

ARKANSAS COURT OF APPEALSDIVISION III
No. CACR 08-1388JONATHAN LAPRESE STEVENSON
APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered SEPTEMBER 9, 2009APPEAL FROM THE MISSISSIPPI
COUNTY CIRCUIT COURT,
[NO. CR 2007-060]HONORABLE VICTOR HILL,
JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

At a bench trial held December 6, 2007, a Mississippi County judge found Jonathan Stevenson guilty of raping his former girlfriend's daughter, K.M. Stevenson challenges the sufficiency of the evidence to support the conviction. He also argues that the trial court erred in denying him a hearing on his motion for new trial. We affirm.

K.M. was nine years old on the date of trial. During the trial, she recalled two instances where Stevenson made her feel "uncomfortable." On one occasion, she had finished eating a bowl of cereal when Stevenson asked her to get some Vaseline. She got the Vaseline for him, and he put some on her hand. He then pulled down his shorts and told her to "jack it off." She testified that she did so for five or ten minutes, and then "stuff started coming out." On the second occasion, Stevenson told her to get on the counter, and she complied. He then pulled down his shorts and her shorts, put Vaseline on both his and her private parts,

then “put his private part in [K.M.’s].”

A portion of the case concerned the date of the incidents, as K.M. could not remember exactly when they occurred, except that they happened while she lived on Riverside Drive in Osceola. The State presented testimony of the family’s landlord, whose records show that the family lived in the home from November 2004 through November 2006. On cross-examination, K.M. was asked about statements she gave to others, where she reported that the incidents happened around Thanksgiving and that they occurred two days apart. She responded that the two incidents occurred over a two-week period.

Stevenson moved for dismissal at the conclusion of the State’s case. While he conceded that K.M. had been sexually abused, he contended that her testimony was so inconsistent that there had to be doubt as to whether he was the perpetrator. The court denied the motion. Stevenson renewed the motion at the close of his case, and the court denied the renewed motion. The court then stated that it believed K.M.’s testimony and that none of the inconsistencies discredited her testimony. It found Stevenson guilty of rape and sentenced him to a forty-year term in the Arkansas Department of Correction.

On January 7, 2008, Stevenson filed a motion for new trial, claiming ineffective assistance of counsel. A hearing was scheduled for January 11, 2008, but Stevenson asked for a continuance, citing an inability to obtain the trial transcript. There was no hearing on the matter until May 15, 2008. After hearing arguments from counsel, the court stated that none of the issues raised in the motion for new trial were dependant upon the availability of the transcript. It further found that it lost jurisdiction to rule upon the motion for new trial for

its failure to resolve the matter within thirty days of the filing of the motion. Stevenson eventually filed a notice of appeal, and the supreme court agreed to allow him a belated appeal. *See Stevenson v. State*, 375 Ark. 318, ___ S.W.3d ___ (2008).

First, Stevenson challenges the sufficiency of the evidence to support the rape conviction. When considering a challenge to the sufficiency of the evidence, we consider the evidence in the light most favorable to the State, considering only the evidence in favor of the guilty verdict, and affirm if the conviction is supported by substantial evidence. *Mitchem v. State*, 96 Ark. App. 78, 238 S.W.3d 623 (2006). Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Baughman v. State*, 353 Ark. 1, 110 S.W.3d 740 (2003).

Stevenson makes three arguments as part of his sufficiency challenge. First, he contends that the State was obligated to establish the date of the offense and that the State failed to make that showing. This argument lacks merit. To establish the charge of rape, the State needed only prove that Stevenson engaged in sexual intercourse or deviate activity with a person less than fourteen years of age. *See Ark. Code Ann. § 5-14-103(a)(3)(A)* (Supp. 2007). The precise time is not an essential element to the crime of rape. *See Williams v. State*, 331 Ark. 263, 962 S.W.2d 329 (1998). Youthful victims of sexual abuse can rarely provide exactness as to the time an offense occurred, and any discrepancies in the testimony concerning the date of the offense are for the trier of fact to resolve. *See Rains v. State*, 329 Ark. 607, 953 S.W.2d 48 (1997). Therefore, the failure to pinpoint the approximate date of the offense does not make the evidence any less sufficient.

Second, Stevenson argues that the inconsistencies in K.M.'s testimony rendered her testimony insufficient. This is also unpersuasive. A rape victim's uncorroborated testimony constitutes substantial evidence to support a guilty verdict. *Brown v. State*, 374 Ark. 341, ___ S.W.3d ___ (2008). The duty of resolving conflicting testimony and determining the credibility of witnesses is left to the discretion of the trier of fact. *Boyd v. State*, 369 Ark. 259, 253 S.W.3d 456 (2007). We will not pass upon the credibility of a witness and have no right to disregard the testimony of any witness after the trier of fact has given it full credence, unless the testimony is inherently improbable, physically impossible, or so clearly unbelievable that reasonable minds could not differ thereon. *Wyles v. State*, 368 Ark. 646, 249 S.W.3d 782 (2007). Any inconsistencies in K.M.'s testimony were for the trial court, sitting as trier of fact, to resolve. And her testimony was not so unbelievable as to warrant reversal of Stevenson's conviction.

Finally, under the same heading as his sufficiency challenge, Stevenson argues that K.M. was an incompetent witness. In so arguing, he identifies instances where K.M. either gave inconsistent testimony, was confused by a question, or did not respond to a question. However, Stevenson failed to challenge K.M.'s competency as a witness at trial, thereby precluding this court from reviewing the issue. See *Johnson v. State*, 71 Ark. App. 58, 25 S.W.2d 445 (2000).

The State presented sufficient evidence to establish that Stevenson raped K.M. Accordingly, we affirm on this point.

Stevenson also argues that he was entitled to a hearing on his motion for new trial. He

relies on Arkansas Rule of Criminal Procedure 33.3(a), which requires a hearing on post-trial motions within ten days of the filing of the motion unless circumstances justify that the hearing or determination be delayed. He also acknowledges subsection (c) of the rule, which deprives the trial court of ruling on the motion if it is not ruled upon within thirty days, but he urges us to make an exception under the circumstances of this case.

In *Rounsaville v. State*, 374 Ark. 356, ___ S.W.3d ___ (2008), our supreme court held that it was appropriate to raise a claim of ineffective assistance of counsel by way of a motion for new trial. The trial judge in that case denied the motion for new trial without holding a hearing to consider the claim of ineffective assistance. The supreme court remanded the case for a hearing on the claim. The key in that case, however, was that the trial court denied the motion without a hearing, despite the obligation and the jurisdiction to do so.

In this case, Stevenson requested a hearing, but no hearing was held within thirty days after he filed the motion. Accordingly, the motion was deemed denied by operation of law. The rule is mandatory and provides no exceptions; a trial court must rule on a post-trial motion within thirty days, or it loses jurisdiction to do so. *State v. Boyette*, 362 Ark. 27, 207 S.W.3d 488 (2005). In other words, had Stevenson been able to convince the trial court to hold a hearing after the thirty-day period, the trial court would have lacked the power to grant any relief.

In addition, the record here shows that a hearing on the motion for new trial was scheduled four days after Stevenson filed the motion. He asked for a continuance, alleging his need for the transcript, but the trial court ultimately concluded that the transcript was

unnecessary to consider the motion. We agree with this ruling, as the trial judge was present at the trial and familiar with the record. While Stevenson needed the hearing to develop his case for ineffective assistance of counsel and was entitled to a hearing under the rules of criminal procedure, *see Rounsaville, supra*, the failure to obtain that hearing was thwarted by his unnecessary desire to obtain the trial transcript.

While Stevenson was entitled to a hearing on his motion for new trial, the trial court lost jurisdiction to grant the motion when it failed to rule on the motion within thirty days. Any hearing would have been moot. Accordingly, we affirm on this point as well.

Affirmed.

ROBBINS and GRUBER, JJ., agree.