

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF COOK)

3 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
4 COUNTY DEPARTMENT - CRIMINAL DIVISION

5 THE PEOPLE OF THE STATE OF)
6 ILLINOIS,)
)
7 Plaintiff,)
)
8 vs.) No. 03 CR 08607-01
) No. 03 CR 08607-02
9 JOHN FULTON,)
 ANTHONY MITCHELL,)
)
 Defendants.)

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11 REPORT OF PROCEEDINGS had of the
12 above-entitled cause, before the HONORABLE LAWRENCE
13 EDWARD FLOOD, one of the judges of said court, on
14 the 19th day of February, A.D., 2019.

15 APPEARANCES:

16 HON. KIMBERLY M. FOXX,
17 State's Attorney of Cook County, by:
18 MS. CAROL ROGALA,
19 MS. LINDA WALLS,
20 Assistant State's Attorney,
21 appeared on behalf of the People;

22 MS. ANDREA LYON,
23 MS. MELISSA MATUZAK,
24 Attorneys at Law,
appeared on behalf of the Defendant, John
Fulton;

MR. ROBERT KERR,
Attorney at Law,
appeared on behalf of the Defendant, Anthony
Mitchell.

JENNIFER N. ALTEPETER
Official Court Reporter
Criminal Division
CSR: #084-004695

1 THE CLERK: John Fulton and Anthony Mitchell.

2 MS. LYON: Your Honor, for the record, on behalf
3 of Mr. Fulton, Andrea Lyon, L-Y-O-N, and Melissa
4 Matuzak.

5 MR. KERR: Robert Kerr, K-E-R-R, on behalf of
6 Anthony Mitchell.

7 MS. ROGALA: Assistant State's Attorney Carol
8 Rogala and Linda Walls on behalf of the People.

9 THE COURT: The matter's up today for the Court's
10 ruling on the third-stage hearing. The petitioners'
11 appearances have been waived. In consideration of this
12 matter, the Court has reviewed the pleadings by both
13 petitioners and the State and has also reviewed the
14 trial transcript. Additionally, I heard testimony of
15 all the witnesses presented during the course of the
16 third-stage hearing.

17 Finally, I listened to closing arguments
18 from -- by both sides and documents submitted in
19 summation. What is clear after reviewing the
20 pleadings, exhibits, and testimony is that the jury did
21 not receive evidence regarding whether or not there was
22 a functioning camera in the rear entrance of John
23 Fulton's building, nor did the jury hear about the
24 swipe fob near the rear door.

1 This was a case, as was pointed out, that had
2 no physical evidence connecting the petitioners to the
3 crime. The only real evidence was the inconsistent
4 statement of an 18-year-old John Fulton taken four days
5 and -- during a period of four days rather and was
6 unrecorded. Whether you want to title this as a --
7 whether you want to title this lack of disclosure as a
8 Brady violation or ineffective assistance of counsel,
9 the end result is the same as far as the petitioners
10 are concerned.

11 The information provided by the testimony
12 during the course of the hearing and the exhibits
13 entered into evidence should have been tendered for
14 discovery by defense counsel through pretrial
15 investigation or disclosure. It was relevant
16 information that the jury should have been presented
17 and considered in determining the outcome of the case.
18 The State was correct in their summation when they
19 stated that the Court was not the 13th juror in this
20 case. In my ruling, I draw no conclusions regarding
21 the guilt or innocence of the petitioners.

22 What I do find, is that because the evidence
23 surrounding the camera and the fob was not heard by the
24 jury, the petitioners were prejudiced and did not

1 receive a fair trial. Therefore, I'm vacating the
2 petitioners' convictions and ordering a new trial for
3 both petitioners. The request for leave is granted.
4 That's the ruling from the Court.

5 MS. LYON: Your Honor, thank you. We came here
6 with two different documents, and the one we're going
7 to file right now is a request for bond.

8 THE COURT: But I think we need to have them up
9 here.

10 MS. LYON: Yes, I agree. I imagine that the State
11 needs to decide what they wish to do regarding
12 appealing or not appealing and all that. So if we
13 could go ahead and file that motion and then set a date
14 and have them brought up then.

15 THE COURT: Sure. I'll grant you leave to file
16 the motions. I'll enter and continue them. We'll
17 figure out a status date.

18 MS. ROGALA: Judge, I will need an appeal check
19 date.

20 THE COURT: Sure.

21 MS. LYON: What about four weeks from today, March
22 the 12th, or the 11th, those work?

23 THE COURT: Which dates, March 11 or 12?

24 MS. ROGALA: The 12th. That's three weeks.

1 THE COURT: That's fine.

2 MS. LYON: How about the 12th, then. What time
3 would you like us, 11:00?

4 THE COURT: 10:30. That'll give IDOC enough time.

5 MS. LYON: And we'd ask that the writs be --

6 MS. ROGALA: Judge, I'll have to issue new writs.

7 THE COURT: Sure.

8 MS. LYON: I'm sorry.

9 THE COURT: So this will be order of Court then to
10 March 12th. The motions for bond will be entered and
11 continued until that date and time. Then the State
12 will writ in the two defendants.

13 Anything else then today?

14 MS. LYON: No.

15 MR. KERR: Thank you, Judge.

16 (The above-entitled cause was
17 continued to March 12th, 2019.)

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1 STATE OF ILLINOIS)
2 COUNTY OF COOK) SS.

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I, JENNIFER N. ALTEPETER, an Official Court Reporter within and for the Circuit Court of Cook County, Criminal Division, do hereby certify that I have reported in shorthand in the report of proceedings had in the above-entitled cause; that I thereafter caused the foregoing to be transcribed into typewriting, which I hereby certify is a true and accurate transcript of the proceedings had before the Honorable LAWRENCE EDWARD FLOOD, Judge of said court.



JENNIFER N. ALTEPETER
Official Shorthand Reporter
Circuit Court of Cook County
County Department - Criminal
Division
Certification No. 084-004695

Dated this 25th day of
February, 2019.