

2015 IL App (2d) 150411-U  
No. 2-15-0411  
Order filed December 10, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> DEYBYS M.,	)	Appeal from the Circuit Court
	)	of Lake County.
a Minor	)	
	)	No. 12-JD-308
(The People of the State of	)	
Illinois, Petitioner-Appellee,	)	Honorable
v. Deybys M., Respondent-	)	Valerie B. Ceckowski,
Appellant).	)	Judge, Presiding.

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JUSTICE JORGENSEN delivered the judgment of the court.  
Presiding Justice Schostok and Justice Birkett concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The evidence was sufficient to sustain the minor’s delinquency adjudication. Affirmed.
- ¶ 2 In the direct appeal of his adjudication as a delinquent minor, respondent, Deybys M., challenges the sufficiency of the evidence that he committed criminal sexual assault (720 ILCS 5/12-13(a)(3) (West 2004))<sup>1</sup> and aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(2)(i) (West 2004)).<sup>2</sup> For the following reasons, we affirm.

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<sup>1</sup> Renumbered as section 11-1.20 by P.A. 96-1551, Art. 2, § 5, eff. July 1, 2011.

<sup>2</sup> Renumbered as section 11-1.60 by P.A. 96-1551, Art. 2, § 5, eff. July 1, 2011.

¶ 3

### I. BACKGROUND

¶ 4 In 2012, Nielsen M. complained that, when she was around six years old, she was the victim of sexual abuse by her cousin, Deybys M. (age 11 at the time of the alleged abuse). The evidence at trial will be detailed below. For context, however, we note that the State moved pre-trial to admit statements Nielsen made outside of court pursuant to section 115-10 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10 (West 2014)). After a hearing, the motion was granted.

¶ 5 Further, the court denied Deyby's motions to suppress statements. Specifically, after he was interviewed by police, Deybys made a handwritten statement and signed it. In relevant part, that statement reads:

“When [I] was 11 years old[,] [I] lived in Powell ave in Waukegan, [I] lived with my dad, brother, Aunt, cuzing [sic] and her dad. One day me and my cuzing [sic] watched some porn videos on the tv and we got the idea of trying something out, it happen like 4 times and now [I] know that what [I] did was wrong and [I] feel bad about everything [I] did when [I] was 11, [I] know [I] shouldn't of done that.”

¶ 6 Further, Deybys signed a typewritten statement prepared by the interviewing officer. In relevant part, that statement reads:

“When I was 11 years old I lived with my father, brother and cousins on Powell Street in Waukegan. My little cousin Nielsen was about 7 years old. Nielsen and I use [sic] to watch pornographic movies together. This gave us the idea to have sex a few times. We would take our clothes off and I would place my penis inside of her anus (butt). I don't remember my brother ever doing this with her. I haven't told anyone about this and I feel bad that I did this with my little cousin.”

¶ 7 A bench trial commenced on March 5, 2014. Emily Brotman testified that, on January 13, 2012, she was a school counselor at Miguel Juarez Middle School in Waukegan. That day, Brotman called Nielsen (then in the sixth grade) to her office, after Nielsen's teacher saw a note in Nielsen's folder that stated that Nielsen hated her mother. Nielsen told Brotman that she was angry with her mother, who beat and hit her many times. According to Nielsen, her mother would punch her in the mouth, had hit her with a belt and shoe, had thrown her to the ground, and gave her bruises and marks all over her body. There were no visible injuries on Nielsen's face or lips. Nielsen said that she felt that her mother hated her and treated her like an animal. Nielsen began to get very upset and started crying. She said that her father also beat her. Nielsen then told Brotman that, when she was five years old, her cousins had raped her. Nielsen explained that, for a period of about one year, she lived with her parents and cousins in the same home. Nielsen pointed behind her to her bottom to show where on the body the rape took place and said that it happened approximately 10 times.

¶ 8 Brotman consulted with another counselor at the school, as well as the school social worker and the assistant principal. They determined that Nielsen's parents should be notified, and a Spanish-speaking staff member called Nielsen's mother, Amelia M., and asked her to come to the school. When Amelia arrived, she sat in the office with Brotman and Nielsen. Nielsen began speaking with her mother and became extremely upset and hysterically crying "to the point where she almost, kind of, fell off of the chair." After Nielsen and her mother spoke, Brotman told them to go to the police. In addition, Brotman contacted DCFS to report Nielsen's allegations of abuse by her mother and rape by her cousins.

¶ 9 Nielsen testified that she was born on November 14, 1999, and was age 14 at the time of trial. She confirmed that, on January 13, 2012, she was asked to see Brotman after her teacher

saw that she had written “I hate my mom” on a notebook. Nielsen testified that she was “really angry” with her mom “because I thought she was paying more attention to my little sister than me.” Nielsen testified that she did not tell Brotman the truth about her mom hitting her, and she said things about her mom that were not truthful only because she was “really, really mad” at her.

¶ 10 Nielsen agreed that she also told Brotman that, when she was five or six years old,<sup>3</sup> she was raped by her cousins, Deybys and Edgar (who are brothers). Brotman called her mother, who came to the school, followed by Nielsen’s father. Eventually, the family left the school and went to the police station. When they arrived, there was no one on duty who spoke Spanish, so they went to eat dinner at McDonald’s. There, Nielsen told her mother that her cousins raped her by entering her “butt cheeks.” After dinner, they returned to the police department and spoke with an officer. Eventually, Nielsen gave a videotaped interview to a detective, which was reviewed by the court.

¶ 11 Nielsen testified that the residence where the abuse occurred had a basement, a first floor with a kitchen and living room, and a second floor, where she shared a bedroom with her parents and Deybys and Edgar shared a second bedroom with their father. There was a television in Deybys’s bedroom. When the children returned home from school, the parents would be working, so a woman named Blanca (Amelia’s cousin’s wife) would take care of the children. When Blanca was on the first floor, Deybys and Edgar would grab Nielsen and take her to their

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<sup>3</sup> Nielsen also testified this occurred in 2005 or 2006, which, depending on exact dates, would have made her six or seven years old. She recalled celebrating two birthdays, her sixth and seventh, at the relevant address, and that her mother was expecting her little sister. She estimated that they lived for around three years at the home in which the allegations took place.

bedroom. Deybys would pull down Nielsen's pants, put her on his bed, and take off his pants. Nielsen testified that Deybys's "thingamajigger" or "dick" had a "boner." Nielsen would be lying on the bed, on her side, and Deybys would lie on the bed behind her on his side. He then put his "thingamajigger" "behind the butt hole" and "inside the butt cheeks" and move toward her. She would yell "stop it," and he would grab her and cover her mouth very tightly. Deybys did this to Nielsen less than 10 times, but more than once. Deybys would say, "Do you like it? Do you like it?" When Deybys was nine years old, he would grab Nielsen's hand and put it on his penis and make her move her hand up and down. Sometimes the bedroom door would be open, and sometimes Deybys and Edgar would watch pornographic television with her in the room. Edgar was sometimes present; he did not have Nielsen touch him. Nielsen did not tell anyone immediately after it happened because she was scared people would not believe her. Also, Deybys told her he would kill her dad, "do something" to her parents, or that she would get in trouble.

¶ 12 Nielsen confirmed that all allegations she had made about her mother and her father (punched her in the mouth, threw her to the ground by her hair, hurt her with a belt and shoe, left bruises and marks on her body, etc.) were untrue. When asked why she would tell Brotman untruthful allegations, Nielsen replied, "I don't know. I was really mad." She agreed that, when she made those statements, she knew that she was lying and that Brotman might have to tell other people and investigate further. Nielsen agreed that, on one occasion, something happened in the bedroom where Deybys struck her near the nose or lip and she was bleeding. She told her mother about that incident and that Deybys had hit her, but not about any of the alleged abuse.

¶ 13 Amelia M., Nielsen's mother, testified through an interpreter and confirmed that, on January 13, 2012, she was called to the middle school and first learned of Nielsen's allegations.

Specifically, when she arrived at Brotman's office and asked her daughter what was going on, Nielsen said, "They raped me, Deybys and Edgar." (Deybys and Edgar are Amelia's nephews and her brother's sons). After going to the police station and being told to return later, Amelia took Nielsen to McDonald's. There, Nielsen told Amelia that Deybys and Edgar would watch pornographic videos. One of them would hold her while the other one would do something to her from behind in her "butt," and it happened several times. After returning to the police department and speaking with an officer, Amelia scheduled an interview for Nielsen at the Gurnee Lake County Children's Advocacy Center, where Nielsen eventually gave a videotaped interview. Amelia estimated that they lived in the relevant residence from around 2005 to 2006, more or less two years. She did not recall Nielsen ever bleeding and complaining that Deybys struck her in the nose or hit her lip.

¶ 14 Jane Postlewait testified that she works for DCFS as a child abuse investigator. On January 13, 2012, she received a call from the Waukegan police department, and she met with Nielsen there. It was after 10 p.m., and Nielsen's parents were present, but in another room. She initiated two investigations concerning Nielsen's reports of: (1) physical abuse by her mother; and (2) sexual penetration by her two cousins. Nielsen was nervous when speaking with Postlewait. She denied abuse by her mother, stating that her mother was "really nice" and that Brotman took things about her mother out of context. As to the cousins, she stated that they were "gang bangers" and that they had sexually abused her. She reported that she did not tell anyone sooner because her cousins had threatened her.

¶ 15 Detective Timothy Ives testified that, for approximately eight years, he has been assigned predominately to cases involving crimes against children. Ives has specialized training relating to victims of sexual abuse. In January 2012, Ives was contacted by DCFS about Nielsen's

complaint. Ives eventually met with Nielsen at the Lake County Children's Advocacy Center, where he conducted a videotaped interview.

¶ 16 Nielsen told Ives that, when she was five or six years old and living with Deybys, he placed his penis inside of her anus. This took place in his bedroom, which he shared with his brother, on more than one occasion and while they were watching pornography. Nielsen explained that defendant would pull down her pants and insert his penis into her pants. Ives testified that he had reviewed the videotape of the interview and that it was accurate.

¶ 17 Ives eventually asked Officer Luka (first name not clear from the record), the school resource officer at Waukegan High School, to pick up Deybys, age 17 at the time (Deybys's birthday was July 2, 1994) from school and to bring him to the police department. (According to testimony at the suppression hearing, Luka's squad car was marked, but Deybys was not handcuffed). Ives spoke with Deybys, but chose not to record or videotape the interview or have any other officer or child advocate present. According to Ives, he asked Deybys if he wanted to have his parents present during the interview, but Deybys declined because his mother was living out of state and his father was at work and would be mad or upset. According to Ives, Deybys appeared to be embarrassed, ashamed, and concerned about getting into trouble and, so, he did not want anyone else in the room. Ives testified that he read Deybys the juvenile rights and warnings, one at a time, pausing after each one to ask if he understood it. He and Deybys placed their initials next to the written description of each right, and then Deybys signed the document, waiving his rights. Deybys never indicated to Ives that he did not want to talk with him.

¶ 18 Ives asked Deybys questions about Nielsen, and Deybys told Ives that he recalled engaging in sexual contact with her when he was about 11 years old. Deybys told Ives that he and Nielsen would watch pornography that he accessed through satellite television. He said that

he and Nielsen would act out what they saw on the television and that he placed his penis on more than one occasion inside Nielsen's anus. Deybys denied that Edgar was ever present in the room. Ives told Deybys to complete a handwritten statement, but did not tell him what he should write. Ives did not make any promises or threats, and he never told Deybys, "Listen, this is not a big deal." While Deybys was hand writing a statement, Ives left the room to type up a statement. He returned to the room with the typewritten statement and reviewed it aloud with Deybys. Ives also reviewed the handwritten statement. Ives and Deybys then signed both documents. The entire interview lasted approximately 35 minutes. Deybys never asked for a parent, said he did not want to talk, or said that he did not understand. Ives drove Deybys home.

¶ 19 On cross-examination, Ives agreed that Nielson told him that Blanca was home during the alleged incidents and that Edgar was also involved. He agreed that the police never "follow[ed]-up" to interview Blanca or Edgar. Nielsen's videotaped interview and Deybys's handwritten and typed statements were admitted into evidence. The State rested. Defense counsel moved for a directed verdict, but made no argument. The court denied the motion.

¶ 20 In his case-in-chief, Deybys sought to establish that, given the layout of the home, the hours the adults worked, the time that the kids attended school and other circumstances, Deybys would not have had the opportunity to commit the alleged offenses and did not do so. In part, Deybys's father, Delio M., testified through an interpreter that, in 2005, he lived with his sister, Amelia, in the house in Waukegan. The house had two bedrooms upstairs, but a makeshift bedroom was created on the first floor, as many people lived there at the time (apparently nine people, including Delio, Deybys and Edgar, Nielsen, Amelia, and Amelia's father, Delio's brother and sister-in-law, Blanca, and another brother). Delio testified that the house was small, the walls were thin, and a person could be on the main floor and hear what was going on

upstairs. He agreed that the bedrooms had doors. According to Delio, Blanca never babysat Nielsen. He agreed that he was at work during the day from 2:15-10:30 p.m., and did not know what happened at the house when he was gone. Nevertheless, he testified that his sons never played with Nielsen.

¶ 21 Edgar M. testified that Deybys is his brother. In 2005, he was in middle school (13 years old) and lived in the Waukegan house. According to Edgar, Nielsen was never home during the weekdays when he and Deybys got home from school. He testified that he and his brother were never alone with Nielsen. He never had any sexual contact with her, nor did he ever witness anybody having sexual contact with her. Edgar did not witness Deybys naked with Nielsen. He never watched any adult movies with Nielsen in the room and testified that there were no adult movies in the house. Further, Edgar testified that “every step” could be heard in the house. Finally, Edgar denied that he ever threatened Nielsen or heard Deybys threaten her and denied gang membership or association.

¶ 22 Deybys testified that he was 19 years old at the time of trial and age 10 or 11 in 2005 or 2006. He testified, consistent with Edgar, that Nielsen was not home on weekdays when he got home from school. He testified that, during the relevant period, he never watched adult movies, nor were there any in the house. Deybys testified that he never had any sexual contact with Nielsen, never removed any of her clothing, never removed his clothing or showed her his penis, never touched her or was alone with her on the bed. With respect to the February 16, 2012, interview with Ives, he testified that he was a sophomore in high school and school security contacted him and then took him to the police department. He was not given any information and did not know why he was brought there. Deybys testified that he initialed and signed the rights and waiver form because Ives told him to, but he denied that Ives read and explained it to

him. Ives did not tell Deybys that he could notify a parent and never mentioned his parents. Deybys never said that he was embarrassed and did not want his father notified. The interview started with Ives showing Deybys a picture of when he had been at the police department in 2008 for a trespassing ordinance violation. Ives told him Nielsen's accusations, and Deybys said that he did not know anything about it and did not do that. Ives kept asking questions and then had Deybys sign some papers. Deybys did not have a chance to see or read anything. He wrote in the handwritten statement what Ives told him to write. Deybys told Ives that he did not know what to write because he did not do anything. Ives told Deybys that he could not leave until he finished the handwritten report, based on what he told him to write, and that nothing would happen to him because he was a minor. Deybys testified that the entire interview lasted around 30 minutes and that Ives did not make him promises or threaten him.

¶ 23 Deybys testified that he is not a member of or associated with any gang. He agreed that, in 2012, he received B's and C's in high school. Deybys testified that he signed the typed statement, handwritten statement, and waiver of rights form after he was informed of Nielsen's allegations; nevertheless, he testified that he did not know what they said because he did not get a chance to read them before Ives told him to sign. Deybys reiterated that Ives "convinced" him to write the statement by telling him that nothing would happen because he was a minor. He agreed, however, that, even though Ives purportedly told him what to write in the handwritten statement, that statement did not use words like "penis" or "anus," as are found in the typewritten statement.

¶ 24 On April 29, 2014, the trial court found defendant guilty of criminal sexual assault and aggravated criminal sexual abuse. The court announced that it had reviewed all of the evidence

and testimony, including Nielsen's videotaped interview, and it had assessed witness credibility. The court found Nielsen credible:

“[Nielsen's] statement has been substantially consistent each time she tells her story about the incidents which happened to her when she was five or six years old. This Court understands that this report was delayed and came during a very upsetting conference with her counselor where she lied about abuse at the hands of her mother and father. This court has considered that.”

¶ 25 The court further noted that it watched closely as Nielsen testified and saw how her demeanor on the stand changed and how upset she became as she recalled the incidents of abuse. The court found not credible Deybys's testimony that he was never alone with Nielsen. She found aspects of Delio's and Edgar's testimony also not credible and/or “suspect.” The court found credible Ives's testimony about his interview with Deybys. Further, the court found that, if, as Deybys testified, Ives had truly told Deybys what to write in the handwritten statement, “[i]t is this Court's belief that Detective Ives would have had the minor include specifics of sexual assault and specific body parts such as butt, anus, and penis so that there would have been no doubt as to what the minor was talking about in his written statement where his written statement says, ‘We were watching porn videos and got the idea to try something.’ ” The court concluded that, “I do not find Deybys'[s] testimony to be credible.” The court found that the State met its burden of proof beyond a reasonable doubt and entered a guilty finding.

¶ 26 The court denied Deybys's posttrial motion. In doing so, the court reiterated its credibility findings, noting again that it considered Nielsen's late outcry and the conflicting statements and lies she told about her mother's abuse. However, having had the opportunity to observe Nielsen as she testified and in her interview with Ives, the court found that “she was very

descriptive during her testimony, extremely credible during her testimony and also credible during her interview with Detective Ives as to what happened in the bedroom with Deybys.”

¶ 27 On April 15, 2015 (around two months before he turned age 21), the court sentenced Deybys to probation until July 1, 2015, with accompanying terms and conditions, including the requirement that he register as a sex offender. Deybys timely appeals.

¶ 28

## II. ANALYSIS

¶ 29 Deyby’s sole challenge on appeal is to the sufficiency of the evidence. Specifically, he contends that the State failed to prove his guilt beyond a reasonable doubt where Nielsen’s complaint lacked “fundamental believability,” her word was uncorroborated, and where the record is clear that she lied about events. We note that Deybys does not allege that the State failed to prove any required elements of the charged offenses. Rather, his overarching argument is that Nielsen is simply unbelievable.

¶ 30 We note that the State asserts that we should find Deybys’s argument forfeited under Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013), as he fails to cite relevant authority or to develop a cogent legal argument. While we do not entirely disagree with the State, we decline to find forfeited Deybys’s argument. Again, the crux of his argument is that the State failed to meet its burden where the complaining witness was allegedly lacking credibility. Deybys cites for this proposition *People v. Schott*, 145 Ill. 2d 188, 206 (1991) (finding the testimony of a witness complaining of a sex offense so incredible as to require reversal), which supports this legal argument. As such, we will address the merits of the argument.

¶ 31 When reviewing a challenge to the sufficiency of the evidence, the standard of review is whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *People v. Wheeler*, 226 Ill. 2d

92, 114 (2007). It is the trier of fact's function to determine witness credibility, weigh and resolve conflicts in the evidence, and draw reasonable inferences therefrom. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). "[D]ue consideration must be given to the fact that it was the trial court and jury that saw and heard the witnesses." *Wheeler*, 226 Ill. 2d at 114-15. Accordingly, we will not substitute our judgment for that of the trier of fact (*Ortiz*, 196 Ill. 2d at 259), and we will reverse a conviction only where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt as to the defendant's guilt (*Wheeler*, 226 Ill. 2d at 114).

¶ 32 Here, Deybys is correct that the record reflects that, at the genesis of her complaints, Nielsen lied about abuse concerning her mother and father. Nielsen admitted to Postlewait on the night of her initial complaint and again at trial that she lied about her mother and father abusing her. However, and unlike the complainant in *Schott*, who admittedly lied "a lot" and whose testimony was "so fraught with inconsistencies and contradictions" that reasonable doubt of the defendant's guilt remained (*Schott*, 145 Ill. 2d at 206), the trial court here found that, with respect to her allegations concerning Deybys, Nielsen was specific, descriptive, and consistent. The court explicitly considered Nielsen's late reporting and her lies about her mother. Nevertheless, the court watched Nielsen carefully and assessed her demeanor in court and in her videotaped interview with Ives. The court found Nielsen credible.

¶ 33 We further note that, in *Schott*, the victim's testimony was the "key evidence" offered by the State. *Id.* Here, however, the State had sufficient evidence to corroborate Nielsen's testimony, including Deybys's signed confessions. Although Deybys moved to suppress those statements, the court denied the suppression motion and that decision is not challenged on appeal. Deybys also testified at trial, as he did at the suppression hearing, that he did not read

those statements before signing them and that Ives told him what to write, but the court found Deybys's testimony on those points not credible.

¶ 34 Deybys broadly criticizes the integrity of the police investigation and the fact that the police did not interview Blanca or Edgar, but the investigation itself is not the issue before us. Further, Deybys raised those points at trial and, therefore, the court was aware of them when it weighed the evidence.

¶ 35 In sum, the trial court's decision did not, as Deybys asserts, rest simply on the uncorroborated testimony of "a liar." Rather, the court weighed all of the evidence, determined witness credibility, and, based on Nielsen's consistent and credible testimony of events concerning Deybys, as corroborated by her reports to her mother, Brotman, and Ives, as well as based on Deybys's own signed confession, found Nielsen credible and found beyond a reasonable doubt that Deybys committed the abuse and assault. Viewing the evidence in the State's favor, we reject Deybys's argument and affirm.

¶ 36 III. CONCLUSION

¶ 37 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 38 Affirmed.