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ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR09-1244

	Opinion Delivered September 15, 2010
DONNIE RAY COLEMAN APPELLANT	APPEAL FROM THE POINSETT COUNTY CIRCUIT COURT [CR-2008-68]
V.	HONORABLE RANDY PHILHOURS, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

DAVID M. GLOVER, Judge

Donnie Ray Coleman was convicted by a Poinsett County jury of raping his daughter's friend, S.M. He was sentenced to twenty-five years in the Arkansas Department of Correction. Coleman raises two points on appeal—that there was insufficient evidence to support the verdict, and that the trial court erred in allowing the State to make certain statements during voir dire. We affirm the conviction.

At trial, testimony revealed that S.M. became friends with appellant's daughter during the summer of 2006 and spent the night at appellant's house on a regular basis during that summer and the 2006-07 school year. S.M., who was fifteen at the time of trial, testified that she was twelve when she began spending the night at appellant's house, and that she would spend the night there two or three times a week or stay the entire weekend.

S.M. related multiple readily received sexual intimacies advanced on her by appellant. She said that on one occasion appellant "grabbed her butt" and told her that she was pretty, and that on another occasion, after appellant had a fight with his wife, she and appellant drove to a pond and he began kissing her. S.M. also related that she and appellant once fell asleep on the couch together and that when they awoke, appellant placed her hand on his penis and put his fingers inside of her. S.M. further testified that she and appellant had sex in the bathroom at his house, with her providing the condom; that one time appellant had placed his fingers inside of her and put her hand on his penis while S.M., appellant, and appellant's family were in appellant's bed watching a movie; and that she had oral sex with appellant on one occasion because she was menstruating. S.M. said that these encounters occurred during the summer of 2006. She testified that she later had sexual intercourse with appellant for a second time in his bedroom by pulling her underwear to one side while appellant placed his penis inside of her, and that because he did not have a condom, appellant ejaculated on her stomach. S.M. said that two days after that sexual encounter, appellant's wife told her that she could not come to their house anymore.

Mark Robinson, an investigator for the Poinsett County Sheriff's Department in December 2007, testified that he interviewed appellant, and that appellant admitted that S.M. was his daughter's friend; that he knew how old S.M. was; that S.M. had been to his home and had spent the night at his house on several occasions; that S.M. had told him that she thought he was attractive; and that he had discussions with S.M. about sex. However, appellant denied that he had ever had any sexual contact with S.M.

Appellant's daughter testified that S.M. would spend the night with her almost every weekend and that appellant had told S.M. that she was too young to be sexually active; however, she denied that appellant spent time with S.M. Appellant's wife, Cassandra Coleman, testified that her daughter became friends with S.M. in the summer of 2006 in a summer-school program, that S.M. would spend the night at their house, and that she was present when appellant counseled S.M. about sex. Cassandra denied that appellant spent time alone with S.M., and she testified that appellant had denied meeting S.M. or doing anything inappropriate with S.M.

Appellant presented evidence of the inconsistencies in S.M.'s testimony, including the fact that S.M. had testified that appellant was circumcised when he was in fact not circumcised. Brenda Golden, a registered nurse called as a defense witness, testified that appellant was not circumcised; she also testified that a twelve-year-old girl might have difficulty in determining whether an erect penis was circumcised. Also, two law-enforcement investigators who interviewed S.M. admitted that there were some inconsistencies in her story; however, both interviewers testified that S.M. consistently reported that she had sex with appellant.

Appellant took the stand in his own defense. He denied all of S.M.'s allegations of sexual contact and sexual intercourse. He stated that he told S.M. not to have premarital sex, and that his wife was present for that discussion. Cassandra Coleman also testified that S.M. had never been in bed with her and appellant.

I.

For his first point on appeal, appellant argues that there is insufficient evidence to support his conviction for rape. Specifically, appellant argues that the State failed to prove that any sexual contact occurred between him and S.M. on the date that the State alleged in the information, and that nothing supported the conviction other than S.M.'s testimony.

In *Terry v. State*, 366 Ark. 441, 442, 236 S.W.3d 495, 496–97 (2006) (citations omitted), our supreme court set forth the standard of review for challenges to the sufficiency of the evidence:

> We treat a motion for a directed verdict as a challenge to the sufficiency of the evidence. When reviewing a challenge to the sufficiency of the evidence, this court assesses the evidence in a light most favorable to the State and considers only the evidence that supports the verdict. We will affirm a judgment of conviction if substantial evidence exists to support it. Substantial evidence is evidence which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture.

A person commits rape if he engages in sexual intercourse or deviate sexual activity with another person who is less than fourteen years of age. Ark. Code Ann. § 5-14-103(a)(3)(A) (Supp. 2009). "Deviate sexual activity" is defined as "any act of sexual gratification involving the penetration, however slight, of the ... mouth of a person by the penis of another person; or the penetration, however slight, of the labia majora ... of a person by any body member ... manipulated by another person." Ark. Code Ann. § 5-14-101(1)(B) (Supp. 2009).

The uncorroborated testimony of a rape victim alone is sufficient to sustain a conviction. *Standridge v. State*, 357 Ark. 105, 161 S.W.3d 815 (2004). Here, S.M. explicitly

testified about two instances of sexual intercourse and at least three instances of deviate sexual activity. This testimony alone is sufficient to sustain appellant's rape conviction. In this case, although appellant denied S.M.'s allegations and pointed to the inconsistencies in her version of events, it is apparent that the jury believed S.M.'s testimony that she and appellant had sexual intercourse and/or engaged in deviate sexual activity. If a victim's testimony contains inconsistencies, this is a matter of credibility that the jury must resolve. *Rains v. State*, 329 Ark. 607, 953 S.W.2d 48 (1997).

Appellant also argues that the State failed to prove that any sexual contact occurred on the date in the information—January 1, 2006. In support, appellant argues that his daughter and S.M. did not even meet until July 2006. This argument is unavailing for two reasons. First, it is unpreserved because appellant did not challenge the information before trial. *See Sawyer v. State*, 327 Ark. 421, 938 S.W.2d 843 (1997). Furthermore, the failure to specify the exact date and time of an offense is not fatal unless time is an essential element of the charged offense, and time is not an essential element of rape. *Rains*, *supra*.

II.

Appellant's second argument is that the trial court abused its discretion in allowing the State to "commit the jurors to a decision in advance" during voir dire. The scope and extent of voir dire is left to the sound discretion of the trial court, and the trial court's rulings will not be reversed on appeal absent an abuse of discretion. *Davis v. State*, 365 Ark. 634, 232 S.W.3d 476 (2006). In order to abuse its discretion, a trial court must act arbitrarily and groundlessly. *Id.* Voir dire allows the parties to gather information to intelligently exercise

for-cause and peremptory challenges. *Hutcheson v. State*, 92 Ark. App. 307, 213 S.W.3d 25 (2005). It is permissible to ask questions in voir dire to determine that prospective jurors understand key issues to be raised in a trial, and while it is impermissible to commit jurors to a decision in advance, jurors may certainly be questioned about their attitudes concerning issues such as circumstantial evidence. *Id.*

In this case, there was no scientific evidence that the rape occurred; rather, there was only S.M.'s testimony. The prosecutor was questioning the prospective jurors as to whether they could convict a person of rape without DNA evidence when appellant's counsel objected that the prosecutor was asking the jury to arrive at a final verdict. The trial court overruled the objection to the extent that the prosecutor was questioning the prospective jurors on the "CSI effect," but stated that the prosecutor had pushed it about as far as it needed to go. We find no abuse of discretion in this ruling. The prosecutor was posing a question to discern if any jurors would require scientific evidence for a rape conviction, which is a legitimate purpose of voir dire.

Furthermore, the State points out that appellant cannot demonstrate prejudice from the voir dire questions because he did not ask for a mistrial or an admonition at trial, and this court will not reverse in the absence of prejudice. *Hutcheson*, *supra*. Appellant admits that he did not request a mistrial, but argues that this is an exception under the third exception in *Wicks v. State*, 270 Ark. 781, 606 S.W.2d 366 (1980), which provides that it is the trial court's duty to intervene, without an objection from any party, to correct a serious error by admonishing the jury or ordering a mistrial. We need not address this argument, as we have

determined that the trial court did not abuse its discretion in allowing the State's line of questioning during voir dire.

Affirmed.

GLADWIN and ABRAMSON, JJ., agree.