2015 IL App (1st) 133323-U

SIXTH DIVISION
Order filed: October 9, 2015
Modified upon denial of rehearing: November 13, 2015

No. 1-13-3323

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 10 CR 1850
	)	
JOSEPH SMITH,	)	Honorable
	)	Noreen Love,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State presented sufficient evidence to prove the defendant guilty of armed robbery beyond a reasonable doubt; (2) the trial court did not violate the defendant's right to present a defense when it limited his cross-examination of the victim; (3) the defendant's sixth amendment right to confrontation was violated by the testimony of a forensic scientist, but such violation was harmless; and (4) the trial court improperly assessed the $15 State Police Operations fine and the defendant is entitled to $5 *per diem* sentencing credit.

¶ 2 Following a bench trial, the defendant, Joseph Smith, was convicted of armed robbery with a firearm (720 ILCS 5/18-2(a)(2) (West 2008)). The trial court sentenced him to 21 years'

imprisonment and assessed $689 in fines and fees. On appeal, the defendant argues: (1) the State failed to prove him guilty of armed robbery beyond a reasonable doubt because it failed to establish that the weapon used in the offense was a firearm; (2) the trial court violated his constitutional right to present a defense where it restricted his cross-examination of the victim; (3) his sixth amendment right to confrontation was violated when a forensic scientist was allowed to testify about DNA laboratory work performed by a nontestifying scientist; and (4) the trial court improperly assessed a $15 State Police Operations fine and his mittimus must be corrected to reflect the correct amount of presentence credit. For the reasons that follow, we affirm the defendant's armed robbery conviction, vacate the $15 Police Operations fine, and correct the mittimus.

¶ 3 In January 2010, the State charged the defendant with two counts of armed robbery. 720 ILCS 5/18-2(a)(2) (West 2008). The charges alleged that on December 21, 2009, the defendant, or one for whose conduct he was legally responsible, took property from the person or presence of Ohee Kim and Jan Hur, by threatening the imminent use of force while armed with a firearm.

¶ 4 In January 2013, the defendant's case proceeded to a bench trial. On the day of trial, the defendant objected to the State calling Megan Neff, a forensic scientist, to testify about DNA laboratory work performed by Nicholas Richert.[1] The defendant argued that presenting the results of Richert's lab analysis through the testimony of Neff would violate his constitutional right to confrontation. In response, the State explained that Richert was no longer employed by the Illinois State Police (ISP) crime lab and was not available to testify as a witness. Nevertheless, the State asserted that it was permissible for Neff to testify to her peer review of Richert's work. The trial court concluded that "there may be something that comes up during the

[1] Nicholas Richert's name is misspelled as "Rickert" in the record.

course of the trial with respect to what [Neff] testifies. I could not make that determination until such time as she testifies, so it is noted for the record."

¶ 5 At trial, Kim testified that, on December 21, 2009, she was working at C&Y Beauty Supply located at 6039 West North Avenue in Oak Park. At about 5 p.m., Kim was working at the front cash register when she noticed a man, whom she identified in court as the defendant, standing near a display of woman's underwear. After shopping around, the defendant purchased a pair of woman's underwear and Kim gave him a receipt for the purchase. Kim testified that the defendant exited the store, but immediately returned with another man, who was brandishing "a handgun with black color." Kim pushed an alarm button. When asked what happened next, she testified that the defendant locked the front door and approached Jan Hur, Kim's employee; meanwhile, the other man pointed the gun at her head, threatened to kill her, and demanded money. Kim opened both cash registers, put the money in a bag, and gave it to the man. The man said he wanted more money and asked where Kim's purse was located. When Kim informed him it was in the storage area, the two robbers escorted Kim and Hur to the back of the store, ordered them to lay face down on the ground, and the defendant took approximately $250 from Kim's purse. Kim testified that the defendant demanded more money, grabbed her, and struck her in the face with an open hand. Kim attempted to return to the front of the store to get loose change out of the cash registers but the defendant grabbed her and told her to "lower down" because a police officer was standing outside. Kim testified that the robbers took the surveillance tapes out of the VCR and ran out of the back door. Kim ran to the front of the store and told the police officer what happened. About 15 minutes later, the police returned to her store with the defendant and Kim identified him as one of the robbers. Although the defendant

wore a "black thermal long t-shirt" during the robbery, Kim testified that he was wearing a white t-shirt during the show-up.

¶ 6 On cross-examination, Kim admitted that she never touched the gun or held the gun. She said she was never struck by the gun and the gun never fired. When asked what material the gun was made of, Kim replied, "Like a metal. It's a real gun. It was not a toy. He came twice." Defense counsel also questioned Kim regarding the weight of the gun, whether the gun was a toy, whether the gun was loaded, and whether the gun was capable of being fired. However, the trial court sustained the State's objections to these questions. The trial court also sustained the State's objection to defense counsel's use of the term "the object" when referencing the gun because it mischaracterized Kim's testimony. On redirect, the State asked Kim if she has "seen guns before in [her] life," and Kim replied, "I know. I know that's a real gun."

¶ 7 Officer Larson of the Oak Park police department testified that he was working patrol on December 21, 2009, when he responded to an "alarm call" from C&Y Beauty Supply. Upon arrival, he discovered the front door was locked and around toward the back of the store. There, Officer Larson was approached by a witness who said that one man removed his black shirt and ran through an alley near LeMoyne Street. The witness said the man was wearing a white t-shirt and jeans. Officer Larson broadcast this information over the police radio and began canvassing the alley for the black shirt, which he found behind a garbage can. Approximately 10 minutes later, he received a radio call that the Chicago police apprehended an individual wearing a white t-shirt and jeans and were transporting him to C&Y Beauty Supply. Kim identified the individual as one of the robbers and Officer Larson arrested him and drove him to the Oak Park police station. At the police station, Officer Larson recovered a little more than $50 from the

defendant's back pocket, $15 from his front pocket, and $266 in various bills wrapped around a receipt from C&Y Beauty Supply, time-stamped 5:03 p.m., December 21, 2009.

¶ 8 On cross-examination, Officer Larson testified that the defendant's accomplice was never apprehended and no gun or surveillance tapes were recovered.

¶ 9 Chicago police officer Matt Koegler testified that on December 21, 2009, at approximately 5:15 p.m., he was on patrol in the area of Austin and North Avenue when he received a flash message from the Oak Park police department regarding an armed robbery. The dispatch described one of the offenders as a black male wearing a white t-shirt and blue jeans. Officer Koegler testified that he began "touring" the area and, shortly thereafter, located a man matching "identically" the description provided by dispatch. Officer Koegler noted that the man was walking down the sidewalk near 1350 North Mason, which is three or four city blocks from C&Y Beauty Supply. Officer Koegler approached the man, conducted a brief field interview, detained him, and transported him back to C&Y Beauty Supply.

¶ 10 Officer Dustin Troik testified that he was assigned to process the scene at C&Y Beauty Supply. He explained that he took photographs and collected evidence, including a black t-shirt that was found behind a garbage can in an alley. On cross-examination, Officer Troik acknowledged he did not recover any gun, VCR tapes, or fingerprints.

¶ 11 Oak Park police detective James Sperandio testified that he was assigned to investigate the armed robbery at C&Y Beauty Supply. As part of the investigation, Detective Sperandio stated that he was asked to obtain a buccal swab of the defendant's DNA. When asked why, he replied that "[a] garment had been discarded by the defendant while he was fleeing the scene" and "[w]e intended to send the garment to the crime lab and have it tested for the presence of [DNA]." Detective Sperandio testified that he met the defendant at the Oak Park police station,

obtained the defendant's consent to DNA testing, and collected a buccal swab of the defendant's DNA. He sent the buccal swab and black shirt to the ISP crime lab for analysis.

¶ 12 Megan Neff testified that she is a forensic scientist in the biology and DNA section of the ISP crime lab. Neff admitted that she did not personally perform any laboratory work on the forensic evidence gathered in this case but she conducted a "technical review" of the reports and notes prepared by forensic scientist Richert. Neff testified that Richert performed a DNA analysis of the black shirt as well as the buccal swab taken from the defendant. Neff explained that the black shirt contained a mixture of human DNA profiles, one of which matched the DNA profile taken from the buccal swab. Thus, the defendant's DNA could not be excluded from the black shirt. Neff opined that the DNA profile extracted from the black shirt would be expected to occur in approximately "1 in 630 billion black; 1 in 4.6 trillion white; or 1 in 8.4 trillion Hispanic unrelated individuals." Neff also testified that Richert followed the scientific protocol established by the ISP, which is generally accepted in the forensic science community.

¶ 13 At the close of the State's case-in-chief, the defendant moved for a directed finding, which the trial court denied. The defendant rested without presenting any witnesses.

¶ 14 In closing argument, the defense argued, *inter alia*, that the State failed to provide enough evidence to prove beyond a reasonable doubt that a firearm was used during the robbery. Defense counsel stated:

> "There's no testimony that the object that was used in this incident was, in fact, a gun. There's no testimony that the gun went off. This object could have been a BB gun. This object could have been a toy. This object could have been a cap gun. This object could have been a flare gun.

> The State has not provided you enough evidence to find beyond a reasonable doubt that there was an actual gun used. Ms. Kim testified—the State provided you no testimony that Ms. Kim has some kind of special training when it comes to guns. She testified, I know it's a gun. I know it's a gun. But there was no testimony how she knows. There's no testimony she held a gun before, that she has a gun, that she's fired a gun. It was just, I know it's a gun. I know it's a gun.
>
> * * *
>
> The State didn't provide an actual gun. The State didn't provide any photograph of any gun. Actually, the testimony was that there was no gun recovered.
>
> There's no testimony of the size of this object used. There's no testimony of a weight of the object used. We have a color but that's it. The object was never fired, Judge.
>
> There is no proof beyond a reasonable doubt that, in fact, the object used was, in fact, a gun."

¶ 15 The trial court found the defendant guilty of armed robbery, sentenced him to 21 years' imprisonment, and imposed $689 in fines and fees. This appeal followed.

¶ 16 On appeal, the defendant first contends that the State failed to prove beyond a reasonable doubt that a firearm was used during the robbery and, consequently, his conviction should be reduced from armed robbery to robbery. The State argues that it presented sufficient evidence that a firearm was used based upon Kim's unequivocal and credible testimony.

¶ 17 When considering a challenge to the sufficiency of the evidence in a criminal case, our function is not to retry the defendant. *People v. Washington*, 2012 IL 107993, ¶ 33. Rather, our

inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Id*. This means that we must allow all reasonable inferences from the record in favor of the prosecution. *Id*. We will not reverse a conviction unless " 'the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt.' " *Id.* (quoting *People v. Ross*, 229 Ill. 2d 255, 276 (2008)).

¶ 18 In order to prove that the defendant committed an armed robbery in this case, the State was required to show beyond a reasonable doubt that the defendant, or someone he was accountable for, "knowingly [took] property *** from the person or presence of another by the use of force or by threatening the imminent use of force" and that he, or someone he was accountable for, "carrie[d] on or about his person or [was] otherwise armed with a firearm." 720 ILCS 5/18-1(a), 18-2(a)(2) (West 2008). A firearm for purposes of section 18-2(a)(2) of the Criminal Code of 1961 (Code) has the meaning ascribed to it by section 1.1 of the Firearm Owners Identification Card Act (FOID Act). 720 ILCS 5/2-7.5 (West 2008)). The FOID Act states that a "firearm" is "any device, *** which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas" but excluding items such as a "paint ball gun," a "B-B gun" or a "pneumatic gun." 430 ILCS 65/1.1 (West 2008).

¶ 19 The defendant argues that the evidence was insufficient to prove that the gun used in the robbery was real where no weapon was recovered and no photographs or visual evidence of the gun was presented at trial. He contends that "Kim's ambiguous description and conclusory assertions that she saw a 'real gun' were insufficient to prove that the object she saw was in fact a 'firearm' ", and not one of the devices excluded from the firearm definition, such as an air gun, spring gun, or BB gun. We disagree.

¶ 20 This court's decision in *People v. Malone*, 2012 IL App (1st) 110517, is instructive. In Malone, a single victim testified that during the robbery the defendant held what appeared to be a gun. This testimony was corroborated with a still photograph from surveillance video showing the defendant holding what looked to be an actual gun. *Id.* ¶ 28. The defendant in *Malone* similarly argued that the gun was never recovered and the witness' testimony was deficient because she did not provide a detailed description of the gun, "so there is no way to compare characteristics of the gun with those of a real or toy gun to determine what the object in the offender's hand was." *Id.* ¶ 41. This court rejected the defendant's argument, stating that the victim's testimony, coupled with the videotape of the offense, was sufficient, and "[t]here was no contrary evidence presented that the gun was a toy gun, a BB gun, or anything other than a 'real gun.' " *Id.* ¶ 52.

¶ 21 Similarly here, nothing in the record suggests that the object the accomplice had in his possession was anything other than a firearm as defined in the FOID Act. While there was no surveillance video of the crime as in *Malone*, Kim had ample opportunity to view the weapon at a close distance during the robbery. She described the weapon as a handgun, black in color, and made of metal material. Kim also testified that the gunman demanded more money and threatened to kill her. When asked on cross-examination, "You don't know that it was a toy gun?" Kim replied, "I know that's a real gun and he came twice." No evidence was presented that could lead the trier of fact to any conclusion other than that the weapon the accomplice used in the robbery was a firearm. The factual judgment of whether Kim knew the firearm was real and not a replica or toy, is a determination best left for the trier of fact who observed the victim testify about the events in question. See *Smith*, 185 Ill. 2d at 541. Moreover, the fact that no gun was recovered is not fatal to the State's case as Illinois courts have repeatedly held that the

recovery of the alleged firearm used during the commission of the crime or its introduction into evidence is not a prerequisite for an armed robbery conviction. See *Washington,* 2012 IL 107993, ¶¶ 24, 37. Given Kim's unequivocal and uncontroverted testimony, viewed in the light most favorable to the State, we find that a rational trier of fact reasonably could have inferred that the defendant's accomplice possessed a real firearm during the commission of the crime. See *People v. Lee*, 376 Ill. App. 3d 951, 955 (2007); *People v. Fields,* 2014 IL App (1st) 110311, ¶ 36 ("[U]nequivocal testimony of a witness that the defendant held a gun is circumstantial evidence sufficient to establish that a defendant is armed during a robbery").

¶ 22 The defendant argues that *Washington*, *Fields*, and *Malone* should be disregarded by this court. The defendant argues *Washington* involved an armed robbery charge under the pre-2000 amended version of the armed robbery statute, where a defendant had to be armed with a dangerous weapon. See 720 ILCS 5/18-2(a) (West 1998). While the armed robbery statute in *Washington* was different, we continue to believe the reasoning and general principles elucidated by our supreme court in *Washington* hold true. Accordingly, we reject the defendant's argument that *Malone* and *Fields* were incorrectly decided simply because they relied on authority interpreting the pre-2000 "dangerous weapon" statute. We decline defendant's invitation to reconsider the holding in *Malone*, and we continue to adhere to its reasoning despite different factual nuances.

¶ 23 We also reject the defendant's claim that the State was required to prove that the gun the accomplice used was not one of the devices excluded from the firearm definition, such as an air gun, spring gun, BB gun, starter pistol, or antique gun. This argument is without merit. See *People v. Beacham*, 50 Ill. App. 3d 695, 700 (1977) (noting that the State "need not seek out and

disprove every possible alternative explanation of a crime before an accused can be found guilty").

¶ 24 In sum, Kim's unequivocal testimony that the defendant's accomplice possessed a gun during the commission of the robbery, is sufficient to sustain a conviction for armed robbery with a firearm.

¶ 25 The defendant next asserts that the trial court violated his constitutional right to present a defense when it limited his cross-examination of Kim. Specifically, the defendant maintains that the trial court erred in sustaining the State's objections to his questioning Kim about (1) the "object" (*i.e.*, gun) used during the robbery; (2) the weight of the gun; (3) whether the gun was a toy; (4) whether the gun was loaded; and (5) whether the gun was capable of being fired.

¶ 26 The State argues that the defendant forfeited this issue by failing to raise it in a posttrial motion. The State also claims that plain error is not applicable since the evidence was not closely balanced. Substantively, however, the State asserts that the trial court properly sustained its objections because defense counsel's questions mischaracterized Kim's testimony, were irrelevant, and called for a speculative response. Lastly, the State claims that even if the trial court abused its discretion in limiting the defendant's cross-examination of Kim, the error was harmless beyond a reasonable doubt.

¶ 27 We initially address the State's argument on forfeiture. Ordinarily, to preserve an issue for review, a party must raise it at trial and in a written posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 190 (1988). The defendant concedes that he failed to raise the issue in a posttrial motion, but asks this court to apply the constitutional-issue exception to forfeiture. In *People v. Cregan*, 2014 IL 113600, ¶ 16, our supreme court clarified that constitutional issues previously

raised at trial which could be raised later in a postconviction petition are not subject to forfeiture on direct appeal under *Enoch*. According to the supreme court:

> "If a defendant were precluded from raising a constitutional issue previously raised at trial on direct appeal, merely because he failed to raise it in a posttrial motion, the defendant could simply allege the issue in a later postconviction petition. Accordingly, the interests in judicial economy favor addressing the issue on direct appeal rather than requiring defendant to raise it in a separate postconviction petition." *Cregan*, 2014 IL 113600, ¶ 18.

Thus, we will review the defendant's claim that the trial court violated his constitutional right to present his defense.

¶ 28 The confrontation clause guarantees a defendant an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish. *People v. Klepper*, 234 Ill. 2d 337, 355 (2009). The exposure of a witness' bias, interest or motive to testify falsely is an important function of this constitutional right. *Id*. However, trial courts retain wide latitude to impose reasonable limits on cross-examination based on concerns about harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or of little relevance." *Id*. Moreover, a reviewing court is not required to look at a particular limitation in isolation to determine whether reversible error has occurred. *Id*. at 355-56. Rather, we look to the record in its entirety to determine whether the limitation created a substantial danger of prejudice by denying the defendant of the only means available to test the truth of the testimony he sought to challenge. *Id*. at 356. Thus, if our review of the entire record reveals that the trier of fact has been made aware of adequate factors concerning relevant areas of impeachment of a witness, no constitutional question arises merely

because the defendant has been prohibited on cross-examination from pursuing other areas of inquiry. *Id*. On review, we will not disturb the trial court's imposition of limits on cross-examination unless there has been a clear abuse of discretion resulting in manifest prejudice to the defendant. *People v. Kirchner*, 194 Ill. 2d 502, 536 (2000).

¶ 29 Here, the defendant's theory of defense was that the State failed to prove beyond a reasonable doubt that a firearm, as defined in section 1.1 of the FOID Act, was used during the robbery. The defendant attempted to show, through the cross-examination of Kim, that she did not have actual knowledge of whether the gun she saw was, in fact, a firearm. Our review of the entire record reveals that the fact finder was aware that Kim had limited knowledge about the gun used during the robbery. Contrary to the defendant's argument, defense counsel was able to test Kim's knowledge about the gun she saw. Defense counsel established that Kim never touched the gun or held the gun, and was never struck by the gun. Kim also admitted that the gun was never fired. Clearly, the defendant was able to inquire as to whether Kim actually knew whether the gun was a firearm—precisely what the defendant sought to show through the cross-examination. The limits imposed on Kim's cross-examination only foreclosed questioning about additional, specific examples of Kim's lack of knowledge of which the finder of fact was well aware. Under these circumstances, the trial court acted within its wide latitude in limiting cross-examination.

¶ 30 We further note that, if defense counsel had been permitted to continue with this line of questioning, it was unlikely that Kim would have uncovered evidence to support the defendant's case. For example, when defense counsel asked Kim what material the gun was made of, Kim replied, "[l]ike a metal. It's a real gun. It was not a toy." Although the trial court sustained the

State's objection to defense counsel's question as to whether the gun was a toy, Kim answered the question anyway, stating, "I know that's a real gun and he came twice."

¶ 31 Accordingly, our review of the record shows that the defendant was not denied his right to test the truthfulness or basis for Kim's testimony, and the trial court did not violate the defendant's right to present a defense.

¶ 32 The defendant next contends that his right to confrontation under *Crawford* and its progeny was violated when Neff testified about the DNA laboratory work performed by Richert, a nontestifying scientist.

¶ 33 The State maintains that the defendant forfeited this issue because he failed to "pinpoint" the specific testimony that he is challenging and failed to include a copy of Richert's forensic report in the record on appeal. Alternatively, the State argues that the forensic evidence at issue was not testimonial under *Crawford* and Neff's testimony did not violate the defendant's confrontation rights. Last, the State argues that any error in admitting the forensic evidence through Neff was harmless beyond a reasonable doubt.

¶ 34 We disagree with the State's claim that the defendant forfeited this issue on appeal. The defendant specifically objected to Neff's testimony regarding the DNA laboratory work performed by Richert, and he need not "pinpoint" the objectionable testimony any further. As to the defendant's failure to provide a copy of Richert's forensic report in the record on appeal, we note that Neff testified at trial regarding the contents of his report. Thus, we are satisfied that the defendant has supplied this court with a sufficient record to review his claims of error. We now address the merits.

¶ 35 The confrontation clause of the sixth amendment of the United States Constitution, which applies to the states under the fourteenth amendment, provides that "[i]n all criminal

prosecutions, the accused shall enjoy the right *** to be confronted with the witnesses against him." U.S. Const. amend. VI; see also *People v. Stechly*, 225 Ill. 2d 246, 264 (2007). Under the confrontation clause, the testimonial hearsay statements of a witness who is unavailable at trial may not be admitted against a criminal defendant unless the defendant had a prior opportunity for cross-examination. *People v. Patterson*, 217 Ill. 2d 407, 423 (2005) (citing *Crawford*, 541 U.S. at 68). The issue of whether defendant's sixth amendment confrontation rights were violated involves a question of law, which we review *de novo*. *People v. Barner*, 2015 IL 116949, ¶ 39.

¶ 36 In this case, the State does not dispute that Richert was unavailable at trial. The State contends, however, that Richert's forensic report was not testimonial in nature. We disagree. The Illinois Supreme Court in *Barner* addressed whether forensic reports are testimonial under *Crawford* and subject to the strictures of the confrontation clause. The court explained:

> "when determining whether a forensic report is testimonial in nature, the *Williams* plurality instructs us to apply an objective test, looking for 'the primary purpose that a reasonable person would have ascribed to the statement, taking into account all of the surrounding circumstances.' [Citation]. If this inquiry reveals that the forensic report was 'made for the purpose of proving the guilt of a particular criminal defendant at trial, it is testimonial.' [Citation]." *Barner*, 2015 IL 116949, ¶ 60.

Here, Richert's forensic report was prepared after the defendant's arrest and was made for the primary purpose of obtaining evidence to be used against the defendant at trial. As such, the forensic report is testimonial in nature, and its admission through the testimony of Neff violated the defendant's right to confrontation. Thus, the only issue remaining before this court is

whether the erroneous admission of the forensic report, through Neff's testimony, was harmless error.

¶ 37 Confrontation clause violations are subject to harmless error review. *In re Rolandis G.*, 232 Ill. 2d 13, 43 (2008). The test is whether it appears beyond a reasonable doubt that the error at issue did not contribute to the verdict obtained at trial. *Id.* When determining whether an error is harmless, a reviewing court may, "(1) focus on the error to determine whether it might have contributed to the conviction; (2) examine the other properly admitted evidence to determine whether it overwhelmingly supports the conviction; or (3) determine whether the improperly admitted evidence is merely cumulative or duplicates properly admitted evidence." *Id.*

¶ 38 In this case, the main focus at trial, as illustrated by defense counsel's closing argument, was whether a firearm was used during the robbery; it did not have to do with Kim's identification of the defendant. Although Neff's testimony bolstered the State's case by connecting the defendant to the black shirt found near the crime scene, we disagree that the outcome would have been different absent such testimony. The defendant was clearly an active participant in the armed robbery and he made no effort to conceal his identity. He was apprehended by the police minutes after the robbery took place and Kim identified him as one of the robbers. The defendant presented no evidence at trial and did not impeach the State's witnesses in any significant way. Thus, the forensic evidence was cumulative or duplicative of Kim's identification testimony, and did not contribute to the defendant's guilt. For these reasons, even if Neff's testimony violated the defendant's right of confrontation, it was harmless error.

¶ 39 Finally, the defendant claims, and the State concedes, that the trial court erred in imposing the $15 State Police Operations fine (705 ILCS 105/27.3a(1), (1.5), (5) (West 2010)),

because that fine took effect after the date of the defendant's offense and violates *ex post facto* principles. See *People v. Devine*, 2012 IL App (4th) 101028, ¶ 10. We agree with the defendant, accept the State's concession, and vacate the $15 State Police operations fine.

¶ 40 The parties also agree that pursuant to section 110–14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110–14(a) (West 2008)), that the defendant is entitled to $6,205 credit based on 1,241 days of presentence custody. The parties agree that the defendant may use the credit to offset the following creditable fines imposed in this case: $10 deceptive practice fine, $50 court system, $5 Mental Health Court, $5 Youth/Peer Diversion, $5 Drug Court, and $30 for Children's Advocacy Center.

¶ 41 Therefore, we order the clerk of the circuit court to correct the fines and fees order to: (1) vacate the $15 Police operations fine; and (2) apply $105 in presentence credit to the defendant's creditable fines.

¶ 42 For the reasons stated herein, we affirm the defendant's conviction for armed robbery, vacate the $15 State Police operations fine, and direct the clerk of the circuit court to apply the defendant's statutory credit against creditable fines.

¶ 43 Affirmed in part, vacated in part, and order corrected.