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IN THE CIRCUIT COURT FOR THE 23RD JUDICIAL CIRCUIT
DEKALB COUNTY, ILLINOIS

THE PEOPLE OF THE STATE)
OF ILLINOIS,)
Plaintiff,)
vs.) CASE NO. 11 CF 454
JACK D. McCULLOUGH,)
Defendant.)

REPORT OF PROCEEDINGS of the ruling before the
HONORABLE WILLIAM BRADY, on the 12th of April, 2017.

APPEARANCES:

MR. RICK AMATO,
DeKalb County State's Attorney, and
MS. STEPHANIE KLEIN,
Assistant State's Attorney,
for the People of the State of Illinois.

MS. AISHA DAVIS,
for the defendant.

SANDRA FOORD, CSR 084-003025
Official Court Reporter
DeKalb County Courthouse

1 (The following proceedings were had
2 in open court.)

3
4 THE COURT: Counsel, would you please all
5 identify yourselves for the record.

6 MR. AMATO: Rick Amato on behalf of the State.

7 MS. KLEIN: Stephanie Klein on behalf of the
8 State.

9 MS. DAVIS: Aisha Davis standing in for Russell
10 Ainsworth for the Exoneration Project.

11 THE COURT: Everybody here that you expect to be
12 here? Okay.

13 MS. DAVIS: Yes, Your Honor.

14 THE COURT: Thank you.

15 We are here today for the Court's ruling. When
16 I have been called upon either by way of closing
17 argument or giving rulings in preparation for trying
18 to determine what should be said, I've always asked
19 the question of myself why are we here in an attempt
20 to focus myself on what the issues at hand truly
21 are.

22 We are not here to retry this case but, rather,
23 we are to examine a statute of recent vintage and
24 see if it has been complied with, a statute whose

1 expressed intent by the General Assembly is to
2 compensate those who are wrongly convicted and
3 incarcerated.

4 The statute is somewhat unique in that it is not
5 meant to be a forum to try a case. The Court is
6 directed to consider evidence that's not normally
7 available at trial due to the passage of time or the
8 death or unavailability of witnesses.

9 It further provides that the litigant must
10 allege and prove by a preponderance of the evidence
11 -- in other words, more likely than not -- that,
12 one, a conviction has been entered against the
13 litigant and he or she was imprisoned; two, that
14 that conviction was either reversed or vacated;
15 three, that thereafter the litigant was either found
16 not guilty or the charges against him were
17 dismissed; four, that he is innocent of the charges;
18 and five, that he did nothing to cause or bring
19 about his conviction.

20 Moving to this litigation, the plaintiff has
21 alleged and presented evidence on all of these
22 requirements. In fact, the State's Attorney does
23 not challenge or contest the first four of those
24 requirements and leaving his objection to the last

1 one which requires a finding that the defendant did
2 not cause or bring about his own conviction by his
3 conduct. Specifically he alleges that the conduct
4 of the defendant that caused his conviction was
5 statements made to Seattle detectives.

6 A review of the law and the evidence at this
7 proceeding includes the statute which I previously
8 referred to and which is found at 735 ILCS 5/2-702,
9 which directs the Court to consider in this case
10 records that could be and, in fact, in many
11 instances were barred at trial, specifically
12 including FBI reports that supported the defendant's
13 alibi defense through verification of a phone call
14 from Rockford at the time of the disappearance of
15 Maria Ridulph as well as interviews with military
16 recruiters confirming the defendant's presence in
17 Rockford on the evening of December 3, 1957.

18 Additionally there were phone records made
19 available at this proceeding which corroborated the
20 phone call to the defendant's parents' home. There
21 was also testimony from an expert witness that
22 challenged the credibility of a 50-year-old photo
23 identification line-up. The photos in the line-up
24 were 50 years old, not that the line-up itself was

1 conducted 50 years ago.

2 This testimony would not have been admissible at
3 the trial of this proceeding but because of a
4 decision by the Illinois Supreme Court in January of
5 2016 that Court did provide that expert testimony on
6 the reliability of eyewitness identification was
7 admissible and this is in People vs. Lerma, 2016 IL
8 118496, wherein the Court in reviewing the prior
9 case law regarding the expert testimony on the
10 reliability of eyewitness identification stated that
11 the decades since the Enis case, however, have seen
12 a dramatic shift in the legal landscape as expert
13 testimony concerning the reliability of eyewitness
14 testimony has moved from the novel and uncertain to
15 the settled and widely accepted.

16 Indeed, as the Supreme Court of Pennsylvania
17 recently noted, "There is now a clear trend among
18 state and federal courts permitting the admission of
19 eyewitness expert testimony at the discretion of the
20 trial court for the purpose of aiding the trier of
21 fact in understanding the characteristics of
22 eyewitness identification".

23 It goes on to say, "In other words, in the 25
24 years since Enis we not only have seen that

1 eyewitness identifications are not always as
2 reliable as they appear, but we have also learned
3 from a scientific standpoint why this is often the
4 case. Accordingly, whereas Enis allowed for but
5 expressed caution toward the developing research
6 concerning eyewitness identifications, today we are
7 able to recognize that such research is well
8 settled, well supported and in appropriate cases a
9 perfectly proper subject for expert witness
10 testimony".

11 Additionally at this proceeding the review of
12 the evidence includes a review of verified pleadings
13 from two informant witnesses that stated they were
14 not truthful at the trial when they testified that
15 there had been no promises made by the prosecution
16 in exchange for their testimony.

17 Also there was testimony from the former
18 girlfriend of the defendant such that the defendant
19 was with her approximately two and a half hours
20 after the victim's disappearance in the city of
21 Sycamore.

22 Finally, what was present in this case that
23 obviously was not present at the original trial were
24 statements and pleadings from the then chief law

1 enforcement official in the county of DeKalb that
2 the defendant was, in fact, innocent.

3 The Court is cognizant, aware of and takes into
4 consideration all of the testimony at the trial in
5 this matter, specifically the testimony relied upon
6 by the trial court in reaching its guilty finding.
7 That testimony, as noted by the trial court,
8 specifically noted the identification through the
9 photo line-up that was presented as well as the
10 admissions to the inmates which, by the way, have
11 not been recanted but, rather, just challenged as to
12 their credibility based on an acknowledgement or at
13 least some evidence that they were misleading at
14 their trial testimony when they said nothing had
15 been offered in the way of promises.

16 As noted by the State's Attorney here, other
17 evidence corroborative of the defendant's guilt such
18 as statements to the Seattle detectives is also
19 noted by the Court, although this Court further
20 finds that the evidence highlighted only supported
21 the trial court's decision and was not a basis of
22 his conviction like the identification testimony and
23 the admissions testified to by the informants that
24 were specifically mentioned by the trial court.

1 IN THE CIRCUIT COURT OF THE 23RD JUDICIAL CIRCUIT
2 DEKALB COUNTY, ILLINOIS

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5 I, SANDRA FOORD, an Official Court Reporter, CSR
6 084-003025, in and for the Circuit Court of DeKalb
7 County, 23rd Judicial Circuit of Illinois, do hereby
8 certify that I reported in shorthand the proceedings
9 had in the hearing in the above-entitled cause; that
10 I thereafter caused the foregoing to be transcribed
11 into typewriting, which I hereby certify to be a
12 true and accurate transcript of the proceedings to
13 the best of my ability had before the Honorable
14 William Brady, Judge of said Court.

15
16 *Sandra Foord*

17 _____
18 Official Court Reporter

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22 Dated this 12th day
23 of April, 2017.

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