

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-280

Filed 19 September 2023

Wake County, Nos. 18 CRS 218993-94

STATE OF NORTH CAROLINA

v.

DAVID LYDELL STEPHENS

Appeal by Defendant from judgments entered 17 August 2022 by Judge Paul Ridgeway in Wake County Superior Court. Heard in the Court of Appeals 29 August 2023.

*Attorney General Joshua H. Stein, by Assistant Attorney General Latasia A. Fields, for the State.*

*Drew Nelson, for Defendant.*

PER CURIAM.

On 26 November 2018, Defendant was indicted for two counts of committing a statutory sex offense with a child between twelve and fifteen years old as well as two counts of committing sex acts by a substitute parent.

The date of offense contained in the indictment for two counts of committing a statutory sex offense with a child between twelve and fifteen years old was 1 June

2016 to 30 June 2016, and the date of offense contained in the indictment for the two counts of committing sex acts by a substitute parent was 1 June 2016. Prior to the commencement of trial on 15 August 2022, the State moved to amend the date range of offenses listed in the indictments to 1 April 2016 through 30 June 2017, stating, “time is not of the essence in these offenses.” Defendant objected but did not wish to be heard on the matter. The trial court granted the motion.

The trial court instructed the jury in order for it to find Defendant guilty of the second count of committing a statutory sex offense with a child, it must base its verdict on an act that was “separate and distinct” from the act that served as the basis for finding him guilty on the first count of committing a statutory sex offense with a child. The trial court also instructed the jury in order for it to find Defendant guilty of the second count of committing a sexual act by a substitute parent, it must base its verdict on an act that was “separate and distinct” from the act that served as the basis for finding him guilty of the first count of committing a sex act by a substitute parent.

The jury found Defendant guilty of the two counts of a statutory sex offense perpetrated against K.S. The trial court entered judgments pursuant to the jury’s verdict and sentenced Defendant to two consecutive terms of 226-332 months imprisonment for these crimes.

The jury also found Defendant guilty of the two counts of a sex act committed by a substitute parent perpetrated against B.B. The trial court entered judgments

pursuant to the jury's verdict and sentenced Defendant to two consecutive terms of 24-89 months imprisonment for these crimes to run at the expiration of his sentence for the statutory sex offenses.

The first and second judgments, based on the statutory sex offenses, both contain offense dates of 1 June 2016. The second and third judgments, based on committing sex acts by a substitute parent, both contain offense dates of 1 June 2017.

Defendant argues that in order for the jury to have convicted him of the two separate pairs of charges, the first and second judgments must contain separate offense dates, and the third and fourth judgments must contain separate offense dates. This is because, according to Defendant, the evidence does not support the notion that Defendant committed separate acts against the same victim on the same day. Therefore, Defendant argues we should remand the matter to the trial court to correct alleged clerical errors on the judgment forms to match the offense dates with the evidence presented at trial. We disagree.

A clerical error is “an error resulting from a minor mistake or inadvertence, [especially] in writing or copying something on the record, and not from judicial reasoning or determination[.]” *State v. Edmonds*, 236 N.C. App. 588, 601, 763 S.E.2d 552, 560 (2014). In the present case, there is no error regarding the dates.

B. B. testified to specific instances of Defendant sexually assaulting her. First, B. B. testified regarding the first time Defendant raped her while she was living in Durham. This crime would have occurred some time before B. B. moved to Wake

County around 1 April 2016. B. B. described another specific instance of rape after moving to Wake County. B. B. testified to other sexual assaults by Defendant and as to the frequency of Defendant's sexual assaults against her: "I don't recall how many times, but it was like it was a routine, like a normal thing. It would happen almost every day or every other day." B. B. testified Defendant sexually assaulted her sometimes when her mom was at work and sometimes at night.

K. S. testified Defendant first sexually assaulted her when she was in eighth grade. Thereafter, K. S. testified Defendant sexually assaulted her "basically every time [she] came over" to Defendant's house in Durham. K. S. further testified that after Defendant moved to Raleigh, she visited his apartment every two weeks during the time period of 1 April 2016 to 30 June 2017. K. S. testified Defendant continued to sexually assault her when she visited him in Raleigh.

The victims' testimony of Defendant's numerous sexual assaults is sufficient evidence to support the two counts for each criminal charge. The jury's verdicts did not, nor were they required, to contain specific dates, and we will not require the trial court to pick a particular date of offense when the jury did not make a specific finding regarding dates. The dates listed on the judgment forms are in accordance with the date range of 1 June 2016 to 30 June 2017 listed on the indictments and within the range allowed by the State's motion prior to trial. There was no clerical error, and the trial court did not commit error in entering its judgments.

NO ERROR.

STATE V. STEPHENS

*Opinion of the Court*

Panel consisting of:

Judges WOOD, GRIFFIN, STADING.

Report per Rule 30(e).