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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0541**

State of Minnesota,
Respondent,

vs.

Andre Joseph Shafer,
Appellant.

**Filed March 22, 2021
Affirmed in part, reversed in part, and remanded
Hooten, Judge**

Anoka County District Court
File No. 02-CR-18-4507

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Anthony C. Palumbo, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Hooten, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

HOOTEN, Judge

On appeal, appellant argues that his convictions of first- and second-degree criminal sexual conduct must be reversed because the district court erred by admitting testimony from a detective. Appellant contends that the detective was not qualified as an expert and

that the detective's testimony about the disclosure patterns of child sexual abuse victims lacked foundational reliability. Alternatively, appellant argues that he is entitled to a new sentencing hearing because the conduct of the district court judge at sentencing would cause an objective, unbiased layperson to question her impartiality. Finally, appellant argues that the district court erred by entering judgment of conviction for count two because it is the same offense as count one and by entering judgment of conviction for count three because it is included in the conviction for count one. Appellant asks us to vacate those convictions. We affirm in part, reverse in part, and remand.

FACTS

Background

In July 2018, the state charged appellant Andre Joseph Shafer with three counts of criminal sexual conduct against a minor child (the minor child) for multiple acts occurring from November 2013, when the minor child was approximately eight years old, until April 2018, when she was 12 years old.

During the time period of the charged offenses, Shafer and S.R., the mother of the minor child, had an on-again, off-again romantic relationship. When Shafer started dating S.R. in 2013, S.R. and the minor child lived with S.R.'s mother. In January 2014, S.R. and the minor child moved in with Shafer and Shafer's mother. Also living there were Shafer's sister and his daughter from a previous relationship (Shafer's daughter). In September 2014, Shafer, S.R., and the minor child moved into a house together. Shafer and S.R. then had a biological child, who was born in October 2015. In February 2017, Shafer moved out of the house he and S.R. had been living in together and moved back into his mother's

house. In May 2017, Shafer and S.R. ended their romantic relationship but continued to co-parent their biological child.

In July 2018, the mother of Shafer's daughter told S.R. that Shafer's daughter had accused Shafer of asking her on three separate occasions to wash his back while he was in the shower. Later that afternoon, S.R. asked the minor child, "I'm being told that something happened to [Shafer's daughter]. Did anything happen to you?" The minor child told S.R. that Shafer would "corner [her] in the bathroom" and "make [her] touch him."

The next day, the minor child gave a statement to Detective Maggie Titus at the Anoka County Sheriff's Office. During the interview, the minor child stated that Shafer had asked her to help wash him while he was in the shower, forced her to rub his penis, made her put his penis in her mouth, made her sit on his stomach as he pushed his penis against her vagina, attempted to penetrate her vagina with his penis, and felt her private parts underneath her pants and underwear.

Based on the minor child's allegations, the state charged Shafer with first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(a) (2018) (count one), first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(a) (count two), and second-degree criminal sexual conduct in violation of Minn. Stat. § 609.343, subd. 1(h)(iii) (2018) (count three).

At a pre-trial hearing, the district court heard arguments on Shafer's motion to exclude the state's expert witness, Detective Jeffrey Schoeberl of the Anoka County Sheriff's Office, from testifying about "the process of disclosure and factors that may

influence an adolescent [sexual assault] victim's decision to disclose or not." The district court denied Shafer's motion, ruling that the state had met its burden to establish Detective Schoeberl as a qualified expert.

At the seven-day jury trial, Detective Titus, Detective Schoeberl, the minor child, S.R., S.R.'s mother, Shafer's daughter, and the mother of Shafer's daughter testified on behalf of the state. Shafer's aunt, mother, friend, sister, and neighbor testified on behalf of the defense, and Shafer testified in his own defense.

The minor child's testimony

The minor child testified that Shafer began abusing her in November 2013 and abused her for the last time in April 2018. During her testimony, the minor child described in detail the many times that Shafer abused her during that time period. She testified that Shafer asked her "to wash his back or to help him wash up" while he was in the shower; forced her to rub his penis while he was in the shower, lying in the bathtub, or lying on the bathroom floor on multiple occasions; made her rub his penis with lotion multiple times; "made [her] put his penis in [her] mouth" once; attempted to penetrate her vagina with his penis in the bathtub 15 to 20 times; and "attempted to rape" her in the shower three times. The minor child also testified that Shafer would threaten her while he abused her, telling her that if she did not comply, he would kill her, her friends, his daughter, and her mother.

The minor child testified that she did not disclose the sexual abuse initially because she was eight years old and "didn't feel like it was a big deal," because Shafer told her not to tell anyone, and because her mother seemed "really happy" dating Shafer. The minor child said that she did not disclose the abuse later because it had become "routine for a

really long time” and “just seem[ed] like normal.” The minor child also said that she was scared to say anything because she feared that Shafer would retaliate against her and she still believed her mother was happy dating Shafer. The minor child said that, when she told her mother and Detective Titus about the abuse, she did not tell them everything because she did not remember it all at the time; she also testified that she has been recalling more details since her initial disclosure.

Testimony from S.R., S.R.’s mother, Detective Titus, and Shafer’s daughter

S.R. and S.R.’s mother testified about the minor child’s disclosure to them. Detective Titus testified generally about the protocol for conducting a forensic interview of a child. A recording of the minor child’s interview with Detective Titus was received into evidence and played for the jury. Shafer’s daughter testified as a *Spreigl* witness that Shafer had called her into the bathroom while he was showering and asked her to wash his back three times, but that she had walked out of the bathroom without responding to him each time.

Detective Schoeberl’s testimony

Detective Schoeberl testified as an expert witness about “how children disclose” abuse, emphasizing that he was testifying based on his training and experience about the way children disclose abuse. He explained that a forensic interviewer does not expect to learn everything about a child’s experience in the initial interview. Detective Schoeberl testified that he would not expect a forensic interview to elicit “all of the information from the child,” particularly in cases involving multiple acts over a period of time. He described disclosure as a process in which children are constantly “evaluating their environment and

how people around them are affected by the information that they're sharing." According to Detective Schoeberl, if children feel supported "they may start to begin to share more about those experiences, whether it's . . . a different occurrence or more details about that occurrence." If children perceive negative feedback from a disclosure, they may stop or reduce the amount of information they share. Detective Schoeberl testified that late-elementary/early-middle-school-aged children understand that the information they disclose "is going to have a large impact on their home environment" and therefore might not disclose abuse because they do not want to "ruin" their family. Delayed disclosure, according to Detective Schoeberl, can be attributed to a variety of factors, including a lack of physical safety or emotional support, a lack of understanding that the abuse is wrong, abnormal, or unusual, and feelings of love and care for the perpetrator despite the abuse.

Defense witnesses' testimony

Each defense witness testified that they never saw anything inappropriate between Shafer and the minor child, or between Shafer and his other children.

Shafer's testimony

Shafer denied the minor child's allegations. He described being "heartbroken" and "speechless" when he heard these allegations, characterizing the minor child as "my kid" and their relationship as "great." Shafer testified that he loved the minor child and his other children, describing them as his "life." Shafer admitted that one time he asked his daughter to wash his back because he had been changing the oil in his mom's truck when the oil spilled and splashed all over him, but he said that he was wearing basketball shorts while

in the shower. Shafer also acknowledged that he had a 2017 felony conviction for interference with privacy.

Verdict and sentencing

The jury found Shafer guilty on all three counts and also returned guilty special verdicts for 24 aggravating sentencing factors. At sentencing, the district court denied Shafer's motion for a downward dispositional or durational departure and granted the state's motion for a double upward durational departure, citing as aggravating factors "the multiple acts of penetration, multiple forms of penetration, as well as the fact that several of these acts occurred in [the minor child's] zone of privacy." The district court sentenced Shafer to 312 months in prison on count one. Shafer appeals.

DECISION

Shafer raises three issues on appeal. First, Shafer contends that the district court abused its discretion by allowing Detective Schoeberl to present expert witness testimony regarding the disclosure patterns of child sexual abuse victims. Second, Shafer asserts that the district court judge violated the Minnesota Code of Judicial Conduct by exhibiting judicial bias at sentencing, entitling him to a new sentencing hearing. Third, Shafer claims that his convictions for counts two and three must be vacated because the district court erred by convicting him of three counts of criminal sexual conduct arising from the same act.

I. The district court did not abuse its discretion by admitting Detective Schoeberl’s expert witness testimony regarding the disclosure patterns of child sexual abuse victims.

We review a district court’s decision to admit expert testimony for an abuse of discretion. *State v. Thao*, 875 N.W.2d 834, 840 (Minn. 2016). A defendant claiming that the district court erred in admitting evidence must demonstrate both abuse of discretion and resulting prejudice. *State v. Stewart*, 643 N.W.2d 281, 292 (Minn. 2002). Expert opinion testimony is generally admissible if the witness is qualified as an expert, the expert’s testimony is helpful to the jury, the expert’s opinion has “foundational reliability,” and the testimony meets the *Frye-Mack* standard of admissibility if it is applicable—which it is not in this case. Minn. R. Evid. 702. Shafer does not dispute that Detective Schoeberl’s testimony was helpful to the jury, but he challenges the detective’s qualifications to testify about “the reasons why adolescents disclose sexual abuse in the manner that they do,” and the foundational reliability of his opinion on the same subject. We address each argument in turn.

Expert qualifications

Shafer argues the state failed to meet its burden of showing that Detective Schoeberl has any education, training, or experience to qualify him as an expert to testify about the factors that affect an adolescent’s methods of disclosing sexual abuse. An expert witness is one who is qualified by “knowledge, skill, experience, training or education” to testify about and provide an opinion regarding “scientific, technical or other specialized knowledge.” Minn. R. Evid. 702. While an expert’s qualifications are not required to stem solely from formal training, their qualifications must be based on some “knowledge, skill,

or experience that would provide the background necessary for a meaningful opinion on the subject.” Minn. R. Evid. 702 1977 comm. cmt.

In an order allowing Detective Schoeberl to present expert testimony, the district court noted that it was “satisfied that Detective Schoeberl ha[d] the requisite education, training and experience to qualify as an expert witness as to the disclosure of sexual abuse by children and adolescents.” The district court also determined that “the [s]tate ha[d] met its burden and established Detective Schoeberl as [a] qualified expert.”

The record supports this determination. At a pre-trial hearing, both the state and defense counsel questioned Detective Schoeberl regarding his qualifications to offer expert testimony regarding the process of disclosure and factors that may influence an adolescent victim’s decision to disclose or not disclose sexual abuse. Detective Schoeberl testified that he has undergraduate degrees in psychology and sociology and a master’s degree in social work. He also described his work history, detailing his experience working with homeless, runaway, delinquent, and emotionally disturbed juveniles, both before and after he became a licensed police officer. Detective Schoeberl testified that he worked as a “child care counselor” in three of those jobs and had daily interactions with children who had experienced physical and sexual abuse. He stated that he was aware that some children disclosed abuse while he worked at the Children Residential Treatment Center, and that he “help[ed] write some of the treatment plans” for those children. However, he admitted that he was not a “therapist” for the children and that he did not have any certifications in counseling or therapy.

Detective Schoeberl testified that he joined the Anoka County Sheriff's Office in 2006 as a detective and in 2011 became the special victims' coordinator focusing on investigating physical and sexual abuse of children. He explained that he has been trained in the cognitive graph risk assessment, a structured child forensic interview format, and that this training also addressed the "scientific basis" behind forensic interviewing methods. He also stated that he had attended both basic and advanced CornerHouse courses regarding the "methods and science behind forensic interviewing" of children. When asked, "[D]id what you learn concern the process of disclosure that children and adolescents go through?," Detective Schoeberl replied, "Yes, we received some instruction in that." Detective Schoeberl also testified that since becoming a detective, he had investigated more than 600 cases of physical and/or sexual abuse of a child, conducted more than 400 forensic interviews of children, and observed others conducting forensic interviews of children more than 600 times.

The record supports the district court's determination that Detective Schoeberl is an experienced investigator with extensive training and experience conducting forensic interviews of sexually-abused children. Given that it is well-established that we must apply a deferential standard to the district court's evidentiary rulings, we conclude that the district court did not abuse its discretion by concluding that Detective Schoeberl was qualified as an expert.

Foundational reliability

The proponent of expert opinion testimony bears the burden of showing that the testimony has foundational reliability. *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150,

164 (Minn. 2012). When analyzing whether an expert's opinion has foundational reliability, a court must consider the purpose for which the testimony is being offered, the reliability of the underlying theory, and the reliability of the evidence in the particular case. *Id.* at 167-69.

At the pre-trial hearing, defense counsel had the following exchange with Detective Schoeberl:

Q: [Y]ou talked about children victim disclosure. What is the science that you're basing that off of?

A: Again, it's the two trainings primarily on cognitive graph risk assessment and CornerHouse.

. . . .

Q: Okay. In terms of the proffered opinions . . . the process for disclosing and the factors influencing a victim disclosing, what are those opinions essentially based on?

A: So I'll speak specifically about the CornerHouse model. That is scientific — scientifically based. A lot of the training is — a lot of the research is cited in the bibliography of that training and so they constructed the protocol for CornerHouse training based upon that research.

Q: Okay. And what's the reliability of it?

A: I'm not going to be — I'm not an academician. I'm a practitioner. I know that the CornerHouse is relied on statewide and nationally and is regarded as kind of the leaders in the field.

. . . .

Q: And are there any, you know, white papers or, you know, articles that you would point somebody to if they asked you, you know, what is — you know, what is the process and how do kids disclose assault or sexual assault?

A: I would typically go to the back of my bibliography of my protocol for CornerHouse which lists many of the research articles that has based it off of. Again, I don't —

Q: Okay. Have you read those articles?

A: I have not, but I've attended the trainings that they've created the protocol based upon those articles.

When asked if his opinion was based on “anything that may have been peer reviewed or anything from the academic setting,” Detective Schoeberl responded that it was based in part on his CornerHouse training and in part on his personal experience working with children who have been abused.

Shafer contends that the state failed to meet its burden of showing that Detective Schoeberl's testimony had foundational reliability because Detective Schoeberl did not “explain the scientific basis” for the training he received from CornerHouse. However, “the district court has wide latitude in determining whether there is sufficient foundation upon which an expert may state an opinion,” *Marquardt v. Schaffhausen*, 941 N.W.2d 715, 719 (Minn. 2020) (quotation omitted), and Shafer's argument against Detective Schoeberl's testimony also faces strong opposition in case law.

The issue of the admissibility of expert testimony to aid the jury in understanding counterintuitive behaviors of children and adolescent victims and their reporting of sexual abuse is now well recognized in Minnesota and left to the discretion of the trial court. See *State v. Hall*, 406 N.W.2d 503, 505 (Minn. 1987); *State v. Myers*, 359 N.W.2d 604, 610 (Minn. 1984); *State v. Sandberg*, 406 N.W.2d 506, 511 (Minn. 1987). In *Hall*, the Minnesota Supreme Court affirmed the district court's decision to permit expert testimony

regarding why adolescents may delay reporting sex abuse, announcing that “expert testimony as to the reporting conduct of [adolescent sexual-assault] victims . . . is admissible in the proper exercise of discretion by the [district] court.” 406 N.W.2d at 505. And in *State v. Reyes*, we affirmed the district court’s decision to allow expert testimony on common characteristics of sexual-abuse victims. 890 N.W.2d 406, 412–413 (Minn. App. 2017).

Although the district court did not specifically comment on the foundational reliability of Detective Schoeberl’s testimony, the district court impliedly found it to be foundationally reliable by admitting it into evidence. The record supports this determination. Detective Schoeberl testified about his extensive educational and practical experience working with victims of child sexual abuse, as well as his training in cognitive graph risk assessment trainings and CornerHouse interview methods about how children disclose abuse, establishing a foundation for his testimony regarding the disclosure patterns of adolescent sex-abuse victims.

Determining the sufficiency of foundation “demand[s] a case by case analysis that is best left to the trial judge familiar with the setting of the case.” *Marquardt*, 941 N.W.2d at 719 (quotation omitted). Here, the district court, which was familiar with the case, determined that the foundational reliability of Detective Schoeberl’s testimony was sufficient. Even if we would reach a different conclusion with respect to the sufficiency of the foundation, we will not reverse the district court’s decision absent a clear abuse of its broad discretion. *Williams v. Wadsworth*, 503 N.W.2d 120, 123 (Minn. 1993). Based on the record and the law, we conclude that the district court did not abuse its discretion in

concluding that the state had met its burden of showing that Detective Schoeberl's testimony had foundational reliability.

Because the district court did not abuse its discretion by concluding that Detective Schoeberl was qualified to testify as an expert and that his opinion had "foundational reliability," the district court acted within its discretion by admitting his testimony about the factors that affect a child's methods of disclosure.

II. The district court did not exhibit judicial bias that would entitle Shafer to a new sentencing hearing.

The Sixth Amendment of the United States Constitution guarantees criminal defendants the right to be tried by an impartial jury. U.S. Const. amend. VI; *see also* Minn. Const. art. 1, § 6. Although the right to a trial before an impartial judge is not specifically enumerated in the Constitution, this principle has long been recognized by the United States Supreme Court. *Rose v. Clark*, 478 U.S. 570, 577, 106 S. Ct. 3101 (1986); *see also Greer v. State*, 673 N.W.2d 151, 155 (Minn. 2004). Impartiality requires the absence of "actual bias against the defendant or interest in the outcome of his particular case." *State v. Munt*, 831 N.W.2d 569, 580 (Minn. 2013) (quotation omitted). "Opinions formed by the judge on the basis of facts introduced or events occurring in the course of current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *State v. Adell*, 755 N.W.2d 767, 775 (Minn. App. 2008) (quotation omitted), *review denied* (Minn. Nov. 25, 2008).

Shafer argues that the district court judge exhibited judicial bias during the sentencing hearing by interrupting his counsel, chastising his supporters, and referencing information outside of the record. We review de novo whether a defendant's right to an impartial judge was violated. *State v. Dorsey*, 701 N.W.2d 238, 249 (Minn. 2005). We presume that the district court judge "will set aside collateral knowledge and approach cases with a neutral and objective disposition." *Id.* at 248–49 (quotation omitted). The party alleging bias has the burden to present evidence sufficient to overcome this presumption. *See McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998).

At the sentencing hearing, defense counsel argued that if the district court doubted Shafer's guilt, it could impose a durational or dispositional departure on the basis of substantial and compelling offender or offense-based characteristics. After the district court judge asked whether defense counsel had authority for that argument, defense counsel admitted there was none. However, defense counsel continued on to argue that it was "just plain logic that if the [district court] harbors doubts about the defendant's guilt, that that is a basis, based on offender or offender-based characteristics, to depart." Defense counsel then stated that "the jury did not fully believe [the minor child's] account, finding in their *Blakely* verdict that [Shafer] committed only a fraction of the number of acts that she alleged." The district court judge responded that defense counsel's statement was "not an accurate representation of [the special verdict] at all" and that the jury "made no such finding and you know that." Defense counsel rephrased his explanation, stating that the jury "did not believe that the [s]tate met its burden beyond a reasonable doubt that even a fraction of the acts that were alleged had been committed."

Defense counsel continued, arguing that Shafer would be under strict supervision while on probation, thereby protecting the public. The district court judge asked, “Wasn’t he on probation at the time of these offenses?” Defense counsel responded that he was. Once defense counsel concluded his argument, Shafer addressed the district court. Shafer stated that he was placed on probation as part of another case and characterized a child protection home study as clearing him because “they didn’t find any evidence of the kids being in any harm.” The district court judge responded, “[T]hat’s not the conclusion. It was a risk, but go ahead.”

The district court judge then addressed the defense motion and advocate letters that spoke to Shafer’s good character and attested to the supporters’ belief in Shafer’s innocence. She noted, “I read every letter and I read every word in every letter . . . it’s rendered me speechless which rarely happens.” The district court judge told the authors of the letters who asserted that certain evidence was not considered, “people, you have no idea what you’re talking about. You were not here for the trial.” The district court judge expressed gladness that the minor child was not present at sentencing “to be told she’s a frickin’ liar,” but said that “at the same time she needs to hear that the jury believed her and I believed her.” As to Shafer’s supporters, who had suggested his conviction was based solely on the minor child’s forensic interview, the district court judge called their assertion “absurd” and “poppycock.” In response to Shafer’s supporters who had asserted that Shafer was not “the type” to commit this crime, the district court judge described specific examples of four men who had appeared before her after being charged with criminal sexual conduct to reach her conclusion that “there is no type.”

The district court judge stated that she had yet to see “a victim testify in such a composed and impactful way as [the minor child and Shafer’s daughter] did.” She then read all of the jury’s findings regarding Shafer’s guilt and the aggravating factors on the special verdict forms for the record. After reading the special verdict findings, the district court judge referred to those findings as “the reasons we’re here” and pointed out that Shafer, during his testimony at trial, “offered explanations that the jury did not believe.” Before sentencing Shafer, the district court judge expressed a serious commitment to seeing that a fair trial is held, that everyone is heard, and that all factors are considered when making sentencing decisions.

Shafer argues that the district court judge’s remarks would cause an objective observer to reasonably question her impartiality. Shafer also contends that it is not clear from the record how the district court judge knew anything about the conclusion reached following the child protection investigation because “[n]o such evidence was introduced at Shafer’s trial or at sentencing.” This court has held that comments by a district court judge may establish bias warranting reversal of a sentencing departure only if the district court judge both makes inappropriate remarks and fails to articulate the findings justifying the departure. *State v. Simmons*, 646 N.W.2d 564, 569–70 (Minn. App. 2002).

Most of the judge’s comments at the sentencing hearing, which Shafer found objectionable, were related to her response to Shafer’s supporters, who had submitted letters questioning his guilt and claiming that he was not the type of person to be a sex offender. In her strongly worded defense of the jury verdict and the fairness of the proceeding, the judge may have unnecessarily referenced her knowledge of a child

protection case involving Shafer and offered detailed descriptions of other sex offenders who had appeared before her to support her contention that there was no typical type of sex offender. But, after the judge had responded to the unfounded claims of Shafer's innocence and the unfairness of the jury verdict, she then turned to the issues presented in the sentencing hearing by reading the special verdict forms. Because the district court judge articulated jury findings sufficient to justify the sentence, and because the record demonstrates that the district court judge relied on the jury findings regarding Shafer's guilt and numerous aggravating factors supporting an upward durational departure, Shafer has failed to overcome the presumption that he was improperly sentenced. Accordingly, we find that the district court judge did not exhibit judicial bias that would entitle Shafer to a new sentencing hearing.

III. The district court erred by convicting Shafer of three counts of criminal sexual conduct arising from the same act.

Shafer argues in the alternative that his convictions for counts two and three must be vacated because the district court erred by convicting him of three counts of criminal sexual conduct arising from the same act. The state agrees.

Minn. Stat. § 609.04, subd. 1 (2018), provides that a defendant may not be convicted of both the crime charged and an included offense. "A crime necessarily proved if the crime charged were proved" is one type of "included offense." *Id.*, subd. 1(4). Furthermore, "section 609.04 bars multiple convictions under different sections of a criminal statute for acts committed during a single behavioral incident." *State v. Chavarria-Cruz*, 839 N.W.2d 515, 523 (Minn. 2013) (quotation omitted). "Whether

multiple offenses form part of a single behavioral act is a question of fact,” but where the facts are undisputed, we review de novo whether the offenses are part of the same behavioral incident. *State v. Marchbanks*, 632 N.W.2d 725, 731 (Minn. App. 2001). To determine whether offenses arise from a single behavioral incident, a court considers such factors as “time and place . . . [and] whether the segment of conduct involved was motivated by an effort to obtain a single criminal objective.” *State v. Bertsch*, 707 N.W.2d 660, 664 (Minn. 2006) (quotation omitted). When many acts over a period of time are collectively charged, the focus is on the time segment alleged in the criminal complaint. *State v. Suhon*, 742 N.W.2d 16, 24 (Minn. App. 2007).

When a defendant is convicted on more than one charge for the same act, the district court should “adjudicate formally and impose sentence on one count only.” *State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984). We may “look to the official judgment of conviction in the district court file as conclusive evidence of whether an offense has been formally adjudicated.” *Spann v. State*, 740 N.W.2d 570, 573 (Minn. 2007) (quotations omitted). Whether the district court erred in adjudicating multiple convictions is also a question of law, which we review de novo. *State v. Ferguson*, 729 N.W.2d 604, 618 (Minn. App. 2007), *review denied* (Minn. June 19, 2007).

Shafer’s charges for counts one, two, and three were part of the same behavioral incident, as each count was based on the same course of conduct occurring “[o]n or about July 20, 2013 – April 1, 2018,” the time period alleged in the amended criminal complaint. Count one charges first-degree criminal sexual conduct involving a single act of sexual penetration. Count two charges first-degree criminal sexual conduct involving a single act

of sexual contact. And count three charges second-degree criminal sexual conduct involving multiple acts of sexual contact over an extended period of time. The prosecutor did not break the period of abuse into three segments when charging Shafer with these three crimes. The jury found appellant guilty of counts one, two and three, and the district court entered convictions for all three offenses. Counts one and two are the same offense—first-degree criminal sexual conduct. And second-degree criminal sexual conduct is a lesser included offense of first-degree criminal sexual conduct. *State v. Kobow*, 466 N.W.2d 747, 753 (Minn. App. 1991), *review denied* (Minn. Apr. 18, 1991). Because the district court erroneously entered convictions for all three offenses in violation of Minn. Stat. § 609.04, subd. 1, we reverse on this issue and remand to the district court to vacate appellant’s adjudication of guilt on counts two and three while leaving the jury’s finding of guilt on those counts intact.

Affirmed in part, reversed in part, and remanded.