FOURTH DIVISION
March 9, 2017

No. 1-14-2715

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 13 CR 349
	)	
DEUNQUIAL ALMOND,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Ellis and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's convictions affirmed over his challenge to the sufficiency of the evidence to establish that he was the perpetrator of the crimes and his contention that the trial court abused its discretion in limiting expert testimony on the reliability of eyewitness identifications. Defendant's mittimus amended to remove court order to provide DNA specimen.

¶ 2 Following a bench trial, defendant Deunquial Almond was convicted of attempted first-degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2012)) and armed robbery (720 ILCS 5/18-2(a)(2) (West 2012)), and sentenced to concurrent terms of 31 years' imprisonment. On appeal, defendant contends that: (1) the State failed to present sufficient evidence to prove that he was the armed offender who committed the crimes; (2) the trial court abused its discretion when it limited expert testimony on the reliability of eyewitness identifications; and (3) the DNA specimen order listed on his mittimus must be removed. We affirm as modified.

¶ 3 The State charged defendant with, and proceeded to trial against him on, multiple counts of attempted first-degree murder and armed robbery, and one count each of aggravated battery and unlawful use of a weapon by a felon, stemming from an incident on November 7, 2012, where he and an unidentified male companion allegedly shot Thoyce Buckner and robbed Ralna Whitcomb.

¶ 4 Prior to trial, defendant sought to suppress the identifications of him made by Whitcomb and Buckner, arguing the photo array and lineup used to produce those identifications were unreliably conducted and unnecessarily suggestive. Defendant submitted a report written by Dr. Geoffrey Loftus, an expert he intended to present at the hearing on the motion and a professor of psychology at the University of Washington. According to the report, Dr. Loftus had studied the field of human perception and memory for 50 years and had previously testified in criminal cases, including in Cook County. The report discussed research into the science of human perception and memory and the frailties of eyewitness identifications due to such factors as: (1) the lighting during the incident; (2) the eyewitness' attention during the incident, influenced by, among other things, weapons being involved; (3) the duration of the incident; (4) the stress of the incident, influenced by, among other things, the eyewitness' life being threatened; and (5) the

eyewitness experiencing postevent information, such as biased identification procedures. The report also discussed the reliability of photo array and lineup identifications, which, it asserted, were fraught with bias and suggestiveness. The report concluded that there were possible biases in both the photo array and lineup procedures used in this case, which could have led to false identifications.

¶ 5 At the hearing on the motion, Dr. Loftus testified as an expert in human perception and memory, discussing the information stated in his report and ultimately opining that both the photo array and lineup conducted in this case were biased and suggestive. Additional testimony was elicited from Buckner and various police officers involved in the investigation of defendant. The trial court denied the motion, finding neither the photo array nor lineup unduly suggestive.

¶ 6 Defendant subsequently filed a motion *in limine* to introduce the expert testimony of Dr. Loftus at trial. Defendant argued that Dr. Loftus' testimony would aid the jury by identifying relevant factors to the reliability of eyewitness identifications, some of which would not be known to the average juror. Defendant asserted that, while "a highly confident eyewitness can be quite persuasive to a jury," he "may not be an accurate witness." Defendant concluded that Dr. Loftus' expert testimony was necessary to ensure he received a fair trial.

¶ 7 The State opposed defendant's motion, arguing that the reliability of eyewitness identifications "should not be decided by academic expert testimony," but rather based on a close examination of the eyewitness' testimony using the factors set forth in *Neil v. Biggers*, 409 U.S. 188 (1972), for assessing the reliability of eyewitness identifications. The State further asserted that the matters Dr. Loftus intended to testify about were "within the common knowledge and previous experience" of an average juror.

¶ 8 At the hearing, the parties argued consistently with their motions. Defense counsel added that, "even though this [case] will be likely a bench trial," Dr. Loftus' expert testimony was necessary because such evidence could then be considered by the trier of fact substantively rather than merely argued by the defense in closing argument. Counsel further asserted the expert testimony would show that some of the research about human perception and memory was not within the common knowledge of an average juror and "contrary to common sense."

¶ 9 During the argument, the trial court commented on the contentions made by both parties. At one point, the court observed that the appellate court "seem[ed] to suggest [the] opposite of what" defense counsel was arguing, namely that the factors that affect the reliability of eyewitness identifications *were* common knowledge. Later, when the State argued that many of the reliability factors Dr. Loftus would testify to were common knowledge, the court asserted "[s]ometimes science debunks common knowledge huh?" The court added "[a]nd Appellate Courts and Supreme Courts, they sometimes over time change their opinions *** [b]ased on new information."

¶ 10 Following argument, the trial court ruled it would not allow Dr. Loftus to testify "as to the lighting, the confidence level, the weapon focus, the violence," but would allow his testimony "with respect to the procedures for lineups and photo identification." Defense counsel asked the court if its ruling meant "lighting, confidence, weapon focus and violence" and other factors affecting the reliability of eyewitness identifications were "within the common knowledge of the average fact finder" and could be argued at closing. The court responded "[y]es."

¶ 11 On the day of defendant's trial, prior to its commencement, both defense counsel and the trial court noted that the case was "set for bench trial." Subsequently, defense counsel orally

moved the court to reconsider its ruling on the motion *in limine*, relying on the recent decision, *People v. Starks*, 2014 IL App (1st) 121169, ¶¶ 68-72, wherein this court noted that "the attitude toward such expert testimony is shifting in favor of admissibility" and held that a trial court must give meaningful consideration to a defendant's request for expert testimony on the reliability of eyewitness identifications. Counsel noted that, while the court gave meaningful consideration to defendant's request, the ruling demonstrated the appellate court's changing attitude on the issue. The trial court found that it "weighed and balanced" the "relevance" and "probative value" of the expert testimony, and denied the motion to reconsider. The case proceeded to a bench trial.

¶ 12 At trial, Ralna Whitcomb testified that, on November 7, 2012, at around 6 p.m., he was approaching the house of his uncle, Thoyce Buckner, on the 4800 block of West Gladys Avenue in Chicago. Whitcomb opened a gated fence, walked up stairs leading to the house's porch, opened a screen door and knocked on the front door. It was dark outside, and although the porch had a light, it was not on at the time. Whitcomb could "still see light," as there were several dim streetlights along Gladys Avenue with the nearest one located on the right side of the gated fence. While waiting for someone to open the door, Whitcomb heard the gate behind him open and he turned around. He immediately observed a silver firearm being pointed in his direction and then two men running toward the porch.

¶ 13 Whitcomb identified the armed offender at trial as defendant, someone he recognized seeing at Moore Park, a park in Whitcomb's neighborhood. Defendant came up to Whitcomb, put the firearm to his chest and told him "be cool" and "give me everything." Whitcomb was "in shock," fearing for his life. Defendant and his companion took a cell phone and approximately $100 from Whitcomb's pockets. Subsequently, Whitcomb observed Buckner open the front door, which brightened the porch due to the lights inside the house. Whitcomb then heard a gunshot

come from where defendant was standing, resulting in Buckner being shot. Defendant's companion punched Whitcomb, and both defendant and his companion ran away. Whitcomb testified that he had no problem seeing defendant's face.

¶ 14 Later that night, Whitcomb spoke to the police, describing defendant as a black man with a light brown complexion and dreadlocks, but he could not remember if he told them that defendant frequented Moore Park. He could not recall other details of his initial conversations with the police, explaining he was still "in shock" from the robbery and "worried" about Buckner. The following day, Whitcomb discussed the incident with Chicago police detective Modelski. Whitcomb described defendant as a black man with dreadlocks and a light complexion wearing a gray hoodie with the drawstring pulled. Whitcomb further described defendant as around the same build as him, which was 5-feet 9-inches tall and 200 pounds, but defendant was perhaps a little taller and little lighter.

¶ 15 On November 10, 2012, Whitcomb viewed a photo array and identified defendant as the armed offender. Although Whitcomb recognized "a couple" other individuals in the photo array, he testified "that's who I know did" it. On November 19, 2012, Chicago police officer Todd Reykjalin drove Whitcomb to the police station and told him that they caught defendant. There, Whitcomb viewed a lineup and identified defendant as the armed offender. Whitcomb testified that none of the individuals in the photo array, except for defendant, participated in the lineup.

¶ 16 Thoyce Buckner testified that, on November 7, 2012, at around 6 p.m., he was sitting on his couch when he heard a knock at the door. He got up, opened the door and observed Whitcomb and two men, including one with a firearm standing within arm's reach of him. Buckner identified the armed offender at trial as defendant. Defendant told Buckner "[d]on't move" and then shot him on the left side of his body. The porch light was not on, but the lights in

the living room, adjacent to the front door, were on. There were also streetlights along Gladys Avenue, including one in front of the house, but he agreed it was "very dim." Buckner testified that he could clearly see defendant's face. After being shot, Buckner was transported to the hospital by an ambulance.

¶ 17 That night, Buckner spoke to Detective Modelski, but he was unable to provide Modelski a description of defendant. Buckner explained at trial that, while he was discussing the incident with Modelski, he was on pain medication and "in a traumatic" state. Buckner agreed he told Modelski that he did not get a "good look" at defendant because his attention was drawn to the firearm and acknowledged making a similar comment to a defense investigator. He later testified that his attention shifted from defendant's face to the firearm and back and forth, but maintained that, during the incident, his "focus was [on] the whole scene."

¶ 18 On November 10, 2012, Buckner viewed a photo array consisting of black and white photographs, but could not differentiate the individuals in the photographs due to the lack of color. The police subsequently showed Buckner color photographs of the individuals using a laptop, and he identified defendant as the armed offender. On November 19, 2012, Officer Reykjalin drove Buckner to the police station where he viewed a lineup and identified defendant as the armed offender. At trial, Buckner denied that Reykjalin told him or implied that they had caught defendant, but acknowledged that none of the individuals in the photo array, except for defendant, participated in the lineup.

¶ 19 Sergeant Todd Reykjalin, who had been promoted since the crimes occurred, testified that, on November 9, 2012, he interviewed Whitcomb about the incident. Whitcomb described defendant as a black man with dreadlocks in his late teens or early 20s, with a light to medium complexion, approximately 5-feet, 10-inches tall, medium build, facial hair and no visible

tattoos. Whitcomb also told Reykjalin that “he observed” defendant “hanging out” in Moore Park. Reykjalin inputted defendant’s characteristics into a computer database and his photograph appeared. Reykjalin then generated a photo array using four additional photographs of people with similar characteristics to defendant, but did not believe they were from the Moore Park neighborhood.

¶ 20 On November 10, 2012, Reykjalin showed the photo array to both Whitcomb and Buckner individually. Buckner “tentatively identified” defendant as the armed offender, and Whitcomb “positively identified” defendant as the armed offender. After Whitcomb identified defendant, Buckner asked if he could see the photographs in color. Using a laptop, Buckner viewed color photographs and again “tentatively [identified]” defendant as the armed offender, telling Reykjalin that defendant “look[ed] like the guy who shot me.” Buckner added that he would feel more confident if he saw defendant in person.

¶ 21 On November 19, 2012, Reykjalin observed defendant on the street and arrested him. Reykjalin stated that defendant was 5-feet, 10-inches tall, weighed approximately 140 pounds, 19 years old with a medium brown complexion, facial hair and no neck tattoos.

¶ 22 Detective Modelski testified that, on November 7, 2012, he interviewed Buckner at the hospital. Buckner told him that he did not get a good look at defendant because his attention was drawn to the firearm. That day, Modelski also learned that a shell casing had been found at the scene, and although he believed he requested forensic testing on it, he was unsure if the testing occurred. The following day, Whitcomb told Modelski that he heard defendant frequented Moore Park. Modelski prepared a report, in part, from this conversation and listed defendant as having a tattoo and wearing a red and black jacket.

¶ 23 On November 19, 2012, Modelski helped arrange a lineup that included defendant and "fillers" who were in custody at other police stations. Modelski believed that none of the fillers were from the Moore Park neighborhood and acknowledged none of the fillers' photographs had been used in the photo array. Both Whitcomb and Buckner identified defendant as the armed offender.

¶ 24 Prior to resting, the State introduced a certified copy of conviction showing defendant had been convicted of possession of a controlled substance in case number 12 CR 4875.

¶ 25 In the defense's case, the parties stipulated that Chicago police officer Amanda Van Pelt responded to Buckner's house after the incident and spoke with Whitcomb. Whitcomb told Van Pelt that he was approached by two "unknown" black men with light brown complexions and dreadlocks. He never mentioned that he recognized either of them from Moore Park and did not provide her any further description.

¶ 26 Latiana Almond, defendant's aunt, testified that, in November 2012, she lived on the 4700 block of West Monroe Street in Chicago with her three sons and defendant, who had been living there for the past three months. She acknowledged that her house was five blocks away from the 4800 block of West Gladys Avenue and near Moore Park.

¶ 27 On November 7, 2012, Almond returned home from work at 7 a.m. and observed defendant in bed. He told her that he was not feeling well. Almond's sons went to school, but defendant stayed home and continued to lie in bed. Around noon, while Almond was watching television, defendant went to the bathroom, appeared to "gag[]" and returned to his bedroom. Around 2 p.m., Almond went into defendant's room with some food and asked if he wanted any, but he declined. Around 4:30 p.m., two of Almond's sons came home from school. One of them told her that defendant had a fever, so she went into his bedroom and checked on him again. She

gave him some medicine, but he threw it up. Around 8 p.m., before Almond went to see a movie, she went into defendant's bedroom and checked on him again. Almond testified that defendant did not leave her house between 4:30 and 8 p.m., explaining that she was watching television in the living room and he had to pass her to leave through the front door and she could see the back door. Almond further explained that defendant did not have keys to the house, so he could not come back inside without knocking. She specifically remembered that day because it was her pay day, which meant she would usually eat out or go see a movie that night.

¶ 28 After defendant was arrested on November 19, 2012, Almond learned that it was due to an event occurring on November 7. She looked at her calendar, remembered it was her pay day and realized defendant could not have done anything that day because he was home sick. Almond testified that, on November 19, she still had her movie ticket stub from November 7, but, after keeping it for a year, threw the stub away because she did not know she would be subpoenaed to court. Almond told defendant's parents that he was with her on November 7, but acknowledged not telling the police or the State's Attorney's Office. She did not know she was a witness in his case until the Public Defender's Office asked her to come forward in the summer of 2013.

¶ 29 Marisa Figueroa, an investigator with the Cook County Public Defender's Office, testified that, on July 3, 2013, she interviewed Buckner and Whitcomb. Before conducting the interviews with them, she reviewed police reports from the case. Buckner told her that his focus was on the firearm during the incident. He also told her that he believed he was going to view a lineup because defendant had been caught, though he did not remember if the police told him that or implied it. Whitcomb told Figueroa that it was "really dim, if not dark" on the night he was robbed. He also stated that defendant had a tattoo on his neck.

¶ 30 Dr. Loftus testified as an expert in the field of human perception and memory. His testimony generally focused on the various problems with identifications and how postevent information can cause witnesses to have unreliable memories leading to false identifications. Dr. Loftus' also discussed lineup and photo array procedure issues, such as the lack of double-blind procedures and the use of simultaneous lineups rather than sequential ones, which render identifications therefrom more unreliable. Dr. Loftus testified to a concept called "unconscious transference" where, in a photo array or lineup setting, an eyewitness may subconsciously select a person based only on that person looking familiar from some prior circumstance, not actually because that person committed the crime.

¶ 31 Dr. Loftus discussed the procedures used in defendant's case, including that the photo array identifications could have been biased if defendant was the only individual in the array to have frequented Moore Park. Dr. Loftus also discussed the lineup, finding the two "cardinal rules" of lineup construction were not followed because defendant was the only individual who matched the initial description of the offender and he stood out physically from the fillers. Dr. Loftus concluded the lineup was "by far the most biased" he had ever seen. He acknowledged that his opinions were based on his conversations with defense counsel and his review of the police reports, the photo array and a photograph of the lineup.

¶ 32 The trial court found defendant guilty of three counts each of attempted first-degree murder and armed robbery, and one count each of aggravated battery and unlawful use of a weapon by a felon. The court observed that Dr. Loftus' testimony was not "junk science," but rather shed light on "important" and "developing areas" of the law. The court stated his testimony helped it focus on, and listen to, the evidence in the case, but found the testimony unhelpful in "making a determination" because his research could not "replicate[] exactly what

happened that evening." The court found the crimes occurred "up close and personal" to Whitcomb and although it was dark outside, it was not "pitch black." The court further observed that, while Whitcomb and Buckner may have focused on the firearm, they could have also shifted their focus to defendant's face or observed both simultaneously. The court found that both Whitcomb and Buckner "saw and credibly identified the defendant" as the armed offender.

¶ 33 Following defendant's unsuccessful motion for new trial, the trial court merged all of defendant's convictions into one count of attempted first-degree murder and one count of armed robbery, sentencing him to concurrent terms of 31 years' imprisonment. The court also ordered defendant to submit a DNA specimen. This appeal followed.

¶ 34 Defendant first contests the sufficiency of the evidence to establish that he was the armed offender, arguing the identifications of him made by Ralna Whitcomb and Thoyce Buckner were unreliable and insufficient to support his convictions. Specifically, defendant argues that he did not match the original description of the armed offender, neither Whitcomb nor Buckner had an adequate opportunity to view the armed offender, their photo array and lineup identifications were based on "biased and suggestive" procedures, and he presented a credible alibi witness.

¶ 35 When a defendant challenges his convictions based upon the sufficiency of the evidence presented against him, we must ask whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could find all the elements of the crimes proven beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). All reasonable inferences must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. While we must carefully examine the evidence before us, credibility issues, resolution of conflicting or inconsistent evidence, weighing the evidence and making reasonable inferences from the evidence are all reserved for the trier of fact. *Brown*,

2013 IL 114196, ¶ 48. We will not overturn convictions unless the evidence is "so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Id.*

¶ 36 Where identification is the main issue, the State must prove beyond a reasonable doubt the identity of the individual who committed the charged offenses. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995). In assessing identification testimony, Illinois courts utilize a five-factor test established in *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972). See *People v. Slim*, 127 Ill. 2d 302, 307 (1989). The factors are: "(1) the opportunity the victim had to view the criminal at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the level of certainty demonstrated by the victim at the identification confrontation; and (5) the length of time between the crime and the identification confrontation." *Id.* at 307-08.

¶ 37 Applying the factors, we find they sufficiently support Whitcomb and Buckner's identification of defendant as the armed offender. Regarding the first factor, the evidence revealed that, at the time of the crimes, it was dark outside and the porch light was off. There, however, was some dim lighting from streetlights and additional lighting once Buckner opened the front door. Whitcomb, who testified that he had no problem viewing the armed offender's face, was right in front of him. Buckner only saw the armed offender's face briefly upon opening the front door before being shot, but testified he could clearly see his face. Consequently, despite the dim lighting and brevity of the crimes, both Whitcomb and Buckner had a sufficient opportunity to view the armed offender. See *People v. Herrett*, 137 Ill. 2d 195, 204 (1990) (finding a sufficient opportunity for a victim to view the offender where he observed the offender's face for "several seconds" in a dimly lit store); *People v. Moore*, 2015 IL App (1st) 141451, ¶ 23 (finding a victim had an "ample opportunity" to view an armed robber where,

although the crime occurred in the evening and briefly, the offender pointed a firearm at the victim "from about three feet away" and was not hiding his face).

¶ 38 Regarding the second factor, Whitcomb first noticed the firearm and then observed the two offenders running up toward the porch. He was scared for his life and in shock, but nothing in the evidence showed he was inattentive during this time. Buckner acknowledged not having a "good look" at the armed offender because his attention was drawn to the firearm. He, however, also testified that his "focus was [on] the whole scene," shifting from the firearm to the armed offender's face. Consequently, the evidence showed that both Whitcomb and Buckner were attentive. See *People v. Mister*, 2016 IL App (4th) 130180-B, ¶ 106 (finding a victim had a high degree of attention when "his attention was directed to [the] defendant when he quickly approached him, pointed a gun in his face, and demanded 'the bread' ").

¶ 39 Regarding the third factor, Buckner could not describe the armed offender on the night of incident, and no further evidence was presented concerning his description of the armed offender. Whitcomb, on the other hand, consistently described the armed offender as a young black man with a light or medium complexion, dreadlocks and around the same build as him, 5-feet 9-inches tall and 200 pounds, but perhaps a little taller and little lighter. There was conflicting evidence as to whether Whitcomb described the armed offender as having a tattoo on his neck, facial hair and whether he wore a gray hoodie or a red and black coat. Nevertheless, "[v]ariances between a witness' trial testimony and pretrial statements raise questions of credibility which the trier of fact must assess in making a determination of guilt." *Slim*, 127 Ill. 2d at 308. Additionally, the evidence showed that, upon being arrested, defendant was 19 years old, had a medium-brown complexion, facial hair, no neck tattoos, weighed 140 pounds and was 5-feet, 10-inches tall. Although defendant did not match Whitcomb's description of the offender

in all respects, any discrepancies between the description of the offender and defendant's actual appearance merely affect the weight to be given to that testimony. See *People v. Romero*, 384 Ill. App. 3d 125, 133 (2008). Overall, this factor slightly favors the State.

¶ 40 Regarding the fourth and fifth factors, three days after the crimes, both Whitcomb and Buckner separately identified defendant as the armed offender in a photo array. Whitcomb was positive while Buckner "tentatively" identified defendant, telling Sergeant Reykjalin that defendant "look[ed] like the guy who shot me." However, less-than-certain identifications may still be found, on the whole, reliable. See *People v. Vasquez*, 313 Ill. App. 3d 82, 103 (2000) (finding identification evidence sufficient where a witness identified the defendant in a photo array as " 'look[ing] just like the guy' "). Furthermore, 12 days after the incident, both Whitcomb and Buckner separately viewed a lineup and positively identified defendant as the armed offender. See *People v. Simmons*, 2016 IL App (1st) 131300, ¶ 97 (finding a photo array identification made one week after a shooting and lineup identifications made two weeks after the shooting weighed in favor of the State). Though there was conflicting evidence on the subject, Whitcomb testified that he had previously seen defendant around Moore Park, which when viewed in the light most favorable to the State, bolstered the reliability of his identification. See *id.* ¶ 99 (finding a witness' "prior recognition of [the] defendant" from his neighborhood "lends additional support to his identification"). The last two factors therefore weigh in favor of the State.

¶ 41 We note that there was evidence elicited at trial that, prior to viewing the lineup, the police may have told or implied to Whitcomb and Buckner that defendant had been caught. Furthermore, defendant was the only person who appeared in both the photo array and lineup.

However, the role this evidence played in casting doubt upon their lineup identifications was for the trier of fact to determine. See *id.* ¶ 88.

¶ 42 In sum, after weighing the factors and viewing the evidence in the light most favorable to the State, we find a rational trier of fact could have found Whitcomb and Buckner's identification of defendant as the armed offender was reliable. We therefore conclude that the State sufficiently proved defendant guilty of the offenses.

¶ 43 Nevertheless, defendant, in addition to arguing the reliability factors of *Biggers* weighed in his favor, challenges the photo array and lineup procedures used by the police to identify him as the armed offender. Relying on Dr. Loftus' trial testimony, defendant asserts the photo array and lineup were "biased and suggestive." As noted, prior to trial, defendant filed a motion to suppress the photo array and lineup identifications of him as unduly suggestive. Following a hearing, in which Dr. Loftus testified as an expert, the trial court denied the motion. Because the photo array and lineup identifications were found admissible, any deficiency in the procedures or the related testimony goes to the weight of the evidence, which is in the province of the trier of fact. See *Manson v. Brathwaite*, 432 U.S. 98, 116 (1977); *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009).

¶ 44 Defendant also highlights that he presented a credible and unimpeached alibi witness, Latiana Almond, defendant's aunt. Although she testified to defendant's whereabouts between 4:30 and 8 p.m. on November 7, 2012, the timeframe in which the crimes occurred, she never told this to the police or State's Attorney's Office. Regardless, the weight afforded to alibi evidence is a question of witness credibility and therefore reserved for the trier of fact, who is not obligated to accept such evidence over the positive identifications of the accused by the victims. See *Slim*, 127 Ill. 2d at 315. This is particularly true when the alibi witness is related to the

accused. See *People v. Johnson*, 2013 IL App (1st) 111317, ¶ 63; *People v. Singleton*, 367 Ill. App. 3d 182, 189 (2006). Although the trial court, in finding defendant guilty, did not explicitly discuss Almond's credibility as a witness, by finding him guilty, it implicitly rejected the credibility of her testimony. We may not substitute in our judgment for that of the trial court on this issue. See *Brown*, 2013 IL 114196, ¶ 48.

¶ 45 Defendant next contends that the trial court abused its discretion when it limited Dr. Loftus' expert testimony on the reliability of eyewitness identifications. Specifically, defendant argues that, although the court allowed Dr. Loftus to testify about the reliability of photo array and lineup procedures, it precluded him from testifying about factors that affect the reliability of eyewitness identifications such as lighting, the presence of a weapon, the stress of event and a witness' confidence level, finding these factors to be common knowledge of an average fact finder.

¶ 46 Initially, the parties disagree on whether defendant has preserved this claim of error for review, specifically whether his posttrial motion raised the claim with sufficient specificity. Regardless, because for the reasons set forth below, we have determined that the trial court did not abuse its discretion in limiting Dr. Loftus' expert testimony, we need not decide whether defendant has preserved his claim of error for review. See *People v. Jackson*, 2016 IL App (1st) 133823, ¶ 35.

¶ 47 In Illinois, trial courts should allow an individual to testify as an expert witness if his background affords him knowledge that is not common to laypersons and will aid the trier of fact in resolving the case. *People v. Lerma*, 2016 IL 118496, ¶ 23. In assessing whether to allow expert testimony, the court must "balance the probative value of the evidence against its prejudicial effect to determine the reliability of the testimony." *Id.* It should also "carefully

consider the necessity and relevance of the expert testimony in light of the particular facts of the case." *Id.* We review the court's decision of whether to allow expert testimony for an abuse of discretion (*id.*), which occurs only when the decision is "arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it." *People v. Rivera*, 2013 IL 112467, ¶ 37.

¶ 48 Defendant relies on *Lerma*, 2016 IL 118496, in arguing that the trial court abused its discretion. In *Lerma*, a gunman opened fire at two people while they were on an unlit front porch late in the evening, killing one of them. *Id.* ¶¶ 3-6. Both the victim, through an excited utterance before he died, and his friend identified the shooter as "Lucky," a neighbor. *Id.*

¶ 49 Anticipating the identification evidence, the defendant filed a pretrial motion *in limine* to introduce expert testimony on the reliability of eyewitness identifications. *Id.* ¶ 8. The defendant wanted the expert to testify about factors that affect reliability including, *inter alia*, the stress of the event, the presence of a weapon and nighttime viewing, which, he argued, were not within the common knowledge of a layperson. *Id.* The trial court denied the request, finding the testimony unnecessary because the eyewitnesses knew the defendant, something " '[t]hat's not a function of psychology or expert opinion testimony' " but rather " 'human nature' " and " 'not something that would require the application of expert opinion testimony because it is not beyond the ken of an ordinary juror.' " *Id.* ¶ 10. Midway through trial, and after the State's eyewitnesses had testified, the defendant moved the court to reconsider its initial ruling and submitted a report from Dr. Loftus because the defendant's original proffered expert had passed away. *Id.* ¶ 14. The court denied the motion to reconsider, relying on its reasoning from its initial denial of the defendant's motion *in limine*. *Id.* ¶ 16.

¶ 50 On appeal, our supreme court addressed whether the trial court abused its discretion in barring Dr. Loftus' expert testimony. *Id.* ¶ 24. It began by noting the changing landscape regarding expert testimony on the reliability of eyewitness identifications, stating previously it was considered "novel and uncertain" but currently was "well settled, well supported, and in appropriate cases a perfectly proper subject for expert testimony." *Id.* It further observed that there is " 'a clear trend among state and federal courts permitting the admission of eyewitness expert testimony, at the discretion of the trial court, for the purpose of aiding the trier of fact in understanding the characteristics of eyewitness identification.' " *Id.* (quoting *Commonwealth v. Walker*, 92 A. 3d 766, 782-83 (Pa. 2014) (collecting cases)).

¶ 51 Our supreme court observed that such expert testimony was "both relevant and appropriate" at the defendant's trial. *Id.* ¶ 26. First, the evidence of his guilt hinged "100% on the reliability of *** eyewitness identifications." *Id.* Second, several of the factors influencing the reliability of eyewitness identifications, which the expert would have discussed, were present such as the stress of the event, the presence of a weapon and nighttime viewing. *Id.* Third, only one of the eyewitnesses was subject to adversarial testing and cross-examination at trial. *Id.* Lastly, while there was some evidence that the victim's friend knew the defendant, there was also evidence that this knowledge was "limited at best." *Id.* Under the backdrop of these circumstances, our supreme court held that the trial court abused its discretion in denying the defendant's request to allow the expert testimony. *Id.* ¶ 27. Most notably, our supreme court found the trial court based its decision on its own personal belief regarding the reliability of eyewitness identifications, a belief that was directly contradicted by the expert's proffered testimony. *Id.* ¶¶ 27-29.

¶ 52 Turning to the facts of the present case, we find the trial court did not abuse its discretion by limiting Dr. Loftus' expert testimony on the reliability of eyewitness identifications. We note the facts in the present case are quite similar to those of *Lerma*, namely that both cases hinged entirely upon two eyewitness identifications and the crimes were committed quickly at nighttime on dark front porches. However, in the present case, the trial court did not completely bar Dr. Loftus' expert testimony on the reliability of eyewitness identifications. While it precluded Dr. Loftus from testifying about the factors that affect reliability, it nevertheless allowed him to testify about the reliability of photo array and lineup procedures, from which the critical evidence of defendant's guilt derived. Through his testimony, Dr. Loftus was able to cast doubt upon the reliability of Whitcomb and Buckner's photo array and lineup identifications, including his opinion that the lineup used in defendant's case was "by far the most biased" he had ever seen.

¶ 53 Given that the trial court allowed Dr. Loftus to testify about some matters related to the reliability of eyewitness identifications, the present facts are distinguishable from those in *Lerma*, where the court completely barred *any* expert testimony on the reliability of eyewitness identifications. Moreover, in the present case, when the court denied defense counsel's oral motion to reconsider its decision, defendant's case was set for, and eventually proceeded to, a bench trial, further distinguishing the instant facts from those in *Lerma*, where the defendant had a jury trial. Consequently, we find no abuse of discretion by the trial court in limiting Dr. Loftus' expert testimony on the reliability of eyewitness identifications.

¶ 54 Defendant lastly contends, and the State concedes, that the DNA specimen order listed on his mittimus must be removed because he has already provided the specimen as a result of a previous conviction.[1]

¶ 55 Defendant did not challenge this order in the trial court, which generally results in the forfeiture of the claim of error on appeal. *People v. Higgins*, 2014 IL App (2d) 120888, ¶ 6. However, because the State has conceded the error and not argued for defendant's forfeiture, the State itself has forfeited raising the issue of forfeiture. *People v. Romanowski*, 2016 IL App (1st) 142360, ¶ 39. We therefore reach the merits of defendant's claim of error, an issue we review *de novo*. *People v. Marshall*, 242 Ill. 2d 285, 292 (2011).

¶ 56 Section 5-4-3 of the Unified Code of Corrections (730 ILCS 5/5-4-3 (West 2012)) requires that defendants convicted of qualifying offenses provide a DNA specimen to be stored in an Illinois State Police database. *Marshall*, 242 Ill. 2d at 297. This requirement only applies when the defendant has not already provided a DNA specimen. *Id.* at 303. If the defendant has been convicted of a felony after the DNA requirement went into effect on January 1, 1998, we may presume that he has already provided the requisite DNA specimen. *People v. Leach*, 2011 IL App (1st) 090339, ¶ 38. Here, defendant's presentence investigative report shows convictions for possession of a controlled substance in case numbers 12 CR 4875 and 12 CR 5487, both felonies occurring after January 1, 1998. See 720 ILCS 570/402(c) (West 2012). Therefore, the trial court improperly ordered defendant to provide a DNA specimen, and we order the amendment of defendant's mittimus to reflect the removal of the DNA specimen order. See

[1] We note that, although the trial court's oral ruling and mittimus reflect an order for defendant to submit a DNA specimen, his fines and fees order does not contain the corresponding $250 fee associated with such an order. See 730 ILCS 5/5-4-3(j) (West 2012).

People v. Alvarez, 2012 IL App (1st) 092119, ¶ 71 ("[Appellate] court has the authority to correct the mittimus without remanding the case back to the circuit court.").

¶ 57 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County in all other respects.

¶ 58 Affirmed as modified.