**IN THE COURT OF APPEALS OF IOWA**

No. 23-0353
Filed February 21, 2024

**IN THE INTEREST OF T.M.,**
**Minor Child,**

**T.M., Minor Child,**
Appellant.

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Appeal from the Iowa District Court for Pottawattamie County, Eric J. Nelson, District Associate Judge.

A juvenile appeals the juvenile court order adjudicating him delinquent for sexual abuse in the second degree. **AFFIRMED.**

Drew H. Kouris, Council Bluffs, for appellant minor child.

Brenna Bird, Attorney General, and Anagha Dixit, Assistant Attorney General, for appellee State.

Considered by Greer, P.J., and Schumacher and Ahlers, JJ.

**AHLERS, Judge.**

In this juvenile delinquency case, the State charged sixteen-year-old T.M. with sexual abuse in the second degree based on an allegation that he performed a sex act on his six-year-old sister. T.M. is alleged to have inserted his fingers in his sister's vagina while the two were sitting on the couch in the family's living room watching television. The juvenile court found that T.M. committed the act and adjudicated him delinquent. T.M. appeals his adjudication. He challenges the admission of evidence in the form of his father's testimony about his Xbox search history,[1] and he argues the evidence is insufficient to support the juvenile court's finding that he committed the delinquent act.

We decline to address T.M.'s evidentiary challenge for two reasons. First, while the challenged evidence was mentioned in the juvenile court's summary of the evidence introduced at trial, the court's ruling does not indicate that it relied on the challenged evidence in reaching its finding that T.M. committed the delinquent act, so it is unnecessary to resolve the challenge to the evidence. *See State v. Weaver*, 608 N.W.2d 797, 805–06 (Iowa 2000) (finding admission of evidence harmless in a bench trial when it was clear the court did not rely on the challenged evidence). Second, even if the juvenile court considered the challenged evidence, we choose not to consider it in assessing the sufficiency of the evidence, making it unnecessary to decide whether the evidence was properly admitted. *See In re J.A.L.*, 694 N.W.2d 748, 753 (Iowa 2005) (finding it unnecessary to determine whether admission of challenged evidence was harmless error when the appellate

[1] An Xbox is a videogaming console with a web browser, permitting the user to access the internet through the gaming console.

court conducts a de novo review and chooses not to consider the challenged evidence).

We turn to the remaining issue in the case, which is whether the evidence—not considering the challenged evidence about T.M.'s internet searches—is sufficient to support the juvenile court's finding that T.M. committed the delinquent act. We review challenges to the sufficiency of the evidence in juvenile delinquency adjudications de novo. *In re T.H.*, 913 N.W.2d 578, 582 (Iowa 2018). The State has the burden to prove that T.M. performed a sex act on his six-year-old sister. *See* Iowa Code §§ 709.1(3) (defining sexual abuse to be a sex act performed with another person who is a child); .3(1)(b) (defining sexual abuse in the second degree as committing sexual abuse against another person who is a child); *see also id.* §§ 702.5 (defining child as any person under the age of fourteen years)[2]; .17(3) (defining sex act as sexual contact between the finger or hand of one person and the genitalia of another person).

T.M.'s sufficiency challenge rests primarily on his contention that his sister was not a credible witness. He notes five potential credibility issues. He contends (1) his sister seemed to have trouble understanding the oath when the judge swore her in as a witness; (2) when she was interviewed five days after her disclosure of the abuse, she said "nobody touched me" before giving a slightly different recounting of the incident than she did at trial; (3) during the same interview she could not recall what she was wearing during the incident; (4) she misremembered

[2] In 2021, the legislature amended Iowa Code section 709.3(1)(b) to change the age requirement of the other person from "under the age of twelve" to "a child." 2021 Iowa Acts ch. 37, § 3. The delinquent act here is alleged to have occurred in 2022, after the effective date of the amendment.

where other family members were during the incident; and (5) she claimed during the interview that her stepmother spanked her, which her stepmother denied.

While we review the record anew and are not bound by the juvenile court's findings, we give weight to the juvenile court's findings, especially regarding questions of witness credibility. *In re D.S.*, 856 N.W.2d 348, 351 (Iowa 2014). We find it important that the court explicitly found the sister's testimony credible. We do not expect a six-year-old to remember minor details such as what she was wearing during the incident or where her family members were in the house while they were out of sight. *See State v. Donahue*, 957 N.W.2d 1, 11 (Iowa 2021) ("Inconsistencies and lack of detail are common in sexual abuse cases and do not compel a jury to conclude that the victim is not credible or that there is insufficient evidence to support a guilty verdict."). The sister testified consistently at trial that "[T.M.] put his fingers in my hoo-hoo," meaning her vagina.[3] The sister testified this happened when she and T.M. were sitting on the couch together. She first disclosed the incident on October 7, 2022, claiming it happened "last night", or the night of October 6. She testified that T.M. gave her candy afterward, which is something he had not done on any prior occasion. The stepmother testified "in the year the kids have been there [T.M.] has never given them candy or snacks or anything without asking [the father] or I first." The father testified that T.M. was present when the sister disclosed the abuse and denied it in a monotone way, which the father considered unusual. The step-grandmother testified that she

[3] The stepmother testified that she taught the sister the term "hoo-hoo" to refer to a vagina, and that when the sister disclosed to her that T.M. put his fingers in her "hoo-hoo", the stepmother knew immediately that she was referring to her vagina.

spoke with the sister after her disclosure to her father and stepmother, and the sister's statement to her about the abuse matched what she told the father and stepmother, as well as her testimony at trial. We find nothing in the record prompting us to reject the juvenile court's finding that the sister was credible.

T.M. also argues the evidence was insufficient because the siblings' step-grandmother was in and out of the living room during the time frame in question, and she testified to never noticing any inappropriate or unusual behavior. But over the thirty- to forty-five-minute period in question, the step-grandmother only walked through the room two or three times, and, while she was on the porch nearby for much of the time, she could not see what was happening in the room. She testified that, from only five or six feet away, she heard nothing inappropriate. But her testimony does not necessarily discredit the sister's account. There was ample opportunity for T.M. to perform the sex act on his sister when the step-grandmother was not present or within earshot.

T.M. also claims he could not have committed the act alleged because he would have triggered the motion-activated camera set up in the living room, and he knew he was being recorded. This argument ignores the fact that the camera was placed behind the couch, which T.M. knew, and only captured the backs of the children's heads, not their hands or other parts of their bodies. Further, because the camera was motion-activated, it only recorded in short increments after it detected sufficient movement. It did not capture the entire period in question. The camera's recording was not preserved, and therefore the only evidence of what was captured by the camera was the father's and stepmother's testimony that they observed nothing noteworthy while watching the footage. The

presence of the camera does not persuade us that the sister's account of what occurred was untruthful.

T.M. suggests that the testimony from the witnesses other than his sister, when balanced against the sister's testimony, show that the State failed to prove its case beyond a reasonable doubt. After reviewing the record, we disagree. The sister's testimony is sufficient to support a finding of guilt. *Id.* at 10–11 ("A sexual abuse victim's testimony alone may be sufficient evidence for conviction."). The other testimony does not contradict her account—it simply shows that no one witnessed anything to corroborate or contradict the sister's testimony. Since T.M. and his sister were alone and unobserved much of the time in question, the lack of direct corroborating evidence does not do much to cast doubt upon the sister's testimony.

Upon our de novo review, without considering the challenged testimony about the Xbox search records, we find sufficient evidence supports the conclusion that T.M. performed a sex act on his six-year-old sister. Therefore, we affirm.

**AFFIRMED.**