2016 IL App (1st) 15-1677-U

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THIRD DIVISION
February 17, 2016

No. 1-15-1677

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

IN THE INTEREST OF ERIC C., A Minor,	)	
	)	Appeal from the Circuit Court
Respondent-Appellee,	)	of Cook County, Illinois,
	)	Criminal Division.
(PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	No. 14 JD 4663
Petitioner-Appellee,	)	
v.	)	The Honorable
	)	Cynthia Ramirez,
ERIC C.,	)	Judge Presiding.
Respondent-Appellant.)		

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: A detective's testimony regarding an out-of-court identification of the respondent as the offender constituted inadmissible hearsay, the admission of which contributed to the verdict thereby requiring remand for a new delinquency proceeding.

¶ 2 The 15-year-old minor respondent, Eric C., was adjudicated delinquent of robbery and armed robbery, and sentenced to the minimum mandatory sentence of five years probation (705 ILCS 405/5-715(1) (West 2014)). On appeal, the respondent makes four contentions. First, he argues that he is entitled to a new delinquency hearing because the trial court improperly admitted

inadmissible hearsay testimony of a police officer's out-of-court identification of him as the offender. Second, the respondent contends that the the trial court violated his right to due process by failing to advise him of his right to choose whether to testify on his own behalf. Third, the respondent argues that section 5-715(1) of the Juvenile Court Act (705 ILCS 405/5-715(1) (West 2014)) under which he was sentenced to a mandatory minimum term of five years probation for having been adjudicated delinquent of a forcible felony violates equal protection. Finally, the respondent contends that under the one-act, one crime-doctrine, the trial court's order adjudicating him delinquent of aggravated robbery and robbery should be corrected to reflect only an adjudication of delinquency for aggravated robbery. For the reasons that follow, we reverse and remand for a new delinquency hearing.

¶ 3 I. BACKGROUND

¶ 4 The record before us reveals the following facts and procedural history. On December 8, 2014, the State filed a petition for adjudication of wardship against the minor respondent, alleging that he committed the offenses of: (1) aggravated robbery (720 ILCS 5/18-1(b) (West 2010)); (2) robbery (720 ILCS 5/18-1 (West 2010)); and (3) theft (720 ILCS 16-1(a)(3) (West 2010)), by taking a cell phone from another minor "while indicating verbally or by actions" that he had a gun and by threatening the use of imminent force.

¶ 5 During discovery, the court initially placed the respondent on electronic monitoring, but vacated that order on January 22, 2015, for good behavior, and instead imposed a 6 p.m. curfew pending further proceedings.

¶ 6 On May 5, 2015, the respondent proceeded with his delinquency hearing where the following evidence was adduced. 13-year-old Jeremie D. testified that he attends Fernwood Elementary School in Chicago and that he is in the eighth grade. Jeremie stated that on December 3, 2014, at

approximately 3:30 p.m. he was walking from school to his grandfather's house, which is located near the corner of 101st Street and Lowe Avenue. Jeremie neared the house when he saw a boy dressed in a green hoodie and jogging pants standing on the sidewalk. The boy had the hood up on his head, but Jeremie averred he could see his hair and described it as dreadlocks with reddish-orange colored tips. The boy also had a mole on his top lip.

¶ 7 Jeremie testified that he walked around the boy to reach the steps leading to his grandfather's house. As he walked up the steps, the boy said "I have gun. Give me your phone." The boy then placed his right hand on the right side of his hip on his pants, in a gripping motion. Jeremie stated that he became frightened and gave his telephone and headphones to the boy. The boy then told Jeremie to sit down on the steps, and told him not to look suspicious. The boy also asked Jeremie for his name, but Jeremie told him his name was "Andrew."

¶ 8 Jeremie stated that he was close enough to the boy that he could touch him, but admitted that they were sitting side to side and not facing each other. Jeremie started to get up, but the boy told him to follow him, so Jeremie obeyed. As they got off the steps, however, Keith Chester, a school counselor started calling Jeremie's name. Jeremie had seen Chester on the street earlier that afternoon directing children across the street, but stated that at that point, Chester was "like an inch" away. When Chester called to Jeremie, the boy started running away, across the block into an alleyway. Jeremie ran after him and soon met up with two friends who joined him in the chase. They never caught the boy, and Jeremie returned to his grandfather's house. Jeremie testified that the whole encounter, from the time when the observed the boy near his grandfather's steps to the time when he ran lasted about five minutes.

¶ 9 Jeremie next averred that on December 4, 2015, Detective Madden came to his grandfather's

house and showed him a photo array. Jeremie was with his father. He identified the respondent from the photo array as the boy who took his telephone. He also made an in court identification of the respondent. Although the photo array was introduced as an exhibit at trial, it is not part of the record on appeal.

¶ 10 On cross-examination, Jeremie admitted that he had never seen the respondent before the encounter. He also admitted that when Chester called out his name he was at least two houses away, standing on the corner and not "an inch" away as Jeremie had initially testified. Jeremie further acknowledged that between the incident and the photo array, on the following morning he spoke to the two friends who had helped him chase after the respondent. Jeremie, however, denied that his friends told him who they thought the offender was. Jeremie also admitted to speaking with Chester before looking at the photo array and acknowledged that Chester told him that he knew who had "done this." Jeremie denied, however, that Chester gave him the respondent's name. He also denied that Chester told him what he thought the offender looked like, explaining that Chester had not "seen the person's face."

¶ 11 Keith Chester next testified that he works for Fernwood Elementary School, as part of their Education Career personnel. On December 3, 2004, at about 3:30 p.m., he was standing on the corner of 101st Street and Lowe Avenue, patrolling students leaving the school building and walking home, when he saw one of his students, Jeremie, with a boy he had never seen before. Chester stated that Jeremie and the boy were about 100 feet away from him, but that he could not view the boy because the boy and Jeremie turned around and began walking towards a porch. Chester stated that he then observed a "hand-in-hand exchange," but averred that he could not see what was being exchanged. The boys then turned towards Chester and sat down on the porch steps. According to Chester, the boys were not on the same level of stairs. Jeremie was on the

top step and the boy sat a few steps below him. Chester started crossing the street to see what was going on. As he did so, he noticed that the boy had dreadlocks. Chester was about two houses away when he called out Jeremie's name and asked him if everything was alright. Both boys turned towards Chester but neither responded. When Chester repeated his question, both boys started running in the opposite direction, away from Chester, with the unknown boy running first and Jeremie following after.

¶ 12 Chester acknowledged that after the incident he spoke with Jones, the dean at Fernwood Elementary School. When asked whether Jones told him that he knew who the perpetrator was, Chester initially responded in the affirmative, but was then equivocal, changing his answer to "no." When asked whether Jones provided him with the name of the perpetrator, Chester answered in the negative.

¶ 13 Chester next averred that on the following afternoon, on December 4, 2015, at about 4:50 p.m. a detective came to Fernwood elementary school and showed him a photo array, from which he identified the respondent as the offender.

¶ 14 On cross-examination, Chester admitted that while he was looking in the direction of Jeremie and the respondent he was also responsible for looking after all of the children who had just been released from school and were crossing the street in front of him. Chester acknowledged that his attention was, "at best in both places at the same time." Chester further admitted that he observed the majority of the interactions between Jeremie and the minor while two houses away and on the opposite side of the street.

¶ 15 On cross-examination, Chester testified, contrary to Jeremie, that the entire time he observed the respondent with Jeremie, the respondent kept his hoodie down, and not over his hair. In addition, contrary to Jeremie's testimony, Chester testified that he never talked to Jeremie

between the time of the incident and the time he looked at the photo array. He stated that he had never talked to Jeremie about what he had seen happen, nor told Jeremie that he did not see the face of the person who had done this.

¶ 16 Chicago Police Detective Michael Madden next testified that on December 4, 2014, he was assigned to investigate this case. The following colloquy then took place:

> "Q [Assistant State's Attorney (ASA)]: And in being assigned to this investigation, did you obtain any information involving possible suspects on this case?
>
> A [Detective Madden]: I did.
>
> Q [ASA]; And where did you receive this information?
>
> A [Detective Madden]: From my sergeant.
>
> Q [ASA]: And who's your sergeant?
>
> A [Detective Madden]: Mike Fitzgerald.
>
> Q [ASA]: What information did you receive?
>
> A [Detective Madden]: He had received a call from a Fernwood School Administrator Mr. Jones that the robbery which had occurred the day before—
>
> Q [ASA]: And would that have been December 3, 2014?
>
> A [Detective Madden]: December 3, on 101st and, I believe, it was Lowe. That the possible suspect went by the name of Eric C. and asked if photos could be shown to the victim.
>
> Q [ASA]: And was any other information provided to you from your sergeant regarding how he obtained the name of Eric C.?

A [Detective Madden]: He had seen Mr. [C.] hanging around the campus earlier in the day, and he was told to leave.

* * *

Q [ASA]: And who did your sergeant receive that information from?

A [Detective Madden]: School Administrator at Fernwood Academy Mr. Jones. I'm not quite sure of his first name, I'm sorry."

Defense counsel objected to this line of questioning on the basis of hearsay, but that objection was overruled.

¶ 17 Detective Madden testified that after obtaining this information he created a photo array including Eric C.'s photo. The detective showed the photo array to Chester at about 4:50 p.m. on December 4, 2014, at Fernwood elementary school. Later that same day at approximately 5:20 p.m. he met with Jeremie at Jeremie's grandfather's house and showed him the photo array in the presence of Jeremie's father. Both Chester and Jeremie identified the respondent from the photo array and the respondent was arrested on the following morning.

¶ 18 After the State rested, the defense called its only witness, the respondent's mother, Kimberley Howell, who provided the respondent with an alibi. Howell stated that that at 3 p.m. On December 3, 2014, she was at home at 119 West 104th Street, with the respondent's grandmother. She testified that the respondent "gets out of school" everyday at 2:45 p.m. and that on that particular day he arrived home at 3 p.m. Howell stated that the respondent did not leave home "until after 3:30 p.m." because he talked to his grandmother, and then went to change his clothes. When asked when exactly the respondent left home, Howell stated "maybe around by [*sic*] 4 p.m." Counsel next asked Howell whether it was fair to say that from about 3 p.m. to 4

p.m. respondent was with her, and she responded in the affirmative.

¶ 19 In closing argument, the respondent's counsel argued that this was a "shaky identification process" because the respondent was initially identified as the suspect in the robbery by the school administrator, Jones, rather than the complaining witness. The state responded in rebuttal that there was "no difficulty with this identification process" because the evidence explained exactly how Jones made the identification. Specifically, the State argued:

> "The evidence that came out—that detective was assigned, and he got information from Mr. Jones at school. There was a kid that day by the name of Eric [C.] that was told to leave the premises. That was the evidence. And based on information of that the detective decided okay, I'm going to make a photo array with this Eric [C.] and see if that's the same person."

¶ 20 After hearing closing arguments, the trial court adjudicated the respondent delinquent of the aggravated robbery and robbery charges. The court adjudicated the respondent not guilty of theft as the State had failed to prove the actual value of the telephone stolen. In doing so, the court stated that it was not "convinced that there was some nefarious information provided by Mr. Jones that led to a misidentification of the minor respondent." The court then found Jeremie and Chester credible, while finding Howell's testimony unconvincing because she testified that the respondent exited the home at two different times (3:30 p.m. and then 4 p.m.).

¶ 21 At sentencing, defense counsel argued that according to the social investigation report the respondent had no prior adjudications of delinquency, that he feels "loved and supported by his mother," and that he is doing well academically, attending eighth grade at Langston Hughes elementary school. Based on the social investigation report, the respondent's probation officer recommended that he be sentenced to only 18 months probation. In addition, at the sentencing

hearing, the probation officer informed the court that the respondent's principal had complemented him for making "large gains in his reading score" and noted that he was expected to graduate that summer.

¶ 22 The State initially recommended that the respondent be sentenced to three years probation, but then changed its recommendation to five years based on the mandatory sentencing guidelines articulated in section 5-715 of the Juvenile Court Act (705 ILCS 405/5-715(1) (West 2014)). After learning that under that section the minimum sentence for a juvenile convicted of aggravated robbery is five years probation, the probation officer agreed with the State's recommendation.

¶ 23 The court sentenced the minor to five years probation and ordered him to complete 30 hours of community service. In addition, the court ordered a community impact panel, a TASC referral, an advocacy referral to determine the necessity of counseling services, and a DNA swab with fees waived. The court also ordered the minor to pay $175 in restitution to the victim after the State produced records of Jeremie's cell phone plan. The respondent now appeals.

¶ 24 II. ANALYSIS

¶ 25 On appeal, the respondent first contends that he is entitled to a new delinquency hearing because the trial court improperly admitted and considered testimony of Detective Madden that the school administrator, Jones, had identified him as a suspect in the robbery. Because the school administrator did not testify at trial, the respondent asserts that the detective's testimony regarding his identification of the respondent was: (1) inadmissible hearsay; and (2) testimonial evidence which violated the respondent's constitutional right to confront the witnesses against him pursuant to the United State Supreme Court's decision in *Crawford v. Washington*, 541 U.S. 36 (2004). For the reasons that follow, we agree.

¶ 26 At the outset we note that our supreme court has repeatedly directed that, when reviewing the admissibility of out-of-court statements into evidence, like those challenged here by the respondent, we must first determine whether those statements " 'pass[ ] muster as an evidentiary matter,' " before we may consider any constitutional objections, including " '*Crawford*-based confrontation clause claims.' " *People v. Melchor*, 226 Ill. 2d 24, 34 (2007) (quoting *In re E.H.*, 224 Ill. 2d 172, 179 (2006)). "This is the only analytical 'flow chart' that comports with the rule that courts must avoid considering constitutional questions where the case can be decided on nonconstitutional grounds.' " *Melchor*, 226 Ill. 2d at 34, (quoting *In re E.H.*, 224 Ill. 2d at 179-80). Accordingly, we first consider whether Detective Madden's testimony regarding the school administrator's identification of the respondent was properly admitted hearsay evidence. For the reasons that follow, we find that it was not.

¶ 27 Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. *People v. Gonzalez*, 379 Ill. App. 3d 941, 954 (2008). As such " '[t]estimony by a third party as to statements made by another nontestifying party identifying an accused as the perpetrator of a crime constitutes hearsay testimony and is inadmissible.' " *People* v. *Yancy*, 368 Ill. App. 3d 381, 385 (2005) (citing *People v. Lopez*, 152 Ill. App. 3d 667, 672 (1987)). "The fundamental reason for excluding hearsay is the lack of an opportunity to cross-examine the declarant." *Yancy*, 368 Ill. App. 3d at 385; see also *People v. Jura*, 352 Ill. App. 3d 1080, 1085 (2004) (citing *People v. Shum*, 117 Ill. 2d 317, 342 (1987)); see also *People v. Dunmore*, 389 Ill. App. 3d 1095, 1106 (2009). A trial court has discretion to determine whether statements are hearsay, and a reviewing court will reverse that determination only for an abuse of discretion, *i.e.*, where the trial court's ruling is "arbitrary, fanciful, or unreasonable or where no reasonable person would take the view

adopted by the trial court." *People v. Leak*, 398 Ill. App. 3d 798, 824 (2010); see also *People v. Spicer*, 379 Ill. App. 3d 441, 449 (2008).

¶ 28 In the present case, the State contends that Detective Madden's testimony does not constitute inadmissible hearsay because it was not offered for the truth of the mater asserted, but rather to explain the course of the detective's police investigation. We disagree.

¶ 29 Statements are not inadmissible hearsay when they are offered for the limited purpose of showing the course of a police investigation, but only where such testimony is necessary to fully explain the State's case to the tier of fact. *Jura*, 352 Ill. App. 3d at 1085; see also *People v. Edgecomb*, 317 Ill. App. 3d 615, 627 (2000); see also *People v. Warlick*, 302 Ill. App. 3d 595, 598-99 (1998) (quoting *People v. Simms*, 143 Ill. 2d 154, 174, (1991)). Accordingly, a police officer may testify about a conversation that he had with an individual and his actions pursuant to the conversation to recount the steps taken in his investigation of the crime, and such testimony will not constitute hearsay, since it is not being offered for the truth of the matter asserted. *People v. Hunley*, 313 Ill. App. 3d 16, 33 (2000) (citing *People v. Pryor*, 181 Ill. App. 3d 865, 870 (1989)). However, the police officer may not testify to information beyond what was necessary to explain the officer's actions. *Jura*, 352 Ill. App. 3d at 1085; *Hunley*, 313 Ill. App. 3d 16, 33 (2000). As such, our courts have repeatedly held that the State may not use the limited investigatory procedure exception to place into evidence the *substance* of any out-of-court statement that the officer hears during his investigation, but may only elicit such evidence to establish the police investigative process. See *Hunley*, 313 Ill. App. 3d at 33-34; *Jura*, 352 Ill. App. 3d at 1085; see also *People v. Gacho*, 122 Ill. 2d 221, 248 (1988) (holding that it was permissible for a police officer to testify that after he spoke to the victim he went to look for the defendant, but indicated that it would have been error to permit the officer to testify to the

contents of that conversation). As we explained the rationale for this principle in *People v. Trotter*, 254 Ill. App. 3d 514, 527 (1993):

> "[T]here is a distinction between an officer testifying to the fact that he spoke to a witness without disclosing the content of that conversation and an officer testifying to the content of the conversation. [Citation.] Under the investigatory procedure exception, the officer's testimony must be limited to show how the investigation was conducted, not place into evidence the substance of any out-of-court statement or conversations for the purpose of establishing the truth of their contents. [Citation.] The police officer should not testify to the contents of the conversation [citation], since such testimony is inadmissible hearsay. [Citation.]").

¶ 30 In the present case, contrary to the State's position, Detective Madden's testimony that Jones identified the respondent as a suspect in the robbery was not necessary to describe the course of the police investigation. The detective's testimony that Jones called the police to identify the respondent as a suspect in the robbery that had occurred the previous day because the respondent was both present at the school and asked to leave, was unnecessary to explain the process by which the detective placed the respondent's photograph in the photo array. It would have been sufficient for the detective to testify that after having received information from Jones, he created a photo array with the respondent's photograph. See *Warlick*, 302 Ill. App. 3d 600 (holding that in a case where the defendant was charged and convicted of burglary, the trial court erred in admitting the police officer's testimony that he received a radio call of a burglary in progress and proceeded to investigate at a recycling center; explaining that "[t]here was no issue concerning the officer's reason or motive for going to the recycling center. It simply did not matter. It would have been enough for the officer to testify he received a radio message, then

went to the recycling center."); see also *Jura*, 352 Ill. App. 3d at 627 (holding that it was inadmissible hearsay for police officers to testify to the content of a radio dispatch that they received, which included a description of the suspect, since the description testimony was not necessary to explain the steps taken by the police officers in proceeding to the area where the defendant was arrested and therefore failed to satisfy any relevant non-hearsay purpose); see also *Edgecombe*, 317 Ill. App. 3d 627 (holding that contents of a radio call concerning the stop of a vehicle matching the victim's description of the getaway car went beyond what was necessary to explain the steps in the police investigation.)

¶ 31 In addition, Jones's out-of-court statement not only needlessly placed into evidence the fact that respondent was present at the scene of the crime, but also established that he was there for an unlawful purpose, since he was asked by the school to leave. What is more, Jones's out-of-court statement offered into evidence the only testimony of any witness's prior familiarity with the respondent, since Jones knew the respondent well-enough to provide the police with the respondent's name. Because the State's case rested entirely on witness identification testimony, Jones's out-of-court identification of the respondent as a suspect in the robbery went directly to the very essence of the dispute, *i.e.*, whether the respondent was present at the scene of the crime and whether he was the one who committed the robbery. As such, his identification was offered for the truth of the matter asserted and constitutes improperly admitted hearsay. See *People v. Rivera*, 277 Ill. App. 3d 811, 820 (1996) ("Hearsay testimony identifying the defendant as the one who committed the crime cannot be explained away as 'police procedure' "); see *Yancy*, 368 Ill. App. 3d 381 ("[T]estimony by a third party as to statements made by another nontestifying party identifying an accused as the perpetrator of a crime constitutes hearsay testimony and is inadmissible") (quoting *Lopez*, 152 Ill. App. 3d at 672); see also *Warlick*, 302 Ill. App. 3d at 600

("Police procedure or not, when the words go to 'the very essence of the dispute' [citation] the scale tips against admissibility.")

¶ 32 In coming to this conclusion we find the State's reliance on the decisions in *People v. Robinson*, 291 Ill. App. 3d 822 (2009); *Gacho*, 122 Ill. 2d 221, and *People v. Henderson*, 142 Ill. 2d 258 (1990) misplaced. Unlike here, in each of those decisions the officers never testified to the substance of any information provided to them by the out-of-court declarants. Specifically, in *Gacho*, the officer testified that after speaking to a witness in the hospital he went to look for the defendant. *Gacho*, 122 Ill. 2d at 247-48. The officer, however, never testified to the content of the conversation he had with the witness, nor stated that the witness identified the defendant as a suspect. *Gacho*, 122 Ill. 2d at 248. In fact, our supreme court explicitly stated that, had the officer done so, his statements would have constituted inadmissible hearsay. *Gacho*, 122 Ill. 2d at 248.

¶ 33 Similarly, unlike in the present case, in *Robinson*, 391 Ill. App. 3d at 835, the court rejected the defendant's objection to the introduction of an officer's testimony that he " 'had reason to believe that [defendant] was transporting drugs back from Rockford to Freeport,' " because that testimony did not "reveal the source" of the officer's belief, namely whether it came by way of an informant or other means, "such as personal observation." *Robinson*, 391 Ill. App. 3d at 835. The court therefore reasoned that the testimony could "not even be shown to directly link to an out-of-court statement." *Robinson*, 391 Ill. App. 3d at 835.

¶ 34 Finally, in *Henderson*, the court rejected a defendant's objection to the introduction of an officer's testimony that after talking to the codefendant the police began looking for the defendant. *Henderson*, 142 Ill. 2d at 303. The court explained that the "actual substance of the codefendant's statement implicating himself and the defendant was never admitted at trial."

Henderson, 142 Ill. 2d at 303. Rather, the court found that "[t]he testimony *** merely related the conduct of the investigation; [*i.e.*,] the fact that it appears that something [the codefendant] said caused the police to look for the defendant." *Henderson*, 142 Ill. 2d at 303.

¶ 35 Unlike in the aforementioned decisions, in the present case, Detective Madden's testimony directly introduced into evidence the substance of Jones's identification of the respondent as the suspect in the robbery by providing his name to the police and by stating that the respondent was present at the school without a lawful reason on the day of the robbery. Accordingly, we find that such testimony was improperly admitted hearsay. See *Jura*, 352 Ill. App. 3d at 1088; *Trotter*, 254 Ill. App. 3d at 527.

¶ 36 Since we find that error occurred, we must next determine whether the error is harmless or whether, as the respondent would have us find, it warrants reversal for a new delinquency hearing. It is well-settled that the remedy for the erroneous admission of hearsay is reversal, unless the record clearly shows that the error was harmless. *People v. Miles*, 351 Ill. App. 3d 857, 867 (2004). "When examining whether the admission of hearsay was harmless, reviewing courts must ask whether there is a reasonable probability that the trier of fact would have acquitted the defendant had the hearsay been excluded." *In re Jovan A.*, 2014 IL App (1st) 103835, ¶ 37. We consider three factors in determining whether an error was harmless: (1) whether the error contributed to the conviction; (2) whether the other evidence in the case overwhelmingly supported the conviction; and (3) whether the improperly admitted evidence was cumulative or duplicative of the properly admitted evidence. *People v. Littleton*, 2014 IL App (1st) 121950, ¶ 66 (citing *People v. Patterson*, 217 Ill. 2d 407, 428 (2005)); see also *In re Rolandis G.*, 232 Ill. 2d 13, 43 (2008).

¶ 37 In the present case, after considering all three factors, we find that there is a reasonable

probability that the trial court would have acquitted the respondent had it properly disregarded the hearsay testimony. Contrary to the State's position, the evidence in this case did not overwhelmingly support the State's position. The State's case rested entirely on the equivocal identification testimony of two witnesses, neither of whom had ever seen the respondent before. Chester observed the respondent for a brief moment while distracted. Likewise, Jeremie, whose entire encounter with the respondent lasted five minutes, admitted that when he was closest to the respondent they were not face-to-face but rather sitting next to each other on the porch, so that he would have been viewing the respondent's profile. Accordingly, the witnesses' descriptions of the respondent varied. While Jeremie averred that the respondent kept his hoodie on top of his head throughout the incident, Chester affirmatively stated that the respondent kept his hoodie down.

¶ 38 What is more, the two identifying witnesses contradicted each other on nearly every aspect of the identification process. While Jeremie testified that he spoke to Chester prior to viewing the photo array, and that Chester told him that he knew who had committed the crime, Chester denied this conversation ever took place. In addition, even though Chester was able to identify the respondent from the photo array, Jeremie testified that Chester never saw the respondent's face.

¶ 39 Similarly, evidence was presented at trial that at the very least shed doubt on Jeremie's motives for identifying the respondent as a thief. While Jeremie testified at trial that he gave the respondent his telephone because he was afraid when the respondent threatened him by stating that he had a gun, Jeremie admitted that after Chester called out his name, instead of running towards Chester or walking into his grandfather's home for help, he chased after the respondent. What is more, Chester testified that the only thing he observed happening between Jeremie and

the respondent was a "hand-to-hand exchange." He affirmed that after he called out to Jeremie twice, Jeremie looked at him, but then ran away in the opposite direction after the respondent.

¶ 40 In contrast to this testimony, the respondent presented an alibi witness, who testified that the respondent was not at the scene of the crime at the time of the robbery. The State's assertion that the trial court properly rejected the respondent's alibi theory because Howell inconsistently testified that the respondent left his home at two different times (3:30 p.m. and then 4 p.m.) is both incorrect and misplaced. Howell only testified that the respondent did not leave home until "after 3:30 p.m." and then when asked exactly when he left she clarified "maybe around by [*sic*] 4 p.m." What is more, since the record is undisputed that the robbery took place at around 3:30 p.m., whether the respondent left home at 3:30 or 4 p.m. would arguably be irrelevant. Accordingly, the evidence in this case far from overwhelmingly supported the respondents' guilt.

¶ 41 We similarly reject the Sate's assertion that Jones's out-of-court statements were merely cumulative evidence in light of the two eyewitness identifications. Our supreme court has repeatedly held that evidence is cumulative only "when it adds nothing to what was already before the jury." *People v. Ortiz*, 235 Ill. 2s 319, 335 (2009). In the present case, Jones's telephone call to the police station identifying the respondent as a suspect to police and his statement to them that on the day of the robbery the respondent was present at the school for an unlawful reason and then asked to leave was not otherwise presented to the court. Moreover, since Jones was the first person to identify the respondent to the police, he was the original link in the chain of otherwise questionable eyewitness identifications by Chester and Jeremie. What is more, Chester himself testified (albeit equivocally) that he spoke to Jones prior to the photo array and that Jones told him that he knew who the offender was. As such, the respondent's inability to cross-examine Jones as to his identification was detrimental to his case.

¶ 42 In that same vein, we reject the State's argument that we must presume that the trial court did not consider the inadmissible evidence in coming to its decision. While there is a presumption that a judge will disregard inadmissible evidence during a bench trial, that presumption was overcome here when the trial court expressly overruled counsel's objection to Jones's hearsay statement. See *People .v Naylor*, 229 Ill. 2d 584, 605 (2008) ("Where an objection has been made to the evidence and overruled, it cannot be presumed that the evidence did not enter into the court's consideration. The ruling itself indicates that the court thought the evidence proper.") (internal quotations omitted). Moreover, the record before us establishes that in closing argument, the State asserted that the identification process was not tainted but rather based on Jones's identification of the respondent to police as the suspect as a result of his presence on the premises and the school's request that he leave. The trial court adopted the State's reasoning, ruling that it did not believe that Jones provided "nefarious information" to the police. As such, the court acknowledged that it believed Jones's statement about seeing the respondent at Fernwood elementary school on the day of the robbery. Therefore, the record rebuts the State's contention that the trial court never considered the substance of Jones's testimony. See *People v. Thorne*, 352 Ill. App. 3d 1062, 1078 (2004) ("While it is true that a trial judge is presumed to know the law and to follow it, 'this presumption may be rebutted when the record affirmatively shows otherwise.' ") (quoting *People v. Mandic*, 325 Ill. App. 3d 544, 546 (2001)).

¶ 43 Finally, we give no credence to the State's contention that Jones's statement was cumulative and could not have undermined the respondent's alibi defense since it merely confirmed that the respondent was at school on the day of the robbery. Contrary to the State's assertion, the record unequivocally establishes that the respondent did not attend Fernwood elementary school, but rather Langston Hughes elementary school. As such, Jones's statement could not have

corroborated Howell's testimony that the respondent came home from school on the day of the robbery.

¶ 44 Accordingly, for the aforementioned reasons, under the very specific facts of this case, we find that the erroneous introduction of Jones's hearsay statements was not harmless. See *In re Jovan A.,* 2014 IL App (1st) 103835, ¶¶ 38-43 (holding that the improper admission of hearsay content of an Internet bicycle advertisement was not harmless in a bench trial during a juvenile delinquency proceeding for theft, where the trial judge, *inter alia*, expressly relied on the hearsay content of the Internet advertisement to find that a bicycle in a teal sedan occupied by the juvenile was the victim's stolen bicycle); see also *In re E.H.*, 377 Ill. App. 3d 406, 415-16 (2007) (holding that court's error in admitting inadmissible hearsay in a delinquency hearing was not harmless where the judge expressly relied on the hearsay); *accord*., *People v. Flournoy*, 336 Ill. App. 3d 739, 745 (2002) (holding that improper admission of identification testimony amounted to reversible error where the Sate presented testimony from an eyewitness identifying the defendant as the offender and the defense presented alibi testimony that he was home at the time of the offense); *People v. Armstead*, 322 Ill. App. 3d 1, 12-13 (2001) (holding that officer's hearsay testimony concerning nontestifying witness's identification of the defendant as the shooter constituted reversible error, since the statement was not offered for the limited purpose of explaining the progress of his investigation, and the evidence in the case was close, such that the statement could have affected the outcome.) Accordingly, we reverse and remand for a new delinquency hearing.

¶ 45 Since we reverse and remand for a new delinquency hearing, we need not consider the remaining issues raised by the respondent in this appeal.

¶ 46 III. CONCLUSION

¶ 47 Accordingly, for all of the aforementioned reasons, we reverse and remand for a new delinquency hearing.

¶ 48 Reversed and remanded for a new delinquency hearing.