2019 IL App (1st) 181763-U
No. 1-18-1763

SECOND DIVISION
March 12, 2019

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF: J.A. a minor ,	)	Appeal from the Circuit Court
	)	of Cook County.
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	No. 18JD00016
	)	
v.	)	
	)	The Honorable
J.A.,	)	Stuart P. Katz,
	)	Judge Presiding.
Respondent-Appellant).		

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Mason and Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* Minor respondent's armed robbery delinquency adjudication affirmed where he was not denied his constitutional rights to confrontation or effective assistance of counsel.

¶ 2 Following a jury trial conducted in accordance with the Juvenile Court Act of 1987 (705 ILCS 405/5-1 *et seq.* (West 2014)), minor respondent J.A. was adjudicated delinquent of aggravated battery and was sentenced to a term of incarceration until his 21st birthday. On appeal, respondent argues that the court violated his constitutional right to confrontation when it

admitted hearsay evidence. He further argues that he was also denied his constitutional right to effective assistance of trial counsel. For the reasons explained herein, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 On November 5, 2017, two young men, one of whom was brandishing a firearm, stole $300 and an iPhone 6 from Esther Harris. Following an investigation into the crime, the State filed a petition for adjudication of wardship against 16-year-old respondent in connection with those events.[1] In its filing, the State alleged that respondent was delinquent of the offense of aggravated robbery (720 ILCS 5/18-1(b) (West 2016)) in that he knowingly took property from Esther Harris by the use or threat of force.[2] The State, citing respondent's criminal history, also filed paperwork revealing its intent to prosecute him as a violent juvenile offender pursuant to section 5-820 of the Juvenile Court Act (705 ILCS 405/5-820 (West 2016)).

¶ 5 At trial, Esther Harris testified that in the early morning of November 5, 2017, she was searching Facebook Marketplace, a site available to local members of the social media platform Facebook to buy and sell goods, to see if anyone was selling an iPhone 7 Plus, a newer cell phone model than the one she currently owned. During her search, she saw a listing for an iPhone 7 Plus posted by a Facebook user identified as Stephen Curry. Harris replied to Curry's ad using the Facebook Messenger App. The two exchanged instant messages over the app and Curry ultimately agreed to sell Harris the iPhone 7 Plus and an apple watch in exchange for $300 and Harris's used iPhone 6 Plus. She agreed to meet Curry at 6940 South Oglesby at 8 a.m. in

[1] The State also filed a petition for adjudication of wardship against minor co-respondent Gerald Hunter. Prior to trial, respondent filed a motion to sever his trial from that of Hunter, which the circuit court granted. Hunter is not a party to this appeal.

[2] The State also alleged that respondent was also delinquent of the offense of robbery; however, the State *nolle prosequied* that charge prior to trial.

person to complete the transaction. When Curry failed to show at the agreed upon time and place, they arranged to meet the following day at the same location.

¶ 6 Harris arrived at the location at approximately 7:45 p.m. the next evening. She described the area as residential with "a lot of big apartment buildings," a school, and a park located nearby. When she arrived, it was becoming dark; however, streetlights illuminated the area. She parked her Ford Expedition on the north side of the street and messaged Curry. Shortly thereafter, a gentleman approached her car and she instructed him to "get in." After he entered her vehicle, Harris deactivated her Apple account, removed her Subscriber Identification Module (SIM) card, and gave the man her phone. When she asked for the new phone, the man informed her that his friend was bringing it. Approximately three minutes later, Harris observed respondent, whom she recognized to be Stephen Curry from the Facebook profile, approaching her vehicle from the rear. When he opened the rear passenger door and sat down, the other man gave respondent Harris's cell phone. At the time respondent entered her SUV, Harris was able to view him because her vehicle's interior lights were illuminated and respondent was not wearing anything to cover his face. She estimated that he was positioned approximately an arm's length or two diagonally from her. When Harris asked respondent for the phone, respondent inquired whether she had the money. Harris confirmed that she had the money and asked again for the phone. She then noticed respondent pointing a handgun with a chrome barrel at her. Upon seeing the gun, Harris, who was pregnant and fearing for her safety and for the safety of her unborn child, gave respondent $300 and ordered the two men to "get out" of her car and "just go." Respondent and the other man then exited her vehicle and began heading north between the alleys of Crandon and Oglesby. She estimated that the entire robbery occurred during a ten to

twelve minute time span and that respondent was in her car for approximately five to six minutes.

¶ 7 After respondent and his friend began walking away, Harris began sounding her horn. She stopped, however, when respondent, who was approximately five to six yards away, turned around and pointed his gun at her. Harris then "waived him off," and respondent continued running away from her. She ultimately saw the two young men get into a vehicle parked in the alley. Harris used a stranger's phone to call 911 to report the crime, but elected not to wait around for the police to arrive because she was too scared. When she arrived home, she logged into her Facebook account and accessed Stephen Curry's Facebook profile. The profile contained images of respondent and the second young man involved in the robbery. Harris took screenshots[3] of their pictures as well as of the instant messages that she exchanged with Curry.

¶ 8 Harris subsequently went to the police station to report the robbery on November 19, 2017. Thereafter, on November 21, 2017, she received a phone call from Detective Scudella, who was following up on the police report. After speaking to the detective, Harris emailed him the pictures she had of the two offenders as well as the messages she had exchanged with Curry. Harris returned to the police station on November 28, 2017, to view a photo array. She met with a detective who explained that she was not required to identify anybody and signed a Photo Lineup Advisory Form acknowledging her understanding of the detective's admonishments. She then viewed a six-person photo array. Respondent's photo was included in the array and Harris identified him as the person with whom she arranged to purchase a phone and the person who pointed a gun at her and took her money and cell phone. Harris returned to the police station on January 4, 2018, to view a second photo array. She signed another Photo Lineup Advisory Form

[3] A screenshot is "an image that shows the contents of a computer screen." https://www.merriam-webster.com/dictionary/screenshot (last visited February 27, 2019).

and viewed a second six-person photo array. This time she identified the second young man who had been involved in the robbery along with respondent. Harris confirmed that neither her money nor her phone have been returned to her.

¶ 9 On cross-examination, Harris testified that she was not Facebook friends with anyone named J.A. Although she instant messaged and spoke on the phone to someone identifying themselves as Stephen Curry, she never communicated with that individual using Facetime, an app that permits video communication between two users. Because Facebook Messenger does not provide a mechanism to communicate through video, users do not necessarily know the actual identities of the persons with whom they are messaging. Harris admitted that she did not know the identity of the person who created the Stephen Curry Facebook profile and that she was not told that respondent was the individual with whom she communicated through that profile. She further admitted that she was scared and fearful when she observed responding holding a gun. Harris estimated that respondent was only in her car for one to two minutes because she gave him the money as soon as she saw him holding the handgun. Harris acknowledged when she initially met with a police officer on November 19, 2017, to report the crime, she did not mention the name Stephen Curry. She explained, however, that the officer to whom she spoke simply wanted a general description of the robbery and informed her that a detective would contact her soon to seek out additional details. For this reason, Harris did not provide physical descriptions of the offenders. Finally, Harris admitted that when Detective Scudella contacted her to view a photo array, she believed the officers had "possibly" found the perpetrators.

¶ 10 Chicago Police Detective Andrew Scudella testified that he received an assignment to investigate the robbery on November 20, 2017. After reviewing the initial case report completed by Officer Lynn Badie, he contacted Harris. During their initial brief conversation, Detective

Scudella requested Harris to email him the screenshots she had taken of the Facebook messages that she exchanged with Stephen Curry and the pictures of the offenders that she had found on Stephen Curry's Facebook profile. Shortly thereafter, he received the requested materials. He then searched the Chicago Police Department's database for the name "Stephen Curry." The search "led" him to respondent. Based on his findings, Detective Scudella compiled a six-person photo array and included respondent's picture in that array. Harris viewed the array on November 28, 2017. When she arrived at the station, Detective Scudella met with her to conduct an in-person interview where she again provided details of the crime. He then had his colleague, Detective Tyrone Jackson, administer the photo array. Detective Scudella testified that it was the Department's practice to use an independent administrator to preside over a photo array to better preserve the integrity of the investigation. He subsequently learned that Harris positively identified respondent as the offender upon viewing the array. Following the positive identification, Detective Scudella completed an investigative alert packet and respondent was arrested sometime thereafter.

¶ 11 On cross-examination, Detective Scudella confirmed that he did not speak to Harris immediately after the crime; rather he spoke to her 13 days after the robbery. At that time, she provided him with the name Stephen Curry and informed him of the screenshots that she had taken of the two offenders from the Stephen Curry Facebook page as well as of the Facebook messages she had exchanged with the perpetrators. She did not provide a physical description of the offenders on that date. When Detective Scudella met with Harris on November 28, 2017, prior to viewing the photo array, she described the first offender as a male black with a dark brown complexion who was 16 to 20 years of age, 5'8'' and approximately 150 pounds. Harris described the second offender as a male black with a medium brown complexion who was 16 to

20 years old, 5'9'' and 150 pounds. Detective Scudella acknowledged that no evidence technician processed Harris's vehicle and that neither Harris's cell phone nor a handgun was ever recovered in connection with the case.

¶ 12 Detective Jackson testified that he was the independent administrator who showed Harris the photo array that Detective Scudella compiled on November 28, 2017. Prior to administering the array, he was not privy to any of the facts of the case or the suspected identities of the offenders. When he met with Harris, he provided her with a series of instructions and had her sign a lineup advisory form. After signing the form, Harris viewed the photos, which were all compiled on one piece of paper, and she identified respondent. Detective Jackson was the only person present in the room when Harris viewed the array. He recalled that Harris made the identification "very quick[ly]."

¶ 13 Following Detective Jackson's testimony, the State rested its case. Defense counsel proceeded to call several witnesses.

¶ 14 Chicago Police Officer Lynn Badie testified that he met with Harris on November 19, 2017, when she arrived at the police station to report the robbery. He spoke to Harris for approximately 20 minutes and completed a computerized case report of the incident. Specifically, he documented general details about the crime and the persons involved. Officer Badie recalled that Harris described the offenders as two male African Americans. The first offender was dark complected and was approximately 5'8" and 145 pounds. The second offender had a medium complexion, black hair, and was approximately 5'9", 145 pounds, and 16 to 20 years old. Harris never mentioned the name Stephen Curry.

¶ 15 On cross-examination, Officer Badie acknowledged that Harris mentioned she had looked through Facebook profiles and had pictures of the offenders. Officer Badie did not ask to

see the photos, however; rather, he instructed Harris to keep the photos and show them to the detective assigned to investigate the case.

¶ 16 Dr. Brian Cutler, a psychology professor and expert in the field of eyewitness identification, testified that he was retained by respondent to review the police reports and the identification procedures utilized in the case. He described memory as a "complex cognitive process" consisting of three distinct stages: encoding, storage, and retrieval. Various factors can influence the accuracy of a person's memory at each of the stages. For example, at the encoding stage, the information one perceives depends on one's goals, state of mind, and the presence or absence of distractions and stress. During the storage stage, a memory can begin to decay due to the passage of time, or can be altered if a person incorporates new information into the memory, making it difficult to distinguish the information originally encoded from the information incorporated later. Finally, at the retrieval stage, one's ability to recall a memory can depend on one's state or mind, level of distraction, and the manner in which one is asked to recall the information.

¶ 17 With respect to eyewitness identification, Dr. Cutler identified various reasons why a witness may make a positive identification. He explained that some witnesses actually recognize the suspect from the crime, others "go through a process of inference and try to figure out whether the suspect is the perpetrator," and others may be influenced by another person to make a positive identification. He testified that police typically employ three different procedures to obtain eyewitness identifications: show ups near the scene of the crime, photo arrays, and live lineups. Photo arrays typically consist of a photo of the suspect and pictures of "fillers" or non-suspects. To be reliable, it is recommended that the suspect's photograph does not "stand out" from those of the fillers.

¶ 18 After viewing the array shown to Harris, Dr. Cutler concluded that the filler photos were "perfectly reasonable" choices to be included in the array; however, he noted that "the photo of the suspect appear[ed] to stand out in some ways different from the photos of the fillers." Specifically, he noted that respondent's photo had "a substantially different background than the photos of the fillers" and that respondent's "face [wa]s positioned somewhat differently than the fillers." In his opinion, those differences "certainly could" draw a witness's attention to respondent's picture and result in an unreliable identification. In addition to the differences in the pictures, Dr. Cutler identified several other factors present in this case that have been known increase the likelihood of misidentification. Specifically, Dr. Cutler noted that 22 days elapsed between the crime and Harris's identification. He emphasized that "the passage of time can erode memory" and that the 22 days between the crime and Harris's identification was "a substantial period of time to retain a memory." He also discussed the phenomenon of contamination, which occurs when a witness has exposure to a suspect "in an instance other than the crime." For example, Dr. Cutler explained that if a witness views a photo of a suspect prior to viewing a photo array, "there's really no way to know whether the witness' identification from the photo array is based on the witness' original memory for the perpetrator from the crime or based on the witness' memory for the photo. There's really no way to tease that apart." The fact that Harris had seen photos on Facebook was an example of contamination. Finally, Dr. Cutler highlighted the stressful circumstance of the robbery, the presence of a weapon, and the fact that more than one perpetrator was involved in the crime and testified that those were all factors known to increase the likelihood of misidentification.

¶ 19 On cross-examination, Dr. Cutler admitted that the use of advisory forms, multiple fillers, and blind independent administrators are factors that lead to more reliable identifications. He

further acknowledged Harris signed an advisory form, viewed an array with multiple fillers, and that the array was shown to her by an independent administrator who was not involved in the investigation into the crime. Finally, Dr. Cutler confirmed that he did not have an opinion as to the accuracy and reliability of Harris's identification.

¶ 20 Upon the conclusion of Dr. Cutler's testimony, respondent informed the court that he elected not to testify. The defense then rested and the parties delivered closing arguments. The jurors were then provided with a series of relevant instructions. Following deliberations, the jury returned with a verdict finding respondent guilty of aggravated armed robbery. At the sentencing hearing the followed, the court adjudicated respondent a ward of the court, and in accordance with the violent juvenile offender statute, committed him to the Department of Juvenile Justice until his 21st birthday. This appeal followed.

¶ 21 ANALYSIS

¶ 22 Hearsay/Confrontation Clause Violation

¶ 23 On appeal, respondent raises no challenge to the sufficiency of the evidence. Instead, he argues that the court erred in allowing the State to introduce evidence that a police database linked respondent to the pseudonym Stephen Curry. He contends that the evidence was inadmissible hearsay and violated his constitutional right to confrontation.

¶ 24 The State responds that Detective Scudella's testimony detailing the course of his investigation did not constitute hearsay or violate respondent's constitutional right to confrontation.

¶ 25 As a threshold matter, we note that respondent did not object to Detective Scudella's testimony at trial. Prior to trial, respondent filed motions *in limine* seeking to preclude Detective Scudella from testifying that he searched the police database for the name "Stephen Curry" and

that the search led him to respondent. Based upon his pretrial filings, respondent sought to exclude the testimony on the grounds that the State failed to establish a foundational link between respondent and the name Stephen Curry and that the introduction of such evidence was more prejudicial than probative given that the testimony supported the inference that respondent was the subject of other pending police cases. After hearing arguments on the matter, the circuit court denied the motion, rationalizing that Detective Scudella's database search constituted permissible course of conduct testimony and was necessary to establish how the police "came on" respondent. Respondent never objected to Detective Sudella's testimony on the grounds of hearsay either in a motion *in limine* or at trial. " 'The law is clear that "[a]n objection to evidence based upon a specific ground is a waiver [*i.e.,* forfeiture] of objection on all grounds not specified." ' " *People v. Whitfield*, 2014 IL App (1st) 123135, ¶ 30 (quoting *People v. Bennett*, 159 Ill. App. 3d 172, 180 (1987), quoting *People v. Washington*, 23 Ill. 2d 546, 548 (1962)). In an effort to avoid forfeiture, however, respondent invokes the plain error doctrine, which provides a limited exception to the forfeiture rule and allows for review of forfeited issues on appeal if the evidence is closely balanced or the error is of such a serious magnitude that it affected the integrity of the judicial process and deprived the defendant of his right to a fair trial. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967); *People v. Belknap*, 2014 IL 117094, ¶ 48; *People v. Sargent*, 239 Ill. 2d 166, 189 (2010); *People v. Piatkowski*, 225 Ill. 2d 551, 564-65 (2007). The first step in any plain error analysis is to determine whether any error actually occurred. *Piatkowski*, 225 Ill. 2d at 565; *People v. Rinehart*, 2012 IL 111719, ¶ 15. If an error is discovered, respondent then bears the burden of persuasion to show that the error prejudiced him. *Sargent*, 239 Ill. 2d at 189-90. Keeping this standard in mind, we turn now to evaluate the merit of respondent's claim.

¶ 26 Every criminal defendant is afforded the constitutional right to present a defense and confront the witnesses against him. Ill. Const. 1970, art. I, §8; U.S. Const., amend. VI. The right to confrontation is equally applicable to juvenile delinquency proceedings. *In re T.Z.*, 2017 IL App (4th) 170545, ¶ 27. Hearsay is "a statement, other than one made by the declarant while testifying at [a] trial or hearing, offered into evidence to prove the truth of the matter asserted" (Ill. R. Evid. 801(c) (eff. Oct. 15, 2015)) and is generally inadmissible unless a specific exception applies because there is no opportunity to confront and cross-examine the declarant. *Whitfield*, 2014 IL App (1st) 123135, ¶ 25; *People v. Dunmore*, 389 Ill. App. 3d 1095, 1106 (2009); *In re J.B.*, 346 Ill. App. 3d 77, 81 (2004). An out-of-court statement from a nontestifying witness that is not introduced to prove the truth of the matter asserted, however, does not constitute hearsay and does not implicate the confrontation clause. *Whitfield*, 2014 IL App (1st) 123135, ¶ 25; *People v. Peoples*, 377 Ill. App. 3d 978, 984 (2007).

¶ 27 For example, statements by a police officer used to explain the investigatory process are not offered to prove the truth of the matter asserted and thus do not constitute hearsay. *People v. Armstead*, 322 Ill. App. 3d 1, 12 (2001). Allowing police officers to explain their investigatory conduct prevents them from being "put in the false position of seeming just to have happened upon the scene" and upon the defendant. *People v. Cameron*, 189 Ill. App. 3d 998, 1004 (1989) (quoting McCormick, Evidence § 249 at 734 (3d ed. 1984)). Accordingly, a police officer may recount the steps of his investigation into the crime and describe the events that led to the defendant's arrest where such testimony is necessary and important to fully explain the State's case to the trier of fact. *People v. Simms*, 143 Ill. 2d at 174. In addition, an officer may testify about conversations he had with others, including victims or witnesses, and the actions taken as a result of those conversations to recount the investigatory process. *People v. Ochoa*, 2017 IL App

(1st) 140204, ¶ 41. "Testimony describing the progress of an investigation is admissible even if it suggests that a nontestifying witness implicated the defendant." *People v. Simms*, 143 Ill. 2d 154, 174 (1991). Importantly, however, an officer's testimony must not convey information beyond what is necessary to explain his or her actions. *People v. Ochoa*, 2017 IL App (1st) 140204, ¶ 41; *People v. Jura*, 352 Ill. App. 3d 1080, 1085 (2004). As a general rule, the admissibility of evidence is within the discretion of the circuit court and, as such, its evidentiary rulings will not be disturbed absent an abuse of discretion. *People v. Jura*, 352 Ill. App. 3d 1080, 1085 (2004).

¶ 28 In this case, Detective Scudella testified that following an interview with Harris, he searched the Chicago Police Department's database for the name "Stephen Curry" and that the search "led" him to respondent. He then included respondent's picture in the photo array shown to Harris. Respondent likens Detective Scudella's computer database search to a police report, the contents of which are undisputedly hearsay (*People v. Williams*, 240 Ill. App. 3d 505, 506 (1992)), and argues that the detective's trial testimony improperly "conveyed the substance of the out-of-court database information" and introduced inadmissible hearsay. We disagree.

¶ 29 Detective Scudella did not, as respondent suggests, convey the *substance* of out-of-court information from his database search. As set forth above, Detective Scudella simply testified that after his interview with Harris, a testifying witness, he searched the name "Stephen Curry" in the police database, and that the results of the database search "led" him to respondent. As a result, Detective Scudella included respondent's picture in a photo array. Courts have concluded that similar testimony is admissible to explain an officer's investigatory process.

¶ 30 For example, in *Peoples*, 377 Ill. App. 3d 978, a detective testified that he spoke to several people after a shooting and that those individuals implicated a person named "Chris" who

lived in, or had previously been arrested in, the neighborhood where the shooting occurred. *Id*. at 984. The detective further testified that he used that information to perform a computer search and that he learned that the defendant, Christopher Peoples, fit that description as he lived a few blocks away from the shooting. *Id*. The detective then included the defendant's picture in a photo array and a witness identified him as the shooter from that array. *Id*. On appeal, this court rejected the defendant's contention that the officer's testimony constituted inadmissible hearsay and a violation of his right to confrontation. In doing so, we noted that the detective's testimony did not reveal the substance of his conversations with the nontestifying witnesses; rather, it was narrowly tailored to explain how the "police narrowed their investigation and eventually focused on defendant." *Id*. at 986. Because the detective's testimony "was not offered for its truth, but rather to show the course of the police investigation that led to defendant's arrest," we concluded that "the evidence in question was not hearsay and did not violate *Crawford*." *Id*.

¶ 31 Detective Scudella, like the detective in *Peoples*, did not relay the contents of any out of court conversation from a non-testifying witness for the truth of the matter asserted. Instead, Detective Scudella limited his testimony to that which was necessary to explain the circumstances that led him to include defendant's picture in the photo array shown to Harris. Absent such testimony, Detective Scudella would have been put in the seemingly false position of simply "happen[ing] upon" respondent, which is why such testimony is permitted. See *Cameron*, 189 Ill. App. 3d at 1004.

¶ 32 Accordingly, we find no error. "Having found no error, there can be no plain error." *Bannister*, 232 Ill. 2d at 79. Moreover, having found no error, respondent's alternative argument that defense counsel was ineffective for failing to properly preserve this issue for review is

likewise unavailing. *Id*. (citing *People v. Hall*, 194 Ill. 2d 305, 354 (2000), and *People v. Alvine*, 173 Ill. 2d 273, 297 (1996)).

¶ 33 We likewise find that the State's commentary on Detective Scudella's testimony during closing argument did not constitute error. During its argument, the State detailed the progress of Detective Scudella's investigation and stated: "As soon as the detective put in Stephen Curry in the database, guess who showed up? *** It was [respondent]. He showed up. Stephen Curry with his photo." Initially, we note that respondent raised no objection to this statement. Moreover, we note that although the State referenced respondent's photograph appearing during Detective Scudella's database search, a detail not included in Detective Scudella's actual testimony, the State's argument did not reference any out-of-court statement from a nontestifying witness. Simply put, the State's argument did not reference hearsay, testimonial or otherwise. Accordingly, we find that respondent's argument that his constitutional right to confrontation was violated due to the erroneous admission of testimonial hearsay evidence to be without merit.

¶ 34 Ineffective Assistance of Counsel

¶ 35 Respondent next argues that his attorney was ineffective for calling Officer Badie to testify and to provide details that corroborated Harris's trial testimony about the circumstances of the crime. He argues that Officer Badie's testimony served to bolster, rather than attack, Harris's credibility as a witness.

¶ 36 The State responds that respondent's ineffective assistance of counsel claim lacks merit because counsel's trial "strategy was reasonable, even if it was unsuccessful." Moreover, the State further argues that respondent cannot "show that any error in this regard prejudiced him."

¶ 37 Minors in delinquency proceedings have a constitutional due process right to effective assistance of counsel. *People v. Austin M.*, 2012 IL 111194, ¶ 74 (citing *In re Gault*, 387 U.S. 1

(1967)). The constitutionally afforded right to effective assistance counsel entails "reasonable, not perfect, representation." *People v. Wilborn*, 2011 IL App (1st) 092802, ¶ 79. The standard used to evaluate the effectiveness and competency of counsel in juvenile proceedings is the same two-prong *Strickland* standard applicable to adult criminal proceedings. *In re Danielle J.*, 2013 IL 110810, ¶ 31 (citing *Strickland v. Washington*, 466 U.S. 668 (1984)). Pursuant to that standard, a minor alleging that he received ineffective assistance of counsel must establish that: (1) his attorney's representation fell below an objective standard of reasonableness and (2) the deficient representation prejudiced the minor. *Id*. With respect to the first prong, the minor must overcome the "strong presumption" that counsel's action or inaction was the result of sound trial strategy. *People v. Jackson*, 205 Ill. 2d 257, 259 (2001); *People v. Shelton*, 401 Ill. App. 3d 564, 584 (2010). As a general rule, decisions concerning what witnesses to call and what evidence present on a minor's behalf are considered matters of trial strategy that are generally immune from ineffective assistance of counsel claims. *People v. Munson*, 206 Ill. 2d 104, 139-40 (2002); *People v. Williams*, 2017 IL App (1st) 152021, ¶ 38. Moreover, " '[i]n recognition of the variety of factors that go into any determination of trial strategy, * * * claims of ineffective assistance of counsel must be judged on a circumstance-specific basis, viewed not in hindsight, but from the time of counsel's conduct, and with great deference accorded counsel's decisions on review.' " *Wilborn*, 2011 IL App (1st) 092802, ¶ 79 (quoting *People v. Fuller*, 205 Ill. 2d 308, 330-31 (2002)); see also *People v. Mitchell*, 105 Ill. 2d 1, 15 (1984) ("The issue of incompetency of counsel is always to be determined by the totality of counsel's conduct.") To satisfy the second prong, the minor must establish that but for counsel's unprofessional errors, there is a reasonable probability that the trial court proceeding would have been different. *People v. Peeples*, 205 Ill. 2d 480, 513 (2002). A minor must satisfy both the performance and prejudice prongs of the

Strickland test to prevail on an ineffective assistance of counsel claim. *Evans*, 209 Ill. 2d at 220; *People v. McCarter*, 385 Ill. App. 3d 919, 935 (2008).

¶ 38 In this case, Harris testified at trial that when she went to the police station 13 days after the robbery to report the crime, she did not provide descriptions of the offenders or many details about the crime because the officer with whom she spoke to informed her that a detective would be assigned to the case and would be contacting her to discuss the details of the crime. Thereafter, respondent's attorney called Officer Badie, the officer who spoke to Harris and completed the initial report on the case. Officer Badie testified that Harris, had in fact, provided details about the robbery and the perpetrators. Officer Badie testified, in pertinent part, that although Harris never mentioned the name Stephen Curry, Harris did provide general physical descriptions of the two offenders, who she estimated were both 16 to 20 years old. Specifically, she described the first offender as a black male who was approximately 5'8'' and weighed 145 pounds and the second offender as a black male with a medium brown complexion who was approximately 5'9'' and 145 pounds. Officer Badie further testified that Harris also provided details about where, when, and how the robbery took place. Specifically, Harris described how the first offender entered her vehicle, sat in the front passenger seat, took her phone, and told her his friend would be bringing the iPhone 7 Plus that she had arranged to purchase. The second offender then entered the rear of her vehicle, asked if she had the money, pointed a gun at her, and ordered her to give him the money, which she did. The two offenders then exited her car and fled from the scene.

¶ 39 Although Officer Badie's testimony contradicted Harris's recollection of the details that she provided to the officer, respondent argues that his attorney's decision to call Officer Badie as a witness ultimately served to corroborate the details of the crime that Harris provided during the

trial and bolster her overall credibility as a witness. We are unable to agree that respondent's attorney's representation in this vein was unreasonable. Respondent's theory of the case was that he was misidentified by Harris as one of the perpetrators of the crime. Harris's memory was thus at issue. Although she was able to provide detailed testimony about the circumstances of the robbery at trial and identify respondent as the gunman, Harris testified that when she initially reported the crime to Officer Badie, the officer did not seek out details; rather, the officer simply took down her contact information and instructed her that a detective would be contacting her to discuss the crime. Officer Badie, however, contradicted Harris's account of their meeting and testified that Harris did provide details about the circumstances of the robbery and the offenders. Although respondent suggests that his attorney erred by asking Officer Badie to delineate all of the details that Harris provided, by doing so Officer Badie was able to show the extent to which Harris's memory of their conversation was fallible. Ultimately, following our review of the record, we conclude that trial counsel's decision to call Officer Badie as witness and the questions posed to the officer may properly be construed as reasonable trial strategy, which will not support an ineffective assistance of counsel claim. See generally *Munson*, 206 Ill. 2d at 139-40; *Williams*, 2017 IL App (1st) 152021, ¶ 38.

¶ 40 CONCLUSION

¶ 41 The judgment of the circuit court is affirmed.

¶ 42 Affirmed.