NO. COA05-1194

NORTH CAROLINA COURT OF APPEALS

Filed: 05 July 2006

STATE OF NORTH CAROLINA

v. Union County
Nos. 03 CRS 51227-37

CAROL NASH STURDIVANT

Appeal by defendant from judgments entered 10 March 2005 by Judge Christopher M. Collier in Union County Superior Court. Heard in the Court of Appeals 19 June 2006.

Attorney General Roy Cooper, by Assistant Attorney General R. Kirk Randleman, for the State.

David Childers for defendant-appellant.

STEELMAN, Judge.

On 31 March 2003, defendant, Carol Nash Sturdivant, was indicted for several sexual offenses involving E.A.C., a minor. The five indictments charged defendant with: (1) first-degree statutory sexual offense from 1 August 2001 through 30 May 2002; (2) three counts of indecent liberties from 1 August 2001 through 30 May 2002; and (3) first-degree statutory rape from 1 August 2001 through 30 May 2002. Prior to trial, defendant moved for a bill of particulars. Specifically, defendant requested that the State provide him with a statement detailing the time and location of each of the alleged crimes and any act or actions which constituted

the crimes charged. Defendant asserted he was unable to adequately prepare or conduct his defense without this information. The trial court denied the motion, citing the age of the victim and the nature of the allegations. The cases were tried at the 7 March 2005 Criminal Session of Union County Superior Court. Defendant was convicted of first-degree sexual offense, three counts of taking indecent liberties with a child, and attempted statutory rape. The trial court sentenced defendant from the mitigated range to consecutive terms of 230 to 285 and 151 to 191 months imprisonment. Defendant appeals.

In defendant's sole argument on appeal, he contends the trial court abused its discretion by denying his motion for bill of particulars. After careful review of the record, briefs and contentions of the parties, we find no error.

It is within the trial court's discretion whether to grant a motion for a bill of particulars and we will not reverse its denial of the motion absent a showing of an abuse of discretion. *State v. Jarrell*, 133 N.C. App. 264, 270, 515 S.E.2d 247, 252 (1999). Moreover, "[a]n appellate court should reverse the denial of a motion for a bill of particulars only if it clearly appears that the 'lack of timely access to the requested information significantly impaired defendant's preparation and conduct of his case.'" *State v. Hines*, 122 N.C. App. 545, 551, 471 S.E.2d 109, 113 (1996)(quoting *State v. Easterling*, 300 N.C. 594, 601, 268 S.E.2d 800, 805 (1980)).

In the instant case, defendant was charged with sexual

offenses involving a child under the age of thirteen. Defendant complains that the failure of the State to provide details regarding the date, time, and location of the offense, as well as the acts that constituted the alleged offense, put him in the unreasonable position of having to wait until the trial was in progress before learning specifically when, where, and what he was accused of doing. He further argued his time for locating and producing alibi witnesses was significantly lessened. However, this Court has noted:

> Courts are lenient in child sexual abuse cases where there are differences between the dates alleged in the indictment and those proven at trial. Our Supreme Court has stated that "in the interests of justice and recognizing that young children cannot be expected to be exact regarding times and dates, a child's uncertainty as to time or date upon which the offense charged was committed goes to the weight rather than the admissibility of the evidence." Leniency has been allowed in cases involving older children as well. "Unless the defendant demonstrates that he was deprived of his defense because of lack of specificity, this policy of leniency governs."

State v. McGriff, 151 N.C. App. 631, 635, 556 S.E.2d 776, 779 (2002)(internal citations omitted).

In *State v. Blackmon*, this Court rejected the defendant's argument that the denial of his motion for a bill of particulars denied him an opportunity to raise an alibi defense. 130 N.C. App. 692, 696-97, 507 S.E.2d 42, 45 (1998). In *Blackmon*, the indictments alleged that the offenses occurred between 1 January and 12 September 1994. Similarly, in the instant case, the indictments alleged the offenses occurred during a period of time

spanning from 1 August 2001 through 30 May 2002. Moreover, defendant failed to offer any alibi defense whatsoever, either to the dates alleged in the indictments, or in response to the evidence presented at trial. He has also failed to identify with any specificity any portion of his defense that was harmed or hindered by the failure of the State to provide specific dates. *See McGriff*, 151 N.C. App. at 637, 556 S.E.2d at 780 ("Time variances do not require dismissal if they do not prejudice a defendant's opportunity to present an adequate defense. '[A] defendant suffers no prejudice . . . when defendant presents alibi evidence relating to neither the date charged nor the date shown by the State's evidence.'")(citations omitted).

Finally, we note that defendant received open file discovery in this case. Thus, he was fully appraised of the specific occurrences to be investigated by the State so as not to have been "surprised" by the evidence introduced by the State at trial. *Accord Blackmon*, 130 N.C. App. at 701, 507 S.E.2d at 48. As such, defendant has failed to show how he did not have timely access to information regarding location and the alleged acts to have occurred. Accordingly, we conclude the trial court did not abuse its discretion by denying defendant's motion for a bill of particulars.

Defendant does not argue his remaining assignments of error contained in the record on appeal. Pursuant to N.C. R. App. P. 28(b)(6), they are deemed abandoned

NO ERROR.

Judges MCCULLOUGH and HUDSON concur.

Report per Rule 30(e).