

2013 IL App (2d) 120696-U  
Nos. 2-12-0696 & 2-12-0697 cons.  
Order filed October 22, 2013

**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).

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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 Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 11-CF-2141
	)	
THOMAS ADAMS, a/k/a John Cassimatis,	)	Honorable
	)	Marmarie J. Kostelny,
Defendant-Appellant.	)	Judge, Presiding.

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 11-CF-2370
	)	
THOMAS ADAMS, a/k/a John Cassimatis,	)	Honorable
	)	Marmarie J. Kostelny,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE BIRKETT delivered the judgment of the court.  
Justices Jorgensen and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) Although the trial court erred in excluding recordings of 911 calls on the ground that defendant needed to have the operator lay a foundation (as the victim herself

could have done so), the error was harmless: the victim's allegedly calm tone on the recordings would not have defeated several witnesses' direct testimony that she was upset as required for defendant's conviction of aggravated stalking; (2) defendant was entitled to full credit against his \$200 domestic-violence fine, to reflect the 198 days he spent in presentencing custody.

¶ 2 Following a jury trial, defendant, Thomas Adams, was convicted of aggravated stalking (720 ILCS 5/12-7.4 (West 2010)) and violation of an order of protection (720 ILCS 5/12-30 (West 2010)). The trial court sentenced him to 30 months' probation and imposed various fines and fees, including a \$200 domestic-violence fine. He appeals, contending that (1) the trial court abused its discretion in barring recordings of the victim's 911 calls; and (2) he is entitled to credit toward his domestic-violence fine for time spent in pretrial custody. We affirm as modified.

¶ 3 Before trial, defense counsel asked to play recordings of the victim's 911 calls to see whether she could authenticate them. He explained that the victim's demeanor on the recordings was calm, and he intended to introduce them to show that defendant's conduct did not cause her emotional distress. The State responded that the defense had not subpoenaed the 911 operator and thus could not lay a proper foundation to admit the calls. The trial court agreed with the State and barred the recordings.

¶ 4 At trial, Sherry C. testified that she dated defendant in 2010. She knew him as John Cassimatis, and only later learned that he also went by Thomas Adams. After Sherry moved out of defendant's house in March 2011, she obtained an order of protection that prohibited him from making contact with her at properties she owned in Kingston and Naperville. The order of protection was later extended for two years.

¶ 5 Sherry began dating Jeffrey Maye in 2011 and began working for his son's towing company. Maye lived in Sugar Grove. The house was on a dead-end street that ended in a cornfield. The towing company was in Aurora.

¶ 6 On September 8, 2011, Sherry was in the living room of Maye's house when she heard defendant's truck approaching. She recognized the distinctive sound of its diesel engine. She called to Maye and they watched the truck drive slowly past the house as defendant looked out the window. This made her very upset, and she called 911.

¶ 7 A week later, she was at work when she heard and saw defendant's truck drive slowly past the building. Defendant looked out the window and yelled something at Sherry that she could not understand. She was very upset and called 911. The next day, she again saw and heard defendant drive past Maye's house. She again was upset and called 911.

¶ 8 On September 19, 2011, Sherry and Maye were bringing groceries in from the car when they noticed that defendant was parked on the street in front of the house. Defendant drove away, and Maye drove after him. Sherry was upset and called 911.

¶ 9 Sherry went to court and had the order of protection amended to prohibit defendant from making contact with her at Maye's house and at her workplace in Aurora. However, on October 18, 2011, Sherry and Maye were driving from the towing company to a restaurant when they noticed defendant following them. Sherry was upset and called 911. Maye drove to the Hollywood Casino, where they met with a police officer.

¶ 10 Maye largely corroborated Sherry's testimony about her encounters with defendant. Specifically, he testified that Sherry was upset by them. Maye had known defendant for about 15 years, and acknowledged having a dispute with defendant about defendant's car. Maye's company had towed the car and replaced the transmission. Defendant never paid for the work, so the company obtained a mechanic's lien and eventually sold the car at auction.

¶ 11 Sugar Grove police officer Jeffrey Black responded to Sherry's 911 calls on September 8 and September 16. Both times she appeared to be angry and frustrated. Aurora police officer David

Hernandez met Sherry and Maye at the Hollywood Casino on October 18. Sherry seemed upset and agitated.

¶ 12 The jury found defendant guilty of aggravated stalking and violating an order of protection. After denying defendant's posttrial motion, the trial court sentenced him to 30 months' probation and assessed various fines and fees, including a \$200 domestic-violence fine. Defendant timely appeals.

¶ 13 Defendant first contends that the trial court erred by barring him from introducing recordings of Sherry's 911 calls. He argues that they were relevant to show that she was not in fact upset by his conduct. He contends that the court erred by holding that he was required to call the 911 operator to authenticate the recordings, because Sherry, as a party to the conversations, could have done so. The State concedes that defendant is correct on the merits, but argues that the error was harmless because Sherry, Maye, and police officers who responded to her calls all testified that Sherry was upset.

¶ 14 Defendant was charged with aggravated stalking. Thus, the State had to prove that he "engage[d] in a course of conduct directed at a specific person, and he" knew or should have known "that this course of conduct would cause a reasonable person to \*\*\* suffer emotional distress." 720 ILCS 5/12-7.3(a)(2) (West 2010). Defendant attempted to introduce the 911 recordings to show that the victim did not suffer emotional distress.

¶ 15 We note initially that defendant never made a formal offer of proof on this issue. Neither the recordings themselves nor transcripts of them are in the record. Generally, when a trial court refuses to admit evidence, a formal offer of proof must be made to preserve the issue for appeal. *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 495 (2002); Ill. R. Evid. 103(a)(2) (eff. Jan. 1, 2011). "The purpose of an offer of proof is to disclose the nature of the offered evidence to which objection is interposed, for the information of the trial judge and opposing counsel, and to enable the reviewing

court to determine whether the exclusion was erroneous and harmful.’ ” *Greater Pleasant Valley Church in Christ v. Pappas*, 2012 IL App (1st) 111853, ¶ 37 (quoting *Sekerez v. Rush University Medical Center*, 2011 IL App (1st) 090889, ¶ 68). However, where it is apparent that the trial court clearly understood the nature and character of the evidence sought to be admitted, an offer of proof is not required. *Dillon*, 199 Ill. 2d at 495.

¶ 16 When seeking to introduce the recordings, defense counsel stated that he believed that Sherry’s “tone” on the tapes was calm and thus the jury could infer that she did not suffer emotional distress. He did not argue that Sherry said anything specific that would indicate that she was not emotionally distraught. The State, apparently assuming that the recordings would reveal a calm tone, does not object to the lack of a formal offer of proof. Thus, we consider defendant’s argument.

¶ 17 A party seeking to introduce physical evidence must be able to lay an adequate foundation. *People v. Woods*, 214 Ill. 2d 455, 466 (2005). A sufficient foundation for a sound recording can be provided when a party to the conversation testifies to the recording’s accuracy and the opposing party does not claim that any material changes or deletions have been made. *People v. Smith*, 321 Ill. App. 3d 669, 675 (2001); see Ill. R. Evid. 901(a) (eff. Jan. 1, 2011). Thus, defendant is correct that Sherry, as a party to the conversations, could have authenticated the recordings, and the trial court erred in excluding them on that basis.

¶ 18 The State concedes that Sherry could have authenticated the recordings, and that the trial court erred in excluding them on that basis. However, the State contends that the error was harmless, given that other evidence clearly showed that Sherry was upset. We agree.

¶ 19 Sherry testified that she was upset by each of the incidents. Maye, who was with her each time, also testified that the incidents upset Sherry. Perhaps most importantly, two police officers who responded to the calls also testified that Sherry appeared upset. Against this direct evidence, any

tenuous inference arising from the fact that Sherry was able to maintain a calm tone while providing important information to the 911 operator would not have affected the outcome of the trial. Thus, the error in excluding the recordings was harmless.

¶ 20 Defendant next contends that he is entitled to full credit against his \$200 domestic-violence fine because he spent 198 days in presentencing custody. The State confesses error.

¶ 21 Section 110-14(a) of the Code of Criminal Procedure of 1963 provides:

“Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of \$5 for each day so incarcerated upon application of the defendant. However, in no case shall the amount so allowed or credited exceed the amount of the fine.” 725 ILCS 5/110-14(a) (West 2010).

¶ 22 A defendant may apply for the credit for the first time on appeal. *People v. Caballero*, 228 Ill. 2d 79, 88 (2008). It is undisputed that defendant was in custody for 198 days before trial. Defendant thus has more than enough credit to offset the \$200 domestic-violence fine. We thus modify the judgment to show that the fine has been satisfied.

¶ 23 The judgment of the circuit court of Kane County is affirmed as modified.

¶ 24 Affirmed as modified.