

SECOND DIVISION

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---|---|------------------|
| IN THE INTEREST OF STANLEY C., a Minor, |) | |
| |) | |
| |) | Appeal from the |
| (THE PEOPLE OF THE STATE OF ILLINOIS, |) | Court Circuit of |
| |) | Cook County. |
| |) | |
| Petitioner-Appellee, |) | |
| |) | 14 JD 01646 |
| v. |) | |
| |) | |
| STANLEY C., A MINOR, |) | The Honorable |
| |) | Lori Wolfson, |
| Respondent-Appellant). |) | Judge Presiding. |

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Simon and Justice Liu concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court will not disturb the trial court's findings of fact based on a record that does not unequivocally show a misapprehension of the evidence. Defendant did not overcome the presumption that his counsel had a strategic purpose for introducing gang-related evidence in his bench trial.

¶ 2 The juvenile court found Stanley C. delinquent for his participation in an aggravated battery. In this appeal, Stanley argues that the trial court misremembered crucial evidence, and trial counsel inexcusably elicited testimony that Stanley belonged to a gang. We find that Stanley has not overcome the presumption that his attorney had a strategic purpose for

eliciting the gang-related testimony. We also find that the transcript does not demonstrate that the trial judge misremembered crucial evidence. Therefore, we affirm the trial court's judgment.

¶ 3

BACKGROUND

¶ 4

After 7:30 p.m. on April 10, 2014, a group of boys attacked Shane Safforld as he walked home. Safforld fell on the sidewalk and curled into a ball. The boys hit and kicked Safforld, then dispersed. Safforld could not locate his cellphone, which he had taken out of his pocket shortly before the attack. Safforld's mother took him to the hospital.

¶ 5

At the hospital, Safforld's mother called police to report the crime. Officer Odugbesan spoke with Safforld that evening. The following day, Safforld went to Dunbar High School where he looked through a book of photographs of the school's students. He picked out seven photographs as pictures of the boys who attacked him. He wrote the names down and gave the list to a dean at Dunbar. He then returned to the police station where he spoke with Detective Hoffmann. Police arrested the seven boys Safforld listed, including Stanley. The State filed a petition for adjudication of wardship, alleging that Stanley, then 16, committed the offenses of robbery and aggravated battery.

¶ 6

The juvenile court held a joint bench trial in which it heard evidence concerning the charges against Stanley and two of his co-defendants. The court watched a recording of pictures taken by a security camera from a nearby store. The videorecording showed a group of boys running after Safforld. Safforld identified one of the boys pictured as one of Stanley's co-defendants, and he identified another as a boy not on trial with Stanley. The camera caught no clear picture of Stanley.

¶ 7 Safforld testified that he knew Stanley and one of the other attackers from elementary school. Safforld went to Dunbar to look at pictures because he recognized some of the attackers as Dunbar students.

¶ 8 On cross-examination, Safforld's attorney asked Stanley, "Why do you think you were attacked?" Safforld answered, "Because they think I'm a gang member from the other side." Counsel specifically elicited Safforld's testimony that all seven co-defendants, including Stanley, were gang members.

¶ 9 A co-defendant's attorney elicited the following testimony on cross-examination of Safforld:

"Q. And you never told Officer Odugsbesan that one of your attackers you knew as Antonio, did you?

A. I don't remember.

Q. Okay. You never told Officer Odugsbesan that one of your attackers had gone to elementary school with you, did you?

A. I don't remember.

* * *

Q. You never told Officer Odugsbesan that one of your attackers was an acquaintance; correct?

A. Yes, I told the officer that I kind of knew him.

Q. Did you tell him you knew one of them as Antonio from elementary school?

A. No. I told them I knew him from the neighborhood instead of from there – elementary school.

* * *

Q. *** When you spoke to Detective Hoffman *** I'm sorry, I'm going to try to get that one more time, Judge. When you spoke to Officer Odugsbesan on April 10th, 2014, did you tell that officer that you believe one or more of your attackers went to Dunbar High School?

A. Yes.

* * *

Q. And you never provided any kind of nicknames or first names to Officer Odugsbesan on April 11th, 2014[, of] your attackers, did you?

A. I provided nicknames.

Q. On – the first time you talked to Odugsbesan?

A. Yes.

Q. What nicknames did you provide?

A. Newby ***, TJ, and Stanley, I knew his first name."

¶ 10 A co-defendant called Officer Odugsbesan, who testified as follows:

"Q. Okay. Did you ask Shane at that time if he knew any of his attackers?

A. Yes.

Q. Did he tell you he knew any of them?

A. No.

* * *

Q. *** Did Shane tell you that he had gone to grammar school or elementary school with one of his attackers?

A. No.

Q. Did Shane tell you that he knew one of his attackers as an acquaintance for *** almost three years?

[Prosecutor]: Objection, leading.

THE COURT: This is perfecting impeachment. It's the only way he can do this. Overruled.

BY THE WITNESS:

A. No.

Q. Okay. Did Shane tell you that he knew any of his attackers?

A. He said he had seen them – I don't think – I don't remember, but I think he said he don't remember or something. I don't remember any."

¶ 11 After looking at his written report, Odugbesan said Safforld did not tell him he knew any of the attackers and Safforld did not say he thought some of the attackers went to Dunbar High School.

¶ 12 Shawna W., Stanley's mother, testified that Stanley stopped going to school before April 2014. He spent his days at home. Shawna generally returned home from work around 5 p.m. Although she did not remember April 10 specifically, she knew that Stanley was home that evening, just like all other evenings around that time.

¶ 13 The trial court found Safforld "extremely credible." The court recounted Safforld's testimony about the attack and that he knew Stanley and another of the attackers from elementary school. The court added:

"I think that the information that Counsel sees as an impeachment was not, in fact, an impeachment, but he said he couldn't remember whether he had told the officer that – the officer that he couldn't remember if he had asked him that, so it really has very little weight, given the degree of the certainty and the identification coming so quickly on the heels of the actual event, and there will be a finding of guilty."

¶ 14 The court acquitted Stanley on the robbery charge, but found him guilty of aggravated battery. The court sentenced Stanley to 18 months of probation and 40 hours of community service. Stanley now appeals.

¶ 15 ANALYSIS

¶ 16 Stanley argues on appeal that the trial court misremembered the impeachment evidence, and that his counsel provided ineffective assistance by eliciting Safford's testimony that Stanley belonged to a gang.

¶ 17 Court's Recollection

¶ 18 We presume that the trial court, in a bench trial, considered all competent evidence, and only competent evidence. *People v. Simon*, 2011 IL App (1st) 091197, ¶ 91. We will not disturb the trial court's findings based on an alleged misapprehension of the testimony unless the record affirmatively shows that the court misremembered the evidence. *Simon*, 2011 IL App (1st) 091197, ¶ 91. "Where the record affirmatively indicates that the trial court did not remember or consider the crux of the defense when entering judgment, the defendant did not receive a fair trial." *Simon*, 2011 IL App (1st) 091197, ¶ 91. The trial court's failure to recall testimony crucial to the defense may violate the defendant's right to due process. *Simon*, 2011 IL App (1st) 091197, ¶ 91.

¶ 19 The record in this case does not affirmatively demonstrate that the trial judge misremembered the impeachment evidence. The judge noted that both Safforld and Odugbesan testified that they did not remember what Safforld said on the night of the attack. Odugbesan relied on his report for his conclusion that Safforld said nothing about the identity of the attackers. Safforld spoke with three authority figures (Officer Odugbesan, the dean at Dunbar, and Detective Hoffmann) over the course of less than 24 hours after the attack. The court heard argument about the conflicting testimonies, clearly showed her understanding of the impeachment, and allowed the examination of Odugbesan to include the leading questions needed for the impeachment. The court's comments on the evidence show that she found the impeachment evidence unpersuasive. The conflict in the testimonies showed only that Safforld may have had difficulty remembering what he told to each authority figure, and Odugbesan may not have remembered or included in his report Safforld's vague statements about some acquaintance with the attackers. Neither difficulty showed that Safforld likely misidentified or lied about the participants in the attack. The trial court concluded, appropriately, that the conflict between the testimonies of Safforld and Odugbesan carried little weight in light of all the circumstances. The record in this case does not show a clear mistake in recounting crucial evidence. See *People v. Mitchell*, 152 Ill. 2d 274, 321-23 (1992); *People v. Bowie*, 36 Ill. App. 3d 177, 180 (1976). We find that the trial judge's summary of her findings concerning the impeachment does not provide grounds for overturning the adjudication of wardship.

¶ 20 Ineffective Assistance of Counsel

¶ 21 Next, Stanley argues that his counsel provided ineffective assistance when counsel elicited from Safforld testimony that all of the attackers, including Stanley, belonged to one

gang. To show ineffective assistance of counsel, "defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Strickland v. Washington*, 466 U.S. 668, 689 (1984), quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955).

¶ 22 Stanley introduced a defense of alibi. Stanley's attorney apparently chose, strategically, to adduce Safforld's testimony about the gang relationship as a way to make the alibi more credible, and explain why Safforld would name Stanley as one of the attackers when Stanley was not at the scene. We would share Stanley's doubt about the advisability of this strategy if Stanley had chosen a jury trial. But in this bench trial, defense counsel had reason to believe that the judge would use the testimony appropriately, as bolstering the alibi, without allowing the gang-related testimony to bias her against Stanley. See *People v. Lewis*, 30 Ill. 2d 617, 622 (1964). We find that Stanley has not overcome the presumption that his counsel had a sound strategic purpose for her cross-examination of Safforld. Thus, we find that Stanley has not shown ineffective assistance of counsel.

¶ 23 CONCLUSION

¶ 24 The trial court's remarks do not show that the court misremembered evidence crucial to the defense. Stanley has not shown ineffective assistance of counsel. Accordingly, we affirm the judgment of the trial court.

¶ 25 Affirmed.