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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 12407
	)	
JAMES JONES,	)	Honorable
	)	Dennis J. Porter,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE CUNNINGHAM delivered the judgment of the court.  
Justices Karnezis and Rochford concurred in the judgment.

**ORDER**

¶ 1 *Held:* Counsel did not render ineffective assistance where he elicited a witness's reference to the defendant's "criminal background," where it was unlikely that the outcome of the trial was changed by the unobjected remark. The defendant is entitled to credit against his Children's Advocacy Center fine for pre-sentencing detention.

¶ 2 Following a 2010 jury trial, defendant James Jones was convicted of aggravated false personation of a peace officer and sentenced to four years' imprisonment with \$555 in fines and fees. On appeal, the defendant contends that trial counsel rendered ineffective assistance by eliciting an improper reference to the defendant's "criminal background." He also seeks credit against his fines for his pre-sentencing detention.

¶ 3 The defendant and the codefendant Lemoyne Smith were charged with armed robbery (720 ILCS 18-2(a)(2) (West 2008)) and aggravated false personation of a peace officer (720 ILCS 5/32-5.2 (West 2008)). The indictment alleged that on or about June 23, 2009, the defendant and the

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codefendant took money from Joseph Arnold by force or threat of force, falsely representing themselves as police officers in the course of that robbery. The trials of the defendant and the codefendant were severed. On the eve of the defendant's trial, the codefendant reached an agreement with the State whereby he would plead guilty to robbery in exchange for the State's recommendation that he be sentenced to "boot camp."

¶ 4 The State sought and obtained an order *in limine* prohibiting the defendant from presenting evidence or argument that he had no felony or misdemeanor convictions as of the time of trial. The record indicates that, while the defendant had no prior convictions, he had a 1998 arrest for disorderly conduct that was stricken with leave to reinstate.

¶ 5 On May 11, 2010, the defendant's trial commenced in the circuit court of Cook County. At trial, Delores Montejano testified that, at about 2:30 a.m. on the day in question, she and Arnold, her ex-boyfriend at the time, were in her Nissan Sentra, parked in an alley. The car was not blocking any garages, and while the engine and radio were on, they were not making much noise. Montejano and Arnold were both in the back seat conversing when she saw a light shining into her car, then saw the defendant standing outside the car. The defendant knocked on the window, said "police," and told Montejano to show her hands slowly and exit the car; she did so. As he gave orders to Montejano, the defendant had his hand on a holstered gun; however, he never removed the black-handled gun from the holster. After Montejano exited the car, the defendant told her to go to the codefendant, who was standing outside at a nearby burgundy Chevy Caprice. He then ordered Arnold, who also complied, to exit the car. At the defendant's request, the codefendant searched Montejano's purse, examined her license, and searched her car. At the same time, the defendant searched Arnold. After the codefendant put Montejano's purse back in the car, he ordered her to put her hands on the trunk of the car. Montejano saw and memorized the license plate number of the Caprice: which was, X724817. The defendant and the codefendant then told Montejano and Arnold that they could leave. Montejano did not see the codefendant carrying or holding a gun, and he did

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not identify himself as a police officer.

¶ 6 However, when Montejano and Arnold drove away, Montejano saw that the Caprice was following them out of the alley. Montejano telephoned "911" and provided the operator with the Caprice's plate number, then kept the call open because the defendant was still following her. At one point, the Caprice swerved toward Montejano's car in an attempt "to push us over," and Montejano clearly saw the defendant driving the Caprice. The Caprice flashed its headlights and then tried to ram Montejano's car, and the defendant repeatedly told Montejano to "pull over." Montejano repeatedly yelled to the defendant, "let me see your badge." The defendant threatened to shoot her tires if Montejano did not stop. Eventually, the Caprice turned away and was no longer following Montejano's car. She stopped her car and waited for the police, while keeping the "911" call active. The police arrived and took a report from Montejano and Arnold, then Montejano went home. The following afternoon, she was called to the police station where she identified the defendant and the codefendant in a lineup as her assailants.

¶ 7 Montejano denied that either she or Arnold had a gun that night, and denied that Arnold had pointed a gun at the Caprice during the pursuit. She also denied that Arnold exchanged heated words with the defendant during the pursuit. However, she admitted that she never mentioned during her "911" call that the defendant had a gun. She denied telling the responding police officers that the defendant had drawn his gun from its holster, and she denied telling Detective Victor Law that the defendant kept his gun in his pants.

¶ 8 Joseph Arnold's testimony was generally consistent with Montejano's. However, he testified that the defendant's gun was tucked into his pants rather than in a holster. Arnold added that, when the defendant searched him, he emptied the contents of his pockets onto the trunk lid of the Sentra, Montejano's car. However, when the defendant returned Arnold's property following the search, the defendant kept Arnold's money. The defendant had the money in his hand, and though Arnold did not see where the defendant put the money, he never returned it to Arnold. Arnold added that the

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codefendant claimed to smell marijuana in the Sentra, and the defendant asked Arnold where the "weed" was, to which Arnold replied that he did not have any. The defendant told Arnold that he was lucky not to be arrested and that he had only suffered the loss of his money. He then told Montejano and Arnold that they could leave. At trial, Arnold admitted that he had smoked marijuana several hours before the incident but denied that he was still under its influence during the incident. Arnold testified that during the pursuit, when the defendant threatened to shoot out the tires of the Sentra, Arnold yelled to the defendant that "you not no policeman, show me your badge." He denied shouting anything else at the defendant. He also denied having a gun that night, and specifically denied pointing anything at the defendant during the pursuit. Arnold also identified the defendant and the codefendant from a lineup.

¶9 Codefendant Lemoyne Smith testified that he was acquainted with the defendant for several years. On the night in question, he called the defendant to ask for a ride home. The defendant picked him up at about 1:30 a.m. in a maroon Chevy Caprice sedan and took him home. The codefendant saw a maroon sedan parked behind his garage. The defendant parked his car nearby. The codefendant did not see anyone inside the parked car, and the defendant said that he would "check out" the car to see if it was abandoned. As the defendant walked toward the car, he had a gun in a holster on his waist. The defendant tapped on the window of the car; said that he was a police officer, and told the occupants to get out of the vehicle. Montejano then exited the car from the back seat, followed a short time later by Arnold. Arnold went to the trunk of the Sentra and emptied his pockets onto the trunk lid. Meanwhile, the defendant directed the codefendant to search the Sentra, which he did. He then told the defendant that "nothing was in there." However, the codefendant denied ever having Montejano's purse or checking her identification. The defendant asked Arnold how much money he had, and then told him to leave. The codefendant saw that the defendant still had Arnold's money in his hand as Arnold left. The defendant did not return the money to Arnold. Montejano and Arnold then got into the Sentra and left, with Montejano driving.

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¶ 10 With the defendant driving, the defendant and the codefendant followed Montejano and Arnold's car out of the alley. At one point, the defendant flashed his headlights and told Montejano to pull over. When she did not, he threatened to shoot out her tires. Montejano held up a mobile telephone and asked the defendant to see his badge. When he did not show his badge, she repeated the demand. Arnold did not argue with or threaten the defendant during the pursuit, nor did he point anything at the defendant's car. The codefendant denied that the defendant swerved his car toward Montejano's car in an effort to run her off the road. When the defendant pulled away from following Montejano and Arnold, he called "911" to make a false report that he was a security guard and that two people had pointed a gun at him. The codefendant then went home. Later that afternoon, the defendant phoned the codefendant to suggest that they go to the police station to file a complaint. As they drove to the police station, the defendant told the codefendant to "stick with the story about what happened last night and nothing gonna happen to you."

¶ 11 At the police station, the defendant and the codefendant were arrested, and the codefendant later stood in a lineup. The codefendant admitted that his initial statement before he was placed in the lineup was consistent with the defendant's account that Arnold had a gun. The codefendant testified that his initial statement was a lie, and that he gave a statement after the lineup that was essentially the same as his trial testimony. The codefendant admitted that he had been charged with the instant offenses but had agreed with the State to plead guilty to robbery and testify truthfully in the instant trial in exchange for the State's recommendation of a "boot camp" sentence; however, he had not yet entered that guilty plea as of the time of trial.

¶ 12 Police detective Victor Law testified that he investigated the instant offenses upon the complaint of Montejano and Arnold. After interviewing Montejano on the morning of the incident, Detective Law was seeking a 1996 Chevrolet Caprice with license plate X724817. That car was registered to the defendant, but when Detective Law went to the registered address, the defendant no longer resided there. He learned of another address for the defendant, but before he could go

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there, he learned that the Caprice had appeared at a police station. At that police station, he interviewed the defendant and the codefendant, then conducted a lineup that included them. Montejano and Arnold viewed the lineup separately, and each identified the defendant and the codefendant. The codefendant then gave a statement generally consistent with his trial testimony and inconsistent with his earlier account, except that he stated that the defendant's gun was in his waistband (not a holster), and that Arnold pointed to what appeared to be a gun during the pursuit. Also, the codefendant admitted in his statement that he searched Montejano's purse and examined her license. The codefendant gave this account again to an Assistant State's Attorney (ASA), who memorialized it.

¶ 13 Defense counsel cross-examined Detective Law regarding his investigation, and specifically regarding the content of his reports of that investigation and the circumstances of the codefendant's statements. At one point, defense counsel asked him how he discovered the defendant's address, to which he replied "[f]rom his criminal background." Neither Detective Law nor defense counsel elaborated on this answer, nor did defense counsel object or ask for a sidebar. Instead, counsel immediately elicited that Detective Law did not seek a warrant to search the defendant's home though neither a gun nor a holster had been found on the defendant or in the Caprice.

¶ 14 The parties stipulated that the defendant was not a peace officer. The parties also stipulated that the Department of Professional Regulation (Department) licenses security guards; a licensed security guard must have a firearm control card (Card) from the Department in order to be armed while on duty; a Card is issued to a guard's employer rather than the guard himself; a Card is limited to when the guard is on duty; and there is no license to be a "24-hour armed security guard" in Illinois. The parties further stipulated that the defendant was a licensed security guard as of the time of trial but had no valid Card on June 23, 2009, at the time of the incident; his Card with Steiner Security having expired in March 2008 and his Card with The Hana Group (Hana) having been terminated in April 2009. The State introduced without objection: (1) the defendant's vehicle

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registration for a 1996 Chevrolet sedan, license plate X724817; and (2) a record from the Department that the defendant did not have an active Card as of January 2010, and that his earlier Cards were expired in March 2008 and terminated in April 2009.

¶ 15 The defendant's motion for a directed verdict was denied.

¶ 16 James Wright testified for the defense that he was (as of trial) the defendant's supervisor with World Security Agency, where the defendant was employed as a security guard. In June 2009, Wright and the defendant were both armed security guards for Hana, assigned to the Great Lakes naval base. Wright began that job in January 2009 and met the defendant in March 2009. They were each issued a black 9-millimeter Beretta pistol, which they had to leave at the base; that is, at the beginning of his shift, each signed his gun out of the armory in a supervisor's presence, and at the end of his shift, he signed it back into the armory under supervision. On cross-examination, Wright clarified that he and the defendant worked different shifts while they both worked for Hana.

¶ 17 The defendant testified that he was a security guard not licensed to carry a firearm. In June 2009, he worked with Wright for Hana at the naval base. The defendant was licensed to carry a gun only at work, and had to sign his gun (a black 9-millimeter Beretta) in and out as described by Wright. He did not own a gun or carry one when not at work. On June 23, 2009, the codefendant called him at about midnight or 1 a.m. to ask for a ride. Using his 1996 Chevrolet Caprice, the defendant picked up the codefendant and took him home. Upon arriving, the codefendant told the defendant that he saw a car parked in the alley near his garage. The defendant did not initially see the car but agreed to help him "check it out." They drove up to the Nissan Sentra parked in the alley, stopping alongside it, and the defendant asked the people in the car "what are y'all doing?" With the tinted windows of the Sentra closed despite the hot weather, the defendant could see only one head moving in the back seat. Not receiving a reply, he asked again twice and added that "y'all can't be back here." Arnold opened the car door and replied "who \*\*\* are you supposed to be?" The defendant replied that the garage was the codefendant's and repeated the "what \*\*\* y'all doing back

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here" question. Arnold responded to the effect that the defendant should move on, but the defendant repeated that it was the codefendant's garage. The defendant was still seated in his car at this point, and he denied claiming to be a police officer, showing a badge, or displaying a gun. The defendant told the codefendant to check his garage, and the codefendant then exited the car to do so. Meanwhile, the defendant and Arnold were exchanging "heated" words. The defendant threatened to beat up Arnold, but Montejano told Arnold to "leave it alone" and suggested that they (Montejano and Arnold) leave. Montejano and Arnold then went into the front seat of the Sentra and drove away.

¶ 18 The defendant testified that he and the codefendant drove around to the front of the codefendant's home, and they then decided to go to a restaurant. Coincidentally, on the way to the restaurant, they saw the Sentra in traffic. When the defendant unsuccessfully tried to pass the Sentra twice, he flashed his headlights. Arnold then yelled to the defendant "are y'all following me?" Though the defendant denied to Arnold that he was following him, they exchanged words, including threats by the defendant against Arnold, as they both continued driving. When the defendant saw Arnold extend his arm out of the car, he thought (though he was not sure) that Arnold may have a gun in his hand. The defendant therefore swerved toward Arnold's car, and Arnold pulled his arm back inside. The defendant phoned "911" and reported the description and license plate number of the Sentra, then stopped to await the police as the Sentra drove away. When the police did not arrive in more than 10 minutes, the defendant went home. When he was about to go to sleep, the "911" operator called him and they had a brief conversation, during which the defendant did not request that a police car come to his home either that night or in the morning. The next morning, the defendant called the codefendant to suggest that they file a complaint with the police. The defendant denied discussing with the codefendant what they would tell the police. Upon arriving at the police station in his Caprice, the defendant was arrested.

¶ 19 The defendant admitted that he lied when he told the "911" operator that he was a 24-hour

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armed guard checking automated teller machines. He explained that he did so in belief that his report would be taken more seriously. The defendant also admitted that, as he was behind the Sentra trying to pass it, Montejano yelled to him "let me see your badge." He denied telling a detective after his arrest that he owned a black 9-millimeter Beretta.

¶ 20 In rebuttal, Detective Law testified that he informed the defendant of his *Miranda* rights and that the defendant indicated that he understood his rights and agreed to speak with Detective Law. During the subsequent interview, the defendant admitted to owning a black 9-millimeter Beretta and never said that Arnold pulled a gun on him; however, he did say so later when giving his statement to an ASA. The codefendant told Detective Law that Arnold "stuck his hand out of the vehicle and pointed a gun." Despite the defendant's admission to owning a Beretta, Detective Law did not search the defendant's home, did not find such a gun in the car, and did not check if the defendant had ever purchased such a gun.

¶ 21 During closing arguments, no reference was made to Detective Law's "criminal background" testimony elicited during cross-examination by defense counsel. Following instructions and deliberation, the jury found the defendant guilty of robbery and aggravated false personation of a peace officer.

¶ 22 In his unsuccessful post-trial motion, the defendant challenged only the sufficiency of the evidence. The defendant was sentenced to four years' imprisonment for aggravated false personation, with \$555 in fines and fees. Though the court ordered "[t]hirty dollars toward the Children's Advocacy Center fine" during sentencing, and the mittimus reflects 110 days' credit against the prison sentence, the order assessing fines and fees shows no credit. The defendant's post-sentencing motion was denied, and this appeal timely filed.

¶ 23 On appeal, the defendant contends that trial defense counsel rendered ineffective assistance by eliciting an improper reference to the defendant's "criminal background." He argues that this reference was especially prejudicial in light of the fact that he had no criminal convictions and only

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one prior arrest for disorderly conduct that was stricken with leave to reinstate.

¶ 24 On a claim of ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that the deficient performance prejudiced him; in other words, that counsel's performance was objectively unreasonable under prevailing professional norms and that there is a reasonable probability that the outcome of the proceedings would have been different but for counsel's errors. *People v. Petrenko*, 237 Ill. 2d 490, 496-97 (2010).

¶ 25 Here, in the middle of his lengthy cross-examination of Detective Law regarding his investigation in the instant case, defense counsel asked him how he discovered the defendant's address, to which the detective replied "[f]rom his criminal background." In order for the defendant's claim of ineffective assistance of counsel to be successful, he must show that this reference to his criminal background satisfies the two-prong test established in *Strickland v. Washington*, 466 U.S. 668 (1984). Specifically, the defendant must show that by eliciting the "criminal background" statement from Detective Law, defense counsel: (1) was deficient to the level of being objectively unreasonable; and (2) prejudiced the defendant with his performance. *Strickland*, 466 U.S. at 687. We need not determine whether defense counsel erred in eliciting that testimony or allowing it to stand because we do not find the prejudice required for an ineffective assistance claim.

¶ 26 We note that neither party made any further reference to the remark in evidence or closing arguments. Moreover, while this case was indeed a credibility contest, the trial evidence was more than merely the victims' testimony on one hand and the defendant's testimony on the other. The jury also heard the codefendant's inculpatory testimony and evidence that he gave a similar inculpatory statement after his arrest before any agreement with the State. The remark at issue was a small piece of a rather large puzzle, and we find it highly unlikely that the outcome of the trial would have been different had the detective not answered counsel's question as he did.

¶ 27 The defendant also contends that he received no credit against his fines for his pre-sentencing detention. Fines, but not fees, are credited \$5 for each day of pre-sentencing detention. 725 ILCS

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5/110-14(a) (West 2010). However, the defendant's fines and fees order shows no such credit though his mittimus reflects 110 days' credit against his prison sentence. The parties correctly agree that the defendant's \$30 Children's Advocacy Center charge is a fine subject to the credit. *People v. Williams*, 2011 IL App (1st) 091667-B, ¶ 19. In light of our supreme court's holding that the \$200 DNA analysis fee is not a fine and thus not subject to the credit (*People v. Johnson*, 2011 IL 111817), the defendant has withdrawn his contention that it is a creditable fine.

¶ 28 Accordingly, the clerk of the circuit court is directed to correct the mittimus assessing fines and fees to reflect a \$30 credit for pre-sentencing detention. The judgment of the circuit court is otherwise affirmed.

¶ 29 Affirmed; mittimus corrected.