

FIRST DIVISION  
May 14, 2012

No. 1-10-1248

**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  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 05 CR 3856
	)	
RONNIE JONES,	)	Honorable
	)	Mary Colleen Roberts,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

**ORDER**

¶ 1 **HELD:** Defendant's conviction for solicitation of murder for hire is affirmed, with the mittimus modified, where: (1) defendant's motion to suppress was properly denied, (2) defendant was not prejudiced by the challenged evidentiary rulings at trial, (3) the trial court did not abuse its discretion in denying defendant access to certain discovery materials following its *in camera* review, and (4) defendant was entitled to additional credit for time spent in presentence custody.

¶ 2 Following a jury trial, defendant, Ronnie Jones, was convicted of solicitation of murder for hire and sentenced to 33 years' imprisonment. On appeal, defendant asserts: (1) the trial court improperly denied his motion to suppress evidence obtained via a request to use eavesdropping equipment; (2) the trial court improperly disallowed certain trial testimony, incorrectly finding it to

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be hearsay; (3) this court should review certain sealed and impounded discovery materials to determine whether the trial court—following its own *in camera* review—erred in refusing to provide those materials to defendant; and (4) defendant is entitled to additional credit for time spent in presentence custody. While we grant defendant additional presentence custody credit, we otherwise affirm.

¶ 3

### I. BACKGROUND

¶ 4 On January 14, 2005, defendant was arrested for attempted murder and solicitation of murder. On February 3, 2005, a grand jury returned a four-count indictment against defendant. The indictment generally alleged that, between January 11 and January 14, 2005, defendant committed the offenses of solicitation of murder and solicitation of murder for hire when he sought to have Tamara Malone and/or undercover police Detective Cornelius Longstreet commit the offense of first degree murder by killing Marina Taylor.

¶ 5 At various times prior to trial, defendant proceeded *pro se*, or was represented by either private counsel or the public defender's office. While acting *pro se*—and even at times while represented by counsel—defendant filed a number of his own motions, pleadings, and subpoena requests. Of particular relevance here are a *pro se* subpoena request filed by defendant, as well as defendant's "Motion to Dismiss (Indictment) for Violation of Due Process," and a motion to quash arrest and suppress evidence.

¶ 6 Defendant's subpoena request specifically sought "any and all complaints and disciplinary documents, warnings, write-ups, [and] reprimands" filed against any of 14 named Chicago police officers. The State objected to this discovery request and, in response, defendant indicated that he

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was interested in these materials so as to determine if they contained information regarding the officers' prior involvement in falsifying reports, or providing false testimony that might support his other pretrial motions. The trial court found that the material was potentially discoverable, but ordered the State to produce material for the court's own *in camera* review. The trial court indicated defendant would only be entitled to information that was directly relevant to his interest in false reports or testimony. The State, thereafter, provided the court with the contents of a number of files maintained by the Chicago police department's office of professional standards (OPS files), which was responsive to defendant's subpoena request. Defendant was subsequently provided, over the State's objection, with the information contained in a single OPS file after the trial court found that the material in the other OPS files was not relevant and therefore not discoverable.

¶ 7 With respect to defendant's motion to dismiss and motion to suppress, the record reflects that they were each originally filed *pro se* and were subsequently amended and refiled as a combined motion to dismiss and suppress by counsel when the public defender subsequently stepped in to represent defendant. In this motion, defendant generally alleged that his arrest had followed a police investigation that included the use of eavesdropping devices. Defendant asserted that the judicial authorization for the use of eavesdropping devices had been improper, because it was based upon material misrepresentations included in a supporting affidavit filed by Detective William Fiedler. He further contended that some of these misrepresentations were repeated by Detective Fiedler in his testimony before the grand jury. On this basis, defendant asked that the indictment against him be dismissed, or that any evidence obtained from the eavesdropping devices be suppressed at trial.

¶ 8 A number of exhibits were attached to defendant's motion, including the affidavit completed

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by Detective Fiedler, and submitted in support of the request for judicial authorization allowing the use of eavesdropping equipment.<sup>1</sup> In that affidavit, Detective Fiedler averred that the statements therein were based upon his personal investigation, his conversations with Tamara Malone, and his review of prior investigative reports of a prior incident involving defendant.

¶ 9 Detective Fiedler further averred that through his investigation, he had learned defendant and Marina Taylor were former coworkers who had also been in a short-term dating relationship in early 2004. In late 2004, Ms. Taylor had made a police report indicating defendant had made a phone call to her and stated he was "going to blow her \*\*\*\* brains out." Ms. Taylor had obtained an order of protection against defendant.

¶ 10 Detective Fiedler also stated that on January 11, 2005, Ms. Malone had contacted the police with information regarding defendant. Detective Fiedler interviewed her the next day, and she indicated that she had become acquainted with defendant in late 2004. On January 11, 2005, defendant came to her place of employment, a public storage facility, and asked her if she would kill his ex-girlfriend, Ms. Taylor, or knew of someone else who would kill her. Defendant was willing to pay \$200, wanted Ms. Taylor killed because she had caused defendant to lose his job, and discussed various ways the murder could be carried out.

¶ 11 Ms. Malone indicated that she would further cooperate with the police investigation into this matter. Defendant contacted her several times over the next two days about the murder of Ms. Taylor. After she told defendant her cousin might be interested, defendant brought her a picture of

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<sup>1</sup> The State's request for judicial authorization, and this affidavit, were filed pursuant to Article 108A of the Code of Criminal Procedure of 1963 (Code). 725 ILCS 5/108A-1, *et seq.* (West 2004).

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Ms. Talyor, stating: "that's the bitch there and her car is on the back." On January 13, 2005, Detective Fielder had Ms. Malone call defendant while he was listening in on the conversation. Ms. Malone told defendant that she had found someone to handle defendant's request, and defendant agreed to meet her the following day at the public storage facility.

¶ 12 Finally, Detective Fielder's affidavit indicated that Ms. Malone had consented to the use of an eavesdropping device, and further indicated that Detective Fielder planned on "having Tamara Malone introduce the undercover police officer, Detective Cornelius Longstreet, as the person she found for Ronnie Jones regarding the murder and solicitation of murder for hire of Marina Taylor. I, Detective William G. Fiedler, request permission to conduct a consensual overhear between Tamara Malone, Detective Cornelius Longstreet, and Ronnie Jones relative to Ronnie Jones soliciting Tamara Malone and Detective Longstreet to kill Ronnie Jones' ex-girlfriend, Marina Taylor."

¶ 13 Also attached to defendant's motion was the issuing judge's order authorizing the use of eavesdropping devices. The judge, after reviewing Detective Fiedler's application, found there was "reasonable cause for believing that the felony of Solicitation of Murder for Hire, is being, has been, and/or will be committed by Ronnie Jones and certain unknown co-conspirators" and, therefore, "any and all conversations between Tamara Malone and Detective Longstreet, consenting parties, and Ronnie Jones, and other unknown co-conspirators may be overheard (overseen) and/or recorded, through the use of an eavesdropping device (audio and/or video)" by Detective Fiedler and other named employees of the Chicago police department and the Cook County State's Attorney's office.

¶ 14 Defendant's motion also contained ¶ 14 copies of the initial information report in this case and

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Detective Fiedler's grand jury testimony. The information report indicated that it was actually a woman named Hattie Askew that originally contacted the police on January 11, 2005. Ms. Askew contacted the police after she had spoken with Ms. Malone at the public storage facility, where both Ms. Askew and defendant rented a storage unit. Ms. Malone had told Ms. Askew about defendant's interest in having Ms. Taylor killed and, as it happened, Ms. Askew used to work with defendant and Ms. Taylor and was aware of their troubled relationship history. Ms. Askew contacted Ms. Taylor, and Ms. Taylor informed her of defendant's recent threatening phone call. The information report indicated that Ms. Malone was then interviewed by the police, and she confirmed that she had spoken with Ms. Askew earlier in the day and that what Ms. Askew had reported was true.

¶ 15 In his grand jury testimony, Detective Fiedler testified consistently with his affidavit, including testimony regarding listening in on the January 13, 2005, phone call where defendant agreed to meet Ms. Malone and her "cousin" the following day. He also testified that pursuant to the judicial authorization, defendant's subsequent meeting with Detective Longstreet was recorded and, in that recording, defendant paid \$200 of an agreed-upon price of \$400 for the murder of Ms. Taylor. Defendant was arrested shortly thereafter, while on his way to show Detective Longstreet where Ms. Taylor lived.

¶ 16 Finally, defendant included an affidavit in support of his motion to dismiss and suppress. In that affidavit, defendant stated he never participated in the January 13, 2005, phone call described in Detective Fiedler's affidavit and that he "never had any conversations with Tamara Malone regarding the purchase of a gun to kill Marina Taylor."

¶ 17 In response to defendant's motion, the State contended that any error, with respect to who

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initially contacted the police, was irrelevant and immaterial, as the content of the information contained in Detective Fiedler's affidavit came from Ms. Malone and had been verified. The State also noted defendant's contentions regarding the January 13, 2005, phone call were completely self-serving and were discredited by Detective Fiedler's affidavit and the fact defendant arrived at the meeting the next day, just as was discussed in the phone conversation.

¶ 18 The trial court denied defendant's motion in its entirety. With respect to the motion to suppress, the trial court found: "[w]ith regard to the affidavit, I think there's more than sufficient probable cause. I think the State is correct on that." The matter then proceeded to a jury trial in February of 2010.

¶ 19 At trial, the State presented testimony from, among others, Ms. Taylor, Ms. Malone, Ms. Askew, Detective Fiedler, and Detective Longstreet. In general, their testimony corresponded to the information presented in the pretrial proceeding described above, detailing defendant's history with Ms. Taylor, how he approached Ms. Malone about having Ms. Taylor murdered, and how the police investigation resulted in the employment of audio and video eavesdropping equipment at a planned January 14, 2005, meeting between defendant and Detective Longstreet, who was introduced to defendant as Ms. Malone's cousin.

¶ 20 The State also presented a videotape of defendant's meeting with Detective Longstreet. In that video, defendant repeatedly indicated that he wanted Ms. Taylor killed, providing Detective Longstreet with detailed information about where she lived and how the murder might be accomplished. He also agreed to pay \$400 for the "hit," and actually paid \$200 as a down payment on that amount. At the end of the video, Detective Longstreet agreed to follow defendant as he drove

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to another location and drop off defendant's vehicle. They would both then proceed together to Ms. Talyor's home so Detective Longstreet would know exactly where she lived. While defendant's actual arrest was not shown in the videotape, the State's other evidence established defendant was arrested by other police officers shortly after the two drove away from the public storage facility.

¶ 21 In defendant's case in chief, defendant testified that he never had any intention of having Ms. Taylor murdered. He testified it was actually Ms. Malone who initially suggested this course of action after defendant explained to her his relationship history with Ms. Taylor and his belief that he lost his job because of his problems with Ms. Taylor. Ms. Malone continued to pester him about the idea. At first defendant flatly rejected Ms. Malone's offers, but after she kept asking him about the idea, he became annoyed that she continued to suggest it, and insulted that she thought he believed someone could be hired to commit murder for only a few hundred dollars.

¶ 22 Defendant ultimately agreed to meet with Ms. Malone's cousin about arranging the murder of Ms. Taylor, but not because he wanted the murder to take place. Defendant believed he would either be meeting a killer, or someone working with Ms. Malone as part of a plan to scheme him out of money. Defendant testified that his original plan was to alert the police of this meeting before it took place, but he was ultimately unable to do so in part because, on the morning of the meeting, he had to take his mother to the doctor and to the grocery store. Defendant then changed his mind and decided he would attempt to lure Ms. Malone's "cousin" to a police station. Indeed, the location where he was to drop off the vehicle he was driving after the meeting with Detective Longstreet, was across the street from a police station. Defendant asserted at trial that he was simply acting in the video that was presented to the jury.

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¶ 23 Finally, defendant denied he ever received a phone call from Ms. Malone on January 13, 2005, indicating that the meeting for the following day was planned in a prior face-to-face conversation. Additionally, while defendant was permitted to testify generally about his interactions with Ms. Malone, on several occasions the trial court sustained State objections to his testimony about her specific statements on the grounds that such testimony was hearsay. In rebuttal, Detective Fiedler testified defendant never told him about a "hit man," or any kind of scheme when defendant was interviewed shortly after his arrest. Defendant did tell Detective Fiedler that he had no idea where Ms. Taylor lived.

¶ 24 The jury acquitted defendant of the two counts involving his alleged solicitation of Ms. Malone, but found him guilty of solicitation of murder and solicitation of murder for hire for seeking to have Detective Longstreet murder Ms. Taylor. Defendant's motion for a new trial was denied, and he was sentenced on the solicitation of murder for hire count to 33 years' imprisonment. Defendant's motion to reconsider his sentence was denied, and he now appeals.

¶ 25 **II. ANALYSIS**

¶ 26 As noted above, defendant raises a total of four issues on appeal. We address each argument in turn.

¶ 27 **A. Motion to Suppress**

¶ 28 We first consider defendant's assertion that the audio and video evidence obtained at the time of his meeting with Officer Longstreet should have been suppressed on the grounds that the original petition for judicial authorization for the use of an eavesdropping device should not have been

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granted due to deficiencies in Detective Fiedler's affidavit.<sup>2</sup>

¶ 29

#### 1. Standard of Review

¶ 30 The ruling of a trial court on a motion to suppress evidence frequently presents mixed questions of fact and law. While we review *de novo* the ultimate legal ruling as to whether suppression of evidence is warranted, we accord great deference to the trial court's factual findings and will reverse such findings only if they are manifestly erroneous. *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001). In ruling on a motion to suppress, it is the trial court's role to determine the credibility of witnesses and the weight to be given their testimony. *People v. Sutton*, 260 Ill. App. 3d 949, 956 (1994).

¶ 31

#### 2. Legal Framework

¶ 32 Under Illinois law, a person commits the criminal offense of eavesdropping when he "knowingly and intentionally uses an eavesdropping device for the purpose of hearing or recording all or any part of any conversation or intercepts, retains, or transcribes electronic communication unless he does so (A) with the consent of all of the parties to such conversation or electronic communication or (B) in accordance with Article 108A or Article 108B of the 'Code of Criminal Procedure of 1963', approved August 14, 1963, as amended." 720 ILCS 5/14-2(a) (West 2004).

Thus, when only one—but not all—of the parties to a conversation have not consented, prior judicial approval for any lawful eavesdropping must be obtained pursuant to Article 108A or Article 108B

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<sup>2</sup> In the trial court, defendant initially sought to have both the indictment dismissed and evidence suppressed on this basis as well as on other grounds. However, because defendant limits his arguments on appeal to the propriety of the trial court's denial of his motion to suppress on this basis, we similarly limit our discussion to those contentions.

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of the Code. As such, section 108A-3 of the Code provides:

"(a) Where any one party to a conversation to occur in the future has consented to the use of an eavesdropping device to overhear or record the conversation, a judge may grant approval to an application to use an eavesdropping device pursuant to the provisions of this section.

Each application for an order authorizing or subsequently approving the use of an eavesdropping device shall be made in writing upon oath or affirmation to a circuit judge, or an associate judge assigned for such purpose pursuant to Section 108A-1 of this Code, and shall state the applicant's authority to make such application. Each application shall include the following:

- (1) the identity of the investigative or law enforcement officer making the application and the State's Attorney authorizing the application;
- (2) a statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued including: (a) details as to the felony that has been, is being, or is about to be committed; (b) a description of the type of communication sought to be monitored; (c) the identity of the party to the expected conversation consenting to the use of an eavesdropping device; (d) the identity of the person, if known, whose conversations are to be overheard by the eavesdropping device;
- (3) a statement of the period of time for which the use of the device is to be maintained or, if the nature of the investigation is such that the authorization for use

of the device should not terminate automatically when the described type of communication is overheard or recorded, a description of facts establishing reasonable cause to believe that additional conversations of the same type will occur thereafter;

(4) 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;

(5) when the application is for an extension of an order, a statement setting forth the results so far obtained from the use of the eavesdropping device or an explanation of the failure to obtain such results.

(b) The judge may request the applicant to furnish additional testimony, witnesses, or evidence in support of the application." 725 ILCS 5/108A-3 (West 2004).

¶ 33 When presented with such an application, "[t]he judge may authorize or approve the use of the eavesdropping device where it is found that: (a) one party to the conversation has or will have consented to the use of the device; (b) there is reasonable cause for believing that an individual is committing, has committed, or is about to commit a felony under Illinois law; (c) there is reasonable cause for believing that particular conversations concerning that felony offense will be obtained through such use; and (d) for any extension authorized, that further use of a device is warranted on similar grounds." 725 ILCS 5/108A-4 (West 2004).

¶ 34 The proper application of these statutory provisions was synthesized in *People v. Calgaro*, 348 Ill. App. 3d 297 (2004), where the court stated:

"The restrictions on the use of an eavesdropping device in such situations are purely statutory; the fourth amendment to the United States Constitution (U.S. Const., amend. IV) is not implicated. [Citation.] However, because Illinois citizens are entitled to be safeguarded from unnecessary governmental surveillance and other unreasonable intrusions into their privacy, the statutory restraints on eavesdropping must be strictly construed with respect to all requests and consents for the authority to use an eavesdropping device. [Citations.]

'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. [Citation.] An application to use an eavesdropping device should be viewed in a commonsense manner and the issuing judge's conclusions that reasonable cause exists should be given great deference when reviewed by subsequent judges. [Citation.] Nevertheless, an application must establish reasonable cause to believe that the eavesdropping will obtain particular conversations about the described felony. [Citation.] Although this requirement is found in section 108A-4, governing judicial authorizations, rather than in section 108A-3, it is properly considered a requirement to be included in an application. [Citation.]" *Id.* at 301.

¶ 35

3. Discussion

¶ 36 On appeal, defendant contends the portion of his motion to dismiss and suppress seeking to suppress the eavesdropping evidence was improperly denied because: (1) the affidavit was improperly based on the incredible hearsay statements of Ms. Malone; (2) there was no reason to believe that the predicate phone call was ever made, or that it was actually made to defendant; and (3) the affidavit in support of the petition for the use of an eavesdropping device contained material inaccuracies.

¶ 37 As an initial matter, only the last two arguments noted above were actually presented in the trial court below. "It is axiomatic that arguments may not be raised for the first time on appeal." *People v. Estrada*, 394 Ill. App. 3d 611, 626 (2009). As our supreme court has long recognized, a defendant's failure to raise a particular issue in his motion to suppress or to object on those grounds at trial generally results in a waiver of that issue on appeal through procedural default. *People v. Coleman*, 129 Ill. 2d 321, 340 (1989). Indeed, the very statutory provisions at issue here provide: "[a]ny aggrieved person in any judicial or administrative proceeding may move to suppress the contents of any recorded conversation or evidence derived therefrom." 725 ILCS 5/108A-9(a) (West 2008). However, any such motion to suppress "shall be made before the proceeding unless there was no previous opportunity for such motion" (725 ILCS 5/108A-9(b) (West 2008)), and a defendant may waive any contentions not so presented prior to trial (*People v. O'Dell*, 84 Ill. App. 3d 359, 364-65 (1980)). Waiver aside, we find all of defendant's contentions on this issue are unfounded.

¶ 38 We initially reject defendant's assertion that the application for authorization to use an eavesdropping device improperly relied—either primarily or entirely—upon the hearsay statements of

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Ms. Malone. In his briefs before this court, defendant variously complains that Detective Fiedler's affidavit in support of the application was "largely based upon the hearsay statements of Tamara Malone," "the vast majority of the assertions in Fiedler's affidavit were culled from the hearsay statements of Tamara Malone," the affidavit "was based upon unadulterated hearsay" and, finally, "Fiedler's affidavit depended entirely on Malone's hearsay statements."

¶ 39 First, there is nothing inherently improper with the use of Ms. Malone's hearsay statements in Detective Fiedler's affidavit, as "[h]earsay statements in an application for the use of an eavesdropping device are not prohibited by statute in Illinois and can support a reasonable cause determination if a substantial basis exists for crediting the hearsay." *People v. Hammer*, 128 Ill. App. 3d 735, 739 (1984). Moreover, and contrary to defendant's assertions, the affidavit here was based upon much more than just Ms. Malone's hearsay statements and did in fact include a "substantial basis" for crediting those statements. Detective Fielder specifically averred that the affidavit was based upon his conversations with Ms. Malone, his personal involvement with the investigation of this case, and his review of investigative reports from defendant's prior interaction with law enforcement. Specifically, Detective Fielder indicated that Ms. Taylor had previously made a formal police report stating defendant had made a phone call in which he threatened to "blow her \*\*\*\* brains out" and, she had also obtained an order of protection against defendant.

¶ 40 Defendant's prior history with Ms. Taylor obviously corroborated Ms. Malone's contentions defendant was now interested in having Ms. Taylor killed, and Detective Fielder's knowledge of these facts directly resulted from his own investigation and was independent of Ms. Malone's hearsay statements. Detective Fielder's affidavit also discussed, in detail, his personal involvement with the

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January 13, 2005, phone call Ms. Malone made to defendant in which the proposed meeting with Detective Longstreet was arranged.

¶ 41 Moreover, the testimony at trial also corroborated the information in Detective Fiedler's affidavit. See *People v. Stewart*, 104 Ill. 2d 463, 480 (1984) ("[I]n reviewing the denial of a motion to suppress, a reviewing court is free to look to trial testimony as well as the evidence presented at the hearing on the motion to suppress."). Both Ms. Malone and Detective Fielder testified at trial that defendant had provided Ms. Malone with a photo of Ms. Taylor and, Ms. Malone had shown that photo to Detective Fiedler at a time before his affidavit was filed with the court. This picture was entered into evidence at trial and appeared in the video of defendant's conversation with Detective Longstreet. We also note that Detective Fielder's affidavit also indicated defendant discussed various ways the murder of Ms. Taylor could be effectuated. At trial, Ms. Malone testified defendant had indicated that the murder might be aided by the fact that he had placed a piece of duct tape over the peep hole of Ms. Taylor's front door. The State presented evidence at trial that duct tape was, in fact, recovered from Ms. Taylor's front door as part of the police investigation.

¶ 42 As such, this case is completely distinguishable from the authority cited by defendant in support of this argument. See *People v. Wassell*, 119 Ill. App. 3d 15, 20 (1983) (finding order authorizing eavesdropping was improperly granted where the application in support of that order was based upon nothing more than the "unadulterated hearsay" of a confidential informant).

¶ 43 We also reject defendant's contention that there was no reason to believe the January 13, 2005, predicate phone call ever occurred, or that this call was actually made to defendant. Defendant first supports these contentions by noting that the State did not present any testimony in support of

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the eavesdropping application, either initially or at the motion to suppress. However, there is no requirement that the application be supported by any testimony, and the statute merely provides that the issuing judge may, in its discretion, "request the applicant to furnish additional testimony, witnesses, or evidence in support of the application." 725 ILCS 5/108A-3(b) (West 2004). Furthermore, defendant also relies upon the counter-affidavit he filed in support of his motion to suppress which challenged Detective Fiedler's initial affidavit by denying that the January 13, 2005, phone call took place. However, this argument essentially asks this court to overturn both the issuing judge's credibility determination and the credibility determination of the judge ruling on defendant's combined motion to dismiss and suppress. As we have noted above, credibility determinations are questions generally within the province of the trial court, and the conclusions of the issuing judge are entitled to great deference upon review. *Sutton*, 260 Ill. App. 3d at 949, 956; *Calgaro*, 348 Ill. App. 3d at 301. Defendant has offered no compelling reason why his affidavit should have been deemed more credible than Detective Fiedler's and, we see no reason to disturb the findings made in the trial court on this issue.

¶ 44 Defendant also appears to assert that the State's application for the use of an eavesdropping device was deficient because it insufficiently identified the person that actually received the January 13, 2005, predicate phone call, and therefore insufficiently identified the nonconsenting party that would, subsequently, be recorded pursuant to any judicial authorization. As has been recognized, however, the eavesdropping statute "does not require that the nonconsenting party be suspected of committing the felony or even that the nonconsenting party be specifically identified. The statute requires only the 'identity of the person, if known,' whose conversations are to be monitored."

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*Calgaro*, 348 Ill. App. 3d at 301 (quoting 725 ILCS 5/108A-3(a)(2) (West 2002)). As such, even if we were to accept defendant's contention that there was some possible ambiguity in Detective Fiedler's affidavit as to the identity of the person actually called on January 13, 2005, his affidavit established that *someone* speaking to Ms. Malone was interested in having Ms. Taylor killed and, any uncertainty as to the identity of the person speaking with Ms. Malone, "did not invalidate the eavesdropping order so as to require suppression of the resulting evidence." *Id.* at 301-02.

¶ 45 Lastly, we also reject defendant's contention that his motion to suppress should have been granted because Detective Fiedler's affidavit contained an "obvious inaccuracy" in that it misidentified the person who initially contacted police about defendant's solicitation of Ms. Taylor's murder as Ms. Malone instead of Ms. Askew. Defendant is certainly correct that the affidavit does contain this inaccuracy. However, despite defendant's arguments to the contrary, there is nothing in the record to indicate that this inaccuracy resulted from anything other than a clerical error. Moreover, we see nothing in the record to indicate that this error had any impact on the initial decision to grant the eavesdropping request, as there was no particular significance attached to the identity of the person who originally contacted the police in this matter.

¶ 46 As discussed above, the issuing judge will grant an eavesdropping order where 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." *Id.* at 301. Furthermore, "[a]n application for an eavesdropping order need not prove beyond a reasonable doubt that a crime has been committed or even establish a *prima facie* case; only a probability of criminal activity need be shown." *People v. Rivas*, 302 Ill. App. 3d 421, 437 (1998). Here, we concur with the trial court's ultimate legal

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conclusions that the totality of the circumstances overwhelmingly supported the eavesdropping request—despite any of defendant's challenges—and that suppression of the eavesdropping evidence was not warranted. *Sorenson*, 196 Ill. 2d at 431. As such, we affirm the denial of defendant's motion to suppress.

¶ 47

#### B. Hearsay Ruling

¶ 48 Defendant next contends he was prejudiced because the trial court improperly found some of his testimony regarding Ms. Malone's statements to be inadmissible hearsay. The admission of evidence lies within the sound discretion of the trial court; we will not reverse its evidentiary rulings absent a clear abuse of its discretion, resulting in manifest prejudice to the accused. *People v. Weatherspoon*, 394 Ill. App. 3d 839, 850 (2009).

¶ 49 In order to constitute hearsay, a statement "must be offered to establish the truth of the matter asserted in the statement. [Citation.] 'The primary rationale for the exclusion of hearsay testimony is the inability of the opposition to test the testimony's reliability through cross-examination of the out-of-court declarant.' [Citation.] Where the out-of-court statement is offered to prove its effect on the listener's mind or to show why the listener subsequently acted as he did, the statement does not constitute hearsay and is admissible. [Citation.]". *People v. Anderson*, 407 Ill. App. 3d 662, 673-74 (2011). Defendant cites to two cases, finding the trial court improperly found statements made to a defendant inadmissible hearsay under circumstances similar to those presented here. *People v. Quick*, 236 Ill. App. 3d 446, 453 (1992); *People v. Perez*, 209 Ill. App. 3d 457, 466 (1991).

¶ 50 However, even if defendant is correct that the trial court erred in excluding some of his testimony regarding Ms. Malone's statements, those errors do not amount to reversible error. A

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defendant is entitled to a fair trial, not a perfect trial. *People v. Easley*, 192 Ill. 2d 307, 344 (2000); Ill. S. Ct. R. 615(a) (eff. Aug. 27, 1999) (providing that any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded on appeal). Errors at trial are considered harmless where it appears beyond a reasonable doubt the error did not contribute to the verdict obtained. *People v. Garcia-Cordova*, 392 Ill. App. 3d 468, 484 (2009). More specifically, this court has recognized that the improper exclusion of hearsay evidence providing an explanation or context for a defendant's actions is not reversible error where: (1) the jury is otherwise provided with evidence sufficient to make them aware of a defendant's explanation for his actions; and/or (2) the evidence of guilt is otherwise overwhelming. *People v. Anderson*, 407 Ill. App. 3d 662, 674-75 (2011); *Weatherspoon*, 394 Ill. App. 3d at 851-52.

¶ 51 Here, some of defendant's testimony regarding Ms. Malone's specific statements was excluded as hearsay. However, even assuming this evidentiary ruling was in error, defendant was also permitted to testify—without objection—that Ms. Malone had consistently offered to have Ms. Taylor killed and that he acted the way he did because he was annoyed and insulted by her repeated efforts. Defense counsel then relied upon this testimony in closing arguments. As such, "the evidence and arguments were sufficient to acquaint the jury with an explanation of [defendant's actions] that was compatible with his innocence." *Id.* at 852. Moreover, we find the evidence of defendant's guilt was overwhelming in light of all the other evidence presented at trial, including the clear and consistent evidence of defendant's troubled history with Ms. Taylor (including his prior threatening phone call and the entry of an order of protection), his interactions with Ms. Malone, the January 13, 2005, phone call, and the video of his meeting with Detective Longstreet. We, therefore,

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reject defendant's arguments on this issue, as "the exclusion of the testimony did not prejudice the defendant, and given the overwhelming evidence against the defendant, the outcome of the trial would not have been different had the omitted testimony been allowed." *Anderson*, 407 Ill. App. 3d at 675.

¶ 52

C. *In Camera* Review

¶ 53 Next, we consider whether the trial court's refusal to provide defendant with all of the OPS records—following its own *in camera* review—was an abuse of discretion. We find the trial court's determination was correct.

¶ 54 Here the record reflects defendant subpoenaed any disciplinary complaints or reports involving 14 police officers named in the police reports regarding his arrest. Before the trial court, defendant explained he wanted to review these materials to determine if they contained information regarding the officers' prior falsification of reports or provision of false testimony. After conducting an *in camera* review of the materials that were provided in response to defendant's subpoena, the trial court provided defendant with only the information contained in the single OPS file it found relevant to defendant's subpoena. The other OPS files were sealed and impounded with the circuit clerk, so as to be available for purposes of any future appeal.

¶ 55 "The trial court has broad discretion in ruling on issues of relevance and materiality and its determination will not be disturbed absent an abuse of discretion." *People v. Williams*, 267 Ill. App. 3d 82, 87 (1994). "A claim that the trial court erred in limiting discovery will be reviewed for an abuse of discretion." *People v. Sutherland*, 223 Ill. 2d 187, 280 (2006). Moreover, the very practice employed here—where the trial court reviews potentially sensitive material *in camera* and, thereafter,

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allows disclosure of only the relevant portion of that material—is appropriate for addressing a situation where one party contends that the information is sensitive and not discoverable. *People v. Bean*, 137 Ill. 2d 65, 101-03 (1990); *People v. Csaszar*, 375 Ill. App.3d 929, 941-42 (2007); see also Ill. S. Ct. R. 415(f) (eff. Oct. 1, 1971) (providing: "[u]pon request of any person, the court may permit any showing of cause for denial or regulation of disclosures, or portion of such showing, to be made *in camera*").

¶ 56 We have reviewed the record on appeal, as well as the OPS materials impounded by the trial court. We find nothing improper with the procedures the trial court followed to determine which OPS files were relevant and discoverable, nor do we find the trial court abused its discretion in refusing to allow defendant access to all but one of the OPS files. After conducting our own review of the materials impounded by the trial court, we find the trial court did not abuse its discretion in finding these additional OPS files were not relevant to defendant's discovery request.

¶ 57 D. Presentence Custody Credit

¶ 58 Finally, we address defendant's request that he be granted a total of 1,914 days of credit for the time he spent in presentence custody.

¶ 59 A defendant is entitled to credit against his sentence for time spent in custody prior to sentencing. 730 ILCS 5/5-8-7(b) (West 2006) (repealed by Pub. Act. 95-1052, § 95, eff. July 1, 2009, with substantive provisions recodified at 730 ILCS 5/5-4.5-100(b) (West 2010)). In this case, defendant was granted a total of 1,809 days of such presentence credit. However, the record reflects defendant was actually in presentence custody for 1,914 days; *i.e.*, from the date of his arrest on January 14, 2005, up to but not including the date the mittimus was issued on April 12, 2010. See

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*People v. Williams*, 239 Ill. 2d 503, 509 (2011) (a defendant is not entitled to presentence credit for the day the mittimus is issued).

¶ 60 The State concedes this issue on appeal, and we concur. Therefore, pursuant to Supreme Court Rule 615(b)(1) (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999)), we modify the mittimus in this case to grant defendant a total of 1914 days of presentence credit.

¶ 61 **III. CONCLUSION**

¶ 62 For the foregoing reasons, the judgment of the circuit court is affirmed as modified.

¶ 63 Affirmed as modified.