

No. 1-12-0049

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	No. 10 CR 12156
MICHAEL DICKERSON,)	
)	Honorable
Defendant-Appellant.)	Noreen Valeria-Love,
)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

Held: We affirmed defendant's conviction of solicitation of murder-for-hire where the trial court committed no abuse of discretion in admitting an enhanced audio recording in which defendant discussed the murder-for-hire and where his trial counsel committed no ineffective assistance.

¶ 1 Following a bench trial, defendant, Michael Dickerson, was convicted of solicitation of murder-for-hire (720 ILCS 5/8-1.2(a) (West 2010)) and sentenced to 20 years' imprisonment. On appeal, defendant contends: (1) the trial court erred by admitting into evidence an enhanced audio recording in which defendant allegedly discussed the murder-for-hire; and (2) his trial counsel was ineffective for failing to challenge the lack of foundation for admission of the

enhanced audio recording and for withdrawing a motion to suppress defendant's statement to Investigator Eduardo Hower. We affirm.

¶ 2 At trial, Brenda Dickerson testified she married defendant in August 2000 and they lived in Lansing, Illinois. Mrs. Dickerson has an adult daughter from a previous relationship. In the spring of 2010, Mrs. Dickerson worked as an executive administrative assistant at BMO Harris Bank. Each day she drove to a Metra train station located at 115th Street and Kensington Avenue and parked her car on the street at 114th Street and Calumet Avenue. Her sister frequently rode in the car with her. Mrs. Dickerson regularly caught the train around 8 a.m. and arrived back at the Kensington Avenue Metra train station after work between 6 and 6:30 p.m. Mrs. Dickerson drove a white Nissan Maxima with rust "[o]n one of the sides *** [t]owards the rear" until May 2010, when she purchased a 2005 blackberry-colored, four-door Lexus.

¶ 3 Mrs. Dickerson testified that in the spring of 2010, she suspected infidelity on defendant's part. They spoke about the condition of their marriage, and Mrs. Dickerson told defendant she would leave him if he could not be honest with her "regarding the infidelity." She brought a few boxes home in preparation for possibly moving out of their home.

¶ 4 Mrs. Dickerson testified that in the spring of 2010, she had a \$200,000 life insurance policy in her name. She designated her daughter and defendant as equal beneficiaries.

¶ 5 Felicia Taggart testified that in 2009 she entered into a sexual relationship with defendant. That relationship lasted for about a year and a half. In the spring of 2010, defendant told Ms. Taggart that he and Mrs. Dickerson were "going their separate ways."

¶ 6 Iran Thomas testified he is defendant's cousin. Mr. Thomas was convicted of possession of heroin with intent to deliver in the 1990's and was charged with a class 2 burglary in the spring of 2010. On April 21, 2010, defendant came to Mr. Thomas' house and asked if they

could speak in private. They went to the basement, where defendant stated he "needed for someone to go away and never come back." Mr. Thomas understood that to mean that defendant "wanted someone to be killed, that he wanted [Mr. Thomas] to kill someone." Defendant stated he would pay Mr. Thomas "\$100,000 or something." Defendant then left.

¶ 7 Mr. Thomas testified defendant returned later that evening with a sealed envelope. Mr. Thomas opened the envelope and saw a note inside. The note, which was admitted into evidence and is contained in the record on appeal, states: "Parks at 114th or 115th Calumet, King Dr., Indiana. Car-White Nissan Maxima 1996-Rust on the Right Rear Fender Well. Arrives 6:00 pm-6:15 pm." On April 26, 2010, defendant returned to Mr. Thomas' home and told him that the white Nissan Maxima had gotten into a wreck and been replaced with a new car. Mr. Thomas understood defendant to be saying that the person he was to make "go away" was now driving a new car. Defendant handed Mr. Thomas a second note with a description of the new car. The second note, which was admitted into evidence and is contained in the record on appeal, states: "new car-2005 Lexus E330 Color-Blackberry 4 Door." Mrs. Dickerson, defendant's wife, identified defendant's handwriting on both notes during her testimony.

¶ 8 Mr. Thomas testified he subsequently informed his attorney about the request defendant had made of him. Mr. Thomas' attorney contacted law enforcement. On May 27, 2010, Mr. Thomas and his attorney attended a meeting with members of the Cook County Sheriff's Office and the Cook County State's Attorney's Office. At the meeting, Mr. Thomas brought the first note defendant had given to him and he identified a photograph of defendant. Mr. Thomas signed a consent form in which he gave his authorization to be recorded during the course of a criminal investigation of defendant. The Cook County Sheriff's Office provided Mr. Thomas

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with a cell phone so as to be able to communicate with him further. In exchange for Mr. Thomas' cooperation, his class 2 burglary charge was subsequently dismissed.

¶ 9 Mr. Thomas testified that later on May 27, 2010, defendant came to his house and provided him with a license plate number. On June 3, 2010, defendant called Mr. Thomas and said he wanted to talk "about that business." Mr. Thomas understood defendant to mean that they were going to talk about "the person that [defendant] wanted to go away and never come back." Defendant suggested a time for the meeting on June 3, 2010, to which Mr. Thomas agreed. However, defendant did not show up for the meeting because he decided to watch a basketball game instead. Later on June 3, 2010, Mr. Thomas met with "some investigators" who provided him with a listening device and a small camera sewn into a White Sox jersey.

¶ 10 Mr. Thomas testified that on June 5, 2010, defendant drove to his house in a blue Mustang. Mr. Thomas entered defendant's car and turned on the video and audio device that had been provided to him. The device was in good operating condition at that time. Mr. Thomas told defendant that he and James, his companion, had driven by the car parked near the area of 114th Street and 115th Street and saw two females in the car. Defendant responded that "the driver is the target." Mr. Thomas understood that the "target" was "the person that [defendant] wanted to go away and never come back." Defendant told Mr. Thomas to "make it look like a robbery." Defendant typed the number 175,000 on his cell phone, indicating the amount of money he would pay Mr. Thomas to make the person go away. Defendant then dropped Mr. Thomas off at his home.

¶ 11 On cross-examination, Mr. Thomas testified that defendant never told him the name of the person he wanted to go away, nor did defendant indicate the sex or description of this person. Mr. Thomas explained that defendant never specifically said he should "kill" this person; rather,

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that was how Mr. Thomas interpreted the words when defendant said he "wanted somebody to go away and never come back." Mr. Thomas testified that when he subsequently used the video and audio device to record his conversation with defendant on June 5, 2010, he was operating the equipment on his own and nobody from the Cook County Sheriff or the Cook County State's Attorney's Office was listening in or monitoring him at that time.

¶ 12 Phillip Loizon testified he is deputy chief probation officer of the Cook County Adult Probation Department. Mr. Loizon testified that defendant was employed by the Cook County Adult Probation Department until the spring of 2010. Defendant was assigned to the gang unit and he monitored his clients that were placed on "gang probation." Mr. Loizon was one of defendant's supervisors.

¶ 13 Mr. Loizon testified that on June 7, 2010, he received a phone call telling him that defendant had been arrested. At about 1 or 2 a.m. on June 9, 2010, defendant called Mr. Loizon and asked him to talk to his (defendant's) wife and to "go to court or talk to the court or the judge" and to the police commander of the area in which defendant worked and tell them "this is not what it appears to be." Defendant told Mr. Loizon he had been conducting an investigation of his cousin, and that his arrest for solicitation of his wife's murder was "all a big mistake basically" and that his cousin and the police officers were framing him. Mr. Loizon testified he was unaware of any actual investigation regarding defendant's cousin and that, as defendant's supervisor, Mr. Loizon would have been made aware of such an investigation. Mr. Loizon subsequently talked with the police commander of the area in which defendant worked, who was also unaware of any such investigation. Mr. Loizon called the Cook County Sheriff's Office and informed them about the details of his conversation with defendant.

¶ 14 Investigator Eduardo Hower testified that in the spring of 2010, he was employed by the Cook County Sheriff's Office and assigned to the special investigations group with the Office of Professional Review. In May 2010, Investigator Hower and other members of the special investigations group were assigned to investigate defendant for solicitation of murder-for-hire. Iran Thomas was a "cooperating individual in the investigation of the defendant."

¶ 15 Investigator Hower testified that on June 3, 2010, he and his partners in the special investigations group met Mr. Thomas and provided him with a recording device with audio and video capability. The recording device was sewn into a Sox jersey and was in proper working order. On June 6, 2010, Investigator Hower learned from the Cook County State's Attorney's Office that on the previous day, June 5, 2010, a conversation between Mr. Thomas and defendant had been "captured" on the recording device. Later on June 6, 2010, Investigator Hower met with Mr. Thomas at a parking lot and recovered the recording device. The recording device was in substantially the same condition as when it had been given to Mr. Thomas and there were no signs the recording device had been tampered with. There was no way Mr. Thomas could have edited or changed the information that was recorded by that recording device.

¶ 16 Investigator Hower testified that after downloading and listening to the conversation between defendant and Mr. Thomas, he contacted the Cook County State's Attorney's Office. Defendant was arrested at his home early in the morning on June 7, 2010, and transported to the Office of Professional Review at 31st Street and California Avenue in Chicago. Investigator Hower read defendant his *Miranda* rights and defendant indicated he understood each of those rights. Defendant initialized a written form that advised him of his *Miranda* rights, and that stated he understood his rights and wished to talk. The waiver form, which was admitted into evidence and is contained in the record on appeal, is dated June 7, 2010, at 4:15 a.m. Defendant

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then spoke with Investigator Hower, who told defendant he was under investigation for solicitation of murder-for-hire. Investigator Hower further testified that defendant made a statement to him admitting that he had hired his "cousin Iran" to kill his wife because he was "tired of hearing her," and that Iran was to "make it look like a robbery." The murder was supposed to happen "sometime after she arrived to her vehicle after work."

¶ 17 Investigator Hower testified that defendant stated he would be willing to speak to an assistant State's Attorney (ASA). When the ASA arrived, defendant requested to speak to his attorney. Investigator Hower testified that defendant had not requested to speak to his attorney prior to the ASA's arrival. Defendant's statement to Investigator Hower confessing to the crime was never recorded or written down.

¶ 18 At trial, Investigator Hower identified People's exhibit number 9 as the disk containing the audio and video recorded conversation between Mr. Thomas and defendant. Investigator Hower testified that the recording was in substantially the same condition as when he downloaded it from the recording device. Investigator Hower testified that the first person heard on the recording is Mr. Thomas and that the second person heard on the recording is defendant. The parties stipulated that the State sent People's exhibit number 9 to the FBI's crime lab to enhance the audio and video. People's exhibit number 10 is the disk containing the enhanced audio recording of defendant's conversation with Mr. Thomas; People's exhibit number 10 contains no video. The parties stipulated to a proper chain of custody and then the State played People's exhibit number 10 in open court. We have listened to People's exhibit number 10, which is included in the record on appeal. People's exhibit number 10 contains audible sections where defendant can be heard speaking with Mr. Thomas; it also contains inaudible sections due to significant background and car engine noises. In pertinent part, Mr. Thomas can be heard

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telling defendant that he saw "two chicks" in the car and defendant can be heard telling Mr. Thomas, "the driver's the one." Defendant can also be heard telling Mr. Thomas "you gotta make it look like a robbery."

¶ 19 After People's exhibit number 10 was played in open court, defendant argued that it was inadmissible and he moved to exclude it from evidence. The trial court stated:

"I think because some areas are inaudible does not necessarily mean that the recording itself should not be received, that it's inadmissible. The beginning of the audio for the most part is the greetings of the two speakers. For the most, the part that's inaudible was on the part of the defendant. But again, it was again going to them coming together. Mr. Thomas getting into the vehicle. And at that point then there are areas where it is absolutely audible, and the conversation is about seeing the two women and [defendant] indicating the driver is the one. There were a few other areas in the course of the conversation where you could understand most of what [defendant] is saying. But there were a couple of things that were inaudible. So some of those sentences, I'm not going to guess at what they meant because they weren't complete, because they trailed off and became inaudible. But I don't know that this is such where the entire audio should be excluded. I think that there is sufficient audibility in that disk for this court to be able to receive it. And I believe that it is admissible, although there are some spots where it is inaudible."

¶ 20 Defendant asked the trial court to reconsider. The trial court stated:

"[A]gain, as I've indicated, *** the first parts there were audible, and for the most part again as I said it was on [defendant's] part. And that was an area where he and Mr. Thomas were first getting together in the car. And these were words that were exchanged

as to greetings. Then Mr. Thomas did relate some information concerning women in the car. And at that point, that's when [defendant] said the driver is the one. For the most part, the conversation after that was pretty much audible. There were one or two places where it appeared to-that it was not audible. However, there were sentences that again some trailed off, and I'm not going to make guesses about what was said. But there were sentences that in fact had clear meaning before they trailed off. The sentences such as, you got to make it look like a robbery, whatever it is. And then there was talk with respect to James and playing football and things of that nature. So I think that for the most part the disk is audible. There are a few spots where it is inaudible, but I don't think it's to the point where it would necessarily confuse the trier of fact, that being me. And it certainly is not going before a jury at this time. So I am going to find that it is not such that it would make it inadmissible."

¶ 21 After the State rested, defendant testified on his own behalf that he had been a Cook County probation officer for 20 years until his arrest in this case. At the time of trial, defendant had been married to Brenda Dickerson for 11 years. In April 2010, defendant and his wife accused each other of infidelity; defendant admitted at trial that he had engaged in an extra-marital sexual relationship with Ms. Taggart. Defendant decided to ask his cousin, Iran Thomas, who was a "guy that you didn't want to mess with," and who had been involved in some shootings, to spy on his wife in order to confirm she was "fooling around" on him. However, defendant never specifically told Mr. Thomas that the person he would be spying on was defendant's wife; instead, defendant led Mr. Thomas to believe he would be spying on one of defendant's friends. Mr. Thomas agreed to defendant's request and defendant provided Mr. Thomas with a paper describing his wife's vehicle, where she parked to take the train to work,

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and her usual arrival time. Defendant testified he did not want Mr. Thomas to kill his wife and he never told Mr. Thomas to kill his wife.

¶ 22 Defendant testified he was unaware Mr. Thomas was recording him on June 5, 2010. Defendant testified he does not remember telling Mr. Thomas "it's the driver" and he is not sure if he told Mr. Thomas to "make it look like a robbery." Defendant testified if the word "robbery" was used, it could have been in reference to a crime that had occurred in Mr. Thomas' high-crime neighborhood.

¶ 23 Defendant testified he was taken into custody on June 7, 2010, at 2:05 a.m. and given his *Miranda* warnings. Defendant signed a waiver form and agreed to speak to the investigators; however, defendant testified he never made the statement attributed to him by Investigator Hower in which he admitted hiring Mr. Thomas to kill his wife and to make it look like a robbery. Defendant further testified:

"Q. And during [the] two days that you were in custody, did you ever ask to have an attorney?

A. Yes.

Q. Were you ever allowed to speak to an attorney?

A. No.

Q. And how often did you ask for an attorney?

A. Several times.

Q. And who did you ask?

A. One of the investigators."

¶ 24 Defendant testified he was not allowed to make a phone call until 46 hours after his arrest. The first person he called was Mr. Loizon. Defendant told Mr. Loizon he had been

conducting an investigation of Mr. Thomas and that Mr. Thomas and the police had "set [him] up" to be arrested. Defendant also asked Mr. Loizon to contact his wife.

¶ 25 Following all the evidence, the trial court convicted defendant of solicitation of murder-for-hire, finding Mr. Thomas, Investigator Hower, and Mr. Loizon were credible witnesses, and that defendant was incredible and sentenced him to 20 years' imprisonment. Defendant appeals.

¶ 26 First, defendant contends the trial court erred by admitting the enhanced audio recording of the June 5, 2010, conversation between him and Mr. Thomas because the recording was substantially inaudible, rendering it untrustworthy and unreliable. "A partially inaudible sound recording is admissible unless the inaudible portions are so substantial as to render the recording untrustworthy as a whole. The admission of a recording that is partially inaudible, or that reproduces only part of a statement or conversation, is a matter within the trial court's discretion." *People v. Manning*, 182 Ill. 2d 193, 212 (1998). In the present case, the trial court listened to the enhanced audio recording of the conversation between defendant and Mr. Thomas and determined that, although portions of the recorded conversation were inaudible, there were other portions that were audible and had "clear meaning," such as when defendant was heard asking Mr. Thomas to make it "look like a robbery." The trial court stated that the inaudible portions of the recorded conversation were not such that it would "confuse" the court or render the entire recording inadmissible. Accordingly, the trial court stated it would admit the recording, while disregarding any portions thereof that were inaudible. We find no abuse of discretion, where we have also listened to the enhanced recorded conversation between defendant and Mr. Thomas and, like the trial court, find that the inaudible portions were not so substantial as to render the recording untrustworthy as a whole. See *Id.* (holding that the trial court did not err by admitting into evidence certain tape-recorded conversations containing

inaudible gaps, where the inaudible gaps were relevant only to the weight of the evidence and not its admissibility and were not so substantial as to render the recordings untrustworthy as a whole).

¶ 27 Defendant argues that *People v. Hunt*, 234 Ill. 2d 49 (2009), compels a different result. In *Hunt*, the State argued in pertinent part that the trial court erred in suppressing certain audio recordings as inaudible. *Id.* at 66. The supreme court affirmed the trial court's suppression order, stating:

"The record demonstrates the trial court listened to the recordings and found them to be 'indiscernible' and 'worthless.' Similarly, the appellate court listened to the recordings, found them to be substantially inaudible, and concluded the recorded conversations could not be understood. [Citation.] After listening to the recordings, we also find that they are substantially inaudible and affirm [the suppression of the recordings] as within the sound discretion of the trial court." *Id.*

¶ 28 Unlike in *Hunt*, the trial court in the present case listened to the enhanced audio recording of defendant's conversation with Mr. Thomas and found that while there were a "few spots where it is inaudible," there were also audible portions that had "clear meaning" rendering the recording admissible. As discussed, we have listened to the enhanced audio recording and agree with the trial court's assessment thereof. Accordingly, we affirm its admission into evidence.

¶ 29 Defendant contends the trial court erred when, in listening to the enhanced audio recording, it referred to a transcript of the recording prepared by the State. We disagree, as the trier of fact may properly use written transcripts of recorded conversations to assist it while listening to the conversations. *People v. Criss*, 307 Ill. App. 3d 888, 899 (1999). Defendant argues, though, that the trial court should not have considered the transcript because the State

"did not provide any information about who prepared the transcript, how it was prepared, how the transcriber knew who was speaking, or even how many times the transcriber had to listen to the recording to be able to prepare it." Defendant waived review by failing to raise this specific foundation objection in the trial court. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988).

¶ 30 Next, defendant contends the trial court erred in admitting the enhanced audio recording of his June 5, 2010, conversation with Mr. Thomas as the State failed to lay the necessary foundation to admit it into evidence. Defendant waived review by failing to raise such a foundation objection at trial. *Id.* Defendant argues his trial counsel was ineffective for failing to object to the admission of the enhanced audio recording on foundational grounds.

¶ 31 To determine whether defendant was denied his right to effective assistance of counsel, we apply the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Defendant must show first, that "counsel's representation fell below an objective standard of reasonableness" (*Strickland*, 466 U.S. at 688), and second, that he was prejudiced such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694.

¶ 32 Defense counsel did not deprive defendant of effective assistance by failing to object to the admission of the enhanced audio recording on foundational grounds, where the State laid a proper foundation for its admission into evidence. "A sufficient foundation is laid for a sound recording when a party to the conversation testifies to the accuracy of the recording and the defendant makes no claim of any changes or deletions in the recordings. [Citation.] Where, as here, no party to the conversation testifies to the accuracy of the recording, a sufficient foundation may be laid by evidence as to: (1) capability of the device for recording; (2) competency of the operator; (3) proper operation of the device; (4) preservation of the recording

with no changes, additions, or deletions; and (5) identification of the speakers." *People v. Smith*, 321 Ill. App. 3d 669, 675 (2001).

¶ 33 In the present case, the State laid a proper foundation for the admission of the enhanced audio recording through the testimony of Investigator Hower. Specifically, Investigator Hower testified that the recording device had audio capability, that it had been preserved with no changes, additions, or deletions¹, and he identified the speakers based on his prior interactions with them. Defendant argues, though, that Investigator Hower failed to testify as to Mr. Thomas' competency to operate the recording device or as to his proper operation of the device on the day of the recording. However, the fact that the recording exists at all is sufficient evidence that the recording device was operational and that Mr. Thomas knew how to operate it. See *People v. Taylor*, 2011 IL 110067, ¶ 39. Accordingly, as the State laid a proper foundation for the admission of the enhanced audio recording into evidence, defense counsel was not ineffective for failing to raise a foundational objection thereto.

¶ 34 Defendant also argues that his trial counsel committed plain error by failing to raise a foundational objection to the admission of the enhanced audio recording into evidence. As just discussed, there was no error ("plain," or otherwise) in failing to object to the admission of the recording on foundational grounds.

¶ 35 Further, even if the issue was not waived and there *was* error in the admission of the enhanced audio recording, such error was harmless where the evidence against defendant was overwhelming and he would have been convicted even in the recording's absence. Specifically, trial testimony established that defendant had been cheating on his wife, who had a \$200,000 life

¹ Defendant makes no argument on appeal that in attempting to enhance the recording, the FBI made any changes, additions, or deletions rendering the enhanced audio recording inaccurate and inadmissible into evidence.

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insurance policy of which defendant was a beneficiary. Defendant's cousin, Mr. Thomas, testified to how defendant solicited him to make someone "go away and never come back" in return for either \$100,000 or \$175,000, which he interpreted to mean that defendant wanted him to kill someone. Defendant gave Mr. Thomas a note describing his wife's vehicle, where she parked to take the train to work, and her usual arrival time. Defendant subsequently gave Mr. Thomas a second note describing his wife's new vehicle. Both notes were admitted into evidence and defendant testified to writing both notes; defendant's wife also confirmed that the handwriting in the notes belonged to defendant. Mr. Thomas further testified that defendant told him that the driver of the vehicle was the "target" and that he was to "make it look like a robbery." Investigator Hower testified that after defendant was arrested and given his *Miranda* warnings, he made a statement consistent with Mr. Thomas' testimony. Specifically, defendant stated he had hired Mr. Thomas to kill his wife because he was "tired of hearing her" and that Mr. Thomas was to make the murder look like it had occurred during a robbery. In his statement, defendant indicated the murder was to occur when his wife returned to her parked vehicle after work. Defendant and Mr. Loizon, the deputy chief probation officer, both testified that after defendant's arrest, defendant called Mr. Loizon and stated his arrest was a frame-up and that he had been involved in an investigation of his cousin. Mr. Loizon testified that as defendant's supervisor, he would have been made aware of defendant's investigation of his cousin; however, Mr. Loizon was unaware of any such investigation. Mr. Loizon subsequently spoke to the police commander of the area in which defendant worked, and he too "had no idea what [defendant] was talking about."

¶ 36 Given all this evidence against defendant, he would have been convicted of solicitation of murder-for-hire even if the enhanced audio recording had not been admitted into evidence.

Tellingly, in detailing the reasons for convicting defendant, the trial court focused on the testimony of Mr. Thomas, Mr. Loizon, and Investigator Hower, and made only a fleeting mention of the enhanced audio recording. Accordingly, any error in the admission of the enhanced audio recording was harmless.

¶ 37 Next, defendant contends his trial counsel denied him the effective assistance of counsel by withdrawing his motion to suppress his statement to Investigator Hower on the grounds that it was obtained in violation of his right to counsel. Defendant argues that his trial counsel withdrew the suppression motion because he mistakenly thought that since defendant claimed to have never made the statement to Investigator Hower, he could not also seek to suppress said statement. Defendant contends that his counsel was wrong in believing that he could not file a motion to suppress a statement which defendant claimed he had never made (see *People v. Norfleet*, 29 Ill. 2d 287, 289-91 (1961)), and that counsel's corresponding withdrawal of the suppression motion constituted ineffective assistance.

¶ 38 We find no ineffective assistance where defendant was not prejudiced by the withdrawal of the suppression motion. Defendant's argument on appeal is premised on his testimony at trial that during his two days in custody he made "several" requests of "[o]ne of the investigators" that he be allowed to speak to an attorney. Defendant argues that since the trial testimony is unclear as to whether this request for counsel came before or after he made the statement to Investigator Hower, we should reverse and remand for a suppression hearing so that the trial court can determine whether his statement was obtained pursuant to a valid waiver or whether it was obtained in violation of his right to counsel. We disagree. At trial, Investigator Hower testified that defendant was given his *Miranda* warnings, after which he spoke with Investigator Hower and made his statement, and that he did not ask to speak to an attorney until *after* the statement

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was made. Defendant testified that he never made the statement to Investigator Hower. In convicting defendant, the trial court expressly found that defendant made the statement to Investigator Hower, *i.e.*, the trial court made a credibility determination and found that Investigator Hower was credible and that defendant was incredible. We find no reason to believe that, at a hearing on the suppression motion, the trial court would make a completely opposite credibility determination and find that Investigator Hower was lying about the timing of defendant's request for counsel. In other words, defendant's motion to suppress would be denied. Thus, defendant has failed to show that he was prejudiced by his counsel's withdrawal of the suppression motion. See *People v. Henderson*, 2013 IL 114040, ¶ 15 (to establish prejudice for the failure to seek suppression of evidence, "the defendant must demonstrate that the unargued suppression motion is meritorious, and that a reasonable probability exists that the trial outcome would have been different had the evidence been suppressed"). Accordingly, defendant's claim of ineffective assistance fails.

¶ 39 For the foregoing reasons, we affirm the circuit court.

¶ 40 Affirmed.

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