NO. 5-10-0140

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Union County.
	)	
v.	)	No. 07-CF-136
	)	
BRIAN RODGERS,	)	Honorable
	)	Kimberly L. Dahlen,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

R U L E 2 3 O R D E R

Held: The trial court did not err in denying the defendant's pretrial motions to vacate and suppress, the defendant's request that the jury be instructed on the defense of entrapment, or the defendant's motion for a directed verdict.

The defendant, Brian Rodgers, appeals from his conviction for solicitation of murder for hire. For the reasons that follow, we affirm.

BACKGROUND

In August 2007, a Union County grand jury indicted the defendant on one count of solicitation of murder for hire (720 ILCS 5/8-1.2(a) (West 2006)). The bill of indictment specifically alleged, "[The defendant,] with the intent that the offense of first[-]degree murder be committed, procured[,] through Deborah Pylest[,] a third party to commit the offense [of first-degree murder] pursuant to an agreement whereby [the] third party would kill Troy Schlenker and the defendant would pay [the] third party [money]." In October 2009, the cause proceeded to a jury trial where the following evidence was adduced.

In July 2001, Levi Schlenker, who farmed in Union County "all his life," died of

leukemia and was survived by two children, Troy Schlenker and the defendant's mother, Imogene Rodgers. Prior to his death, Levi placed a will in a safe deposit box at his bank and gave Troy a key to the box. After Levi passed, Troy retrieved the will and filed it in the circuit court of Union County. Dated January 2001, the will purportedly left the entirety of Levi's estate to Troy. At the defendant's trial, Troy testified that even though he had farmed with his father since childhood, he was surprised that Levi had left him everything. Troy indicated that Levi's farmland alone was worth approximately $500,000.

Troy testified that while Levi was alive, Levi had financially taken care of both Imogene and the defendant, helping them "over and above" what was reasonable. Troy indicated that Levi had purchased several automobiles and a home for Imogene and the defendant and had also paid for the defendant's college education. Troy indicated that Imogene and the defendant were both "lazy," however, and "[t]hey trashed everything" Levi gave them. Troy stated that the defendant and Imogene had always been close, were practically "identical," and did not "do anything without one another."

Troy testified that he and Imogene had never gotten along and that she and the defendant both blamed him for Levi's death. Troy suspected that Imogene and the defendant had taken items from Levi's house while he and the rest of the family were "at the funeral home for [Levi's] visitation." Troy indicated that in July 2004, after Imogene and the defendant had attempted to steal a tractor and a baler from his farm, the defendant had attacked him and they fought. A Union County sheriff's deputy subsequently investigated the incident, and criminal charges were ultimately filed against the defendant and Imogene.

In June 2007, in the circuit court of Union County, the defendant filed a will that was purportedly executed by Levi in April 2001. The April 2001 will conflicted with the January 2001 will that left the entirety of Levi's estate to Troy. In July 2007, a Union County jury convicted the defendant and Imogene on the charges related to the July 2004 incident at

Troy's farm.

On August 1, 2007, the attorney who prepared Levi's January 2001 will contacted private investigator Gary Darnell on Troy's behalf. At the defendant's trial, Darnell indicated that Troy wanted help "defending *** against a fraudulent will that had been filed against his inheritance." Darnell further indicated that the will in question was the will that the defendant had filed in June 2007. On August 2, 2007, Darnell interviewed Deborah Pylest, who was listed as a witness to the will that the defendant filed. After speaking with Deborah, Darnell believed that Troy's "life was in danger," so he advised the Union County sheriff's department that he "had reason to believe that there was a conspiracy to commit a homicide in Union County." From there, the sheriff's department took over the investigation.

Deborah testified that she was born and raised near Chicago and had moved to Union County with her husband in 1993. She further testified that she had met the defendant while working at a restaurant in Anna. Deborah indicated that in the summer of 2007, the defendant, who was unhappy about the settling of Levi's estate, had asked her if she knew someone who could kill Troy for him. Deborah told the defendant that she could possibly find someone, and she testified that "everyone suspected" that she could because she was from Chicago. Deborah testified that she had agreed to possibly find someone for the defendant because she "knew [he] was capable of doing this," and she wanted the situation "taken care of without having an innocent individual hurt."

Deborah testified that after speaking with Darnell, she spoke with Captain Scott Harvel of the Union County sheriff's department. After meeting with Harvel, Deborah agreed to wear a hidden camera and engage the defendant in further conversations about his desire to hire a "hit man" to kill Troy. After meeting with Deborah, Harvel obtained authorization for an overhear, and Deborah wore a hidden camera while meeting with the defendant and Imogene on August 3, 2007, and the defendant alone on August 9, 2007. Both

meetings were monitored by a surveillance team, and Harvel generally instructed Deborah to "find out what [the defendant's] intentions were." Aware that the defendant owned a pistol and "was trying to hire somebody to kill Troy," Harvel also "encouraged her to try to get that gun from [him]." When later testifying before the grand jury, Harvel indicated that he had decided to move quickly with regard to the overhear, because the defendant had apparently been attempting to find a hit man through a friend named "Joe" in Cairo, and Harvel "was afraid that [the defendant] was going to get to somebody else and actually get [the hit] done."

On the night of Friday, August 3, 2007, while wearing a hidden camera, Deborah met with the defendant and Imogene outside their home in Anna. At the outset, Imogene complained about her and the defendant's recent jury trial, and Imogene pondered whether her telephone was "bugged." When Deborah referenced the defendant's search for a hit man, the defendant and Imogene both expressed interest in finding one. In response, Deborah stated that she had contacted a man she knew from Chicago who could do the job. When she asked the defendant and Imogene whether they had "talked to anybody else about going out and doing this," the defendant replied, "Just Joey," and Imogene indicated the same. Deborah then explained that the hit man she had contacted was willing to come to Union County and told them, "[I]t just basically boils down to what you want him to do." Imogene questioned whether having Troy killed was a good idea in light of the recent jury trial, because "it might look like retaliation," and she did not want to end up in jail. Deborah assured Imogene that if the hit man killed Troy, neither she nor the defendant would be implicated in the murder. When Imogene and the defendant discussed having Troy beaten "within an inch of his life" or having his death look like a tractor accident, Deborah advised that those were not realistic options. Deborah further advised that the hit man did "nothing but permanent jobs." Deborah told the defendant and Imogene that if they wanted Troy killed, she could have the man come down and take care of it, but she needed to know if that was what they wanted her

to do. When the defendant alluded to the "seriousness" of the matter, Deborah suggested that the defendant give her his pistol for safekeeping. Deborah explained that if Troy ended up shot to death, it would be better if the police did not find a firearm in the defendant's home. When Imogene noted that the trial on Levi's contested will was set for December, the defendant asked Deborah if the hit could take place closer to the time of the trial. The defendant stated that if Troy was not "there to testify," then Troy's "side" would be out of luck. When Deborah pointedly asked the defendant if he wanted Troy dead, the defendant said, "If it can be arranged, arrange it." Reminding him that the hit man was "serious," Deborah indicated that the defendant's response was not definitive enough to put the plan into motion. Addressing the defendant and Imogene, Deborah stated that she needed to hear it out of their mouths, so she could tell the hit man she heard it. At that point, Imogene asked Deborah if she had "a tape or anything like that." When Deborah profanely berated the insinuation that she was recording their conversation, Imogene commented, "[I]t just seems ironic that we're standing here talking like that." Imogene then indicated that she did not want Troy to suffer "anything permanent" but rather wanted him "just maimed good." Opining that dying and having "him go to hell" would be "too easy for him," Imogene stated that she wanted Troy to be "a vegetable the rest of his life, because he deserve[d] it." When the defendant indicated that he wanted the man to kill Troy, Imogene reiterated that she just wanted Troy severely maimed. When Deborah pressed the defendant for an unequivocal statement that he wanted Troy dead, the defendant stated, "Yeah," and, "I want him gone." He then asked Deborah if his response was "satisfactory," and she indicated that it would have to do. The defendant then stated, "You know I want him dead." When the defendant asked her, Deborah acknowledged that she would find somebody to kill Troy if she were in the defendant's position. Thereafter, Imogene went inside the house.

Outside of Imogene's presence, the defendant and Deborah continued their discussions

regarding the hit man, and Deborah admonished the defendant to not discuss anything over the phone. When the defendant asked when it would be too late to call off the hit should he have a change of heart about it, Deborah indicated that the defendant might have 24 hours. Deborah reminded the defendant that this was "serious business," however, and he agreed that they did not want to "waste [the hit man's] time coming down here." Deborah told the defendant that Imogene was "just hem-hawing around," and Deborah and the defendant agreed that Imogene did not understand and was "not all with it." The defendant then stated that he would "love to see" Troy "found hung in the barn" with a typewritten suicide note. The defendant explained that although he wanted Troy killed, he was not sure if he wanted it done that soon, so he wanted some time to think about it. Deborah told him that that was okay but that she needed a definite answer from him within a couple of days. When the defendant asked her how much the hit was going to cost, she told him that the hit man usually received about $5,000. When the defendant indicated that he was experiencing cash flow problems, Deborah told him to come up with a $250 down payment, and she would see if a payment plan could be arranged. The defendant noted that he still owed Deborah money for helping him with the will that he filed in June 2007.

Imogene subsequently returned, claiming that she had been unable to locate the defendant's gun. Noting that the gun was legally owned and could not implicate the defendant in Troy's murder unless it were used to shoot Troy, Imogene also questioned why Deborah needed the weapon. Assuring Imogene that any murder weapon would be "coming out of Chicago," Deborah nevertheless insisted that it would be better if the defendant had no guns in the house. When Imogene expressed concern that the defendant might be arrested, he and Deborah assured her that he would not be. Potential alibis for the defendant were also discussed, and Imogene restated her fears that she and the defendant would be suspected of Troy's murder, given that he had just testified against them. Before Deborah

left, the defendant told her that he would let her know, and he asked her when "the point of no return" would be. After further discussions, it was agreed that the defendant would consider the matter over the weekend. Imogene suggested that the defendant wait until deer hunting season because "[t]hen it would look like a hunting accident." Deborah indicated that waiting would be a bad idea, and Deborah and the defendant both assured Imogene that with Troy "eliminated," the dispute over Levi's estate would be resolved. The defendant and Deborah agreed that further details could be discussed later.

A day or two after the August 3 meeting, the defendant left Deborah a phone message while he was intoxicated. On the recording, the defendant advised Deborah that she was going to have to help him" because she was his "only hope." He also stated that he would keep up his end of the bargain and would talk to her more later. After listening to the message, Deborah contacted the sheriff's department, and she was instructed to set up another meeting with the defendant. She subsequently arranged to meet the defendant at a parking lot near his home on the morning of August 9, 2007, and she told him to bring money and a handwritten note for the hit man.

On August 9, 2007, at approximately 11 a.m., Deborah, again wearing a hidden camera, called the defendant and advised him that she was on her way to the parking lot. He subsequently met her there, and while exchanging pleasantries, he apologized for having left the aforementioned message on her phone. Admitting that he was drunk when he left it, he noted that he had still been careful of what he said. Deborah then asked the defendant if he had brought the handwritten note and money that she had asked him to bring. In response, the defendant told her that he brought $100 like he had promised, and he produced a handwritten note folded in an envelope. The note read, "Dear Sir," followed by Troy's name and address, followed by, "later date, please." Deborah later testified that although the defendant wanted the hit done at a later date, she had advised him that once the hit man

received the note "it could happen any day." After reading the note, Deborah indicated that the hit man wanted her to witness the defendant sign the note and write on it what he wanted done to Troy. Commenting that the hit man had been "pretty patient" up to that point, Deborah told the defendant that the hit man wanted the additional writing to ensure that the defendant was serious. She then retrieved a pen from her purse and gave it to the defendant. Stating that he did not want to write anything indiscreet, the defendant added the following phrases to the note: "Please Ice Later," "Chill out Later," and "Bump OFF." When the defendant stated that he would rather not write down his first name, Deborah told him to just initial the note, and the defendant signed it with a "B." The defendant then handed Deborah five $20 bills, which she placed in the envelope along with the note. Deborah told the defendant that the hit man was waiting for her in Marion and that she was going to deliver the envelope to him immediately. She also told the defendant that once the man read the letter, he would burn it up. When the defendant asked Deborah if she would "watch and verify it," she agreed that she would "stand right there and watch him burn it up." After the meeting's conclusion, Deborah gave Harvel the envelope containing the note and the money, and the defendant was arrested later that day.

When cross-examined at the trial, Deborah acknowledged that she had participated in the preparation of the will that the defendant had filed in June 2007. She further acknowledged that the will was fraudulent. She denied, however, that she had agreed to assist Harvel merely because she feared that she might get into trouble over the will. She maintained that it was just a coincidence that she had not gone to see Harvel until after Darnell had interviewed her. Regarding her August 3 meeting with the defendant and Imogene, Deborah admitted that it had taken the defendant "a long time" to indicate that he wanted to hire a hit man. Acknowledging that she did not truly know a hit man, she further admitted that she had to persuade the defendant to say what he had said. Deborah testified

that she could not recall ever having asked the defendant to loan her money. Deborah further testified that she did not believe that the defendant had ever thought that their conversations about hiring a hit man were just part of an ongoing joke between the two of them.

The defendant testified that following his arrest, Harvel interviewed him and advised him that he was being charged with trying to hire someone to kill his uncle Troy. At the outset and throughout the interview, the defendant indicated that as he understood it, his plan to hire a hit man through Deborah was just a big joke. The defendant claimed that he really did not understand what she was telling him. The defendant stated that he had known Deborah for years and that he sometimes talked to her about his problems with Troy. The defendant attempted to explain away much of what he had said during his recorded meetings with Deborah, and he indicated that much of what he had said was not truthful or "was all taken out of context." Suggesting that the defendant was lying, Harvel accused him of "talking in circles."

Regarding the handwritten note he had given Deborah, the defendant told Harvel that he had given her the note, because she had told him to do it. With the exception of adding the letter "B" and the phrase "Bump OFF," however, the defendant claimed that he had not written the note. He claimed that he had paid someone "off the street" $20 to write the note for him and that the note was just a part of the joke. When Harvel indicated that he did not believe that the matter was just an "elaborate joke," the defendant responded that he understood it to be a joke: "That's the way I interpreted it in my mind." The defendant stated that he thought that Deborah had also "interpreted it in her mind" as being a joke and that he thought that she was just joking all along. During the course of the interview, the defendant thrice advised Harvel that Imogene did not know much about this and that, like him, she thought it was all a joke, too. The defendant indicated that he had given Deborah the $100 because she had asked him to loan her some money.

When Harvel referenced Levi's estate and the conflicting wills, the defendant claimed that, on his deathbed, Levi had told him that hidden in a barn at the farm there was a will that he wanted the defendant to find. The defendant explained that several years later he found the will and filed it in June 2007. Indicating that he "got everything" according to the will that he found, the defendant stated that the will "basically" said "the opposite" of the one that Troy had turned in. Claiming that Troy had caused him to suffer "quite a bit of brain damage" by hitting him on top of his head with a fence post, the defendant further stated that he was afraid of Troy.

At the conclusion of the interview, the defendant continued to maintain that the recorded conversations he had with Deborah were part of a "big laugh" and that Deborah "was playing a joke[,] too." Stating that he could not "accept" or "believe" that it was a joke, Harvel opined that the defendant's story was nonsensical. In response, the defendant suggested that Harvel was not being objective. At the trial, Harvel described the defendant as being "bright" and "intelligent," but Harvel believed that during the interview, the defendant had attempted to portray himself as "gullible."

The defendant's cousin, Karen Tripp-Manzella, testified that following Levi's death, the defendant and Imogene had often spoken angrily about having been omitted from the will. Karen testified that the defendant had frequently spoken about a second will that he believed was hidden in a barn on Levi's property. Karen stated that on numerous occasions from January to March 2007, the defendant and Imogene had stopped by her home to tell her that they were going to the barn to look for the second will. The defendant once stated that if Troy ever caught him out in the barn, he would beat Troy to death with a large pole. Karen testified that the defendant had often spoken about wanting Troy dead. Karen recalled that in February 2007 the defendant had stated that he would kill Troy himself "but he would be the first one they would come looking for."

Karen acknowledged that she had a prior theft conviction. When cross-examined, Karen further acknowledged that in 2007 she had voluntarily spent a few days in an inpatient mental health center and had been treated with psychotropic medications. Karen indicated that sometime after March 2007 she had a falling out with the defendant and Imogene. Karen further indicated that the defendant and Imogene had started "getting dangerous" after she had told them that she "didn't want anything to do with this." Karen testified that their constant visits and incessant search for the second will had put her "on edge."

The defendant testified that he lived with his mother, Imogene, in Anna, and that he met Deborah at a restaurant where he used to work. The defendant stated that he had never approached Deborah about possibly hiring a hit man but that they would "talk about Chicago and the mobsters and all that." He indicated that he thought that organized crime was interesting and that his interest in it was "kind of an inside joke" between him and Deborah. The defendant testified that he had often loaned Deborah money and various items of value.

Regarding his recorded meetings with Deborah, the defendant claimed that he never intended to hire a hit man to kill Troy. The defendant further testified that on two occasions after his August 3, 2007, meeting with Deborah, when she "began pestering [him] to write her a note," he had told her, "[I]f this is really real, *** I don't want to do it." The defendant explained that even though he "thought it was a joke," he wanted to make sure Deborah understood that if the hit were a real possibility, he wanted it called off. Regarding the $100 that he gave Deborah, he testified that she had called him the night before their August 9, 2007, meeting and asked if he could loan her some money, so he did. The defendant testified that he had also given Deborah the handwritten note because she had asked him for it. At the August 9, 2007, meeting, he added things to the note, because she had told him to. When asked about the phone message that he left Deborah after their August 3, 2007, meeting, the defendant stated that he was drunk when he left it and that he could have been asking her to

help him with "a number of things." The defendant testified, "[Deborah was] pretty pushy and controlling, and half the time she was drunk or in the process of getting drunk." The defendant stated that he felt sorry for her. The defendant denied having ever told Karen that he would kill Troy if Troy ever caught him out in Levi's barn.

When cross-examined, the defendant stated that although he had a college degree and was "fairly educated," he did what other people told him to do most of the time. The defendant testified that he did not know why he had paid someone to write the note that he gave to Deborah, given that he could have written it himself, stating that the whole thing was just a joke anyway. When asked about the will that he filed in June 2007, the defendant testified that he had found the will after searching for it for more than five years. The defendant indicated that the will was covered in dust and hidden "up on a rail" in a barn on Levi's property. The defendant further indicated that the rail was so high that he had to use a ladder to get to it. The defendant acknowledged that when he was interviewed following his arrest, he had not told Harvel that he had twice told Deborah that he did not really want a hit man. When asked why he had not told Harvel about those conversations, the defendant stated, "He didn't ask." When asked why he felt the need to tell Deborah that "this was all a big joke," the defendant explained that while "most of the time[,] she was laughing about this," he wanted to make sure that she knew it was a joke. The defendant testified, "I just naturally assumed it was a joke." The defendant reiterated that he was just joking about hiring a hit man when he discussed the matter with Deborah and he stated that he thought that she was joking, too.

On October 22, 2009, the jury returned a verdict finding the defendant guilty of solicitation of murder for hire. He subsequently received the minimum sentence of 20 years' imprisonment for the crime (see 720 ILCS 5/8-1.2(b) (West 2006)), and the present appeal followed.

ANALYSIS

The arguments that the defendant raises on appeal can be consolidated into four issues: (1) whether the trial court erred in denying the defendant's motion to vacate the order that authorized the State's overhears of his August 3 and 9, 2007, meetings with Deborah, (2) whether the trial court erred in denying the defendant's motion to suppress the recordings of the overhears, (3) whether the trial court erred in denying the defendant's request that the jury be instructed on the defense of entrapment, and (4) whether the trial court erred in denying the defendant's motion for a directed verdict. We will address each in turn.

Authorization Order

On August 3, 2007, from Judge Mark Boie, Harvel sought and obtained authorization to use the eavesdropping device that Deborah wore during the meetings that she surreptitiously recorded on the night of August 3 and the morning of August 9, 2007 (see 725 ILCS 5/108A-1 *et seq*. (West 2006)). On August 22, 2007, Harvel turned the recordings of the meetings over to Judge Boie, and Judge Boie entered an order providing for the recordings' custody and retention. On August 22, 2007, Harvel's authorization petition and other documents related to his overhear request were also filed. On October 12, 2007, referencing Harvel's authorization petition, Judge Boie noted, by docket entry, that while he had authorized, on August 3, 2007, Harvel's use of the device, he had failed to sign the actual authorization order. Judge Boie then signed and entered the authorization order *nunc pro tunc*.

In December 2007, the defendant filed a motion to vacate Judge Boie's *nunc pro tunc* authorization order. Arguing that the order was invalid, the defendant maintained that Judge Boie had abused his authority by entering it. Following a hearing, the trial court denied the defendant's motion to vacate. Finding that Judge Boie had "acted to correct a clerical error," the court held, "[T]he record, when considered in its entirety, clearly and convincingly

supports Judge Boie's contention that he granted the order authorizing the eavesdrop recordings but merely failed to sign and enter the order into the record."

On appeal, the defendant argues that the trial court erred in denying his motion to vacate Judge Boie's *nunc pro tunc* authorization order. Contending that the order was improperly used to supply an omitted judicial action (see, *e.g.*, *Phil Dressler & Associates, Inc. v. Old Oak Brook Investment Corp.*, 192 Ill. App. 3d 577, 581 (1989)), the defendant suggests that Judge Boie's October 12, 2007, docket entry aside, nothing in the record supports the trial court's conclusion that on August 3, 2007, Judge Boie had, in fact, granted the order authorizing Harvel's use of an eavesdropping device.

" '*Nunc pro tunc*' literally means 'now for then,' " and a "*nunc pro tunc* order is an entry now for something previously done, made to make the record speak now for what was actually done then." *In re Marriage of Hirsch*, 135 Ill. App. 3d 945, 955 (1985). "[A] *nunc pro tunc* order is based on the inherent power of the court to correct its own records." *Id.* "[T]he use of *nunc pro tunc* orders or judgments is limited to incorporating into the record something which was actually previously done by the court but inadvertently omitted by clerical error. It may not be used for supplying omitted judicial action, or correcting judicial errors under the pretense of correcting clerical errors." *People v. Melchor*, 226 Ill. 2d 24, 32-33 (2007). Additionally, "[a]ny *nunc pro tunc* correction must be based on definite and certain evidence of record and not merely the recollection of the judge or a party." *In re Aaron R.*, 387 Ill. App. 3d 1130, 1140 (2009). "We review *de novo* whether an order was properly a *nunc pro tunc* order." *Neumann v. Neumann*, 334 Ill. App. 3d 305, 310 (2002).

Here, we wholly agree with the trial court's assessment: "[T]he record, when considered in its entirety, clearly and convincingly supports Judge Boie's contention that he granted the order authorizing the eavesdrop recordings but merely failed to sign and enter the order into the record." First of all, independent recollections aside, the record unequivocally

indicates that Harvel's authorization petition was prepared and presented to Judge Boie on August 3, 2007. As the trial court observed, Judge Boie not only signed the authorization petition as a witness to Harvel's signature, but Judge Boie dated his signature August 3, 2007. The record further indicates that the authorization order that Judge Boie later signed and entered *nunc pro tunc* was also prepared on August 3, 2007, and was done so by the same hand that prepared the authorization petition and the other related documents that were filed on August 22, 2007. We also note that, substantively, the authorization petition's contents are identical to those of the authorization order, and on the recordings of the August 3 and 9, 2007, meetings, Harvel stated at the outset that the meetings were being recorded pursuant to an "authorized overhear." The record also contains a supplemental report dated August 3, 2007, in which Harvel memorialized that he had obtained an "authorized overhear issued by Judge Mark Boie." Lastly, the preservation order that Judge Boie entered on August 22, 2007, noted that the recordings Harvel returned were "within the order authorizing the use of eavesdropping devices previously issued."

Under the circumstances, the defendant's suggestion that there is no independent basis from which to conclude that on August 3, 2007, Judge Boie actually authorized Harvel's use of an overhear device is belied by the record, and the trial court rightfully denied the defendant's motion to vacate the authorization order that Judge Boie signed and entered *nunc pro tunc*.

Motion to Suppress

The defendant moved to suppress the overhear recordings of his August 3 and 9, 2007, meetings with Deborah on numerous grounds. At a hearing on the defendant's motion, Harvel testified that although he had not personally dealt with Deborah prior to meeting her on August 2, 2007, he was aware that another deputy in his department had previously used her for "information purposes" and that the information that she had previously provided had

"panned out." Harvel acknowledged, however, that he could not recall whether he had advised Judge Boie that this was the case before receiving authorization to conduct the August 3 and 9, 2007, overhears. Harvel further acknowledged that the fact that Deborah had provided reliable information in the past was not noted in the written report that he attached to his authorization petition.

When denying the defendant's motion to suppress, the trial court rejected the defendant's argument that because Harvel was aware that Deborah was "the subject of a will fraud investigation," his authorization request should have included information demonstrating that she was a reliable source of information. Noting that it had previously denied the defendant's motion to vacate Judge Boie's *nunc pro tunc* authorization order, the trial court also rejected the defendant's suggestion that the suppression of the recordings was warranted because the authorization order was invalid. On appeal, reasserting these arguments, the defendant contends that the trial court erred in denying his motion to suppress the recordings of his meetings with Deborah. Having already determined that Judge Boie's authorization order was a valid order, we need only address the defendant's claim that his motion to suppress should have been granted because the information presented for Judge Boie's consideration "consisted solely of uncorroborated hearsay from an informant whose prior reliability had not been established."

Here, Judge Boie authorized the use of the eavesdropping device based on the following information, as relayed by Harvel. On the evening of August 2, 2007, Harvel was at home when a fellow deputy called him and advised that, while being questioned about the falsification of the will that the defendant had filed in June 2007, Deborah had told Darnell that the defendant and Imogene had offered her money to find someone to kill Troy. Shortly thereafter, Harvel briefly met with Deborah at the sheriff's office. Harvel asked her if she would be willing to provide a videotaped interview regarding what she knew, and she agreed.

Harvel then went to Troy's house to warn him of the defendant's and Imogene's intentions. Harvel testified, "Troy indicated he felt [that the defendant] and Imogene were capable of following through with their intent to have him killed, but at this time[,] he felt like he could protect himself if he needed to[]." Harvel then returned to the sheriff's office and interviewed Deborah.

During her videotaped interview, Deborah told Harvel that the defendant, who believed that he was going to inherit Levi's estate, was upset with his uncle, Troy, because Troy had received the inheritance instead. Deborah indicated that the defendant and Imogene had therefore paid her money to sign portions of a fictitious will that purportedly left Levi's estate to the defendant. Acknowledging that she should not have participated in the falsification of the will, Deborah believed that the defendant had finally gone too far by trying to solicit someone to kill Troy.

Deborah indicated that in early July 2007, the defendant and Imogene had "asked her to find someone to either hurt Troy so bad that he could never talk again or kill him." The defendant believed that Deborah had criminal connections and could find someone from out of town to do the job. Deborah told Harvel that the defendant had also spoken with a man named Joe, from Cairo, about killing Troy.

Deborah indicated that on August 2, 2007, before she spoke with Darnell, the defendant had called her. Deborah described what the defendant had told her: "[H]e was getting desperate because the court hearing regarding [Levi's estate] had been moved up to December 2007." Deborah further indicated that shortly before Harvel had returned from Troy's to formally interview her, the defendant had left her a message on her phone that accused Troy of "paying off the jury" to convict him and Imogene on the charges related to the July 2004 incident at Troy's farm. Also on the message, the defendant stated that he wanted to meet with Deborah on August 3, 2007, to further discuss the job he wanted done,

which Deborah took to mean "finding someone to kill Troy." Deborah advised Harvel that she felt that the defendant was "serious about having Troy killed." As previously noted, Harvel presented this information to Judge Boie on August 3, 2007, when petitioning the court for authorization to conduct the subsequent overhears. Harvel later testified that when he appeared before Judge Boie, he had been sworn in, and they had discussed the case.

An authorization to use an eavesdropping device requires a finding that "there is reasonable cause for believing that an individual is committing, has committed, or is about to commit a felony under Illinois law" and that "there is reasonable cause for believing that particular conversations concerning that felony offense will be obtained." 725 ILCS 5/108A-4(b), (c) (West 2006). " '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 (2004). "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." *Id.* "Nevertheless, an application must establish reasonable cause to believe that the eavesdropping will obtain particular conversations about the described felony." *Id.* When reviewing a trial court's ruling on a motion to suppress evidence, *de novo* review is appropriate where, as here, "neither the facts nor the credibility of witnesses is questioned." *People v. Ceja*, 204 Ill. 2d 332, 347 (2003).

"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 (1984). For purposes of crediting hearsay, "[c]ircumstances set forth relative to an informant's veracity or reliability are relevant factors to the court's probable cause determination" (*People v. Wrestler*, 121 Ill. App. 3d 147, 155 (1984)), but "it is not essential

that the informant be shown to be reliable where the informant is a witness and an ordinary citizen" (*People v. Sylvester*, 86 Ill. App. 3d 186, 196 (1980)). "When a tip comes from an identifiable witness, only a minimum of corroboration or other verification of the reliability of the information is required, because the witness puts himself or herself in position to be criminally liable for a false complaint." *People v. DiPace*, 354 Ill. App. 3d 104, 109 (2004). Moreover, the amount of factual detail provided by a named informant can in and of itself be a basis for crediting hearsay, notwithstanding that the informant might arguably have an incentive to lie. *People v. Hammer*, 128 Ill. App. 3d 735, 740-41 (1984); *People v. Woods*, 122 Ill. App. 3d 176, 181 (1984). As the United States Supreme Court has observed, "[E]ven if we entertain some doubt as to an informant's motives, his explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed first-hand, entitles his tip to greater weight than might otherwise be the case." *Illinois v. Gates*, 462 U.S. 213, 234 (1983).

Here, although Deborah's status as an "ordinary citizen" is debatable, the firsthand information that she relayed to Harvel and that Harvel in turn relayed to Judge Boie was sufficiently detailed to establish the requisite reasonable cause to authorize the overhears in the present case. Additionally, Harvel spoke with Troy after initially meeting with Deborah, and according to Harvel, "[Troy] indicated he felt [that the defendant] and Imogene were capable of following through with their intent to have him killed." While obviously subjective, Troy's belief nevertheless tended to corroborate Deborah's claims. Deborah's admissions that she had participated in the falsification of the will that the defendant filed was also relevant: "[o]ne indicia of reliability of information is found in admissions against the penal interests of the party giving the information" (*People v. Weston*, 271 Ill. App. 3d 604, 611 (1995)).

Given the totality of the circumstances, there was reasonable cause to authorize the

overhears in the present case, and the trial court rightfully denied the defendant's motion to suppress. As an aside, we find that the defendant's reliance on *People v. Wassell*, 119 Ill. App. 3d 15 (1983), is misplaced, because the authorization petition in that case dealt with information originating from an unnamed confidential source. *Id*. at 16.

Entrapment Defense

The defendant argues that the trial court committed reversible error by denying his request that the jury be instructed on the defense of entrapment (see 720 ILCS 5/7-12 (West 2006)). The State counters that the trial court correctly denied the defendant's request, because the defendant "never admitted that he had any intention or desire to kill his uncle."

"A defendant is entitled to have the jury instructed on any legally recognized defense theory having some basis in the evidence." *People v. Ingram*, 401 Ill. App. 3d 382, 402 (2010). "Whether a defendant has met the evidentiary minimum for a certain jury instruction is a matter of law, and our review is *de novo*." *People v. Washington*, 399 Ill. App. 3d 664, 675 (2010), *appeal allowed*, 237 Ill. 2d 586 (2010).

Under Illinois law, "in order to rely on the defense of entrapment, a defendant must admit to committing all the elements of the charged offense." *People v. Landwer*, 166 Ill. 2d 475, 488 (1995). In order to rely on the defense of entrapment in the present case, the defendant was therefore required to admit that he had acted with the intent that Troy be killed, a necessary element of the charged offense of solicitation of murder for hire. *People v. Eaglin*, 224 Ill. App. 3d 668, 671 (1992). This requirement recognizes the "logical inconsistency in claiming both that one did not commit a crime and that one was induced to do so by a government agent." *Eaglin v. Welborn*, 57 F.3d 496, 501 (7th Cir. 1995).

Here, when denying the defendant's request that the jury be instructed on the defense of entrapment, the trial court correctly determined that the instruction could not be given under the circumstances. The trial court reasoned: "[The defendant did not] admit that a

crime was committed and that he committed it. He continually said it was a joke." The defendant nevertheless asserts that his testimony that he had twice called Deborah and "called off" the hit essentially constituted "an admission of the offense" and thus entitled him to an entrapment instruction. When considered in context, however, the defendant's claim that he had twice called off the hit was not akin to an admission at all.

The defendant testified that even though he "thought it was a joke" and "just naturally assumed it was a joke," when Deborah "began pestering [him] to write her a note," he wanted to make sure that Deborah understood that if the hit were a real possibility, he did not want to do it and wanted it called off. The defendant explained that while "most of the time[, Deborah] was laughing about this," he wanted to make sure that she knew it was all just a joke. The defendant's testimony thereby intimated that while it was possible that Deborah might have mistakenly believed that he really wanted her to hire the hit man to murder Troy, he never truly did. The defendant's testimony that he had twice called off the hit was thus not, as he contends, an equivocal admission that he had acted with the intent that Troy be killed.

"A defendant is precluded from relying on entrapment as a defense if he denies any of the facts constituting the offense charged, including the requisite mental state ***." *People v. Cooper*, 239 Ill. App. 3d 336, 349 (1992). Here, because the defendant denied having ever acted with the intent that Troy be murdered, the trial court correctly refused the defendant's request that the jury be instructed on the defense of entrapment. See *Eaglin*, 224 Ill. App. 3d at 671.

Motion for a Directed Verdict

The defendant lastly contends that the trial court erred in denying his motion for a directed verdict. The defendant argues that while the State's evidence might have established that he solicited Deborah to procure a hit man on his behalf, that alone is insufficient to

sustain his conviction. Noting that he never asked Deborah to kill Troy and that the hit man she allegedly contacted was merely "a figment of [her] imagination," the defendant argues that his conviction must be vacated because the State failed to prove that a third party was actually solicited to commit first-degree murder.

"A motion for a directed verdict in a case tried before a jury requires the trial judge to consider only whether a reasonable mind could fairly conclude the guilt of the accused beyond a reasonable doubt, considering the evidence in a light most favorable to the State." *People v. Connolly*, 322 Ill. App. 3d 905, 914 (2001). " 'A motion for a directed verdict asserts only that as a matter of law the evidence is insufficient to support a finding or verdict of guilty.' " *Id.* at 915 (quoting *People v. Withers*, 87 Ill. 2d 224, 230 (1981)).

"A person commits solicitation of murder for hire when, with the intent that the offense of first degree murder be committed, he procures another to commit that offense pursuant to any contract, agreement, understanding, command or request for money or anything of value." 720 ILCS 5/8-1.2(a) (West 2006). The solicitation-of-murder-for-hire statute is based on the unilateral theory of conspiracy, "which only requires actual agreement by one of the parties." *People v. Breton*, 237 Ill. App. 3d 355, 362 (1992). "Procurement of another to commit murder pursuant to an agreement where a defendant agrees with a government agent feigning agreement is sufficient to support a conviction of solicitation of murder for hire." *Id.* at 361-62. For purposes of the solicitation-of-murder-for-hire statute, the terms "procures" and "solicits" are not necessarily interchangeable terms. *People v. Cuadrado*, 214 Ill. 2d 79, 88 (2005).

Here, contrary to the defendant's assertions on appeal, that Deborah agreed only to find someone to kill Troy is inconsequential. A defendant who solicits first-degree murder through an intermediary is procuring another to commit first-degree murder and thus cannot insulate himself from criminal liability under the solicitation-of-murder-for-hire statute

merely because he did not personally solicit a third party or the intermediary to perform the murder. *People v. Cuadrado*, 341 Ill. App. 3d 703, 714-16 (2003), *aff'd*, 214 Ill. 2d 79 (2005). To allow that insulation would frustrate the statute's purpose of punishing "those who might otherwise be able to 'hide behind [their] hireling(s).' " *People v. Terrell*, 339 Ill. App. 3d 786, 791 (2003) (quoting *People v. Kauten*, 324 Ill. App. 3d 588, 592 (2001)). The court in *Terrell* cited *Moss v. State*, 888 P.2d 509, 517 (Okla. Crim. App. 1994), which reasoned, "If we were to hold otherwise, all one would have to do is place a third (or more) person in the chain and escape judgment." *Terrell*, 339 Ill. App. 3d at 790. Thus, under general principles of solicitation and accountability, it is " 'criminal for one person to solicit another to in turn solicit a third party.' " *Moss*, 888 P.2d at 517 (quoting *State v. Furr*, 235 S.E.2d 193, 199 (N.C. 1977)); see also *State v. Yee*, 465 N.W.2d 260, 262 (Wis. App. 1990). Accordingly, it does not matter that the defendant did not solicit Deborah to personally commit the murder.

We also reject the defendant's contention that his conviction cannot stand because the hit man he believed he was procuring through Deborah was fictitious. Under the unilateral theory of conspiracy, all that the State was required to prove was that with the intent that Troy be murdered, the defendant solicited Deborah to solicit another to murder Troy pursuant to an agreement for money, and the offense was complete once the defendant, with the requisite intent, solicited Deborah to do so. *Cf. People v. Woodard*, 367 Ill. App. 3d 304, 317 (2006) ("where an individual solicits another person to commit murder *** the offense of solicitation is complete once the request has been made"). Because the solicitation-of-murder-for-hire statute is based on the unilateral theory of conspiracy and because the term "another," as used in the statute, is not a reference to a victim, in situations where a defendant solicits murder through an intermediary, we see no reason to require that the "another" procured be an actual "legal person." *Cf. People v. Ahmer*, 8 Ill. App. 3d 795, 797 (1972)

(noting that "where the State must prove that the victim of a crime is a person" the State must prove the identity of "a legal person"). Were we to hold otherwise, an agent feigning agreement, such as Deborah, would be required to ask a second agent feigning agreement to commit a murder that only the defendant intended to accomplish. In our view, that requirement would be absurd, and in construing statutes, we must presume that the legislature "did not intend absurd results." *Thomas v. Greer*, 143 Ill. 2d 271, 279 (1991).

CONCLUSION

The trial court did not err in denying the defendant's pretrial motions to vacate and suppress, the defendant's request that the jury be instructed on the defense of entrapment, or the defendant's motion for a directed verdict. Accordingly, the judgment of the trial court is hereby affirmed.

Affirmed.