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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Winnebago County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 10-CF-799
	)	
TAVIEUS T. SIMMONS,	)	Honorable
	)	John R. Truitt,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE ZENOFF delivered the judgment of the court.  
Justices Hudson and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the recanted prior inconsistent statements of two witnesses were sufficient to prove beyond a reasonable doubt that defendant was armed with a firearm during the commission of a kidnapping, and where the trial court committed no error in granting the State’s motion *in limine* to exclude evidence of a “green leafy substance” found in two witnesses’ car, defendant’s conviction of aggravated kidnapping was affirmed; where defendant had submitted a DNA sample in connection with a prior delinquency adjudication, the DNA analysis fee was vacated.

¶ 2 Following a jury trial, defendant was convicted of two counts of aggravated kidnapping and sentenced to concurrent terms of 33 years’ imprisonment. Defendant’s convictions arose out of his participation in the kidnapping of Mira Puckett (Count I) and her one-year-old son, Isaiah Harris, Jr.,

(Count II). Both convictions were for aggravated kidnapping because the jury determined that defendant kidnapped the victims while armed with a firearm (720 ILCS 5/10-2(a)(6) (West 2010)). Aggravated kidnapping is a Class X felony (720 ILCS 5/10-2(b) (West 2010)) with a sentencing range of 6 to 30 years (730 ILCS 5/5-4.5-25 (West 2010)). However, an automatic 15-year sentence enhancement applied to defendant's sentence because he was armed with a firearm (720 ILCS 5/10-2(b) (West 2010)). On appeal, defendant argues (1) that the evidence was insufficient to prove beyond a reasonable doubt that he was armed with a firearm during the kidnapping, (2) that it was plain error for the trial court to grant the State's motion *in limine* to exclude evidence of a "green leafy substance" found in the glove box of the car in which two witnesses were located, and (3) that the \$200 DNA analysis fee must be vacated. For the following reasons, we vacate the DNA analysis fee, but otherwise we affirm.

¶ 3

#### BACKGROUND

¶ 4 The following undisputed evidence was presented at defendant's jury trial. On the evening of March 10, 2010, in Rockford, Illinois, defendant was riding in a red Chevrolet Monte Carlo with his girlfriend, Shimere Love, and his cousin, Isaiah Harris ("Biff"). Defendant planned to drive Shimere to her cousin's house so she could get her hair done. In the meantime, however, Biff asked defendant and Shimere to drop him off at the house on South Church Street where Biff's sister, Necoah Tennin ("Nikki"), and Nikki's boyfriend, Roger Pennie, lived. Defendant and Shimere dropped Biff off at Nikki's house, but no one was home. Biff returned to the Monte Carlo, and he and defendant rolled a marijuana "blunt." The Monte Carlo remained parked in the driveway in front of Nikki's house.

¶ 5 Meanwhile, Nikki and Roger had taken Mira and her son shopping at CherryVale Mall. Nikki had recently purchased a maroon Chevrolet Lumina, and the group had ridden in the car. Once they finished shopping, they planned to go out to eat, but they decided to first stop by Nikki's house. Roger drove.

¶ 6 Mira was Biff's former girlfriend, and Isaiah, Jr., was their son. However, Mira had an order of protection against Biff, which prohibited him from contacting Mira or Isaiah, Jr. The order of protection was entered on March 20, 2009, and would not expire until March 20, 2011. According to Mira, she and Biff had a "violent past."

¶ 7 Once Roger reached Nikki's house, he saw a car in the driveway. Nikki told him to keep driving. Roger drove off at a high rate of speed. The red Monte Carlo pulled out of the driveway and began to pursue the maroon Lumina. According to Roger, the driving got "a little dangerous." Both cars pulled over at the corner of South Main Street and Knowlton Street.

¶ 8 The details of what happened next were disputed. Mira testified that she was in the back seat of the Lumina during the car chase and that she could see that Biff was driving the Monte Carlo. She was concerned and was crying because she "didn't know what he was going to do to [her]." She also testified that she knew Biff was mad at her at the time because she would not let Biff see their son. According to Mira, once the cars pulled over, Biff got out of the Monte Carlo, walked over to the Lumina, and told Roger to open the door. At that point, Nikki exited the car from the passenger side, and Biff was able to unlock the car doors and access the back seat. He struggled to get Isaiah, Jr., and Mira out of the car. Biff hit Mira on the lip and ripped her shirt. While Biff and Mira were struggling, defendant jumped on the hood of the Lumina and smashed the windshield. Mira testified that she then got out of the car with Isaiah, Jr. She did not want to go, but she was concerned

because, she thought, after “the car chase and everything and [the] window being smashed, anything could happen to [her] son.” She got into the back seat of the Monte Carlo. Defendant drove Mira, Biff, and Isaiah, Jr., to a house on Elm Street, where Biff held Mira and Isaiah, Jr., in the basement for two hours before releasing them to police. On cross-examination, Mira testified that she did not see either Biff or defendant with a gun at any time during the incident.

¶9 Roger testified that, during the chase, he knew the occupants of the Monte Carlo wanted him to pull over because he heard one of them say “pull over or I’ll shoot.” He testified that, once he pulled over, Biff came over to the Lumina and started arguing with him. Biff then disappeared around the other side of the car, and Roger got out. Roger testified that, at that point, he was confronted by another individual. Roger told the individual that he was “not about to let this happen.” The other individual then jumped on the hood of the Lumina and broke the windshield. Roger saw Biff taking Mira by the arm to the Monte Carlo along with Isaiah, Jr. Roger did not do anything to stop Biff because the other individual made “a comment” to him. When the State asked Roger what the comment was, the trial court sustained defense counsel’s hearsay objection.

¶10 Roger further testified that, at the time of the kidnapping incident, he did not know who the other individual was and he did not see the individual with a gun. However, the State impeached Roger with his written statement to police, which Roger signed during the early morning hours of March 11, 2010, just a few hours after the kidnapping incident. In the written statement, Roger identified the other individual as a black male named “TT” and stated, “ ‘TT’ was carrying a black colored gun and he was pointing it at us.” The written statement went on:

“ ‘TT’ jumped up on the hood and he hit our windshield with his gun. I think that he cracked our windshield with his gun. Necoah jumped out of the car and started yelling at him so I

got out too. When I got out of the car ‘TT’ told me that he was going to shoot me so I did not move.”

At trial, Roger denied telling officers that the other individual had a gun. He testified that he “told the officers that [he] couldn’t say if the individual had a gun or not.” Instead, Roger clarified, the individual “made a threat” and Roger “took the threat serious.” When asked about the threat, Roger testified that the individual told him that he was “going to pop” him, which could have meant either “get hit upside the head or get shot.” Roger testified that he “took the strongest definition.” But, according to Roger’s trial testimony, he “never saw [a] gun.”

¶ 11 The State also impeached Roger with his testimony before the grand jury on April 7, 2010. In describing to the grand jury the other individual who was with Biff, Roger testified, “I only know him either by TT [or] Tay Tay. I only met him once.” When asked if he knew that the individual’s real name was Tavieus Simmons, Roger testified that he found that out after the kidnapping incident. Roger further testified before the grand jury that, once he got out of the car, “Tay Tay, whatever his name is, pulled an object and told [him] not to get shot.”

¶ 12 On cross-examination, Roger testified that he had consumed up to 15 beers and had smoked 3 to 4 marijuana “blunts” on the day of the kidnapping incident. Defense counsel also impeached Roger with his prior convictions of unlawful use of a weapon and manufacturing and delivery of cocaine.

¶ 13 Nikki testified that she “didn’t notice the car” following the Lumina until the cars pulled over. She further testified that once the cars pulled over, she got into an argument with defendant, who was her cousin, “over family issues.” She further testified that defendant kicked in her windshield because “[h]e got mad at [her] for something [she] said.” When asked if she observed

what Biff, her brother, was doing, she testified that she “didn’t see him doing anything” because she had walked away from the vehicles to call 911, which she did solely because defendant had kicked in her windshield. Nikki denied that she called 911 out of concern for Mira and Isaiah, Jr., and instead testified that “it would be more fair to say that [she] was very upset about arguing with [her] little cousin and him breaking [her] window out.”

¶ 14 The State impeached Nikki with her written statement to police, which she signed in the early morning hours of March 11, 2010. In her written statement, Nikki stated that, during the car chase, she “saw ‘Biff’ was holding a black gun pointing and ‘T.T’ [*sic*] also had a black gun and they were pointing it [*sic*] at us and yelling for us to pull over.” When confronted with this statement at trial, Nikki testified that she “never saw a gun.” Also in her written statement, Nikki made no mention of arguing with defendant over family issues. She did state that defendant threatened to kill her before smashing her windshield and that she saw Biff walk to the back of the car and pull Mira out by her hair, while Mira screamed at him to let her go. Nikki testified that she was very intoxicated at the time she witnessed the incident and that she was “pretty blasted” at the time she gave her written statement to police.

¶ 15 As with Roger, the State also impeached Nikki with her testimony before the grand jury on April 7, 2010. When asked whether she saw something in defendant’s hands during the kidnapping incident, Nikki testified before the grand jury as follows: “His actions made me think that he may have a gun. I didn’t actually see a gun but his actions intimidated me, gave me the belief that there may be a gun \*\*\*.” When asked if she was sober when she testified before the grand jury, Nikki testified, “Halfway, yeah.” The State also impeached Nikki with her prior convictions of writing a

bad check and retail theft. Nikki admitted that she was currently in custody on three charges stemming from a DUI.

¶ 16 On cross-examination, Nikki testified that she was “highly intoxicated” on the day of the incident and that she and her friends had consumed approximately three 12-packs of beer, a “fifth of Hen,” and other alcoholic drinks that day. She also testified that, after police arrived at the scene, they permitted her to walk to the liquor store to purchase more alcohol and continue drinking. When asked about her consumption of marijuana on the day of the incident, she testified that she had smoked “[p]robably like seven” marijuana “blunts.” She smoked the last one approximately 15 minutes before police arrived. She testified that her level of intoxication affected her ability to perceive things that day. When asked whether she ever saw defendant with a gun, she said no. She explained her written statement and her grand jury testimony by testifying that she had accused defendant of having a gun because she was angry at him for breaking her windshield and wanted him to get in trouble.

¶ 17 After calling as a witness the operator who took Nikki’s 911 call, the State played for the jury a recording of the call, which the court found to fall within the “excited utterance” exception to the hearsay rule. During the first seconds of the call, Nikki said, “Somebody has took [*sic*] my sister.” She identified Biff and defendant as the perpetrators and exclaimed, “They pulled a gun on us,” and, “He pulled a gun on my husband.”

¶ 18 The State also called as witnesses several Rockford police detectives and one police officer. According to detective David Lee, who took Nikki’s written statement, he knew that Nikki had been drinking, but “she was coherent and able to talk to [detectives] and provide [them] with an account of what occurred.” Officer Gregory Yalden testified that he had a conversation with Roger at the

scene of the incident and that Roger “was completely sober.” Detective Scot Mastroianni testified that, while being interviewed at the public safety building following the incident, Roger did not appear to be under the influence of alcohol or drugs.

¶ 19 After the State rested, defendant called his girlfriend, Shimere, as his first witness. Shimere testified that she saw defendant and Nikki arguing, as well as Biff and Mira arguing. However, she testified, neither Biff nor defendant had a gun.

¶ 20 Defendant testified on his own behalf. He began his testimony by admitting that he had a prior conviction of aggravated unlawful use of a weapon. Consistent with Nikki’s trial testimony, he then testified that, once the cars pulled over, he confronted her “about the problem [he] had with her.” Defendant explained how Nikki had fallen “off the deep end” and had started drinking too much and “cuss[ing] our granny out.” He testified that the argument got “real heated” and then he jumped on her car and kicked her windshield out. Defendant testified that he did not argue with Mira during the incident. He further testified that he did not have a gun or threaten anyone with a gun.

¶ 21 The jury found defendant guilty of the aggravated kidnapping of Mira (count I) and Isaiah, Jr. (count II), and also returned a special verdict form finding that defendant committed the kidnapping while armed with a firearm. The jury acquitted defendant of aggravated unlawful restraint (count III). Although the jury found defendant guilty of unlawful possession of a weapon by a felon (count IV), the court determined that the conviction merged into the convictions of aggravated kidnapping. Defendant filed a motion for a new trial, which the trial court denied. The trial court sentenced defendant on counts I and II to concurrent terms of 33 years’ imprisonment, each of which included an automatic 15-year sentence enhancement. This timely appeal followed.

¶ 22

ANALYSIS

¶ 23 On appeal, defendant argues (1) that the evidence was insufficient to prove him guilty beyond a reasonable doubt of aggravated kidnapping because no witnesses testified at trial that they saw defendant with a gun and because Roger's and Nikki's recanted prior inconsistent statements on this subject were unreliable and insufficient evidence of guilt, (2) that it was plain error for the trial court to grant the State's motion *in limine* to exclude evidence of a "green leafy substance" found in the glove box of the Lumina after it was impounded following the incident, and (3) that the \$200 DNA analysis fee must be vacated because defendant submitted a DNA sample in connection with a prior delinquency adjudication. We address each argument in turn.

¶ 24

Sufficiency of the Evidence

¶ 25 Defendant first argues that the evidence was insufficient to prove that he committed the offense of kidnapping while armed with a firearm. He accurately asserts that no witnesses testified at trial that they observed him with a gun. While defendant acknowledges that Roger's and Nikki's prior inconsistent statements contained in their written statements to police and in their grand jury testimonies were properly admitted as substantive evidence under section 115-10.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10.1 (West 2010)), he argues that those out-of-court statements were unreliable and insufficient to prove beyond a reasonable doubt that he was armed with a firearm. Therefore, defendant argues, his conviction on count I (Mira) should be reduced to kidnapping, a class 2 felony (720 ILCS 5/10-1(c) (West 2010)), and his conviction on count II (Isaiah, Jr.), while still aggravated kidnapping because the victim was under the age of 13 years (720 ILCS 5/10-2(a)(2) (West 2010)), should not be subject to the automatic 15-year sentence enhancement. The State argues in response that Roger's and Nikki's prior inconsistent statements,

along with Nikki's recorded 911 call, were sufficient evidence to prove beyond a reasonable doubt that defendant was armed with a firearm.

¶ 26 When presented with a challenge to the sufficiency of the evidence, it is not the function of the reviewing court to retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Rather, “ ‘the relevant question 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 crime beyond a reasonable doubt.’ ” (Emphasis in original.) *Collins*, 106 Ill. 2d at 261 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The reviewing court should not substitute its judgment for that of the trier of fact, who is responsible for weighing the evidence, assessing the credibility of witnesses, resolving conflicts in the evidence, and drawing reasonable inferences and conclusions from the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). However, the jury's determinations on these issues are not always conclusive, and a reviewing court must set aside a defendant's conviction if a careful review of the evidence reveals that it was so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of the defendant's guilt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004); *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

¶ 27 As an initial matter, we reject defendant's argument that the prior inconsistent statements of Roger and Nikki admitted under section 115-10.1 of the Code were so unreliable that “no rational jury could have believed” them. As noted, defendant does not challenge the admissibility of Roger's and Nikki's written statements to police or the transcripts of their testimonies before the grand jury. Where a prior inconsistent statement is properly admitted as substantive evidence under section 115-10.1 of the Code, “ ‘a finding of reliability and voluntariness is automatically made.’ ” *People v. Morrow*, 303 Ill. App. 3d 671, 677 (1999) (quoting *People v. Pursley*, 284 Ill. App. 3d 597, 609

(1996)). It then falls within the province of the jury to weigh the prior inconsistent statement against the witness' statement at trial and to determine which, if either, is to be believed. *People v. Zizzo*, 301 Ill. App. 3d 481, 489 (1998). The jury is to assess the prior inconsistent statement on the same basis that it would assess any direct testimony. *People v. McCarter*, 2011 IL App (1st) 092846, ¶ 23. Where the trier of fact returns a guilty verdict based on a recanted prior inconsistent statement, as with any evidence, the question for the reviewing court is whether, based on the statement, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *Zizzo*, 301 Ill. App. 3d at 489 (citing *People v. Curtis*, 296 Ill. App. 3d 991, 999 (1998)).

¶ 28 Defendant argues that, “[s]imply by their admitted overuse of alcohol and marijuana,” Roger and Nikki “were not credible witnesses.” Yet, a witness' intoxication at the time he or she gave a written statement to police is a matter for the trier of fact to consider when determining the credibility of the witness and the weight to be given the out-of-court statement. See *People v. Wilson*, 302 Ill. App. 3d 499, 508 (1998) (holding that the witness' claims that she was on drugs when she gave a written statement to police, that she did not read the statement, and that she was induced to give a false statement were matters properly before the trier of fact in determining the weight to be given the statement). The same reasoning applies to defendant's argument that Roger and Nikki were not credible witnesses due to their prior convictions. See *People v. Sharrod*, 271 Ill. App. 3d 684, 689 (1995) (“ ‘One way of discrediting the witness is to introduce evidence of a prior conviction of that witness. By so doing the cross-examiner intends to afford the jury a basis to infer that the witness' character is such that he would be less likely than the average trustworthy citizen to be truthful in his testimony.’ ” (quoting *Davis v. Alaska*, 415 U.S. 308, 316 (1974))).

¶ 29 *People v. Pellegrino*, 30 Ill. 2d 331 (1964), on which defendant relies, is distinguishable. In *Pellegrino*, the supreme court reversed a murder conviction after determining that the testimony from two witnesses upon which the conviction was based was so unsatisfactory as to require reversal. *Pellegrino*, 30 Ill. 2d at 334-35. The first witness had been punched by the victim moments earlier and was “stunned, bleeding and crying” at the time she witnessed the fatal attack. *Pellegrino*, 30 Ill. 2d at 334. That witness, without explanation, first accused one man, then another, and finally the defendant. *Pellegrino*, 30 Ill. 2d at 334. The second witness was in the midst of a “seven-week period of drunkenness” and was suffering from the “shakes,” could not walk five feet unassisted, and could not recognize a person three feet away. *Pellegrino*, 30 Ill. 2d at 334.

¶ 30 The evidence tending to discredit Roger’s and Nikki’s statements did not rise to the level of the evidence discrediting the testimony from the two witnesses in *Pellegrino*. Although both Roger and Nikki admitted to being intoxicated at the time they witnessed the kidnapping and at the time they gave their written statements to police, the jury also heard evidence that both witnesses were coherent and able to communicate clearly. Detective Lee testified that, although he knew that Nikki had been drinking, “she was coherent and able to talk to [detectives] and provide [them] with an account of what occurred.” Furthermore, the jury heard the recording of Nikki’s 911 call, made fifteen minutes after the kidnapping, from which the jury could have assessed whether Nikki sounded intoxicated or incoherent. Officer Yalden testified that Roger “was completely sober” while at the scene. Detective Mastroianni similarly testified that Roger did not appear to be under the influence of alcohol or drugs during his interview at the public safety building just hours after the incident.

¶ 31 Having determined that the credibility of Roger's and Nikki's prior inconsistent statements was a matter properly before the jury, the next issue is whether, viewing those statements in a light most favorable to the prosecution, *any* rational trial of fact could have found beyond a reasonable doubt that defendant committed the kidnapping while armed with a firearm. See *Zizzo*, 301 Ill. App. 3d at 489. Defendant argues that Roger's written statement that he saw a "black colored gun," Roger's grand jury testimony that he saw an "object" in defendant's hand, and Nikki's written statement that she saw a "black gun," were insufficient under existing case law to support the jury's finding that defendant was armed with a firearm. Defendant relies primarily on *People v. Ross*, 229 Ill. 2d 255 (2008), and *People v. Thorne*, 352 Ill. App. 3d 1062 (2004).

¶ 32 The facts of *Ross* and *Thorne* are sufficiently similar that we can discuss them together. In each case, the defendant was charged with and convicted of armed robbery, which, under the applicable statute, required the State to prove that the defendant committed the robbery while armed with a dangerous weapon. *Ross*, 229 Ill. 2d at 272; *Thorne*, 352 Ill. App. 3d at 1070. The victim in each case testified that the defendant pointed a gun at him during the commission of the robbery. *Ross*, 229 Ill. 2d at 258; *Thorne*, 352 Ill. App. 3d at 1064. Also in each case, police recovered a gun, which turned out to be a BB gun. *Ross*, 229 Ill. 2d at 258; *Thorne*, 352 Ill. App. 3d at 1066. On appeal, the supreme court in *Ross*, as did the appellate court in *Thorne*, reduced the defendant's conviction from armed robbery to robbery after determining that the evidence was insufficient to prove that the BB gun was a "dangerous weapon." *Ross*, 229 Ill. 2d at 276-77; *Thorne*, 352 Ill. App. 3d at 1073-74. Applying case law outlining the criteria for what constituted a "dangerous weapon," the courts in *Ross* and *Thorne* reasoned that, without evidence that the BB guns were loaded or that the guns were of such a weight and composition as to render them capable of use as bludgeons, there

was no evidence from which the triers of fact could have concluded that the guns were dangerous. *Ross*, 229 Ill. 2d at 277; *Thorne*, 352 Ill. App. 3d at 1073.

¶ 33 *Ross* and *Thorne* are inapposite because both cases involved the preamendment version of the armed robbery statute. See 720 ILCS 5/18-2 (West 1998) (requiring proof that a defendant was armed with a dangerous weapon). The amended version of the armed robbery statute went into effect on January 1, 2000, and deleted the requirement of a “dangerous weapon” when a defendant is armed with a firearm. See *People v. Toy*, 407 Ill. App. 3d 272, 291 (2011) (distinguishing *Ross* and discussing the amendment to the armed robbery statute). The same public act that amended the armed robbery statute also amended the aggravated kidnapping statute. See Pub. Act 91-404, § 5 (eff. Jan. 1, 2000) (amending, *inter alia*, 720 ILCS 5/18-2 (West 1998) (armed robbery) and 720 ILCS 5/10-2 (West 1998) (aggravated kidnapping)). While the preamendment version of the aggravated kidnapping statute did not distinguish between being armed with a dangerous weapon and being armed with a firearm, the amended statute contains separate subsections for aggravated kidnapping while armed with a “dangerous weapon” and while armed with a “firearm.” Compare 720 ILCS 5/10-2 (West 1998) (making no distinction between being armed with a “dangerous weapon” and being armed with a “firearm”), with 720 ILCS 5/10-2 (West 2010) (containing separate subsections for aggravated kidnapping while armed with a “dangerous weapon, other than a firearm,” and while armed with a “firearm”). Notably, there is no requirement in the amended statute that a weapon be proven “dangerous” when the weapon is a firearm. See 720 ILCS 5/10-2 (West 2010). Thus, cases such as *Ross* and *Thorne*, in which the courts reduced convictions for failure to prove that a gun was a “dangerous weapon,” have no bearing on this case.

¶ 34 We consider *Toy* to be more on point. In *Toy*, the defendant was charged with and convicted of two counts each of attempted armed robbery and aggravated criminal sexual assault with a firearm. *Toy*, 407 Ill. App. 3d at 273. On appeal, he argued that the evidence was insufficient to prove beyond a reasonable doubt that he was armed with a firearm for purposes of the aggravated criminal sexual assault convictions or that he was armed with a “dangerous weapon” for purposes of the attempted armed robbery convictions. *Toy*, 407 Ill. App. 3d at 273. The court first concluded that the evidence was sufficient to prove beyond a reasonable doubt that the defendant was armed with a firearm. *Toy*, 407 Ill. App. 3d at 289. The court reasoned that both victims testified that defendant was armed with a gun. *Toy*, 407 Ill. App. 3d at 289. One of the victims testified that the defendant “had the gun out” and the victim had no doubt that what he saw was a gun. *Toy*, 407 Ill. App. 3d at 289. The other victim testified that, at one point, she saw the defendant put the gun in his waistband and, later, she felt something pressed against her head, which she believed to be a gun. *Toy*, 407 Ill. App. 3d at 289.

¶ 35 Regarding the defendant’s second argument in *Toy*—that the evidence was insufficient to prove that he was armed with a “dangerous weapon” for purposes of the attempted armed robbery convictions—the court noted, as we have noted here, that the defendant mistakenly relied on *Ross*. *Toy*, 407 Ill. App. 3d at 290-92. The court reasoned that the defendant was charged with attempt under the amended armed robbery statute, which distinguishes between “dangerous weapon” and “firearm.” *Toy*, 407 Ill. App. 3d at 291. Because the defendant was charged under the “firearm” subsection of armed robbery, the court affirmed the defendant’s conviction, having already determined that the evidence was sufficient on this issue. *Toy*, 407 Ill. App. 3d at 293.

¶ 36 Here, the State introduced substantive evidence in the form of Roger’s and Nikki’s prior inconsistent statements contained in their written statements to police and in their grand jury testimonies. In Roger’s written statement, he unequivocally stated that he saw defendant “carrying a black colored gun and he was pointing it at us.” He further stated that defendant told him not to move or defendant would shoot. Nikki similarly stated in her written statement that she saw defendant with a “black gun” and that he was “pointing it at us and yelling for us to pull over.” Before the grand jury, Roger testified that defendant “pulled an object and told [him] not to get shot” and that he saw “some kind of object” in defendant’s hand. Nikki also recanted her story somewhat by the time she testified before the grand jury, but she still testified that defendant’s “actions made [her] think he may have a gun” and “gave [her] the belief that there may be a gun.” The jury also heard Nikki’s recorded 911 call, made just several minutes after the kidnapping, in which she exclaimed, “They pulled a gun on us,” and, “He pulled a gun on my husband.” Just as the two witnesses’ testimonies in *Toy* were sufficient to uphold the defendant’s convictions in that case, we conclude that, viewing Roger’s and Nikki’s statements in the light most favorable to the State, the evidence was sufficient to prove beyond a reasonable doubt that defendant was armed with a firearm during the commission of the kidnapping. Merely because Roger and Nikki recanted their earlier statements when they testified at trial does not alter this result. As stated, it was the jury’s duty to weigh the prior inconsistent statements against the testimony at trial and to decide, based on the evidence presented and on the jurors’ assessments of credibility, which to believe.

¶ 37 Defendant’s reliance on *People v. Fiala*, 85 Ill. App. 3d 397 (1980), is misplaced. In *Fiala*, the issue on appeal was whether there was sufficient evidence to establish that the defendant was armed with a gun at the time he robbed a bank. *Fiala*, 85 Ill. App. 3d at 398. Following the robbery,

police had engaged in a car chase with the defendant before subduing him shortly after he exited his vehicle and fled on foot. *Fiala*, 85 Ill. App. 3d at 399. An officer found a gun abandoned in the area of the arrest. *Fiala*, 85 Ill. App. 3d at 399-400. The appellate court reduced the defendant's conviction from armed robbery to robbery after determining that there was insufficient evidence to prove that the defendant possessed the gun, found following the car chase, at the time of the robbery. *Fiala*, 85 Ill. App. 3d at 400-02. Central to the court's analysis was the testimony of witnesses who observed both of the defendant's hands empty during the robbery. *Fiala*, 85 Ill. App. 3d at 400-01. Here, by contrast, Roger and Nikki stated unequivocally in their written statements to police that they observed a "black gun" in defendant's hands.

¶ 38

*Motion in Limine*

¶ 39 Defendant next argues that the trial court erred in granting the State's motion *in limine* to exclude evidence of the "green leafy substance" that police found in the maroon Lumina after the car was impounded following the kidnapping incident. Defendant argues that the evidence would have been relevant to establishing Roger's and Nikki's intoxication at the time they witnessed the kidnapping. Defendant correctly concedes that he forfeited the issue by failing to raise it in his posttrial motion. See *People v. Maldonado*, 398 Ill. App. 3d 401, 415-16 (2010) (issue can be preserved for appeal if it is raised in a motion *in limine* and also raised in a posttrial motion). Nevertheless, defendant urges us to review the matter for plain error.

¶ 40 Plain error is a limited and narrow exception to the general forfeiture rule. *People v. Hampton*, 149 Ill. 2d 71, 100 (1992). To obtain relief under the plain-error rule, a defendant must show that a clear or obvious error occurred. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). If a court determines that no error occurred, it need not go any further in the plain-error analysis. *People v.*

*Moreira*, 378 Ill. App. 3d 120, 131 (2007). Only if an error has occurred is a court required to determine if relief is warranted by looking to whether (1) the evidence was so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error; or (2) the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Naylor*, 229 Ill. 2d 584, 593 (2008); Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). Defendant bears the burden of persuasion under either prong. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 41 It is unclear from defendant's brief whether he argues plain error under the closely-balanced-evidence prong only or under both prongs. Nevertheless, we need not consider whether defendant can show plain error under either prong, since we determine that the trial court committed no error. Defendant is correct that he has a constitutional right to confront and cross-examine the witnesses against him. *People v. Accardo*, 195 Ill. App. 3d 180, 192 (1990) (citing U.S. Const., amend. VI; Ill. Const. 1970, art. I, § 8.). In a criminal case, a trial court should allow the defendant wide latitude during cross-examination to establish a witness' interest, bias, or motive, and should permit inquiry into any subjects that tend to explain, discredit, or destroy the witness' direct testimony. *People v. Terrell*, 185 Ill. 2d 467, 498 (1998); *Accardo*, 195 Ill. App. 3d at 192. This is particularly important in cases where the credibility of a witness is a central issue. *Accardo*, 195 Ill. App. 3d at 192; *People v. Adams*, 129 Ill. App. 3d 202, 207 (1984). Yet, as with any evidence, evidence used to impeach a witness's credibility must be relevant. See *People v. Di Maso*, 100 Ill. App. 3d 338, 342 (1981) (addressing whether evidence of a witness' habitual drug use was relevant evidence admissible for purposes of impeachment). Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it

would be without the evidence.” Ill. R. of Evid. 401 (eff. Jan. 1, 2011); see also *People v. Morgan*, 197 Ill. 2d 404, 455-56 (2001). A court may reject evidence on the grounds of relevancy if it is too remote, uncertain, or speculative. *People v. Cloutier*, 156 Ill. 2d 483, 501 (1993). Whether to grant or deny a motion *in limine* is a matter within a trial court’s discretion, which it abuses only if its ruling “is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.” *People v. Caffey*, 205 Ill. 2d 52, 89 (2001).

¶ 42 Here, the trial court was well within its discretion when it granted the State’s motion *in limine* to exclude evidence of the “green leafy substance” found in the glove box of the maroon Lumina. As defendant concedes, no test was ever performed to determine whether the substance was in fact marijuana. Therefore, the evidence’s tendency to bolster or to undermine Roger’s and Nikki’s credibility was speculative. The case on which defendant relies to support his argument that the evidence was relevant despite the lack of testing is distinguishable. In *State v. Ampey*, 609 P.2d 96 (Ariz. Ct. App. 1980), the Court of Appeals of Arizona upheld a misdemeanor conviction of possession of marijuana although no tests were performed on a bag containing a “green leafy substance” found in the defendant’s vehicle. *Ampey*, 609 P.2d at 97. In *Ampey*, however, the court reasoned that there was sufficient other evidence of guilt because the defendant admitted to police that the substance was marijuana and an officer trained to identify marijuana testified that he smelled freshly burned marijuana in the defendant’s car. *Ampey*, 609 P.2d at 97. Here, in opposing the State’s motion *in limine*, defendant did not identify any evidence that would establish that the substance was in fact marijuana.

¶ 43 Moreover, the trial court granted defendant wide latitude on cross-examination and permitted him to elicit substantial evidence of Roger’s and Nikki’s intoxication. The trial court permitted

defendant to elicit testimony from Nikki that she had smoked up to seven marijuana “blunts” on the day of the kidnapping and from Roger that he had smoked three to four “blunts.” Nikki further testified that she smoked the last “blunt” approximately 15 minutes before police arrived, from which the jury could have inferred that she had marijuana in the Lumina or on her person. Evidence of a “green leafy substance” found in the Lumina—even if suggestive of marijuana—would have had marginal value as impeaching evidence given the substantial other evidence of marijuana consumption that defendant was able to introduce. This supports our conclusion that the trial court did not abuse its discretion in granting the State’s motion *in limine*.

¶ 44 Finally on this topic, we reject defendant’s argument that the State’s comments during closing argument somehow establish that the trial court abused its discretion in excluding evidence of the “green leafy substance.” Defendant refers to the following comments made during the State’s closing argument: “If Necoah Tennin was drinking at the scene, where is the evidence of that? Where is the proof? Where are the bottles?” Defendant argues that the State “took unfair advantage” of the court’s ruling on the motion *in limine* by referring the absence of evidence at the scene and that evidence of the “green leafy substance” would have curtailed the State’s ability to make this argument in closing. We interpret the State’s comments to have been directly and properly in response to Nikki’s testimony that police officers permitted her to walk to the liquor store and to continue drinking on the scene. Furthermore, we fail to see how evidence of a “green leafy substance” would have impaired the State’s ability to argue the lack of “bottles” or other evidence of consumption of alcohol on the scene.

¶ 45

DNA Analysis Fee

¶ 46 Finally, defendant contends that the \$200 DNA analysis fee imposed against him must be vacated because he submitted a DNA sample following a previous delinquency adjudication. The State concedes this error. Because a defendant is required under statute to submit only one DNA sample (*People v. Marshall*, 242 Ill. 2d 285, 301-03 (2011)), we vacate the \$200 DNA analysis fee imposed against defendant.

¶ 47 CONCLUSION

¶ 48 For the reasons stated, we vacate the \$200 DNA analysis fee but otherwise we affirm the judgment of the circuit court of Winnebago County.

¶ 49 Affirmed in part and vacated in part.