2013 IL App (2d) 110289
No. 2-11-0289
Order filed May 8, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. LAURENCE E. LOVEJOY, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 04-CF-2319 Honorable Kathryn E. Creswell, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: In light of the defendant's pattern of misconduct, the trial court did not abuse its discretion in barring the defendant from the courtroom during one afternoon session of trial. Additionally, the failure to hold a *Frye* hearing was, at most, harmless error.

¶ 2 Following a remand for a new trial, the defendant, Laurence Lovejoy, was retried and again convicted of the first-degree murder of his step-daughter, Erin Justice. The defendant was sentenced to natural life in prison. On appeal, the defendant argues that the trial court: (1) abused its discretion in excluding him from an afternoon session of his trial and (2) erred in failing to hold a *Frye* hearing

(see *Frye v. United States*, 293 F. 1013 (D.C. Cir.1923)) to determine the admissibility of leuco crystal violet (LCV) testing and the combination of LCV testing with super glue fuming. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Because the parties are familiar with the extensive background of the case, we set forth only those facts relevant to the appeal. The defendant was originally convicted of the first degree murder of his step-daughter following a jury trial in 2007. He was sentenced to death. Following a direct appeal to the supreme court, the case was remanded for a new trial based on a discovery violation. *People v. Lovejoy*, 235 Ill. 2d 97, 120 (2009). Specifically, the supreme court noted that "the lynchpin of the State's case was the evidence of defendant's bare footprint, allegedly made with Erin's blood, on a tile in the bathroom where Erin's body was found." *Id.* at 121. The supreme court determined that reversible error had occurred when a DNA expert, Tamara Camp, was allowed to testify that, despite a negative Tetramethylbenzadine (TMB) test, a presumptive test for blood, the substance swabbed from the tile was "apparent blood." *Id.* Although Camp's previously disclosed reports had shown the negative TMB test, Camp had not included the finding that it was a "false negative." *Id.* at 118. The supreme court held that the defendant was prejudiced because Camp's statement that the TMB test was negative provided some support for his theory that the footprint found on the tile was preexisting and had come into contact with a substance, other than blood, that contained Erin's DNA, such as skin cells or saliva. *Id.* at 121. Additionally, if the defendant had known that Camp would testify that the TMB test was a false negative, he could have called an expert to refute that contention or pursued a different theory of defense. *Id.*

¶ 5 On remand, prior to his retrial, the defendant requested a *Frye* hearing. In his written motion requesting the *Frye* hearing, filed on October 5, 2010, the defendant explained his expectation that the State would offer testimony that a process consisting of super glue fuming, followed by

application of LCV, resulted in a color change indicative of blood on a portion of a bathroom tile. The defendant noted that in the Processing Guide for Developing Latent Prints, published by the Department of Justice, Federal Bureau of Investigation, Laboratory Division (2000 revised edition) at p. 31, latent print investigators are warned that "[super glue] fuming may be detrimental to [the process of using LCV to enhance visual prints or develop latent prints in blood.]" The defendant argued that the process of super glue fuming followed by LCV constituted a novel scientific methodology which had not gained general acceptance in the relevant scientific community.

¶ 6 On October 26, 2010, the State filed a response to the motion for a *Frye* hearing. The State argued that the FBI document relied on by the defendant related only to latent prints and that the print at issue was a patent print.[1] The State cited authority for the proposition that super glue fuming was generally accepted to develop fingerprints (*People v. Eyler*, 133 Ill. 2d 173 (1990)) and that LCV was generally accepted as a presumptive test for blood (*People v. Wright*, 2006 WL 2271264 (2006) (unpublished Michigan appellate court case noting that LCV has been used in the United States and other countries since 1995)). Because the two processes were not new or novel, the State argued that a *Frye* hearing was not required. The State noted that, at the first trial, Michael Dabney, a crime scene technician, testified that he did not know of any interaction between super glue fuming and LCV, and that, in his experience, there was no interference.

¶ 7 On that same day, a hearing was held on the defendant's motion for a *Frye* hearing. The defendant argued that the combined application of the super glue fuming and LCV was a single and distinct process that was not generally accepted in the scientific community. The defendant further argued that Dabney was a crime scene investigator, not a chemist, and was not qualified to testify

[1]A patent print is visible to the naked eye, whereas a latent print is only visible after it has been processed or chemically treated in some way.

as to what was generally accepted in the scientific community. Moreover, the FBI manual contradicted Dabney's testimony that there was no interference between super glue fuming and LCV. The defendant acknowledged that Dabney testified that he had observed patent ridge impressions prior to applying the super glue and LCV. However, the defendant argued that there was no evidence that the print at issue was the patent print observed by Dabney. He further argued that whether the print was patent or latent was not the issue. Rather, the issue was whether combining the two techniques to identify whether something was indicative of blood was generally accepted.

¶ 8 In response, the State argued that the FBI manual was not relevant authority in determining whether super glue fuming followed by LCV testing was generally accepted in the scientific community. In reply, the defendant argued that the FBI manual was enough to raise the question as to whether the combined technique was generally accepted.

¶ 9 The trial court noted that there had been testimony that the super glue fuming technique had been used by the Aurora police department for 15 years and the LCV technique for six to eight years and that both techniques were reliable. The witness also testified that the ridge print was visible prior to testing. The trial court found that the FBI manual did not indicate that the combined technique was improper under these circumstances, where there was a patent print. Specifically, the recommendations in the manual went to ensuring development of latent prints and minimizing the chance of destroying latent prints. The trial court stated that "[t]his [wasn't] a situation where there's a danger of making prints appear that aren't there. What we're talking about here is the danger would be that the prints could not be developed. And as Mr. Berlin has pointed out, they were developed." The trial court concluded that the FBI guide failed to raise a question as to the reliability of either the super glue fuming or LCV techniques and, therefore, denied the request for a *Frye* hearing.

¶ 10 The following relevant evidence was adduced at the defendant's new trial. Evidence technician Michael Dabney processed the second floor bathroom where Erin's body was found. Dabney testified that when he arrived at Erin's home, there was blood throughout the first floor. In the bathroom where Erin was found there was blood on the floor, on the door, and every other surface imaginable, except the ceiling. The bathroom floor was covered with reddish brown stains, which he knew were blood. Dabney took photos of the home as it looked when he arrived. There was a pattern impression on the bathroom door handles. The door handle assembly was removed and preserved as evidence. He was also able to see a ridge impression (footprint) on a piece of tile floor in the bathroom near the doorway. He removed the tile from the floor and preserved it as evidence. (It was admitted into evidence and marked as People's Exhibit No. 137.) He was able to see the ridge impression prior to any treatments used to enhance the print. He treated the bathroom with super glue fumes to preserve and enhance any potential prints. In addition, LCV was then used to enhance and find any blood evidence. He photographed the floor before applying either substance and after applying the LCV. LCV was a presumptive test for blood. Dabney testified that it "means that it probably is blood, but it still needs to be tested further to show that it is blood. And so you can presume that it is blood if it reacts with the blood." After the super glue fuming and the application of LCV, the reddish brown stains turned purple and the ridge impression became more evident. On cross-examination he acknowledged that a positive LCV test indicated a possibility of blood, it was not an indication that it was definitely blood.

¶ 11 Dabney had taken a frying pan from the kitchen into evidence. There was blood on the frying pan. He also took swabs of the reddish brown stains from various areas of the home, such as countertops, walls, and ceiling fixtures. Erin's discharge papers from the hospital, when she was discharged after she was raped, were found in the defendant's van. Dabney also searched the

defendant's locker at his place of employment and preserved a pair of the defendant's work gloves as evidence.

¶ 12 Leroy Keith testified that he was a forensic scientist. He was found qualified to testify as an expert in latent fingerprint examination and fabric pattern impressions. He examined the bathroom door assembly and determined that the impression left on the rose plate could have been made by the type of work gloves that were removed from the defendant's locker. He also examined the piece of floor tile removed from the bathroom, People's Exhibit No. 137, and determined that the impression left at the center of the tile was made by the defendant's left foot. It was a positive impression, which meant that the substance on the tile, which appeared to be blood, had been on the bottom of the defendant's foot when the print was made. Prints are made of furrows and ridges. Ridges are the raised surfaces. If it had been a negative impression, the furrows would have been dark and the ridges would have been white. That was not the case. It was a positive impression and therefore could not have been a preexisting latent print. Additionally, Keith disputed that blood had merely ended up on a preexisting print because the blood would have destroyed the ridge impressions. Keith acknowledged, however, that if the defendant had deposited the print earlier, and no other substance such as blood or water came in contact with the print, and the defendant had a substance on his foot that reacted with LCV, the print would have looked the same.

¶ 13 Tamara Camp, a forensic scientist, testified as an expert in the areas of forensic biology and DNA testing. Camp had conducted testing on the frying pan recovered from the victim's kitchen. The reddish brown substance on the pan and its handle tested positive for blood and matched the DNA of the victim. Two swabs from kitchen counter tops were positive for blood and matched the victim's DNA profile. Swabs from reddish brown stains found in the stairwell, the upstairs hallway, and on the globe of the second floor hallway light fixture were positive for blood. She conducted

a TMB test on the center of the tile, People's Exhibit No. 137, near the ridge impression that was used for comparison. The test was negative. However, a swab from a part of the same tile, which had been under the threshold to the hallway, was positive for blood and the DNA matched that of the victim. Test results from a swab taken from the center of the tile was consistent with Erin's DNA profile and the substance was consistent with hair and blood. Camp testified that she had observed the tile both before and after the LCV process, and that she was not aware of any other substance that the stain could be other than blood. She testified that she did not know what caused the TMB test to produce a false negative, but she believed that something in the LCV had interfered with the TMB test.

¶ 14 On cross-examination, Camp testified that despite the negative TMB test, she still believed the substance at the center of the tile could "possibly" be blood. She acknowledged that in the defendant's 2007 trial she erred by saying that the TMB test had been negative due to the heme or hemoglobin being used up by the LCV. Camp admitted that the heme would not be used up and that she did not know the chemical basis for the negative test result.

¶ 15 On February 8, 2011, following the denial of the defendant's motion for a directed verdict, the defense called two witnesses. A deputy sheriff testified that while the defendant was detained on March 29, 2004, all the keys on the defendant's key ring were compared to the doors on Erin's townhouse, but none matched. Erin's father, Edreick Justice, testified as to an incident where he concluded that Erin had falsely reported being sexually attacked when she was 12 years old. On that same day, the jury returned a verdict finding the defendant guilty of Erin's murder. The jury found the defendant not eligible for the death penalty. On March 15, 2011, the defendant was sentenced to natural life in prison. Following the denial of his motion to reconsider his sentence, the defendant filed a timely amended notice of appeal.

¶ 16 II. ANALYSIS

¶ 17 A. Removal from Courtroom

¶ 18 On appeal, the defendant first argues that the trial court erred in barring him from the courtroom during the afternoon session when the State's DNA expert, Camp, testified. Specifically, he argues that he had not been disruptive in the presence of the jury, the court failed to consider less restrictive alternatives, and the jury would negatively view his absence during the key evidence as a consciousness of his own guilt.

¶ 19 The confrontation clause of the sixth amendment to the United States Constitution, made obligatory upon the States by the fourteenth amendment, provides that: 'In all criminal prosecutions, the accused shall enjoy the right * * * to be confronted with the witnesses against him * * *.' " *Illinois v. Allen*, 397 U.S. 337, 338 (1970). An accused's right to be present in the courtroom during every stage of his trial is one of the most basic rights guaranteed by the confrontation clause. *Id.* Nonetheless, "a defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom." *Id.* at 343. In *Allen*, the Court reasoned that "[i]t would degrade our country and our judicial system to permit our courts to be bullied, insulted, and humiliated and their orderly progress thwarted and obstructed by defendants brought before them charged with crimes." *Id.* at 346. Whether a defendant's conduct is sufficiently objectionable to warrant his removal from the proceedings is within the discretion of the trial court. *Id.* at 347. A trial court abuses its discretion when its decision is fanciful, arbitrary, or so unreasonable that no rational person would agree with it. *People v. Collins*, 382 Ill. App. 3d 149, 153-54 (2008).

¶ 20 In the present case, the record indicates that, at his first trial, the defendant had repeatedly been disruptive and disrespectful to the court. The court warned him that his behavior would result in his removal from the courtroom. When his behavior persisted, the defendant was so removed. On remand, at the pretrial proceedings, the defendant's disruptive conduct persisted. On March 24, 2010, the trial court informed the defendant that a public defender would be appointed since the defendant had failed to retain private counsel with the 60 days he had been allowed. When the trial court addressed the public defender, the defendant interjected that he was not represented by the public defender. The trial court requested that the defendant be removed from the courtroom. The defendant stated that he had a right to be present. The trial court told him that he did not have the right to be present if he was going to interrupt.

¶ 21 On April 6 and April 28, 2010, also pretrial proceedings, the defendant attempted to file motions on his own behalf. The trial court told him that he could not file *pro se* motions as he was being represented by counsel. The defendant argued that he was not represented by the public defender. Additionally, at the April 28 hearing, the defendant objected when the trial court told the State to draft an order that *pro se* pleadings would not be accepted or filed by the clerk. The trial court told the defendant that he was not allowed to voice his objections to the court, he had to speak with his counsel. On both dates the defendant was warned that if he continued to address the court directly he would be removed from the proceedings. He failed to conform and was removed.

¶ 22 At a subsequent hearing on July 13, 2010, the defendant was warned that if he continued to interrupt proceedings, he would be removed from the courtroom. On September 9 and October 26, 2010, the defendant made objections at the proceedings but the trial court told him to speak with his lawyer. On November 24, 2010, the defendant started to address the court. The trial court told him that he should talk to his lawyer and that if he interrupted again, he would waive his right to be

present. The defendant spoke again and was removed from the courtroom. On December 16, 2010, after being warned, the defendant did not interrupt the trial court.

¶ 23 On December 21, 2010, the trial court denied the defendant's request for a continuance. The defendant argued he needed a continuance to "settle" the matter about him representing himself *pro se*. Defense counsel then presented a certificate of readiness for trial. The defendant objected and stated that his lawyers had refused to conduct further DNA or forensic testing. The trial court stated that those were matters of trial strategy. The defendant said it was not trial strategy and that he had a right to prove his innocence. The trial court stated that the defendant had waived his right to be present. The defendant objected and stated that this was turning into a "kangaroo court." The defendant was then escorted out of the courtroom.

¶ 24 On January 7, 2011, the defendant made an oral motion for mistrial or dismissal of the charges on the basis that Camp had perjured herself at his original trial. The trial court reminded the defendant that he could not make motions, he did not represent himself, and that if he could not conform his conduct to courtroom requirements he would be removed. On January 11, 2011, the defendant again made oral motions and argued that the trial court should recuse itself. The trial court reminded the defendant that if he could not conform his conduct, he would be removed from the proceedings for the remainder of the day.

¶ 25 Opening statements were given on January 25, 2011. On January 28, 2011, Camp was called as a witness and certified to testify as an expert. The defendant objected, outside the presence of the jury, and stated that Camp could have committed perjury at his first trial. The trial court told the defendant that he would not be back in the courtroom in the afternoon if he continued to interrupt. Defense counsel was allowed to make an offer of proof. Defense counsel wanted to show that the acknowledged errors in Camp's testimony from the first trial prevented her from being qualified as

an expert in the second trial. Following Camp's testimony as to the offer of proof, the trial court reiterated that Camp was qualified to testify as an expert. The defendant then stated that he wanted "to reissue a warrant" for the trial court to recuse and that he could not get a fair trial. The following colloquy ensued:

> "COURT: I'm telling you on more time. If you say one more thing, you're not coming back this afternoon.
>
> DEFENDANT: I'm not waiving my right.
>
> COURT: You just did.
>
> DEFENDANT: I object."

The morning proceedings ended and the defendant was not allowed to attend the afternoon proceedings.

¶ 26 At the start of the afternoon proceedings, defense counsel asked the trial court to reconsider and allow the defendant to return to the courtroom. Defense counsel acknowledged that the defendant was out of line, but argued that he had a constitutional right to be present. The trial court recollected two instances when it had admonished the defendant that if he continued to interrupt, he would waive his right to be present—(1) after Camp was initially qualified and then (2) after the offer of proof. The trial court noted that the case had been pending for seven years and that the defendant had interrupted the proceedings more times than one could count and had been warned that such interruptions would result in his removal from the courtroom. The trial court found that the defendant had waived his right to be present. Defense counsel noted that the testimony to come that afternoon was the "lynchpin of the State's case" and argued that the jurors could infer a consciousness of guilt from the defendant's absence. When the jurors returned, the trial court gave the following admonition: "[The defendant] is absent from this afternoon's proceedings. You are

not to infer anything from his absence, and you cannot consider his absence in any way in arriving at your verdict."

¶ 27 The trial court did not abuse its discretion in barring the defendant from the courtroom. The defendant's continued interruptions and disregard for the trial court is the type of behavior that courts have found sufficient to warrant removal. *United States v. Benabe*, 654 F.3d 753, 762-65 (7th Cir. 2011) (removal justified based on defendant's repeated objections to attorney representation, making frivolous *pro se* arguments despite being represented by counsel, and speaking out of turn); *People v. Pearson*, 52 Ill. 2d 260, 266 (1972) (removal justified based on defendant's repeated disruptive behavior despite warnings from the trial court that such behavior would result in his removal from the courtroom). The defendant argues that his removal was unjustified because his behavior was not as egregious as the *Allen* defendant's behavior. See *Allen*, 397 U.S. at 339-41 (defendant removed based on abusive and vile language addressed to the trial court and stating that he intended to talk through his entire trial). While this may be true, the *Allen* defendant was essentially out of the courtroom for the State's entire case-in-chief. The present defendant was only removed for one afternoon session of trial.

¶ 28 The defendant argues that the trial court should have held him in contempt, rather than removing him from the courtroom. However, the sixth amendment does not so "handicap a trial judge in conducting a criminal trial." *Benabe*, 654 F.3d at 770 (quoting *Allen*, 397 U.S. at 342). Although a trial court has multiple methods it may use to control its courtroom, such as binding and gagging, contempt citations, or removal, the *Allen* court did not make removal a last resort. *Id.* In fact, the *Allen* court noted that contempt proceedings may be unlikely to deter some defendants. *Allen*, 397 U.S. at 346 (noting that "the defendant might not be affected by a mere contempt sentence

when he ultimately faces a far more serious sanction"). This is likely true in this case, where the defendant was facing a life sentence and repeatedly showed little regard for the trial court's authority.

¶ 29 The defendant also argues that the trial court should have taken steps to mitigate his removal, such as sending him to another courtroom to observe the proceedings from a remote location. Although sending the defendant to another courtroom may have been ideal, there is no indication in the record that such an option was available at the time of his removal. Moreover, when he was removed, the defendant did not request to observe the proceedings from a remote location. Additionally, the defendant does not argue on appeal that, had he been present, he would have been able to assist his attorney with cross-examination.

¶ 30 The defendant argues that he suffered prejudice as a result of his removal because the jury would view his absence as a consciousness of guilt. In support, the defendant quotes *Maryland v. Craig*, 497 U.S. 836, 847 (1990), for the proposition that there is "[s]omething deep in human nature that regards face to face confrontation between accused and accuser as essential to a fair trial in a criminal proceedings." The defendant notes that in *Coy v. Iowa*, 487 U.S. 1012, 1020 (1988), the reviewing court found error where the lower court allowed the child sexual assault victim to be screened during her testimony such that she and the defendant could not see each other. The defendant argues that this case is like *Coy* because he was not allowed to see Camp when she testified. We disagree. This case is not like *Coy* because Camp was not the defendant's accuser. Furthermore, the *Craig* court noted that the right to face-to-face confrontation was not absolute. *Craig*, 497 U.S. at 847. Even though the defendant was not present for Camp's testimony, the other elements of confrontation—physical presence, oath, cross-examination, and observation of demeanor by the trier of fact—were preserved.

¶ 31 In further support of his argument that he suffered prejudice, the defendant notes that one of the jurors had stated in *voir dire* that when resolving disputes between her children, she believed it was important for her children to look her in the eye. The defendant argues that his inability to look Camp in the eye during her testimony could have suggested to the jury that he was hiding something. However, the trial court admonished the jury that it was not to consider the defendant's absence in arriving at its verdict. A jury is presumed to follow the instructions that the court gives it (*People v. Glasper*, 234 Ill. 2d 173, 201 (2009)) and the defendant has failed to provide any evidence to rebut this presumption. The defendant argues that the jury could have believed that he was voluntarily absent because he did not want to face Camp's testimony about the victim's DNA and possible blood at the center of a bathroom tile where his footprint was found. However, there was other testimony concerning the bathroom tile and the bloody footprint, for which the defendant was present. Keith testified that the footprint on the tile belonged to the defendant and that it was a positive print, meaning that the defendant had blood on his foot when he left it. Dabney testified that when he arrived at the crime scene, there was blood on every surface imaginable in the bathroom. He recognized it as blood before he even did any LCV testing. Accordingly, the defendant has failed to show prejudice.

¶ 32 The defendant further argues that his removal was not justified because he had not been disruptive in the presence of the jury. The defendant cites *Allen* in support of this proposition because, in *Allen*, the defendant had been disruptive in the presence of the jury. *Allen*, 397 U.S. at 337, 339-41, 343. However, the *Allen* court never specifically limited its reasoning to actions of the defendant that occur in front of the jury. There is no authority for the proposition that a defendant's obstreperous conduct must occur in the presence of the jury to warrant removal. Cf. *Benabe*, 654 F. 3d at 767 (noting that a trial court need not wait until a defendant acts out in the presence of the

jury and thus risk prejudice to the venire and a delay of proceedings); *United States v. Shepherd*, 284 F. 3d 965, 968 (8th Cir. 2002) (removal affirmed even though disruptive behavior had not occurred in the presence of the jury; reviewing court found "little need to second-guess trial judge's decision that removal was the best way for [defendant] to receive a just verdict"). Based on the defendant's pattern of misconduct in this case, we decline to second-guess the trial court's determination that removal was the best way to preserve the integrity of the trial proceedings.

¶ 33 The defendant also relies on *United States v. Watkins*, 983 F.2d 1413, 1416 (7th Cir. 1993), because, before excluding the defendant from trial, the trial court in *Watkins* court made a finding that the defendant would obstruct the trial. Nonetheless, *Watkins* does not support the defendant's contention. The case does not hold that disruptive behavior must occur in front of the jury. Moreover, the *Watkins* court held that the removal of the defendant was error because the trial court never warned the defendant that his conduct could result in his removal from the courtroom. *Id.* at 1422. In the present case, the defendant was repeatedly warned that his conduct would result in his removal from the courtroom.

¶ 34 The defendant also cites *Benabe*, 654 F.3d at 764, for the proposition that the trial court was required to ask him whether he intended to repeat his disruptive behavior in the presence of the jury. However, that case sets forth no such requirement. Rather, how to best maintain the dignity and decorum of the courtroom is left up to the discretion of the trial court. The *Allen* court stated that it "believe[d] [that] trial judges confronted with disruptive, contumacious, stubbornly defiant defendants must be given sufficient discretion to meet the circumstances of each case. No one formula for maintaining the appropriate courtroom atmosphere will be best in all situations." *Allen*, 397 U.S. at 343. In the present case, the defendant repeatedly disrupted courtroom proceedings and was warned that his disruptions would result in his removal. Accordingly, mindful of the deference

due the trial court, we cannot say that it abused its discretion in removing the defendant from the courtroom.

¶ 35 B. Admissibility of LCV testing and Super Glue Fuming

¶ 36 The defendant's second contention on appeal is that the trial court erred in failing to hold a *Frye* hearing on the admissibility of LCV testing, as a presumptive test for blood, both alone and in combination with super glue fuming. The defendant argues that the super glue fuming may have caused the LCV testing to return a false positive. The defendant contends that he is entitled to a new trial or, at a minimum, the matter should be remanded for a *Frye* hearing.

¶ 37 At the outset, we note that the State argues that even if a *Frye* hearing was warranted, the trial court's failure to grant one was harmless error. We agree. When a defendant challenges the admission of evidence, we may hold the admission to be harmless "[w]hen the competent evidence in the record establishes the defendant's guilt beyond a reasonable doubt and it can be concluded that retrial without the erroneous admission of the challenged evidence would produce no different result." *People v. Arman*, 131 Ill. 2d 115, 124 (1989).

¶ 38 In the present case, even had the trial court excluded evidence of the LCV testing, as a presumptive test for blood, the result of the trial would not have changed. There was enough other evidence for a jury to conclude that the substance on the tile was blood. Dabney testified that when he arrived at the crime scene, there was blood throughout the first floor and on every surface imaginable in the bathroom. Photos admitted into evidence, which were taken prior to the application of the LCV, clearly showed that the bathroom was covered in blood. Erin was found with deep cuts on both her neck and wrists, which clearly had been bleeding. An expert in the field of forensic pathology testified that if Erin had not drowned, she would have died due to ~~rapid~~ blood loss. Camp testified that swabs from these reddish brown stains throughout the house and on other

surfaces in the bathroom were positive for blood. Additionally, a swab on a reddish brown portion of the bathroom tile that had not been treated with the LCV, because it was under a metal strip at the doorway from the hallway into the bathroom, tested positive for blood. Further, Camp testified that although a swab from the tile where the footprint was at tested negative for blood, DNA testing indicated that the substance matched Erin's DNA profile and that the substance was consistent with hair and blood. Despite being aware that Camp would testify that the negative TMB test was a false negative, the defendant failed to present any of his own expert testimony to refute that contention.

¶ 39 Furthermore, there was significant circumstantial evidence that the defendant had murdered Erin. The defendant had the motive to commit the crime—Erin had accused him of sexually assaulting her. Swabs of Erin's cheek and breast, taken following the alleged assault, revealed the presence of genetic material consistent with the defendant's DNA. On the day of Erin's murder, there was no sign of forced entry and the evidence indicated that the defendant had access to a key to the house on prior occasions. The defendant knew Erin's mother was at work and that Erin would be home alone. The defendant did not have an explanation of where he was on the morning of the murder. He told the police that he had stopped by at 7:30 a.m. to pick up his dog for a 10:30 a.m. veterinary appointment. He said that no one answered, so he left. However, he had no explanation of where he went. Furthermore, he had told Erin's mother the night before that he had changed the appointment to 12:30 p.m. In conversations with Erin's mother after the murder, the defendant did not tell Erin's mother that he had stopped by the house that morning. Accordingly, even absent the alleged erroneous admission of the LCV testing, the result of the trial would not have changed.

¶ 40 III. CONCLUSION

¶ 41 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 42 Affirmed.