STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 30, 2012
v	No. 305006 Saginaw Circuit Court
PETER ALFRED PEREZ, Defendant-Appellant.	LC No. 10-033800-FH

Before: TALBOT, P.J., and WILDER and RIORDAN, JJ.

PER CURIAM.

Defendant appeals from convictions following a jury trial of eight counts of criminal sexual conduct (CSC), third degree, MCL 750.520(d)(1)(a) (victim between 13 and 15). The trial court sentenced defendant as a habitual offender, fourth offense, MCL 769.12, to serve concurrent terms of 25 to 52 years in prison for each count. Defendant appeals as of right, and we affirm.

Defendant first argues that the evidence was insufficient to find him guilty beyond a reasonable doubt. We review de novo a challenge to the sufficiency of the evidence. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). In determining whether the prosecutor has presented sufficient evidence to sustain a conviction, an appellate court is required to take the evidence in the light most favorable to the prosecutor to ascertain whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt. *People v Tennyson*, 487 Mich 730, 735; 790 NW2d 354 (2010). Direct and circumstantial evidence, as well as all reasonable inferences that may be drawn, when viewed in a light most favorable to the prosecution, are considered to determine whether the evidence was sufficient to support defendant's conviction. *People v Hardiman*, 466 Mich 417, 429; 646 NW2d 158 (2002).

Defendant maintains that complainant's testimony was insufficient to convict because it was not credible. However, "[q]uestions of credibility are left to the trier of fact and will not be resolved anew by this Court." *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). While there are circumstances allowing the trial court to make judgments on the credibility of a witness, a defendant must move for a new trial, and even then, a court is not to discount or negate testimony except in *extreme* circumstances, such as when the "testimony contradicts indisputable physical facts or laws, where testimony is patently incredible or defies physical realities, [or] where a witness's testimony is material and is so inherently implausible that it

could not be believed by a reasonable juror." *People v Lemmon*, 456 Mich 625, 643-644; 576 NW2d 129 (1998) (quotations and citations omitted).

Defendant's assertion that the complainant's testimony is too incredible to qualify as sufficient evidence of his guilt falls well short of this threshold. Defendant's primary argument is that the time frame testified to by complainant in which the sexual abuse occurred could not be accurate because it covered a period when he was in jail. The parties stipulated that defendant was in jail from October 30, 2005, until July 14, 2006. When the prosecutor asked complainant whether the abuse occurred "shortly after" defendant moved from one trailer lot to another, complainant answered affirmatively. There was evidence that the move occurred on May 1, 2006.[1]

Defendant's argument rests on the assertion that any sexual contact occurring after he got out of jail in July 2006 cannot be characterized as "shortly after" May 1, 2006. This is an invalid assumption. The phrase "shortly after" is inherently vague. It is not unreasonable to assume that complaint would have considered late July to be "shortly after" May 1. In any event, complainant testified that she was not certain of specific dates, but was certain that she was 15 years old when the incidents occurred because she was entering high school as a ninth grader and had not yet taken driver's training.

Additionally, defendant argues that testimony from three other witnesses regarding defendant inappropriately touching young girls did not help establish the time frame or manner in which defendant touched complainant. However, complainant's testimony need not be corroborated. *Phelps*, 288 Mich App at 133. Moreover, that was not the purpose of the evidence.

Defendant also argues that complainant's testimony of four incidents of cunnilingus does not support that she was penetrated with his tongue as required for his CSC III convictions. This argument is contrary to the statutory definition of sexual penetration, which includes "sexual intercourse, *cunnilingus*, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required." MCL 750.520a(r) (emphasis added).

Next, defendant argues that the trial court committed several errors in motion rulings and evidentiary decisions. A trial court's decision on an evidentiary issue will be reversed on appeal only when there has been a clear abuse of discretion. *People v Holtzman*, 234 Mich App 166, 190; 593 NW2d 617 (1999). The trial court does not abuse its discretion when it chooses an outcome within the range of reasonable and principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

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[1] Obviously, defendant could not have physically moved while in jail. The testimony of the move was offered by defendant's girlfriend, who indicated that she and defendant moved on May 1.

Defendant first argues that the police failed to provide him with a 2005 police report that contained information of a possible witness who could impeach the testimony of one of the other-acts witnesses. However, the 2005 report was provided to defendant the day before trial. Further, the prosecutor located the witness at issue, and defense counsel interviewed the witness. Defense counsel stated on the record that after interviewing the potential witness, he decided "for trial tactics not to call her" as a witness at trial. Therefore, there is no error, and even if there was any error, it was harmless since defense counsel got access to the witness defendant surmises on appeal could have helped his case.

Next, defendant argues that the testimony related to "other-acts" evidence should not have been admitted under MCL 768.27a because the testimony did not describe other violations of the CSC statutes. As defendant asserts, the testimony of the two witnesses did not recount completed acts of CSC. However, attempted acts of listed offenses against minors are admissible under MCL 768.27a. *People v Mann*, 288 Mich App 114, 118-119; 792 NW2d 53 (2010). The testimony involved defendant's attempts to commit CSC and, thus, were admissible under MCL 768.27a.

Defendant next argues that MCL 768.27a is unconstitutional, and therefore testimony admitted under it was error. Defendant never raised this issue at the trial court, and accordingly we review it for plain error. *People v McNally*, 470 Mich 1, 5; 679 NW2d 301 (2004). And because we have already rejected this precise argument in *People v Pattison*, 276 Mich App 613, 619-621; 741 NW2d 558 (2007), we find no plain error.

Defendant further argues that MCL 768.27a violates MRE 401, MRE 402, and MRE 403, which are under the exclusive authority of the judiciary. MRE 401 and MRE 402 operate to ensure that only relevant evidence is admitted. Consistently, MCL 768.27a specifies that evidence admitted under the statute must be "considered for its bearing on any matter to which it is relevant." Defendant also argues that MCL 768.27a violates MRE 403 because it allows admission of evidence regardless of its level of prejudice. However, evidence that is admitted under MCL 768.27a is nonetheless subject to analysis under the requirements of MRE 403. *People v Watkins*, 491 Mich 450, 481; 818 NW2d 296 (2012).

Defendant also argues that evidence admitted under MCL 768.27a improperly allows character evidence to demonstrate a propensity to commit crimes. *Pattison* is on point:

> [O]ur cases have never suggested that a defendant's criminal history and propensity for committing a particular type of crime is irrelevant to a similar charge. On the contrary, it is because of the human instinct to focus exclusively on the relevance of such evidence that the judiciary has traditionally limited its presentation to juries. In cases involving the sexual abuse of minors, MCL 768.27a now allows the admission of other-acts evidence to demonstrate the likelihood of a defendant's criminal sexual behavior toward other minors. [*Pattison*, 276 Mich App at 620.]

There is a conflict between MRE 404(b) and MCL 768.27a because MRE 404(b) prohibits the admission of a defendant's other bad acts to prove defendant's propensity to commit the charged crime. However, because MCL 768.27a is a legislated rule of evidence that is based on public policy, rather than a procedural rule, MCL 768.27a is an exception to and

supersedes MRE 404(b). *Watkins*, 491 Mich at 476-477; *People v Smith*, 282 Mich App 191, 204; 772 NW2d 428 (2009).

Defendant argues that allowing the testimony related to these other acts violated his due-process rights and fair trial guarantees because these "similar acts" were not CSC crimes and were used as evidence of defendant's propensity to commit the crime charged. However, as discussed previously, evidence of attempted CSC was admissible under MCL 768.27a, *Mann*, 288 Mich App at 118-119, and MCL 768.27a allows admission of listed offenses against minors for its bearing on any matter that is relevant, including propensity to commit CSC, *Watkins*, 491 Mich at 470. Further, MCL 768.27a does not lower the quantum of proof or value of the evidence that the prosecutor must prove and the jury must determine in order to convict defendant of the crime charged. *Pattison*, 276 Mich App at 619.

Defendant argues that evidence of these other acts should have been excluded because it was not relevant and its probative value was substantially outweighed by undue prejudice under MRE 403. Again, the evidence was relevant generally to show a propensity to commit the charged crimes and thus admissible under MCL 768.27a. *Watkins*, 491 Mich at 476-477. In *Watkins*, the Supreme Court explained that "when applying MRE 403 to evidence admissible under MCL 768.27a, courts must weigh the propensity inference *in favor* of the evidence's probative value rather than its prejudicial effect." *Id.* at 487 (emphasis added). Therefore, defendant, while relying solely on the fact that the evidence was propensity evidence, has failed to establish how the other-acts evidence was *unfairly* prejudicial. See *People v Pickens*, 446 Mich 298, 336; 521 NW2d 797 (1994) (stating that all evidence is prejudicial, but unfair prejudicial evidence is evidence that injects consideration extraneous to the merits of the lawsuit).

Defendant argues that the trial court errantly denied defendant's request to strike the *entire* testimony of one of the other-acts witnesses because it was irrelevant and the jury would have to speculate as to what she was testifying to because she would not verbalize her accusations against defendant. However, while the witness was unable to precisely verbalize defendant's actions toward her, she did nod her head "yes" at one point that defendant touched her vagina while they were under a blanket together.[2] Further, the witness, a special-needs student, testified that she was unable to attend school because she was so upset with what defendant had done to her. Because the evidence is relevant as propensity evidence under MCL 768.27a, the trial court did not abuse its discretion in refusing to strike it in its entirety.

Defendant argues that the trial court improperly limited his cross-examination of complainant when it prohibited an exploration of her relationship with defendant when she was 17 years old. Defendant argues that "[t]he prosecutor brought out testimony that nothing had been done with the Defendant's penis by [complainant] until after she became 17" but prohibited him from asking about the same topic. However, the prosecutor did not ask complainant about

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[2] At trial, there was no objection to the prosecutor's description of the nod being an affirmative nod.

her relationship with defendant beyond age 16. Rather, she offered an unresponsive comment that defendant did not use his penis with her until after she was 17. Because the prosecutor did not question complainant about her sexual relationship with defendant when she was 17 years old, defendant was not deprived of his right of cross-examination when he was not allowed to question about this issue. Moreover, such evidence of what happened when complainant was 17 years old is wholly irrelevant to what happened when she was 15 years old, the pertinent time of the charged offense, and would have been inadmissible. MRE 402.

Defendant also argues that he was improperly prevented from questioning complainant regarding whether she had a boyfriend during the relevant time period. Defendant argues that this information would have shed light on complainant's credibility. But, again, complainant's relationship status was not relevant to the charges or his defense. As a result, the trial court did not err in preventing this line of questioning.

Defendant additionally argues that the trial court erred in not sustaining defendant's objection to a witness's unresponsive comment that defendant was a sick man and needed to be put where he belonged. However, the trial court stated "All right" in response to the objection, and notably, the examination ceased after the court's statement, and the witness was not allowed to expand on her thoughts. Thus, we find no error.

Defendant also argues that the trial court errantly prevented him from admitting evidence of a consensual relationship with complainant after she turned 16 years old. Defendant argues that this ruling prevented defendant from presenting a defense that the sexual interactions between defendant and complainant occurred after she was 16 years old. A criminal defendant has a state and federal constitutional right to present a defense. US Const, Ams VI, XIV; Const 1963, art 1, § 13; *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002). However, a defendant's right to present evidence in his own defense is not absolute, and a defendant's interest in presenting evidence must give way to other legitimate interests in criminal proceedings, such as the rules of evidence. *People v Unger (On Remand)*, 278 Mich App 210, 250; 749 NW2d 272 (2008). Such rules do not abridge defendant's right to present a defense as long as they are not "arbitrary" or "disproportionate to the purposes they are designed to serve." *Id*. (internal quotation marks and citations omitted).

Here, a consensual relationship was not a defense to the CSC charges that resulted from defendant's conduct when complainant was 15 years old. Further, defendant *did* present the defense that defendant's sexual contact occurred after complainant was 16 years old and that she was mistaken about her age at the time of the sexual contact. Accordingly, we find that defendant's argument has no merit.

Next, defendant argues that the scoring of the offense variables (OVs) was errantly based on facts that were not proved beyond a reasonable doubt and that the scoring of OVs 4, 10, 13, and 19 was incorrect.

The first portion of this argument is premised on *Blakely v Washington*, 542 US 296, 305; 124 S Ct 2531; 159 L Ed 2d 403 (2004), and it has already, and consistently, been determined that Michigan's sentencing scheme does not violate *Blakely*. *People v McCuller*, 479 Mich 672, 682; 739 NW2d 563 (2007); *People v Drohan*, 475 Mich 140, 159; 715 NW2d 778 (2006). A

sentencing factor need only be proved by a preponderance of the evidence. *Drohan*, 475 Mich at 142-143. "A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score." *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). A sentencing court may consider all record evidence before it when calculating the guidelines, including testimony taken at a preliminary examination. *People v Ratkov (Before Remand)*, 201 Mich App 123, 125; 505 NW2d 886 (1993). A trial court's scoring decision for which there is any evidence in support will be upheld. *People v Steele*, 283 Mich App 472, 490; 769 NW2d 256 (2009).

OV 4 was scored 10 points because the trial court found that complainant suffered serious psychological injury which may require professional treatment. MCL 777.34(2). Defendant argues that there was no evidence that she was upset during the sexual assaults and that, even if she was, being upset or afraid is not serious psychological injury as intended by the Legislature. However, complainant testified that she felt afraid and embarrassed at the time to the extent that she did not know what to do and froze. In *People v Apgar*, 264 Mich App 321, 329; 690 NW2d 312 (2004), this Court found that OV 4 was correctly scored at 10 points because the victim testified that she was fearful during the encounter with the defendant. Moreover, complainant remarked at the sentencing hearing that she was traumatized by the events and would never be able to trust men. The evidence supported the trial court scoring OV 4. *Steele*, 283 Mich App at 490.

Defendant also argues that the trial court erred in scoring OV 10, exploitation of a victim's vulnerability, at 15 points. OV 10 is scored at 15 points where predatory conduct, which is "preoffense conduct directed at a victim for the primary purpose of victimization," was involved. MCL 777.40(1)(a); MCL 777.40(3)(a). Defendant argues that there was no evidence of defendant engaging in predatory behavior toward complainant or of defendant exploiting her youth. In *People v Cannon*, 481 Mich 152, 161-162; 749 NW2d 257 (2008), limited in *People v Huston*, 489 Mich 451; 802 NW2d 261 (2011), the Court stated that OV 10 is scored for 15 points when the responses to the following inquiries are true:

> (1) Did the offender engage in conduct before the commission of the offense?
>
> (2) Was this conduct directed at one or more specific victims who suffered from a readily apparent susceptibility to injury, physical restraint, persuasion, or temptation?[3]

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[3] *Huston* provides that the reference to "one or more specific victims" is dictum. *Huston*, 489 Mich at 458 n 4. "[W]e must take care not to construe MCL 777.40(3)(a) as requiring that the defendant's preoffense predatory conduct have been directed at one particular or specific victim, but instead as requiring only that the defendant's preoffense predatory conduct have been directed at *a* victim." *Id.* at 459 (emphasis in original).

(3) Was victimization the offender's primary purpose for engaging in the preoffense conduct?

Predatory conduct involves only conduct that is "commonly understood as being "predatory" in nature, e.g., lying in wait and stalking, as opposed to purely opportunistic criminal conduct or "preoffense conduct involving nothing more than run-of-the-mill planning to effect a crime or subsequent escape without detection." *Huston*, 489 Mich at 462.

Complainant testified that, beginning when she was age 13, she and other children would spend a lot of time at defendant's trailer because he would fix their bikes. She explained that defendant began to single her out and treat her nicer than others, including the giving of gifts. She said that the favorable treatment continued to grow and progressed to flattering comments about her physical appearance. She characterized the relationship as a daughter/father type. It is reasonable to conclude from this evidence that defendant was grooming complainant for sexual conduct, and consequently, there was evidence to support a scoring of 15 points for OV 10.

OV 13 considers a continuing pattern of criminal behavior and was scored at 25 points because "[t]he offense was part of a pattern of felonious criminal activity involving 3 or more crimes against a person." MCL 777.43(1)(c); see *People v Bonilla-Machado*, 489 Mich 412, 422-423; 803 NW2d 217 (2011). "[A]ll crimes within a 5-year period, including the sentencing offense, shall be counted regardless of whether the offense resulted in a conviction." MCL 777.43(2)(a). Defendant argues that the trial court improperly scored OV 13 at 25 points because defendant had no convictions for crimes against persons other than those involved in this case. However, the plain language of MCL 777.43(2)(a) mandates that the sentencing offenses are included in scoring OV 13. See *People v Harmon*, 248 Mich App 522, 532; 640 NW2d 314 (2001) (allowing scoring of 25 points for OV 13 based on sole fact that the defendant had four concurrent convictions). Additionally, in 2008 defendant pleaded no contest to assault and battery, and pleaded guilty to domestic violence in 2009. Therefore, the scoring of OV 13 is supported.

Defendant argues that OV 19 was incorrectly scored at 10 points. MCL 777.49(c) requires that the sentencing court assess 10 points if "[t]he offender otherwise interfered with or attempted to interfere with the administration of justice." The factors considered in OV 19 include events that almost always occur after the charged offense has been completed. *People v Smith*, 488 Mich 193, 200; 793 NW2d 666 (2010). Interfering or attempting to interfere with the administration of justice includes acts that constitute obstruction of justice but is not limited to such acts. *People v Ericksen*, 288 Mich App 192, 204; 793 NW2d 120 (2010), citing *People v Barbee*, 470 Mich 283, 286-287; 681 NW2d 348 (2004).

Defendant argues that asking complainant not to tell of defendant's behavior was not sufficient to score 10 under OV 19. But interference with the administration of justice includes preventing a victim from coming forward sooner or affecting the testimony against defendant. *People v McDonald*, 293 Mich App 292, 299-300; 811 NW2d 507 (2011); *People v Endres*, 269 Mich App 414, 421-422; 711 NW2d 398 (2006). Thus, the scoring of OV 19 is supported.

Next, defendant raises several arguments in his Standard 4 brief. The first is a challenge to comments made by the prosecutor during opening statements. Since defendant did not object

to these statements, the issue is not preserved. *People v Metamora Water Service, Inc*, 276 Mich App 376, 382; 741 NW2d 61 (2007).

Generally, the test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Dobek*, 274 Mich App 58, 63; 732 NW2d 546 (2007). But this Court reviews unpreserved claims of prosecutorial misconduct for plain error affecting substantial rights. *People v Brown*, 279 Mich App 116, 134; 755 NW2d 664 (2008). Reversal is warranted only "if the defendant is actually innocent or the error seriously undermined the fairness, integrity, or public reputation of the trial." *People v Pipes*, 475 Mich 267, 274; 715 NW2d 290 (2006). Thus, reversal is not warranted unless the prejudicial effect of the prosecutor's comments could not have been cured by a timely instruction. *People v Leshaj*, 249 Mich App 417, 419; 641 NW2d 872 (2002).

Defendant contends that the prosecutor argued irrelevant facts not in evidence during her opening statement. "When a prosecutor states that evidence will be submitted to the jury, which subsequently is not presented, reversal is not warranted if the prosecutor acted in good faith." *People v Johnson*, 187 Mich App 621, 626; 468 NW2d 307 (1991). Defendant has failed to establish, let alone argue, that the prosecutor acted in bad faith. Accordingly, we find no plain error. Additionally, the jury was instructed that the lawyer's statements and arguments were not evidence and were only meant to illustrate the parties' theories. "It is well established that jurors are presumed to follow their instructions." *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). The instruction cured any potential prejudice.

Defendant also contends that the prosecutor made inappropriate remarks during closing argument. Specifically, defendant argues that the prosecutor impaired his right to a fair trial when she stated the following:

> [If you recall, m]yself and the judge both [examined] her, what are you afraid of? You know, why are you not attending school? Why are you afraid here today? What are you afraid of? She said it was because of [defendant]. It was because of [defendant].

At trial, the trial court examined the witness regarding why she has not been going to school:

> *THE COURT:* Okay. And how come haven't you been getting to school?
>
> *THE WITNESS:* Because I'm so nervous, I can't go. I tried to go. I went one day, and I just cannot go to school because I'm so nervous.
>
> *THE COURT:* Is the nervousness, is that in regards to school or is it in regards to something that happened to you?
>
> *THE WITNESS:* Well, it's you know, it's regards to [defendant]. It is.

Later, the witness stated that she had looked to defendant as a father figure and became upset "because of what happened between [her] and [defendant when he] did something a dad shouldn't do." Throughout her testimony, the witness consistently explained that she was afraid

to testify. While the witness did not explicitly say that she was fearful *of* defendant, her statements established that she was afraid *as a result of what defendant did to her*. Consequently, we conclude that the prosecutor stating that the witness was afraid *because of* defendant was an accurate statement of the evidence, and the statements were permissible. Contrary to defendant's assertion on appeal, the prosecutor did not state that the witness was afraid *of* defendant, himself.

Defendant argues that the prosecutor impermissibly misstated the law when she stated in closing that defendant loses his presumption of innocence when the evidence "comes in" and the jury begins to deliberate. "A prosecutor's clear misstatement of the law *that remains uncorrected* may deprive a defendant of a fair trial." *People v Grayer*, 252 Mich App 349, 357; 651 NW2d 818 (2002) (emphasis added). Every defendant has a due process right to a fair trial, which includes the right to be presumed innocent. *People v Rose*, 289 Mich App 499, 517; 808 NW2d 301 (2010). The presumption of innocence applies until it is overcome by proof beyond a reasonable doubt to the contrary. *People v Potter*, 89 Mich 353, 355; 50 NW 994 (1891). Here, the prosecutor did not clearly misstate the law as she was commenting that evidence erodes the presumption of innocence. Moreover, even if the prosecutor's statement was considered an incorrect statement of the law, the trial court informed the jury that defendant's presumption of innocence continued and entitled defendant to a verdict of not guilty unless it found beyond a reasonable doubt that he was guilty. Thus, any error in the prosecutor's statement did not remain uncorrected, and defendant was not deprived a fair trial. *Grayer*, 252 Mich App at 357.

Next, defendant argues in his Standard 4 brief that the out-of-court statements to the police of complainant and an other-acts witness establish that defendant was not guilty. This argument is essentially a challenge to the sufficiency of the evidence based on the witnesses' testimony being not credible. But, as we discussed earlier, this type of attack on credibility necessarily fails. *Avant*, 235 Mich App at 506.

Defendant's next Standard 4 issue relates to the dismissal of counts 5 and 10. After the prosecution presented its proofs, it moved for dismissal of counts 5 and 10. Defendant consented to the motion, and the trial court dismissed those two counts. But in his brief, defendant fails to explain what error exists to correct. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims . . . ." *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Accordingly, defendant has abandoned the issue.

Next, defendant argues that the trial court erred in denying his motion for a bill of particulars because he claims that the dates in the information were too vague. The Court reviews a trial court's decision on whether to grant a motion for a bill of particulars for an abuse of discretion. *People v Harbour*, 76 Mich App 552, 556-557; 257 NW2d 165 (1977). For purposes of the information filed in this case, MCR 6.112(E) provides that a trial court "may order the prosecutor to provide the defendant a bill of particulars describing the essential facts of the alleged offense." Significantly though, time is not of the essence nor a material element in a criminal sexual conduct case, at least where the victim is a child. *People v Sabin*, 223 Mich App 530, 532; 566 NW2d 677 (1997). Furthermore, when a defendant is informed of the details of the charged conduct, the need for a bill of particulars is no longer present. See *Harbour*, 76 Mich App at 557. Here, defendant waived the preliminary examination at which he would have

received details on this information. Additionally, defendant had police reports detailing the accusations against him as they related to sexual abuse of complainant when she was under 16 years old. Moreover, on February 22, 2010, the trial court entered an order allowing both parties 45 days, or until April 8, 2010, to file "any and all" pretrial motions. Defendant moved for the bill of particulars on May 11, 2010, more than a month after the court-imposed deadline without providing any good cause for not meeting the deadline. Accordingly, the trial court did not abuse its discretion when it denied defendant's motion.

Lastly, defendant argues that the trial court erred in denying his request for an evidentiary hearing on the admissibility of the other-acts evidence. A trial court's decision regarding whether to hold an evidentiary hearing is reviewed for an abuse of discretion. *Unger*, 278 Mich App at 217. Before trial, the trial court stated that it preferred to consider the admissibility of this testimony during the trial in order to avoid gamesmanship and to gain more familiarity with the facts of the case and relevance of the testimony. On the first day of trial, the court instructed the parties that it would bring in the potential other-acts witnesses and make a separate record. The motion to exclude the other-acts evidence was heard by the court and denied. Although the witnesses were not called, the substance of their testimony was known. We conclude that the trial court handled the matter reasonably and did not abuse its discretion.

Affirmed.

/s/ Michael J. Talbot
/s/ Kurtis T. Wilder
/s/ Michael J. Riordan