nature of the act differed between the victims, both crimes involved the defendant's coercing a minor to participate in oral sex. Whatever differences exist in the nature of those acts apparently meant little to even the defendant, whom the complainant testified roughly equated those acts, when he told her that he would either perform oral sex on her or have another person do it. In addition, we agree with

the trial court that another striking similarity exists between the two crimes: the defendant accomplished the crimes by abusing his position of authority over the victims. These similarities suffice to meet the threshold requirement that the other crime have at least a "mere general area of similarity" to the charged crime, so that evidence of the other crime may be admitted. With these similarities established, we see no abuse of discretion in the trial court's overall assessment that the probative value of the other-crimes evidence outweighed its undue prejudicial effect.

¶ 20 The defendant's third argument on appeal is that his counsel was ineffective for failing to tender a jury instruction stating that accomplice testimony, such as Partridge's, should be viewed with suspicion. An accused is entitled to capable legal representation at trial. People v. Wiley, 165 Ill.2d 259, 284, 651 N.E. 2d 189 (1995). Under the two-part test articulated in Strickland v. Washington, 466 U.S. 668 (1984), a defendant alleging ineffective assistance of counsel will prevail only where he is able to show that (1) counsel's performance fell below an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. People v. Albanese, 104 Ill.2d 504, 525, 473 N.E. 2d 1246 (1984) (adopting Strickland). Even if we were to assume here that counsel's failure to request an accomplice instruction was unreasonable, we agree with the State that the defendant cannot meet the second part of the Strickland test.

¶ 21 The defendant's complaint is that his counsel should have proposed Illinois Pattern Jury Instruction, Criminal, No. 3,17 (4th ed. 2000), which states as follows:

> "When a witness says he was involved in the commission of a crime with the defendant, the testimony of that witness is subject to suspicion and should be considered by you with caution. It should be carefully examined in light of the other evidence in the case."

The defendant contends that there was no reason for counsel to omit this instruction, because counsel "made significant efforts to attack" Partridge's statement, by pointing out that Partridge made the statement after having been held in custody for over 48 hours and that Partridge was not charged with a crime after she made the statement. In so arguing, the defendant illustrates why he was not

prejudiced by the omission of the instruction. Even without the instruction, counsel very forcefully presented to the jury the reasons Partridge's statement should be viewed with suspicion. Further, Partridge's contradictory, inconsistent, and at times implausible deposition testimony bolstered counsel's point that Partridge was not a reliable witness. Because the weakness in Partridge's credibility was so forcefully presented to the jury, we see no reasonable probability that the result of this trial would have differed if the jury were also presented with an instruction on the point. For that reason, we reject the defendant's ineffective-assistance-of-counsel argument.

¶ 22 The defendant's fourth argument on appeal is that his trial was rendered unfair by the prosecution's improper closing argument. The defendant acknowledges that he did not raise this claim of error in a post-trial motion. Although a defendant's failure to raise both a contemporaneous objection and a post-trial objection normally results in his waiver of the same objection on appeal (People v. Enoch, 122 Ill.2d 176, 186, 522 N.E.2d 1124 (1988)), the defendant urges that we review this issue as plain error under Supreme Court Rule 615(a) (eff. Aug. 27, 1999). "[T]he plain-error doctrine allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." People v. Piatkowski, 225 Ill.2d 551, 565, 870 N.E.2d 403 (2007). The first step of the inquiry under the plain error doctrine is to determine if the challenged comment constituted error. Piatkowski, 225 Ill.2d at 565. If so, then we proceed to determine whether either of the two prongs is satisfied: whether the error affected the fairness of the trial process or whether the evidence was closely balanced. Piatkowski, 225 Ill.2d at 566. Here, we conclude that the comments at issue do not constitute error, much less plain error.

¶ 23 A prosecutor is afforded wide latitude in making closing arguments. People v. Blue, 189 Ill.2d 99, 127, 724 N.E.2d 920 (2000). In closing arguments, the State may comment on the evidence

and all of the reasonable inferences arising from the evidence. Blue, 189 Ill.2d at 127, 724 N.E.2d 920. Closing arguments are to be viewed in their entirety, and any allegedly improper argument must be viewed in its context within the closing argument as a whole. Blue, 189 Ill.2d at 128, 724 N.E.2d 920. The defendant takes issue with the State's argument that his move to California was evidence of flight, and thus circumstantial evidence of his guilt. According to the defendant, the simple fact of his relocation fell short of establishing his conscious avoidance of police. See People v. Hayes, 139 Ill. 2d 89, 132, 564 N.E.2d 803 (1990) (explaining relevance of evidence of flight) (abrogated on other grounds by People v. Tisdel, 201 Ill. 2d 210, 775 N.E.2d 921 (2002)). However, the evidence at trial demonstrated that the defendant was questioned by police and then relocated to another state approximately one month later. While this evidence does not conclusively establish his intent to flee, it does support that inference very strongly. Because prosecutors are allowed to argue reasonable inferences to the jury, we conclude that the prosecutor's reference to the defendant's flight did not constitute improper closing argument. Accordingly, we conclude that the defendant has not established plain error with respect to this closing argument issue, and we must deem the issue forfeited.

¶ 24 The defendant's final argument on appeal is that the trial court's sentencing decision was based on an improper application of aggravating factors. The defendant raises points relating to his sentences for both criminal sexual assault and indecent solicitation. However, because we reverse the defendant's sexual assault conviction and sentence, we consider only those arguments relating to his indecent solicitation sentence. With respect to that sentence, the defendant argues that the trial court erred when it justified his sentence as follows:

> "Regarding aggravation, I find that the following do apply: The defendant's conduct did cause or threaten serious harm. It cause serious emotional harm to his daughter, and he caused serious physical harm to the proof of other crimes [witness, S.T.] Chlamydia, I would consider serious harm.
>
> The defendant *** has a history of prior delinquency or criminal activity. The

defendant has the prior sex conviction in Kentucky before the acts here were committed.

The sentence is necessary to deter others from committing the same crime. I think absolutely that applies."

(The court also considered the defendant's misuse of a position of trust, but the defendant expressly limits his objection to that consideration to its application to his sexual assault conviction.)

¶ 25 The trial court's explanation demonstrates that it was tracking section 5-5-3.2 of the Code, which sets out the factors a sentencing judge may consider in aggravation. The defendant argues that the trial court's reasoning misapplies the first of those statutory factors in aggravation, that "the defendant's conduct caused or threatened serious harm." 730 ILCS 5/5-5-3.2(a)(1) (West 2004). According to the defendant, the trial court's comments indicate that it considered not only harm to the complainant in this case, but also to S.T., the victim in another case.

¶ 26 We agree with the defendant that the trial court's rationale was infelicitously phrased. However, as the trial court observed, there was evidence that the complainant in this case suffered serious harm, of the emotional variety, as a result of the defendant's actions. Thus, the aggravating factor applies. See People v. Leggans, 253 Ill. App. 3d 724, 736-37, 625 N.E.2d 1133 (1993) (applying section 5-5-3.2(a)(1) due to emotional harm to a molested minor). To the extent the trial court relied on the harm caused to S.T., the victim in another case, that factor may not have been proper under section 5-5-3.2(a)(1), but it constituted part of the criminal history the trial court was permitted to consider as part of the sentencing decision. See 730 ILCS 5/5-5-3.2(a)(3) (West 2004) (allowing a trial court to consider the defendant's record of prior crimes and delinquency). Although the trial court mentioned the harm to S.T. at the same time it considered the harm to the complainant under section 5-5-3.2(a)(1), the court's comments leave no question that it understood the defendant's crimes against S.T. to be separate from the case at hand. It referred to S.T. as an "other crimes" witness, and it noted that the defendant had been convicted of abusing her in another case. From these comments, we conclude that the trial court did not sentence the defendant here for his crimes

against S.T., but did consider those crimes in aggravation. Because the trial court was empowered to do so, and because section 5-5-3.2(a)(1) applied here in any event, we see no prejudice in any mistake the trial court made in categorizing the harm to S.T. under section 5-5-3.2(a)(1) rather than 5-5-3.2(a)(3). Thus, we reject the defendant's argument that his sentence for indecent solicitation of an adult must be vacated.

¶ 27 For the foregoing reasons, we reverse the defendant's conviction and sentence for criminal sexual assault but affirm his conviction and sentence for indecent solicitation of an adult.

¶ 28 Affirmed in part and reversed in part.