ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION II

CACR05-950

November 8, 2006

JACQUELYNE VELCOFF
APPELLANT

AN APPEAL FROM CLARK COUNTY CIRCUIT COURT
[NO. CR-2003-187]

V.

HON. JOHN A. THOMAS, JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

On February 25, 2005, a Clark County jury found Jacquelyne Velcoff guilty of twenty counts of rape, for which she received twenty concurrent fourteen-year terms in the Arkansas Department of Correction. She challenges the sufficiency of the evidence to support the convictions. She also argues that the trial court allowed unfairly prejudicial testimony in violation of Ark. R. Evid. 403. We affirm.

The State charged appellant with twenty separate counts of raping her daughter, N.V.[1]

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[1]The criminal information, filed October 2, 2003, charged in pertinent part as follows:

> **Counts 1 through 20: RAPE ARK. CODE ANN. § 5-14-103.** The said defendant in the Ninth East District of the Criminal Division of CLARK COUNTY, acting alone or with Wayne Poland, did unlawfully and feloniously on or about the period of 2000 through 9/2003 engaged in sexual intercourse or deviate sexual activity with a minor

On September 19, 2003, N.V. went to school counselor William Bell and explained that appellant was taking her to Wayne Poland's house and forcing her to have sex with him. Bell reported N.V.'s statement to DHS and to school resource officer Steve Escalante. When Escalante asked N.V. how often she had been forced to have sex with Poland, N.V. replied, "More than once, but more like a hundred."

Escalante turned the investigation over to Investigator Roy Bethell of the Arkadelphia Police Department and Chief Deputy Wes Sossamon of the Clark County Sheriff's Department. Bethell and Sossamon interviewed N.V., who told them that the sexual abuse began when she was ten or eleven and that she had just turned fourteen. N.V. told them that Poland took pictures of her in various states of undress and that he videotaped him having sex with her on a couple of occasions. She also described in graphic detail the sexual acts that occurred, stating that it happened more than twenty times. Police later executed a search warrant at Poland's residence, where they took two computers, data storage discs, a camera with film, a video camera, photographs, and a personal safe containing sexually related items. Ninety percent of the pictures on the computer were pornographic. They found no videotapes of children engaged in sexual activity.

Police also took a statement from N.V.'s brother, D.V., who told police that he had been sexually assaulted as well and that the sexual assaults had been going on for years. He

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female, who was less than fourteen (14) years of age, by forcible compulsion on twenty (20) separate occasions in violation of A.C.A. 5-14-103 against the peace and dignity of the State of Arkansas.

told police that he was first molested when Poland lived in Caddo Valley at Storm Creek Apartments and that it happened after appellant suggested that he spend the night with Poland. Bethell also interviewed appellant. During the interview, Bethell asked her if she had called Poland since her children were taken into DHS's custody. Appellant initially denied it, but after Bethell told her that the police could check her caller ID, she told him that she did have a conversation with him.

At trial, D.V. testified that his family lived next to Poland when they lived in Caddo Valley and that appellant encouraged him to spend the night with Poland because Poland was an old man and alone. Over appellant's objection, D.V. stated that he visited Poland every weekend or every other weekend, that he and Poland would sleep in the same bed, and that Poland would wake him up in the middle of the night and molest him. He also stated that Poland would show him pictures and videos of naked women and men and that he saw N.V. in one video. He testified that he would tell appellant that he did not want to visit Poland and that appellant would get impatient if he told her that he did not want to go. D.V. also testified that appellant encouraged him to change his story to keep Poland out of jail.

N.V. testified that she was fifteen and at one time lived in an apartment in Caddo Valley next door to Poland. She stated that the first time she was alone with Poland, he told her to take off her clothes because appellant needed money. During this time, Poland would touch her outside of her clothes. She noted that this happened at his house on the hill and that Poland started touching her on her buttocks and vagina. Poland was planning to take her to his house so that he could have sex with her again on the day she told her counselor about

the rapes. N.V. testified that the abuse occurred "well over twenty times"; that Poland would penetrate her with his penis; and that she told appellant about the rapes, to which appellant replied that it was her imagination. N.V. also testified that she saw Poland give appellant money and that Poland would give her money to give to appellant. She stated that appellant would sometimes be in the room while Poland was having sex with her and that Poland would want to have sex with her after he had sex with appellant. On one occasion, N.V. told appellant that she did not want to have sex with Poland, after which appellant held her down while Poland got on top of her. She stated that appellant told her that she needed the money.

Appellant moved for directed verdict at the close of the State's case, contending that the information did not specifically allege that the twenty counts occurred at a particular time. The court denied her motion. Appellant testified in her defense and denied that Poland paid her in exchange for sex. She also denied holding N.V. down while Poland took advantage of her. The jury later found appellant guilty of twenty counts of rape and sentenced her to twenty concurrent fourteen-year terms in the Arkansas Department of Correction.

Appellant challenges the sufficiency of the evidence, arguing that the State presented insufficient evidence that she committed twenty counts of rape. The State contends that appellant's sufficiency challenge is not preserved for appellate review. It notes that appellant only objected once during the testimony about the number of times Poland had sex with N.V.; that the objection only concerned the witness's memory, recollection of the statements, and the need for a proper foundation; and that the court made no ruling on the objection.

However, we are aware of no authority that requires a defendant to cite offending testimony as a prerequisite to preserving a sufficiency challenge on appellate review. The record shows that she made a specific directed-verdict motion at the close of the State's evidence and renewed that motion at the close of all evidence.[2] This is all that is necessary to preserve a challenge to the sufficiency of the evidence. *See* Ark. R. Crim. P. 33.1.

A motion for directed verdict is a challenge to the sufficiency of the evidence. *Hunt v. State*, 354 Ark. 682, 128 S.W.3d 820 (2003). We review the evidence in the light most favorable to the State. *Baughman v. State*, 353 Ark. 1, 110 S.W.3d 740 (2003). The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* Only evidence

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[2]Appellant argued at trial:

> [W]e would make a Motion for Directed Verdict and as a basis for that motion, we would state that, number 1, the defendant is charged by way of a general information which alleges specifically 20 counts in a general manner. It does not specifically allege that a count occurred at a particular time.
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> . . . .
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> There [sic] has not been demonstrated that there was actually any credible evidence, when you take into consideration that [D.V.] basically stated that he could not testify that the mother was present at any given time when these alleged acts could of occurred. That's not to say that there were times when he would not have been present. When you take the testimony of [N.V.], and you size up her testimony, her testimony is incredible to a point where a reasonable juror should not be required to sit and make a decision as to whether or not my client is, in fact, guilty of the commission of the 20 counts as alleged in the information.

supporting the verdict will be considered. *Id.*

Appellant argues, "The complaining witness, more likely than not, pulled a number 'out of thin air' during her interview with the police, and this became a basis for a criminal information." She further contends, without much argument, that the information did not allege that a count occurred at a particular time.

Regarding appellant's argument that N.V. pulled the number twenty "out of thin air," it is the job of the jury, as fact finder, to weigh inconsistent evidence and determine issues of credibility. *Brown v. State*, — Ark. App. —, — S.W.3d — (June 14, 2006). It was within the jury's power to either reject as speculative or accept as the truth N.V.'s testimony that she was raped on at least twenty occasions. Further, the testimony of a rape victim, standing by itself, is sufficient to support a conviction. *Gillard v. State*, — Ark. —, — S.W.3d — (Apr. 27, 2006). N.V. testified that Poland would penetrate her with his penis when he would abuse her and that this occurred more than twenty times.

As for appellant's argument that the information did not allege that a count occurred at a particular time, it is well-settled that 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 jury to resolve. *Rains v. State*, 329 Ark. 607, 953 S.W.2d 48 (1997).

Appellant also argues that D.V.'s testimony was unfairly prejudicial.[3] Appellant contends that even if D.V.'s testimony was admissible under Rule 404(b) of the Arkansas Rules of Evidence, it was inadmissible under Rule 403. We apply an abuse-of-discretion standard of review to rulings under Rule 403. *Morris v. State*, — Ark. —, — S.W.3d — (Oct. 5, 2006). Evidence offered by the State will usually be prejudicial to the accused; otherwise, the State would not introduce it. *Id.* However, that evidence should not be excluded under Rule 403 absent a showing that the evidence lacks probative value in light of the risk of *unfair* prejudice to the accused. *Id.*

Appellant cites *Smith v. State*, 19 Ark. App. 188, 718 S.W.2d 475 (1986), for the proposition that the probative value of evidence correlates inversely to the availability of other means of proving the issue for which the prejudicial evidence is offered. However, the supreme court overruled the rule stated in *Smith* in *Bledsoe v. State*, 344 Ark. 86, 39 S.W.3d 760 (2001) (overruling *Golden v. State*, 10 Ark. App. 362, 664 S.W.2d 496 (1984)), and expressly overruled *Smith* in *Bullock v. State*, 353 Ark. 577, 111 S.W.2d 380 (2003). Today, Arkansas appellate courts often state that the State is entitled to prove its case as conclusively as possible. *Smith v. State*, 351 Ark. 468, 95 S.W.3d 801 (2003); *Bledsoe v. State*, *supra*.

Here, D.V. testified, among other things, that appellant would encourage him to spend the night at Poland's residence and that Poland would abuse him. He also testified that appellant would get impatient if he stated that he did not want to visit Poland. D.V.'s

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[3]At trial, appellant argued that D.V.'s testimony was "irrelevant, prejudicial, inflammatory, and unrelated to the charges."

testimony established that appellant encouraged him to visit Poland, who committed horrible acts of abuse. While this testimony is prejudicial, it does not rise to the level of prejudice that would warrant exclusion. We hold that the trial court did not err in allowing D.V.'s testimony to be entered into evidence.

Affirmed.

PITTMAN, C.J., and GLOVER, J., agree.