

NOTICE
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2013 IL App (4th) 110926-U

NO. 4-11-0926

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
January 9, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
DEMARCO L. TAYLOR,)	No. 10CF1388
Defendant-Appellant.)	
)	Honorable
)	Harry E. Clem,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

- ¶ 1 *Held:* The 15-year mandatory firearm enhancement and the truth-in-sentencing statute do not violate the United States and Illinois Constitutions as they apply to the 40-year sentence for murder imposed on defendant who was 17 years old at the time of the offense.
- ¶ 2 Where a motion to suppress the recording obtained by an eavesdropping device would not have been granted, defense counsel was not ineffective for not moving to suppress the recording.
- ¶ 3 In June 2011, a jury found defendant, Demarco Taylor, guilty of first degree murder. In August 2011, the trial court sentenced defendant to 40 years in prison.
- ¶ 4 On appeal, defendant argues (1) the application of the 15-year mandatory firearm enhancement and the truth-in-sentencing statute violate the United States and Illinois Constitutions and (2) defense counsel was ineffective for failing to move to suppress a recording obtained by an eavesdropping device. We affirm.

¶ 5

I. BACKGROUND

¶ 6 In August 2010, the State charged defendant by information with five counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2), (a)(3) (West 2008)) relating to the death of James Ellis. The information stated each count carried a sentencing range of 20 to 60 years in prison. Further, each count carried an additional and mandatory 15-year prison term because defendant was armed with a firearm during the commission of the offense. 730 ILCS 5/5-8-1(a)(1)(d)(i) (West 2008). Defendant pleaded not guilty.

¶ 7 In June 2011, defendant's jury trial commenced. Melinda Ellis testified she married James Ellis in August 2006. She had two sons, Tyrone Franklin and Zachary Gray. Melinda and James lived in a converted garage at a house at 1909 Joanne Lane in Champaign. Relatives of James also lived at the residence. Melinda testified she did not work during the marriage but collected social security and disability benefits. James sold cocaine and marijuana.

¶ 8 On December 18, 2008, James obtained cocaine from a man named Big Ron. Later on, he traveled to Monticello to sell the cocaine. Melinda stayed home with his children, Devon, Kaitlin, Brian, and Gage. James returned before midnight. After they had gone to bed, Melinda stated two masked men came in with two guns. The men told them to give them "your shit" and "your money." One of the men then hit James over the head with a gun, leaving a gash. The other shot at Melinda four times but the gun did not fire. After one man ran away, James said "you're fucking with fake pistols" and ran after him into the next room where Devon and Kaitlin were located. Melinda hid behind the door but could hear fighting in the next room. She heard James say that his kids were in there, but the gunman said "I don't care. I'll shoot your kids too." Melinda then heard three shots. After the gunman left, Melinda found James lying on the

floor with blood coming out of his mouth. She then called the police. She was not able to see the gunmen's faces, although she assumed they were between the ages of 16 and 19.

¶ 9 The parties stipulated that Devon would testify two men armed with handguns entered the converted garage. One gunman pointed his gun at Melinda and pulled the trigger, but it did not fire. James began struggling with the other man, who shot at James three or more times. At the end of the struggle, James was holding onto the man's legs. The man threatened to shoot Devon and Kaitlin unless James released him. James released the man, who shot him and fled with the other gunman. The stipulation indicated the man who shot James was wearing a dark colored mask. Devon was able to see the back of the man's hand and determined he was young and African-American. Kaitlin's testimony would be similar to Devon's, except she was able to see the eyes, nose, and mouth of the man who shot James. She determined the man was African-American.

¶ 10 Jane Schook, James's mother, testified James was living in her garage that he had converted. She stated James had "a very bad relationship" with Tyrone Franklin, Jr., Melinda's son. Tyrone visited Schook's house the day before James was killed. An argument ensued between Tyrone and James. James later told Schook that Tyrone stated he would kill him. Later on that evening, Melinda called to tell Schook that James had been shot. She stated Melinda was "very calm." Schook proceeded to the garage and saw James lying face down.

¶ 11 Darlene Milton testified she lived near 1909 Joanne Lane. During the early morning hours of December 19, 2008, she saw a brown or maroon-colored Dodge Intrepid with its headlights off back into her yard. Milton saw four individuals wearing all black with hooded sweatshirts. She believed they were all African-American. Two individuals got back into the

car, while two others ran toward the victim's house. The driver of the car pulled out onto the road and parked in front of Milton's house. Approximately 15 minutes later, Milton heard what she thought were four gunshots.

¶ 12 Champaign police officer Andre Davis testified he was on routine patrol during the early morning hours of December 19, 2008. At approximately 1:20 a.m., he responded to a call that a shooting had occurred at 1909 Joanne Lane. He observed a vehicle coming toward him. He described the vehicle as a "deep maroon" Dodge Intrepid. He saw three African-American males inside but stated it was possible there were more. In his rearview mirror, Officer Davis saw the vehicle turn southbound on Highland.

¶ 13 Mark Briggs testified he was a Champaign police officer on the night of the shootings. He assisted a canine officer, who located a dark-colored sweatshirt and a stocking cap on Bloomington Road, approximately 100 feet east of Joanne Lane. With the freezing rain that evening, Briggs stated the clothing was wet but it was not soaked. Champaign police officer William Killin testified he collected Kaitlin's nightshirt, which contained a partial shoe print and bloodstains.

¶ 14 Champaign police officer Von Young testified he located several articles of clothing in the middle of Bloomington Road. He stated the clothing appeared to be "freshly discarded," including a white T-shirt with blood on it. Champaign police officer Jennifer Jones testified she located a pair of jeans on Bloomington Road. She stated the jeans had a "reddish color" on them that could have been blood.

¶ 15 Champaign police sergeant Bruce Ramseyer testified that in processing the garage he located 22 different sets of fingerprints. None of the prints matched any existing prints in the

department database. On August 5, 2009, Ramseyer assisted in processing a maroon Dodge Intrepid that had been brought to the department from Danville. Inside he found medical discharge papers from St. Bernard Hospital in Chicago relating to Troy Kirkwood.

¶ 16 Champaign police officer Shane Standifer testified he collected a doorknob from inside the garage that appeared to have a bloody fingerprint on it. He also collected a bullet and a piece of drywall that appeared to have been shot. Based on a lack of shell casings at the scene, Standifer believed the shooter would have been using a revolver.

¶ 17 Dr. Scott Denton, a forensic pathologist, testified James had three different gunshot wounds. Two shots grazed his head, and the third entered on the lower left side of his neck. Dr. Denton opined the shot to the neck was fired at close range and caused James's death. He also found evidence of blunt trauma to the top of James's head.

¶ 18 Champaign police detective Don Shepard testified he identified Tyrone Franklin and Zachary Gray as possible suspects based on the statements of Jane Schook. Based on a statement by David Rodgers, defendant's cousin, Shepard identified defendant as a suspect. An interview of William Ayres led Shepard to identify John Brumfield as another possible suspect. Brumfield told Shepard he was in Chicago at the time of the shooting. Brumfield said he had been the victim of a shooting and had been treated at a hospital under the fake name of Troy Kirkwood. Shepard's investigation revealed Brumfield had actually been treated "a few weeks before" James was killed.

¶ 19 Detective Shepard testified he interviewed an informant who stated Laniel Bradley drove a maroon Dodge Intrepid. Bradley dated Tanisha Allen, and she had been stopped in the Intrepid 11 days after the murder. The car was towed, sold to a recycling company in

Danville, and was located in a salvage yard. Shepard found the discharge papers for Troy Kirkwood inside the Intrepid.

¶ 20 Detective Shepard testified his investigation caused him to contact Qwantrell Ayres, Tyrone Franklin's stepbrother. Shepard interviewed Ayres on December 12, 2009. Ayres agreed to wear a court-approved recording device and attempt to record conversations with defendant, John Brumfield, and Laniel Bradley. Based on recorded conversations with Ayres, the State charged defendant, Bradley, Brumfield, and Franklin with murder.

¶ 21 Champaign police detective Nathan Rath testified he assisted in obtaining the March 25, 2010, recording of the conversation between Qwantrell Ayres and defendant. The recording was transcribed, and Rath stated the transcript accurately reflected the contents of the recording.

¶ 22 Defense counsel objected to the admission of the transcript, stating there was an inadequate foundation because only Qwantrell could state it was an accurate representation of the conversations. The State responded the jury would be instructed the recording is the evidence and not the transcript. If there was a difference between the two, the recording would control. The trial court found a proper foundation.

¶ 23 Defense counsel also objected to the State's introduction of only portions of exhibit No. 22, a transcript of the overhear involving Qwantrell, claiming the jury should hear the entire conversation. The trial court ruled the State could present those portions it believed to be relevant, defense counsel could play other portions of the tape if needed, and the jurors could have a copy of the transcript to compare with the tape. On the recording, defendant can be heard saying the following:

"Then we was [*sic*] talking about the lick, they was [*sic*] we fittin [*sic*] to woo woo, we fittin [*sic*] to go in here and do this. We get there and everybody [*sic*] scared. So me and Tyron [*sic*] say fuck it, we [*sic*] the only ones [*sic*] went in there, everyone else was scared."

* * *

"[W]e ran up in there, I ran in there first, put the gun on 'em, dude jumped up, I got to pistol whippin [*sic*] him."

The following conversation between Ayres and defendant also took place:

DEFENDANT: I left Tyrone . . . Tyrone got to lookin [*sic*] around at shit, and then me and dude got to wrestling.

QWANTRELL: O [*sic*] you got to wrestling?

DEFENDANT: Yeah, cause [*sic*] he got up and shit and when I was pistol whipping his ass he tried to fight me.

QWANTRELL: So Tyrone let loose on his ass.

DEFENDANT: I took off so Tyrone shot his ass and ran too."

¶ 24 Richard Howard testified he had been convicted of eight misdemeanors and six felonies dating back to 1989. At the time of the trial, he had two pending misdemeanor charges and four pending felony charges. Howard stated he had a conversation regarding James Ellis with defendant on February 9, 2011, at the county jail. On the night of the shooting, defendant received a call from Tyrone Franklin, who stated "he had a lick." Howard stated "a lick" was

something illegal to obtain money. During their conversation, defendant told Howard he had been "in the wrong place at the wrong time." Defendant stated Franklin was fighting with James when defendant heard a gun go off. They then ran and left in a car.

¶ 25 Qwantrell Ayres testified he was 21 years old and resided at Chester Mental Health Center because he had been found unfit to stand trial. He had previously been convicted for possessing a firearm with a defaced serial number. He also had four pending felony cases for aggravated fleeing and eluding a police officer and resisting a peace officer, armed robbery, robbery and aggravated battery, and home invasion and armed robbery.

¶ 26 Qwantrell testified he had known defendant for a long time. In December 2009, Qwantrell talked with Detective Shepard about the murder. Prior to being incarcerated, Qwantrell had talked about the murder with defendant, Laniel Bradley, John Brumfield, and Tyrone Franklin. Defendant told Qwantrell that he went to James's house in a car with Franklin, Bradley, and Brumfield to steal cocaine. Defendant stated he went inside the house with Franklin and both of them were armed with revolvers. Once inside, Melinda reached into a drawer, and defendant tried to fire the gun but it did not go off. When the gun did not go off, James thought the gun was fake and charged at Franklin. Defendant stated he ran out. Defendant told Qwantrell that clothes were thrown out after the shooting and the guns were hidden under a shed.

¶ 27 After talking with Detective Shepard, Qwantrell agreed to wear a recording device to record conversations with defendant, Bradley, and Brumfield. The State distributed transcripts of the March 25, 2010, recording to the jury and played the audio recording.

¶ 28 Defendant chose not to testify, and defense counsel did not present any evidence.

Following closing arguments and two jury questions, the jury found defendant guilty.

¶ 29 In July 2011, defense counsel filed a motion for a new trial. In August 2011, the trial court denied the motion. Thereafter, the court sentenced defendant to 40 years in prison.

This court granted defendant's motion for leave to file a late notice of appeal.

¶ 30 II. ANALYSIS

¶ 31 A. Fifteen-Year Mandatory Firearm Enhancement and Truth-In-Sentencing

¶ 32 Defendant argues the application of the 15-year mandatory firearm enhancement (730 ILCS 5/5-8-1(a)(1)(d)(i) (West 2008)) to his sentence and the truth-in-sentencing statute (730 ILCS 5/3-6-3(a)(2)(i) (West 2008)) violate the United States and Illinois Constitutions where these laws require the imposition of a minimum 35-year sentence without regard to his juvenile status at the time of the offense. We disagree.

¶ 33 1. *Standard of Review*

¶ 34 Defendant did not raise the constitutionality of the firearm-enhancement statute and the truth-in-sentencing statute at trial or in his posttrial motion. However, the constitutionality of a statute may be raised at any time. *People v. Winningham*, 391 Ill. App. 3d 476, 480, 909 N.E.2d 363, 367 (2009).

¶ 35 "All statutes are presumed to be constitutional, and the burden of rebutting that presumption is on the party challenging the validity of the statute to demonstrate clearly a constitutional violation. [Citation.] If reasonably possible, a statute must be construed so as to affirm its constitutionality and validity." *People v. Greco*, 204 Ill. 2d 400, 406, 790 N.E.2d 846, 851 (2003). Whether a statute is constitutional involves a question of law, and our review is *de novo*. *People v. McCarty*, 223 Ill. 2d 109, 135, 858 N.E.2d 15, 32 (2006).

¶ 36

2. The Eighth Amendment

¶ 37 Defendant notes the sentence for first degree murder is 20 to 60 years in prison. 730 ILCS 5/5-8-1(a)(1)(a) (West 2008) (text of section eff. until June 1, 2009). Under the firearm-enhancement statute, if a defendant commits the offense while armed with a firearm, "15 years shall be added to the term of imprisonment imposed by the court." 730 ILCS 5/5-8-1(a)(1)(d)(i) (West 2008). Under the truth-in-sentencing statute, a person serving a term of imprisonment for first degree murder "shall receive no good conduct credit and shall serve the entire sentence imposed by the court[.]" 730 ILCS 5/3-6-3(a)(2)(i) (West 2008). Based on the confluence of these sentencing statutes, defendant, 17 years old at the time of the murder, argues he faced a mandatory minimum sentence of 35 years in prison, during which he would not be eligible for good-conduct credit. While the State points out defendant was not a juvenile at the time of the offense, defendant argues the United States Supreme Court's definition of "juvenile" includes defendants up to and including 17 years of age. *Miller v. Alabama*, 567 U.S. __, __, 132 S. Ct. 2455, 2460 (2012).

¶ 38 Defendant argues these sentencing statutes violate the eighth amendment to the United States Constitution because they prevent courts from taking into account a juvenile's "lessened culpability" and "greater 'capacity for change.'" *Miller*, 567 U.S. at __, 132 S. Ct. at 2460 (quoting *Graham v. Florida*, 560 U.S. __, __, 130 S. Ct. 2011, 2026, 2030 (2010)). The eighth amendment states that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const., amend. VIII. Within the last decade, the United States Supreme Court has considered a number of eighth-amendment cases involving sentences imposed on juvenile offenders.

¶ 39 In *Roper v. Simmons*, 543 U.S. 551, 568 (2005), the Supreme Court held the eighth amendment bars capital punishment for juvenile offenders. The Court stated that "[b]ecause the death penalty is the most severe punishment, the Eighth Amendment applies to it with special force." *Roper*, 543 U.S. at 568.

¶ 40 In *Graham*, 560 U.S. at ___, 130 S. Ct. at 2034, the Court held a sentence of life without parole violates the eighth amendment when imposed on juvenile nonhomicide offenders. In that case, the Court found the punishment of "life without parole is 'the second most severe penalty permitted by law.'" *Graham*, 560 U.S. at ___, 130 S. Ct. at 2027 (quoting *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991) (opinion of Kennedy, J.)). "Life without parole is an especially harsh punishment for a juvenile [because] *** a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender." *Graham*, 560 U.S. at ___, 130 S. Ct. at 2028. The Court stated that although "[t]he Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life[, i]t does forbid States from making the judgment at the outset that those offenders never will be fit to reenter society." *Graham*, 560 U.S. at ___, 130 S. Ct. at 2030.

¶ 41 In *Miller*, 567 U.S. at ___, 132 S. Ct. at 2460, two 14-year-old offenders were convicted of murder, and the trial courts had no discretion but to sentence them to life in prison without the possibility of parole. The defendants argued the mandatory life sentence without parole for juvenile offenders violated the eighth amendment.

¶ 42 The Supreme Court agreed. *Miller*, 567 U.S. at ___, 132 S. Ct. at 2460. The Court noted "children are constitutionally different from adults for purposes of sentencing." *Miller*,

567 U.S. at __, 132 S. Ct. at 2464. Also, the mandatory sentencing schemes prevented the sentencing courts from taking into consideration an offender's youth, which "prohibit[ed] a sentencing authority from assessing whether the law's harshest term of imprisonment proportionately punishes a juvenile offender." *Miller*, 567 U.S. at __, 132 S. Ct. at 2466. "Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences." *Miller*, 567 U.S. at __, 132 S. Ct. at 2468. Along with factors such as the family and home environment and the possibility of rehabilitation, the Court held the eighth amendment prohibits "a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Miller*, 567 U.S. at __, 132 S. Ct. at 2469. "By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment." *Miller*, 567 U.S. at __, 132 S. Ct. at 2469.

"*Graham, Roper*, and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing *the harshest possible penalty for juveniles*. By requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, the mandatory sentencing schemes before us violate this principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment." (Emphasis added.) *Miller*, 567 U.S. at __, 132 S. Ct. at 2475.

¶ 43 We find the Supreme Court's decisions unavailing in this case. Defendant was neither sentenced to death nor life imprisonment without the possibility of parole. He was subject to a minimum of 35 years in prison, which does not equate with "the harshest possible penalty for juveniles." *Miller*, 567 U.S. at __, 132 S. Ct. at 2475. Moreover, the trial court was not without discretion in sentencing defendant between the minimum of 35 years and the maximum of 75 years.

¶ 44 In the case *sub judice*, the trial court indicated it considered defendant's age and rehabilitative potential. The court noted "the defendant is a person of relatively young age but certainly of age to know the difference between right and wrong and a person of an age to have made appropriate choices, something that he definitely didn't do in this particular instance." As to defendant's rehabilitative potential, the court found he had a juvenile record and committed another offense during the time of the murder investigation. "Because of his youth and because there is a lengthy sentence to the Department of Corrections built into this particular offense," the court decided against imposing the maximum sentence. Instead, while noting society demanded defendant "pay a significant penalty," and considering the need to deter others, the court sentenced defendant to 40 years in prison.

¶ 45 In *Miller*, 567 U.S. at __, 132 S. Ct. at 2467-68, the Supreme Court found a mandatory life sentence without parole precluded consideration of an offender's age, background, and relative culpability and would likely result in a greater sentence than adults would serve. Here, however, the trial court considered defendant's age and criminal history in fashioning a sentence just five years above the minimum. The Supreme Court has not said a mandatory minimum 35-year sentence for a 17-year-old defendant convicted of first degree murder violates

the eighth amendment, and we find no violation here.

¶ 46

3. *The Illinois Constitution*

¶ 47

Defendant also argues the sentencing statutes violate the proportionate-penalties clause of the Illinois Constitution, which provides that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. Our supreme court has stated the "proportionate penalties clause is coextensive with the [federal] cruel and unusual punishment clause." *In re Rodney H.*, 223 Ill. 2d 510, 518, 861 N.E.2d 623, 628 (2006). "A sentence does not offend the requirement of proportionality if it is commensurate with the seriousness of the crime and gives adequate consideration to the rehabilitative potential." *People v. St. Pierre*, 146 Ill. 2d 494, 513, 588 N.E.2d 1159, 1168 (1992).

¶ 48

In support of his argument, defendant relies on *People v. Miller*, 202 Ill. 2d 328, 781 N.E.2d 300 (2002). In that case, a 15-year-old juvenile was found guilty of two counts of first degree murder based on accountability and was subject to a mandatory sentence of natural life imprisonment under the multiple-murder statute. *Miller*, 202 Ill. 2d at 330, 781 N.E.2d at 302. The supreme court held the penalty of natural life violated the proportionate-penalties clause as applied to the defendant, "a 15-year-old with one minute to contemplate his decision to participate in the incident [and who] stood as a lookout during the shooting, but never handled a gun." *Miller*, 202 Ill. 2d at 341, 781 N.E.2d at 308. The court held the statute in question "as applied to defendant, a juvenile offender convicted under a theory of accountability, violates the proportionate penalties clause" and affirmed the trial court's decision to impose a 50-year prison sentence. *Miller*, 202 Ill. 2d at 343, 781 N.E.2d at 310. However, the court refused to hold

"that a sentence of life imprisonment for a juvenile offender convicted under a theory of accountability is never appropriate. It is certainly possible to contemplate a situation where a juvenile offender actively participated in the planning of a crime resulting in the death of two or more individuals, such that a sentence of natural life imprisonment without the possibility of parole is appropriate." *Miller*, 202 Ill. 2d at 341, 781 N.E.2d at 309.

¶ 49 Here, defendant's proportionate-penalties argument must suffer the same fate as his eighth-amendment argument. The trial court in this case was not statutorily mandated to impose a natural life sentence on a defendant who was 17 years old at the time of the crime. Further, the court was not prevented from weighing the facts of the case or from considering evidence in aggravation and mitigation when fashioning the sentence. In fact, the court took into consideration defendant's age and rehabilitative potential. Defendant has not shown a 35-year minimum sentence, of which he would serve 100% of the time, for first degree murder would deprive all 17-year-old juveniles of meaningful opportunities at rehabilitation. Thus, the statutes at issue here do not violate the proportionate-penalties clause.

¶ 50 B. Assistance of Counsel

¶ 51 Defendant argues trial counsel was ineffective for failing to move to suppress the March 25, 2010, recording obtained pursuant to the trial court's order authorizing the use of an eavesdropping device where the application for the recording (1) was based on Quantrell Ayres's hearsay and the fact that deoxyribonucleic acid (DNA) belonging to Tyrone Franklin was found on clothing near the crime scene and (2) failed to disclose a prior attempt to secure a recording.

We disagree.

¶ 52 Claims of ineffective assistance of counsel are governed by the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Cathey*, 2012 IL 111746, ¶ 23, 965 N.E.2d 1109, 1115. "To prevail on a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defendant." *People v. Petrenko*, 237 Ill. 2d 490, 496, 931 N.E.2d 1198, 1203 (2010). A defendant must satisfy both prongs of the *Strickland* standard, and the failure to satisfy either prong precludes a finding of ineffective assistance of counsel. *People v. Clendenin*, 238 Ill. 2d 302, 317-18, 939 N.E.2d 310, 319 (2010).

"In order to establish prejudice resulting from failure to file a motion to suppress, a defendant must show a reasonable probability that: (1) the motion would have been granted, and (2) the outcome of the trial would have been different had the evidence been suppressed. [Citation.] The failure to file a motion to suppress does not establish incompetent representation when the motion would have been futile." *People v. Patterson*, 217 Ill. 2d 407, 438, 841 N.E.2d 889, 907 (2005).

¶ 53 When one party to a conversation yet to occur has consented to the use of an eavesdropping device, a judge may grant an application to use such a device. 725 ILCS 5/108A-3(a) (West 2008). Each application must include (1) the identity of the law-enforcement officer making the application and the State's Attorney authorizing it; (2) a statement of the facts and circumstances justifying the officer's belief that an eavesdrop order be issued, including (a)

details about the felony being investigated, (b) a description of the type of communication sought to be monitored, (c) the identity of the consenting party, and (d) the identity of the person to be overheard by the device; and (3) the period of time during which the device will be used. 725 ILCS 5/108A-3(a) (West 2008). Pertinent to this case, the application must also include

"a statement of the existence of all previous applications known to the individual making the application which have been made to any judge requesting permission to use an eavesdropping device involving the same persons in the present application, and the action taken by the judge on the previous applications[.]" 725 ILCS 5/108A-3(a)(4) (West 2008).

¶ 54 "The purposes of the eavesdropping statute are to ensure that all eavesdropping is subject to judicial supervision and to prevent unwarranted intrusions into a person's privacy." *People v. Stewart*, 343 Ill. App. 3d 963, 976, 799 N.E.2d 1011, 1021 (2003). Thus, the eavesdropping statute must be strictly construed. *People v. Cunningham*, 2012 IL App (3d) 100013, ¶ 22, 964 N.E.2d 683, 691. However, not all statutory violations of the eavesdropping statute require suppression. *Stewart*, 343 Ill. App. 3d at 976, 799 N.E.2d at 1021. "Suppression is only required where there is a failure to satisfy any of the statutory requirements that directly and substantially implement the legislative intent to limit the use of overhears." *Cunningham*, 2012 IL App (3d) 100013, ¶ 22, 964 N.E.2d at 691; see also *Stewart*, 343 Ill. App. 3d at 976, 799 N.E.2d at 1021 ("Where the purpose and reasoning behind requiring judicial authorization were satisfied and the State gained no tactical advantage, any technical defect in the State's compliance with the statutory requirements does not require suppression.").

"The test is whether (1) the particular safeguard is a central safeguard in the legislative scheme to prevent abuses; (2) the purpose the particular procedure was designed to accomplish has been satisfied in spite of the error; and (3) the statutory requirement was deliberately ignored and, if so, whether the government gained a tactical advantage." *Cunningham*, 2012 IL App (3d) 100013, ¶ 22, 964 N.E.2d at 691.

¶ 55 First, defendant argues Detective Shepard did not strictly comply with the requirement to disclose previous applications. See 725 ILCS 5/108A-3(a)(4) (West 2008). On March 9, 2010, Detective Shepard applied for an order in case No. 2010-MR-178 authorizing the use of an eavesdropping device to be worn by Qwantrell Ayres during conversations anticipated to take place with defendant and Laniel Bradley between March 12, 2010, and April 11, 2010. Judge Thomas Difanis issued the order the same day. No recording was made.

¶ 56 On March 25, 2010, Detective Shepard applied for an order in case No. 2010-MR-232 authorizing the use of an eavesdropping device to be worn by Ayres during conversations anticipated to take place with defendant and Bradley between March 25, 2010, and April 24, 2010. The application indicated Shepard knew "of no previous applications requesting permission to use an eavesdropping device involving the same persons as in this application." Judge Difanis issued the order the same day. The recording introduced into evidence was made pursuant to this order.

¶ 57 Defendant argues Detective Shepard's failure to state the existence of the previous application for use of an eavesdropping device was in violation of the statute and "the purpose of

judicial supervision over all mandatory elements of the application was thwarted." Although the March 25, 2010, application was deficient because the previous application was not listed, nothing indicates the statutory requirement was deliberately ignored or the State obtained a tactical advantage from the omission. The purpose of this type of requirement is to combat the problem of "judge-shopping" that has been noted with requests for search warrants. See *Zweibon v. Mitchell*, 516 F.2d 594, 668 fn.251 (D.C. Cir. 1975) (citing 18 U.S.C. § 2518(1)(e) (1970)). Here, Judge Difanis signed both orders. Moreover, the purpose the procedures were designed to accomplish, judicial supervision of the use of eavesdropping devices, was satisfied despite the error. While we do not condone the error, the failure to list the previous application would not have required suppression of the recording.

¶ 58 Second, defendant argues the State failed to establish reasonable cause that he committed an offense because there was no showing that Ayres's hearsay statements were reliable. A judge may authorize the use of the eavesdropping device upon finding (1) one party has consented to the use of the device; (2) reasonable cause exists to believe an individual has committed, is committing, or will commit a felony; and (3) reasonable cause exists to believe that particular conversations regarding the felony offense will be obtained by the use of the eavesdropping device. 725 ILCS 5/108A-4 (West 2008). " 'Reasonable cause' as used in the eavesdropping statute is synonymous with 'probable cause' and is established when the totality of the circumstances is sufficient to warrant the belief by a reasonable person that an offense has been, is being, or will be committed." *People v. Calgaro*, 348 Ill. App. 3d 297, 301, 809 N.E.2d 758, 761 (2004).

¶ 59 In this case, Detective Shepard applied for the eavesdropping order, stating he was

investigating the murder of James Ellis after two masked men displaying guns entered the residence and demanded drugs. His investigation indicated at least four individuals were involved. Two individuals went inside to commit the robbery, while two black males waited in the getaway car. Shepard indicated he had positively identified DNA evidence belonging to Franklin from the scene. He also stated he spoke with Ayres, who was familiar with Franklin, Brumfield, Bradley, and defendant. Ayres told Shepard he spoke with the four men about the murder and they told him the details of the murder and the roles they played. Shepard related Ayres's belief that he could engage defendant and Bradley in conversation about the details of the murder and their respective involvement.

¶ 60 "An application for an eavesdropping order based upon hearsay, as here, is permitted provided there is a basis for crediting the hearsay." *People v. Woods*, 122 Ill. App. 3d 176, 181, 460 N.E.2d 880, 885 (1984). Here, Shepard's investigation indicated four males were involved in the murder. Ayres gave the names of four men, including Franklin. Shepard indicated he identified DNA evidence belonging to Franklin from the scene. Thus, Shepard had evidence that credited Ayres's hearsay, notwithstanding that Ayres was in jail and may have had a motive to lie. See *Woods*, 122 Ill. App. 3d at 181, 460 N.E.2d at 885; see also *People v. White*, 209 Ill. App. 3d 844, 878, 567 N.E.2d 1368, 1389 (1991) (stating "the danger of fabrication is less in a probable cause setting than at the trial stage and that courts have been most willing to find a sufficient showing of veracity in the probable cause setting"). As reasonable cause existed, a motion to suppress the recording would have been futile. Accordingly, counsel's failure to move to suppress the recording did not prejudice defendant, and defendant cannot establish he received ineffective assistance of counsel.

¶ 61

III. CONCLUSION

¶ 62 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 63 Affirmed.