THIRD DIVISION
September 20, 2017

No. 1-14-0988

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Respondent-Appellee,	)	Cook County
	)	
v.	)	No. 85C7651
	)	
NATHSON FIELDS,	)	The Honorable
	)	Paul J. Biebel, Jr.,
Petitioner-Appellant.	)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justice Lavin concurred in the judgment.
Justice Pucinski dissented.

ORDER

¶ 1 Held: In proceedings regarding a petition for innocence, trial court affirmed where: (1) it properly followed the mandate of the Appellate Court; and (2) it did not err in allowing certain witness testimony at the innocence hearing. Affirmed.

¶ 2 Petitioner Nathson Fields appeals from a circuit court order denying his petition for a certificate of innocence. Petitioner argues that the circuit court erred by: (1) improperly holding

an evidentiary hearing on the petition, in contravention to the appellate court's mandate; and (2) denying his motion *in limine* to preclude particular testimony. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Petitioner has come before this court, the Illinois Supreme Court, and the federal courts on numerous occasions stemming from the underlying crimes.[1] Petitioner and codefendants Earl Hawkins and George Carter[2] were charged with the April 28, 1984 murders of Jerome "Fuddy" Smith and Talman Hickman (the Smith/Hickman murders). Attorney Jack Smeeton represented petitioner, and attorney William Swano represented Hawkins. Following a bench trial in Cook County before Judge Thomas Maloney, petitioner and Hawkins were both convicted of murder and sentenced to death. The complete facts from the original trial are found in *People v. Fields,* 135 Ill. 2d 18 (1990). Our supreme court affirmed the convictions on direct appeal. See *Fields,* 135 Ill. 2d 18. The United States Supreme Court denied petitioner and Hawkins' petitions for writ of *certiorari* (*Fields v. Illinois*, 498 U.S. 881, 111 S.Ct. 227, 112 L.Ed.2d 182 (1990); *Hawkins v. Illinois*, 498 U.S. 881, 111 S.Ct. 228, 112 L.Ed.2d 182 (1990)), as well as their subsequent petitions for rehearing (*Fields v. Illinois*, 498 U.S. 994, 111 S.Ct. 547, 112 L.Ed.2d 555 (1990); *Hawkins v. Illinois*, 498 U.S. 995, 111 S.Ct. 551, 112 L.Ed.2d 558 (1990)).

¶ 5 Petitioner filed a petition for postconviction relief pursuant to section 122-1 of the Code of Criminal Procedure (725 ILCS 5/122-1, *et seq.* (West 1992)) and, after the trial judge, Judge Maloney, was convicted in federal court of various crimes in connection with fixing cases (See *United States v. Maloney,* 71 F.3d 645 (7th Cir. 1995) (*en banc*), including accepting a bribe in defendants' case, the trial court granted petitioner's postconviction petition, vacated his

[1] Because many of the facts of this case have been set out fully in these previous cases, and because the case history here is so voluminous, we recite here only those facts and cases relevant to the instant appeal.
[2] Carter's case was later severed; Petitioner and Hawkins were tried together.

convictions, and ordered a new trial. Our supreme court affirmed on direct appeal. *People v. Hawkins*, 181 Ill. 2d 41, 44 (1998). Then, before the retrial began, the trial court denied the State's motion *in limine* to admit evidence relating, in pertinent part, to petitioner's knowledge of the bribe to Judge Maloney. The State filed an interlocutory appeal from the court's decision. *People v. Hawkins*, 326 Ill. App. 3d 992 (2001). We found the trial court did not err in denying the bribery evidence because there was no testimony linking petitioner to the bribery activity. See *Hawkins*, 326 Ill. App. 3d at 999 ("[W]e find that because the evidence of Fields' participation in the bribe is weak, it is insufficient to outweigh the extreme prejudicial effect of the admission of the bribery evidence").

¶ 6 On remand, the parties brought two interlocutory appeals challenging evidentiary rulings. We affirmed. *Hawkins*, 326 Ill. App. 3d 992; *People v. Fields*, 357 Ill. App. 3d 780 (2005). At retrial, the court held a bench trial and found petitioner not guilty, noting that the State failed to prove petitioner guilty beyond a reasonable doubt. Petitioner then filed a Petition for Certificate of Innocence, seeking compensation for his incarceration. The circuit court granted the petition and the State appealed. On appeal, we reversed and remanded for further proceedings, finding that the circuit court had failed to consider the plain language of section 2-702 of the Code of Civil Procedure (Code) (735 ILCS 5/2-702 (West 2008)) and distinguish between a judicial finding of not guilty and petitioner's burden to prove his innocence by a preponderance of the evidence. *People v. Fields*, 2011 IL App (1st) 100169, ¶ 19. On remand, after an innocence hearing, the circuit court denied petitioner's petition.

¶ 7 i. The Underlying Facts

¶ 8 Addressing the underlying facts in more detail, after Petitioner was initially convicted, he appealed directly to our supreme court. *Fields*, 135 Ill. 2d 18. On direct appeal, our supreme court set forth the following evidence against petitioner:

> "At approximately 10 a.m. on [April 28, 1984], the victims were standing in front of a Chicago Housing Authority building located at 706 East 39th Street. The building is part of the Ida B. Wells housing complex. Jerome Smith was the leader of the Black Gangsters Goon Squad street gang (Goon Squad). According to witnesses, two black men wearing ski masks over their faces approached the victims from behind. The two gunmen then shot and killed the victims.
>
> The State presented the following evidence at the defendants' trial. Officer Anthony Mikel of the Chicago police department testified that he arrived at the scene of the crime within minutes after the shooting. Mikel testified that a crowd gathered at the scene. He stated that, while he talked to numerous persons at the scene, none were eager to help or to give their names.
>
> Randy Langston, the State's key witness, testified that he was standing directly across the street from the building where the shooting occurred, on a sidewalk adjacent to a baseball field. Langston testified that he saw two black men wearing ski masks approach the victims. Both men carried guns, wore their hair in braids and had facial hair. He stated that one of the assailants was shorter, heavier, and had a darker complexion than the other and was dressed in blue pants and a blue shirt. The other gunman was taller, thinner and had a light complexion and wore blue pants and a red jacket. Langston testified that, immediately after shooting the victims, the two gunmen pulled up to see who had witnessed the shooting. Langston testified that at this time he was able to see the

faces of the two men. He testified that he immediately recognized one of the men as the defendant Hawkins, known to him as "Monsieur." He did not recognize the second gunman at the time of the shooting but he later identified him as the defendant Fields from a police photo display and at a lineup.

Langston testified that, after looking around, the two men turned and ran back through the breezeway which led to the rear of the building. The two men ran to a large dark-blue car parked on Langley Avenue, alongside the apartment building. The gunmen got into the car, which then proceeded north on Langley. Langston testified that the two gunmen did not pull their ski masks down again before running to the car.

Langston admitted that he was a member of the Goon Squad street gang. He also admitted that, although he told the police on the night of the crime that he witnessed the shooting, he did not tell them that he recognized one of the gunmen. He explained, however, that he lived in the building where the shooting occurred, had seen Hawkins around the building and, after witnessing what happened to two of his friends, was reluctant to say anything to the police. He testified that he was contacted by the police and identified the defendants in photo displays and lineups more than a year after the crime, at which time he had moved from the Ida B. Wells housing complex.

Langston admitted on cross-examination that he had told defendant Hawkins' attorney that he was standing on the pitchers' mound, rather than on the sidewalk (a much farther distance), at the time of the shooting. He stated, however, that the statement was untrue and that he made the statements because he did not know who the defendant's lawyer was. He denied stating, however, that he was not able to see the shooters.

Richard Buckles, another teenage boy, testified for the State. Buckles stated that he was standing at the corner of 39th Street and Langley, across the street from the Ida B. Wells housing complex at the time the shooting occurred. He testified that he saw two black men, one tall, light skinned, wearing a red jacket and blue pants and a ski mask, and the other shorter, bigger, dark-skinned, and wearing blue pants, a blue shirt and a ski mask. He testified that the men shot Talman Hickman several times and shot Jerome Smith twice. The men then pulled up their ski masks and looked around. He testified that he immediately recognized defendant Hawkins, whom he knew as 'Monsieur,' because he had seen him at the Ida B. Wells complex. He testified that the two men then ran to a large blue car parked on Langley Avenue with their masks off, threw their guns in the car, jumped in the car and drove away. Buckles testified that he was approximately 25 feet away from the victims at the time of the shooting.

Buckles testified that he lived in the Ida B. Wells complex at the time of the shooting and was a member of the Goon Squad. He testified that he first spoke to the police two years after the shooting, after he moved from the complex. He testified that he had never viewed photo displays or a lineup involving the defendants. At the trial, he positively identified defendant Hawkins as one of the gunmen, but could not be sure if defendant Fields was the other gunman.

Gerald Morris, another Goon Squad member, also testified for the State. Morris stated that, shortly before the shooting, he leaned out the window of his second-floor apartment and spoke with Jerome Smith, one of the victims. He testified that he remained at the window for several minutes after Smith walked through the breezeway toward the front of the building. As he stood at the window, he observed two black men follow

Smith into the breezeway. He testified that one man was tall, thin, light-skinned, had hair on his face and was wearing a red jacket. The other was shorter, heavy, dark-skinned, had a beard, and was dressed all in blue. After seeing the men enter the breezeway, Morris left the window to get his shirt. Shortly thereafter, he heard shots. He ran to another window and saw two men, dressed in the same manner as the men he had seen enter the breezeway shortly before, run out of the breezeway to a parked car. The men threw the guns into the car and jumped into the car, which proceeded north on Langley.

Morris identified both defendants in court as the two men he saw follow Smith into the breezeway leading to the front of the building and then run out without ski masks, after the shooting, to a waiting blue Cadillac. Morris also testified to his previous lineup and photo identifications of both defendants.

The State also introduced the testimony of Detective O'Callaghan of the Chicago police department, who testified that both Randy Langston and Gerald Morris had identified the defendants from a stack of 25 photos and a lineup.

Anthony Sumner, a former El Rukn gang member, also testified for the State. Sumner testified that he spoke with defendant Hawkins at Hawkins' home several days after the shooting. He testified that Hawkins told him that Hawkins, Fields, George Carter and Hank Suddleman 'got' Smith. Sumner testified that Hawkins told him that the four men rode around on the day of the shooting until they saw Smith. They then parked the car and two persons got out of the car, shot Smith, got back into the car and drove off. Hawkins indicated that they had used Hank Suddleman's car in the shooting. Sumner testified that Suddleman owned a blue Cadillac. Sumner also testified that he spoke with defendant Fields at the El Rukn headquarters several days after the shooting. Sumner

testified that he told Fields that he (Sumner) had heard that Fields was involved in the shooting of 'Fuddy' Smith, to which Fields responded, 'It was good exercise.'

Sumner also testified as to how he came to be a witness for the State. He admitted that, in May 1985, the police raided the Cleveland house in which he was hiding out with several other El Rukn gang members. When questioned by the police, Sumner implicated himself and other El Rukn gang members in various crimes. Specifically, Sumner implicated defendants Hawkins and Fields in the murders of Jerome Smith and Talman Hickman. Sumner also implicated himself, Hawkins and Fields in another double murder. Sumner subsequently testified before a grand jury, implicating various El Rukn gang members in more than seven criminal cases. Sumner also testified that he accompanied defendants Hawkins and Fields to the home of Joseph White and Dee Eggars Vaughn and was present when the defendants killed those individuals. Sumner had no agreement with the State and was not charged with any crimes at the time of his grand jury testimony.

After testifying before the grand jury, Sumner was relocated to Indiana with his so-called common law wife and children. In August 1985, his wife and children returned to Chicago without him. Shortly thereafter, Sumner also returned to Chicago. On cross-examination, Sumner admitted that, after returning to Chicago, he met with Charles Murphy, an attorney who represented several El Rukn gang members, and gave a statement indicating that he had lied to the police and had implicated El Rukns in various crimes only after the police beat him and threatened to charge him with an unrelated triple murder. Two weeks later, Sumner met with defendant Hawkins' attorney and several other attorneys and gave another statement, in which he claimed that the information he gave to the police regarding the murders of Jerome Smith and Talman

Hickman was untrue and that none of the persons he had named had ever admitted any involvement in criminal activity.

On redirect, Sumner testified that the two statements he gave to Charles Murphy and to other attorneys representing El Rukns were untrue. He explained that he returned to Chicago because he feared for the safety of his children. He testified that he spoke with Samuel Knox, an El Rukn general, who told him that Jeff Fort had agreed not to harm Sumner's family if Sumner cooperated. At Knox's urging, Sumner met with Charles Murphy, one of Jeff Fort's attorneys, and gave a statement saying that the police beat him. He testified that Samuel Knox also told him to make the second statement to other attorneys and drove him to the attorney's office where he made the statement. Sumner testified that he spoke with Knox immediately before and after giving both statements. After giving the statements, Sumner fled to Detroit to avoid being charged with the murders of Joseph White and Dee Eggars Vaughn. Sumner testified that he was later arrested in Detroit and charged in Chicago with the murders of White and Eggars Vaughn. He subsequently entered into an agreement with the State under which the murder charges were dropped in return for Sumner's agreement to testify truthfully to all activities concerning El Rukn gang members and to plead guilty to conspiracy to purchase drugs.

Stipulations were entered regarding ballistics evidence, life and death evidence, and the results of the post-mortem examination of the victims establishing the cause of death as multiple gunshot wounds. Following these stipulations, the State rested.

The defendants called eight witnesses to testify in their behalf, including four persons who claimed that they witnessed the shooting. Carlos Willis testified that he was

standing on the baseball field across the street from 706 East 39th Street with Randy Langston on the morning of the shooting. He testified that he heard gunshots and immediately began running south. He testified that he saw the two gunmen run through the breezeway with their ski masks on. Willis testified that he attended a police lineup approximately one year later, but could not identify anyone. He stated that Detective O'Callaghan was present at the lineup and kept asking Willis to look at a particular man, who tuned out to be defendant Hawkins.

Carlos Willis' grandmother, Evelyn Carter, testified that she accompanied her grandson to the lineup. She testified that she was standing by the door and could not hear what Willis and O'Callaghan were saying. She did not recall O'Callaghan pointing to anyone in the lineup.

Cleveland Ball testified that he was in his apartment at 706 East 39th Street on the morning of the shooting. Ball testified that he heard four gunshots, and immediately ran to his apartment window facing south, where he saw 'Fuddy' Smith lying on the ground. He then ran to the window facing north and saw two men running towards a blue Cadillac parked on Langley Avenue. Ball testified that he could not see the faces of the two men because they wore ski masks. The two men got into the car, which proceeded north on Langley Avenue. Ball claimed that he spoke with the police on the day of the shooting and told them what he saw. He testified that the police later brought photographs to his house but he was unable to identify anyone.

Torrence White also lived at 706 East 39th Street at the time of the shooting. He claimed that he was at a baseball field across from the housing complex with Randy Langston and Carlos Willis at the time of the shooting. He testified that they heard

gunshots and immediately started running south, away from the building. White testified that he first spoke to the police about the shooting one year later and that he went to the police station to view a lineup but was unable to identify anyone. White claimed that a police officer told him that if he picked someone out of the lineup, he would help him move out of the projects and that the officer pointed at defendant Hawkins several times.

The final occurrence witness was Cornell Jefferson. Jefferson testified that he was at a mailbox located near the breezeway of 706 East 39th Street on the morning of the shooting. While there, he heard shots and saw two men running through the breezeway. Jefferson testified that he followed the men to the corner of the building and saw them run through a parking lot to a blue car. He testified that he could not see the faces of the two men because they wore ski masks.

The defendants also called Detective Joseph Bogdalek to testify that Randy Langston told him on the day after the shooting that he observed one man with a ski mask during the shooting. On cross-examination, Detective Bogdalek testified that Randy also told him that the man pulled the ski mask from over his face to the top of his head so that he was able to see the man's face. On redirect, Bogdalek admitted that his police report did not contain any description of the gunman.

Robert Beseth, a private investigator hired by defense attorney William Swano to investigate the case, also testified on behalf of the defendants. Beseth testified that on July 22, 1985, he interviewed Randy Langston at the baseball diamond across from 706 East 39th Street. Beseth testified that Randy Langston told him that he was not sure whether he could make a positive identification of the offenders. The defense rested.

In rebuttal, the State called Officer Joseph Murphy, who testified that Gerald Morris telephoned him and told him that Randy Langston had just gone to the scene of the crime with two persons, one who identified himself as an assistant State's Attorney and the other who identified himself as a detective in homicide. Murphy testified that, after receiving this information, he went to 706 East 39th Street and saw Randy Langston with defendant Hawkin's attorney (Mr. Swano), a white woman, and a white man (Mr. Beseth). He testified that he asked Randy how the men had identified themselves and Randy told him that Mr. Swano had identified himself as an assistant State's Attorney and the other man had said he was a detective from Area One Homicide. When Murphy told Randy that Mr. Swano was an attorney representing the El Rukns, Randy stated that he did not want to speak to them. Murphy also testified that he arrested Mr. Beseth for impersonating a police officer. Murphy testified that grand jury subpoenas had been issued for Mr. Swano, Mr. Beseth and the woman and that the matter was still pending. On cross-examination, Murphy admitted that he was testifying from memory and that no police report had been prepared regarding the incident.

The State also called two other police officers to rebut the testimony of defense witnesses. Detective Evans testified that Cleveland Ball gave him a detailed description of the gunmen after the shooting, including the fact that one wore an earring. Ball also stated that the men were wearing 'skull caps' and never mentioned the word 'ski mask.' Evans also testified that Carlos Willis had never mentioned that the offenders wore ski masks and that Willis told him that he stood with Randy Langston across the street for several minutes after the shooting.

Detective O'Callaghan testified that he interviewed Carlos Willis and Torrence White in May 1985. Both Willis and White told him prior to the lineup that they thought they could identify the gunmen. O'Callaghan testified that he did not point to anyone at the lineup or suggest that anyone should be identified.

At the close of the evidence, the trial court denied the defendants' motion to dismiss the indictment on the basis of police and prosecutorial misconduct. After closing argument by the prosecutors and defense attorneys, the court found both defendants guilty of the murders of Jerome 'Fuddy' Smith and Talman Hickman. The defendants' motion for a new trial and a supplemental motion for a new trial were denied." *People v. Fields*, 135 Ill. 2d 18, 28-73 (1990).

¶ 9 In the direct appeal, petitioner claimed, in pertinent part, that the State had failed to prove him guilty for the murders beyond a reasonable doubt. *Fields*, 135 Ill. 2d at 40. Specifically, petitioner argued that the State's witnesses provided "inconsistent, contradictory and inherently incredible testimony, and were motivated by their rival gang affiliation to testify falsely against the defendants." *Fields*, 135 Ill. 2d 40. In rejecting petitioner's arguments, the court stated:

"This court has consistently held that the identification of the accused by a single witness is sufficient to sustain a conviction, provided that the witness viewed the accused under circumstances permitting a positive identification. [Citation.] Here, three eyewitnesses testified consistently regarding the details of the murders and identified defendant Hawkins in court as one of the gunmen who shot the victims. Two of these eyewitnesses also identified defendant Fields as the second gunman. The witness' testimony was corroborated by Anthony Sumner, an accomplice of the defendants in an

unrelated double homicide, who testified that the defendants made statements to him admitting their participation in the homicides." *Fields*, 135 Ill. 2d 41.

¶ 10 After addressing and rejecting various arguments about the witness testimony, the court affirmed petitioner's and co-defendant Hawkins' convictions and death sentences. *Fields*, 135 Ill. 2d 41, noting:

"In this case, resolution of the question of the defendants' guilt or innocence depended upon the credibility of the witnesses and the weight given to their testimony. [Citation.] The trial court here was fully aware of the problems in the testimony of the State's witnesses. It knew of their gang affiliations, their criminal backgrounds and of prior inconsistant statements. All of the arguments which the defendants' attorneys advance in an effort to show that the State's evidence was insufficient to support a conviction were advanced by defendants' trial counsel during closing arguments. The trial court heard those arguments as well as the testimony of the witnesses for the State and for the defendants. It was informed of all relevant impeaching evidence, had the opportunity to observe the demeanor of the witnesses and concluded that the evidence established beyond a reasonable doubt that the defendants were guilty of the murders of Jerome Smith and Talman Hickman. The trial court chose, it would appear, to believe the testimony of the State's witnesses and not that of the defense witnesses. While discrepancies in the evidence certainly existed, we cannot say that the trial court's conclusion was so unreasonable, improbable or unsatisfactory as to justify a reasonable doubt as to the defendants' guilt. [Citations.]" *Fields*, 135 Ill. 2d at 48-49.

¶ 11 ii. The Postconviction Petition

¶ 12 In 1992, petitioner filed a postconviction petition alleging, in pertinent part, that he was denied a fair trial because the trial judge, Judge Maloney, initially accepted a bribe to acquit the defendants of murder charges. The crux of this claim was a June 1991 federal indictment against Judge Maloney and attorneys William Swano and Robert McGee. Swano represented Hawkins during the murder trial before Maloney. McGee was a former associate of Maloney in private practice and acted as Maloney's intermediary with those who wished to bribe the judge. *Hawkins*, 181 Ill. 2d at 45-46. The indictment alleged that, prior to trial, Swano, with McGee acting as a go-between, forwarded a $10,000 bribe to Judge Maloney to acquit co-defendant Hawkins and petitioner. The indictment also asserted that Judge Maloney had previously accepted bribes to fix the outcome of at least four criminal trials. *Hawkins*, 181 Ill. 2d at 47.

¶ 13 While petitioner's postconviction petition was pending, in April 1993, Judge Maloney was found guilty of violations of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1961 *et seq*. (1994)), conspiracy to commit extortion and obstruction of justice in connection with a scheme to fix cases in his courtroom, including this one. See *Maloney*, 71 F.3d 645. The prosecution proved that, during the course of the Hawkins/Fields trial, Judge Maloney accepted a bribe, only to return the money and convict petitioner and Hawkins when he realized the FBI was investigating him. *Maloney*, 71 F.3d at 651.

¶ 14 The circuit court granted petitioner's postconviction petition in September 1996, vacated petitioner and co-defendant Hawkins' convictions for murder, vacated their death sentences, and ordered a new trial, finding they were "denied a 'fair trial before an impartial trier of fact' because Maloney had a 'direct, personal, substantial, pecuniary interest' in the outcome of the Hawkins/Fields trial." *Hawkins*, 181 Ill. 2d at 49. Our supreme court affirmed that order on direct appeal, holding that a new trial was required because "Maloney possessed and actively cultivated

a personal, pecuniary interest in the outcome of defendants' case." *Hawkins*, 181 Ill. 2d at 51. In so doing, it noted that, in 1995, the United States Court of Appeals for the Seventh Circuit had affirmed Judge Maloney's convictions of racketeering conspiracy, racketeering, extortion under color of official right and obstruction of justice, in violation of 18 U.S.C. §§ 1962(c), (d), 1951, 1503 (1994). *Hawkins*, 181 Ill. 2d at 49

¶ 15 Our supreme court noted:

> "In this appeal, we find that Maloney possessed and actively cultivated a personal, pecuniary interest in the outcome of defendants' case. Evidence admitted at the trial of Maloney and McGee demonstrated, beyond a reasonable doubt, that Maloney traded verdicts for bribes. Swano and Hawkins testified that they conspired with McGee and Maloney to purchase an outcome amendable to Hawkins in his own murder trial. Knowing from past experience that Maloney could be bribed, Swano approached McGee to convey the availability of a $10,000 bribe to Maloney. Again using McGee as an intermediary, Maloney communicated that he would accept a bribe, with certain conditions. By this action, he signaled his readiness to skew the outcome of the trial in order to earn $10,000 for himself.
>
> That Maloney subsequently returned the money did not render his interest in the outcome any less acute. As defendants suggest, he wanted to insure that he did not lose his judicial post and salary as a result of a criminal indictment, and therefore was motivated to return a verdict that would not spark the suspicions of authorities.
>
> Record evidence supports the conclusion that Maloney knew the FBI was watching him. The Hawkins/Fields trial occurred in June 1986. By that date, several judges presiding at 26th Street and California, where Maloney sat, had been convicted or

> indicted in Operation Greylord for soliciting bribes. FBI agents testified at trial that they monitored Maloney's courtroom during the trial of the Hawkins/Fields matter. Hawkins testified that on June 19, the first date that the judge expressed interest in returning the money, Swano told Hawkins that Maloney wanted to disavow their agreement, and told Hawkins that perhaps information had been leaked from the El Rukns to the FBI. After the trial ended, moreover, Maloney warned Lucius Robinson, Maloney's intermediary of choice before McGee to 'watch Swano, he might be wearing a wire.' " *Hawkins*, 181 Ill. 2d at 52.

Our supreme court acknowledged that it had previously affirmed defendants' convictions, but that "the sole fact of the convictions cannot restore integrity to a trial that was fatally flawed." *Hawkins*, 181 Ill. 2d at 59. It also said:

> "On retrial, defendants may be found guilty again. If so, we do not believe it will be either a preordained result or the fruit of a useless exercise. Rather, the courts and the parties will know that the verdict will be the product of a fair trial.
>
> The State maintains too that, as a practical matter, retrying these defendants will be difficult. According to the State, the usual concerns prompted by the passage of time are compounded in 'gang' cases by the frequent 'flipping' of State witnesses, *i.e.*, the unsettling proclivity of these witnesses to recant prior testimony.
>
> While we are not unsympathetic to the difficulties presented by retrials, particularly years after the crime charged, we believe that any hardships anticipated on remand are outweighed by the gravity of the constitutional violation in this case that can be cured only by a new trial. Additionally, as noted in *Fields*, 135 Ill. 2d 18, 142 Ill. Dec. 200, 552 N.E. 2d 791, at least one of the State's key witnesses flipped during the course

> of the Hawkins/Fields trial, so that the impeachment threat posed by recantations has already occurred. We observe as well that the problems posed by recantations are not limited to the State's case; the conundrum of inconsistent testimony was visited upon the defendants' case too, when three defense witnesses gave trial testimony inconsistent with statements previously given to police." *Fields*, 135 Ill. 2d 18 [ ].

¶ 16 iii. The Retrial

¶ 17 On remand, the State filed, in pertinent part, a motion *in limine* to admit evidence relating to petitioner's knowledge of the bribe to Judge Maloney to show evidence of petitioner's consciousness of guilt, as well as to allow in evidence the prior testimony of witness Richard Buckles, who died after the first trial. The trial court denied the motion and the State filed an interlocutory appeal from the court's decision. *Hawkins*, 326 Ill. App. 3d 992. We found the trial court did not err in denying the bribery evidence as to petitioner because there was no testimony linking petitioner to the bribery activity. See *Hawkins*, 326 Ill. App. 3d at 999 ("[W]e find that because the evidence of Fields' participation in the bribe is weak, it is insufficient to outweigh the extreme prejudicial effect of the admission of the bribery evidence."). We found that the bribery evidence as to Hawkins was admissible. *Hawkins*, 326 Ill. App. 3d at 998. We also found that the court abused its discretion in denying the State's motion to admit Buckles' testimony and in denying the State's motion to admit gang evidence as to both defendants to show motive. *Hawkins*, 326 Ill. App. 3d at 999-1008.

¶ 18 Following this ruling, the State entered into a plea agreement with Hawkins agreeing that, in exchange for Hawkins' testimony, the State would drop the two murder counts from the Smith and Hickman murders, Hawkins would plead guilty to two counts of armed violence, and the State would recommend a sentence to run concurrently with Hawkins' imprisonment on federal

bribery charges. *Fields*¸ 357 Ill. App. 3d at 782. During the negotiations for the plea agreement, "Hawkins said that he, defendant and both of their attorneys discussed the details of how to bribe Judge Maloney." *Fields*¸ 2011 IL App (1st) 100169, ¶ 7. Based on this evidence, the State renewed its motion to admit bribery evidence against petitioner. The court denied the motion and the State brought another interlocutory appeal, arguing that the ruling would substantially impair prosecution of the murder charge. *Fields*¸ 357 Ill. App. 3d 780. We affirmed, finding that the State failed to exercise due diligence in obtaining the evidence. *Fields*¸ 357 Ill. App. 3d at 783.

¶ 19 A bench trial proceeded, after which petitioner was found not guilty. Judge Vincent Gaughan noted that there were no unimpeached witnesses identifying Fields as one of the gunmen, and found that the State failed to prove him guilty beyond a reasonable doubt. The court also excluded evidence of petitioner's involvement in the bribe of Judge Maloney based on a lack of due diligence by the State in presenting it. The court stated:

> "THE COURT: Looking at the totality of the circumstances and the evidence here, again, people are impeached with [*sic*], by their testimony, by other witness' testimony. Oaths are given little weight by the people that took them.
>
> I find under these circumstances, the state has not proved [petitioner] guilty beyond a reasonable doubt. There will be a finding of not guilty."

¶ 20 iv. The Innocence Petition

¶ 21 In August 2009, petitioner filed a Petition for Certificate of Innocence pursuant to section 2-702 of the Code (735 ILCS 5/2-702 (West 2008)) seeking compensation for the 18 years he spent incarcerated. In support of this petition, he attached his own affidavit in which he averred that he was innocent of the murders and that Sandra Langston's description of the two shooters

did not match his appearance; and a stipulation from the retrial that, if called to testify, Sandra Langston would testify that on the day of the shooting she gave police a description of two men.

¶ 22 The State filed a motion to intervene and object to the issuance of the certificate, arguing that petitioner was unable to show by a preponderance of evidence that he is innocent of the murders as required by section 2-702 of the Code.

¶ 23 At the hearing on the petition, Judge Paul Biebel recounted the history of the case and heard arguments from the parties. The State argued that, in light of the evidence adduced at retrial indicating that petitioner was one of the shooters, petitioner's affidavit was insufficient to show his innocence by a preponderance of the evidence. Petitioner argued that witness Sandra Langston's stipulated-to-testimony at retrial was sufficient to exonerate him. After taking the issue under advisement, the court granted the petition, stating:

> " 'There is no doubt that Judge Gaughan found beyond a reasonable doubt that [petitioner] was not guilty of the charges that were tried in 2009.
>
> Can I look behind his finding and provide a judgment on actual innocence on the basis of what I might think? What I might imagine? Or do I take the case as I find it. And I have to take the case as I find it.' " *Fields*, 2011 IL App (1st) 100169, ¶ 11.

And:

> " 'In the criminal justice system it's not what we think. It's not what we surmise. It's not what we conjur. It's what was proved. And on the basis of the record that was before Judge Gaughan, which is based on * * * four opinions of reviewing courts, he found that [defendant] was not guilty.

> I will follow that finding of Judge Gaughan, and find that the petition for certificate of innocence is well grounded here, and will so grant it over the objection of the State.' " *Fields*, 2011 IL App (1st) 100169, ¶ 11.

Soon after, the court entered a written order to the same effect.[3]

¶ 24 The State appealed from the grant of the petition for a certificate of innocence, arguing that the trial court erred in granting the petition because the court "equated Judge Gaughan's finding of not guilty with the determination that defendant is actually innocent of the murders." *Fields*, 2011 IL App (1st) 100169, ¶ 19. On appeal, we considered the statutory language of section 2-702 of the Code and reversed and remanded with instructions, stating:

> "Defendant does not dispute and we agree with the State that the plain language of section 2-702 shows the legislature's intent to distinguish between a finding of not guilty at retrial and actual innocence of the charged offenses. Although the court's written order notes that defendant had shown by a preponderance of evidence that he is innocent of the murders, the record shows that in granting defendant's petition the court did not distinguish between a finding of not guilty and actual innocence as required by statute. The court's comments at the hearing on the petition that it could not 'look behind [Judge Gaughan's] finding and provide a judgment on actual innocence' and that it would 'follow the finding of Judge Gaughan' in granting defendant's petition show the court equated a finding of not guilty at retrial with defendant's actual innocence. Although the court entered a written order clarifying that Judge Gaughan's actual finding was that the State failed to prove defendant guilty beyond a reasonable doubt, not that defendant was not guilty beyond a reasonable doubt, there is no indication that the court considered

[3] The court clarified that " 'Judge Gaughan's actual finding was that the State failed to prove [defendant] guilty beyond a reasonable doubt, not that defendant was not guilty beyond a reasonable doubt.' " *Fields*, 2011 IL App (1st) 100169, ¶ 12.

> anything but the result of defendant's retrial in determining his innocence. We believe that under section 2-702 in determining whether defendant showed by a preponderance of evidence that he is innocent of the murders, the court was required to consider the materials attached to defendant's petition in support of his innocence claim—his affidavit and the stipulated-to testimony of Sandra Langston—in relation to the evidence presented against him at both trials. The court erred in not doing so. We reverse and remand to the circuit court for this determination." *Fields*, 2011 IL App (1st) 100169, ¶ 19.

¶ 25 Judge Biebel again presided over the cause on remand. The court heard arguments over the course of two days regarding whether a hearing was necessary in this matter. Transcripts from these hearings are in the record on appeal.[4] At the end of the second day, the court, after hearing arguments by the parties and again reviewing the petition, the supporting documents, and the record from petitioner's trials, determined that the materials were insufficient to satisfy petitioner's burden of establishing his innocence by a preponderance of the evidence, and found a hearing was necessary "because there's so much that's uncertain about everything here." In addition to this oral pronouncement, the court also noted in its memorandum order that "this Court finds it necessary to conduct a hearing to determine whether [Petitioner] is able to demonstrate that he is actually innocent of these crimes". The docket sheet, part of the record on appeal, also reflects "Ruling is a hearing will be held."

¶ 26 Prior to the evidentiary hearing, the parties conducted discovery and litigated several motions. In March 2013, the court granted the State's motion to admit bribery evidence, In doing so, the court quoted section 2-702 language[5], finding that "[w]hether Petitioner participated in

[4] Contrary to the State's assertion, the transcripts for these hearings do appear in the record on appeal and we have thoroughly reviewed them.

[5] The relevant provision of the statute provides:

the bribery scheme is especially relevant to the query whether Petitioner did or ". . . did not by his or her own conduct voluntarily cause or bring about his or her conviction' 735 ILCS 5/2-702(d) (West 2009)." Regarding the proposed testimony by Hawkins that petitioner was involved in bribing Judge Maloney, the court ruled:

> "The State proposes presenting Hawkins as a witness in the innocence hearing. Hawkins testimony is undoubtedly relevant. He is not only Petitioner's co-defendant, but a high-ranking member of the El Rukn street gang. Hawkins participated in the bribery of Judge Maloney. He was physically incarcerated with Petitioner and shared a lock-up pen with him when awaiting court appearances. The logistics of the bribery are alleged to have been discussed with Swano in the lockup in Petitioner's presence before these court appearances. In the past Hawkins has provided sworn testimony that, to some extent, links Petitioner to the bribery of Judge Maloney.
>
> Petitioner argues that his testimony is entirely unreliable and Hawkins should therefore be barred from testifying at the innocence hearing. In support of this position, Petitioner points to Judge Gaughan's ruling on retrial excluding Hawkins' testimony as to Fields' participation in the bribery scheme as well as the fact that Hawkins testimony has been somewhat inconsistent through the years and he is testifying pursuant to a plea agreement. While Hawkins' testimony may have proven too prejudicial at Petitioner's criminal trial, the instant proceeding is different.

"(d) The petition shall state facts in sufficient detail to permit the court to find that the petitioner is likely to succeed at trial in proving that the petitioner is innocent of the offenses charged in the indictment or information or his or her acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State of Illinois, and the petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction. The petition shall be verified by the petitioner." 735 ILCS 5/2-702(d) (West 2008).

> Importantly, this Court notes the distinctly dissimilar nature of a retrial on a criminal indictment for murder and a Petition for a Certificate of Innocence. On retrial Petitioner's liberty was at stake for murder, and the relevancy of Hawkins' testimony as to Petitioner's role in the bribery scheme was outweighed [by] the potential prejudice to Petitioner's defense. In the instant proceedings, Hawkins' testimony is clearly relevant to the issue of whether Petitioner is able to show that he has satisfied the statutory requirements for a Certificate of Innocence. One of the relevant queries at the innocence hearing will be the extent of Petitioner's knowledge and involvement in the Judge Maloney bribe. Since Petitioner's liberty is no longer at stake and the burden now lies on him to prove actual innocence, the relevancy of the information weighed against the potential prejudice is no longer the same as it was on retrial. If Hawkins is permitted to testify in court, subject to cross examination, this Court as finder of fact will have an opportunity to observe the examination of the witness and make determinations of credibility. To the extent that Hawkins is available to both parties before the hearing and during the hearing, and assuming that Petitioner has the opportunity to investigate his testimony and cross examine him at the hearing, he is a permissible witness for the innocence hearing."

¶ 27 On the first scheduled day of the innocence hearing, petitioner's counsel filed a motion to "preclude the State from calling at this noncriminal proceeding witnesses who have received compensation, either reduced prison sentences or cash money from the State, in exchange for testimony against Nathson Fields in this noncriminal proceeding." Counsel argued that offering witnesses compensation in exchange for their testimony is prohibited under the Rules of Professional Conduct and the bribery statutes, with the only exception being where a prosecutor

is acting in the public interest by prosecuting a criminal matter. Here, counsel argued, the exception does not apply because a certificate of innocence is not a criminal proceeding but a "proceeding for [petitioner] to clear his name and to be allowed to seek compensation." The State responded that the instant matter is not an "ordinary civil matter" because it is "directly related to the criminal case." Counsel argued:

> "[ASSISTANT STATE'S ATTORNEY:] Yes, it is governed by the Rules of Civil Procedure, but it is most like a post-conviction proceeding, and I recognize, of course, that Mr. Fields was found not guilty at the trial, so it is not by definition a post-conviction proceeding, but it is a question regarding whether or not there is sufficient evidence to demonstrate that Mr. Fields should not be deemed actually innocent of the crime.
>
> The role of the State's Attorney in this case is statutorily authorized as the People of the State of Illinois. We are exercising our authority as we do in any other criminal matter which we prosecute. The role that we do is to ensure the truth-seeking function of this Court, to make sure that the evidence is brought forth to this court to make the determination as to whether or not Mr. Fields has satisfied his burden of demonstrating that he is actually innocent."

¶ 28 The State also argued that, under *People v. Bannister*, 236 Ill. 2d 1 (2009), "whether or not an agreement has been reached with another party, with another person to offer testimony against a person in a criminal matter is not a basis to exclude the evidence. Instead, it is a question that goes solely to the weight of the evidence."

¶ 29 The court took the motion under advisement, later denying the motion during the hearing, stating:

"THE COURT: * * * This is a bench hearing. I'm not going to disqualify witnesses, but I certainly will take into consideration the fact that either deals were made or some money was paid. As a matter of fact, I heard yesterday from both witnesses that somebody was paid. Your witness was relocated by the State's Attorney's Office at one time or another. I take that into consideration in a bench hearing."

¶ 30 Many witnesses were called at the hearing over many days in August to November 2013. Petitioner called Sandra Langston to testify in support of the petition, and also testified on his own behalf. The State called Earl Hawkins, Jackie Clay, former Assistant State's Attorney John Hynes, Eugene Hunter, Randy Langston, Derrick Kees, Anthony Momtemurro, Michael Nieto, Gene Wolfe, and Assistant United States Attorney William Hogan. Both petitioner and former attorney Herschella Conyers testified in rebuttal. After hearing arguments by the parties, the court took the matter under advisement.

¶ 31 In March 2014, the court issued a 50-page memorandum order denying the petition. In it, the court recounted the extensive history of this cause and the statutory elements to be satisfied to succeed on a claim for a certificate of innocence:

"Turning to the statute, a person is entitled to a certificate of innocence if he or she can prove by a preponderance of the evidence that:

['](1) the petitioner was convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;

(2) the judgment of conviction was reversed or vacated, and the indictment or information dismissed, or, if a new trial was ordered *** the petitioner was not retried and the indictment or information dismissed ***;

(3) the petitioner is innocent of the offenses charged in the indictment or information ***;

(4) the petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction. 735 ILCS 5/2-702 (West 2012).' "

¶ 32 The court acknowledged that the first two prongs of the statute are "clearly satisfied" and not contested by the parties. It then stated that the "crux of the decision rests on Fields' ability to demonstrate that the third prong, in that by his potential involvement in the bribe of Judge Maloney, Fields did arguably " 'bring about his . . . conviction.' " The court, then, focused its discussion and analysis on the third and fourth prongs of the statute. In so doing, it discussed petitioner's testimony in detail, noting that it was in a "unique and important position" regarding the assessment of petitioner's demeanor and credibility. "Based on the evidence Fields presents in this case, his credibility is of critical importance. After listening to Fields' testimony, observing his demeanor on the witness stand, and considering the extensive record in this case, there are several significant issues affecting his credibility in this action." The court then discussed the fact that petitioner had previously perjured himself and encouraged others to perjure themselves to his benefit, and "generally shows a disregard for the truth-finding function of our courts of law." It also discussed that petitioner has an "apparent predilection to fabricate legal claims in order to take advantage of our system of laws;" and that petitioner's "feigned ignorance of the criminal activities of the El Rukn organization is simply unbelievable. The court found petitioner "was a willing participant in the bribe of Maloney, and therefore has unclean hands in this civil proceeding."

¶ 33 The court then discussed Sandra Langston's testimony, acknowledging it as "one of the primary issues" on remand. The court acknowledged Langston's stipulated-to description of the

alleged gunmen from retrial that was attached to petitioner's claim, in which Langston describes being inside her home, talking out the window to victim Smith just before the shooting. As Smith walked away, she saw two men pass by her window, following Smith. The description she provided of these men did not match petitioner. A few minutes later, Langston's mother told her that the two victims had been shot. In its order, the court noted that, while petitioner relies heavily on this stipulated testimony, "that testimony does not conclusively support or refute Fields' claim that he is actually innocent." Moreover, the court said, this stipulated testimony was not her only testimony. It considered an affidavit by Langston dated July 12, 2012, in which she averred:

> " 'I never witnessed any murders. Specifically, I did not witness any murders or any shooting which occurred on April 28, 1984 at 706 E. 39th Street. I do not recall telling the police that I witnessed any such murders or shooting. I do not know anything about the murders of Talman Hickman and Jerome "Fuddy" Smith. I do not recall any of the facts about the murders. [The following is written in Langston's hand.] Other then [*sic*] two guys running and heard two shots. S.L.' "

¶ 34 Then, noted the court, in 2013, nearly a year after signing that affidavit and a few weeks after receiving a letter from petitioner's attorney, and two months prior to the innocence hearing, Langston signed a three-page affidavit in which she stated that she saw two men running toward a car. She gave a statement to the police. She was aware of an ongoing feud between the 'Goon Squad' (the gang to which Smith belonged) and a family with the name of Edwards, and knew of various shootings in the weeks preceding the Smith/Hickman murders. She was "very familiar" with the El Rukns in the area and was not aware of an ongoing feud. In that statement, she also averred that the State's Attorney's office helped her family move to Wisconsin after her husband,

Gerald Morris, testified at petitioner's trial in 1986. She signed the 2012 affidavit in order " 'to get them to leave me alone.' "

¶ 35 Langston testified at the innocence hearing that she only saw the sides of the two men's faces on the night of the shooting, and could not describe them but to say they were light-skinned. She said petitioner "couldn't have been [one of the shooters] because it was two light-skinned men[.]"

¶ 36 The court described Langston as "hostile" on cross examination, and said she was "verbally aggressive and consistently expressed her displeasure at being called as a witness." She did not recall if the men she saw fleeing the scene were carrying guns, and she said she did not see anybody get into a car.

¶ 37 The court considered Langston's many and conflicting statements throughout this cause and determined that her testimony "provided more confusion than clarity." The court found:

> "The conclusion that this Court makes from Langston's testimony is that she was not an eye witness to the murder. She admittedly did not witness the shooting, and therefore cannot know if the men she saw (either following the victims or running from the victims) were the actual shooters. It is clear that she does not have an accurate recollection of the Smith/Hickman murders at this time. Looking back at her statements through time, it is impossible to conclude whether the men she saw were simply running from the gunshots or whether they were, in fact, the shooters. There is not enough credible or useful evidence here to support Fields' claim of actual innocence."

¶ 38 Regarding the evidence presented by the State in opposition to the petition, the court stated:

"The State put on an extensive case in rebuttal. It called as witnesses former El Rukns Jackie Clay, Earl Hawkins, Eugene Hunter, Nathson Fields and Derrick Kees. It also called three prosecutors who have been involved in El Rukn cases. Finally, the State also called Randy Langston and Michael Nieto.

The testimony of the El Rukn witnesses was colored by the agreements each has made with the government. They have testified extensively in the Federal and State litigation which has resulted from the investigation and prosecution of the El Rukn organization. Some, like Derrick Kees and Earl Hawkins, received benefits from the State for their participation in this innocence hearing. Each of these men are convicted felons, most murderers, and significantly interested in reducing their sentences or upholding their deals with state and Federal prosecutors to avoid additional incarceration beyond their lengthy sentences.

Despite these personal interests, these El Rukn witnesses were believable. Throughout the years they have testified relatively consistently both internally with their prior testimony and also with regards to the testimony of one another. These witnesses were well spoken and believable on the witness stand and had adequate memory and decent recollection of the El Rukn organization in the 1970s and 1980s. While each of these men has their own incentives to testify, their testimony is bolstered by their apparent honesty and the consistency of their testimony through time. Also important to this Court's assessment of the quality of the witness testimony was AUSA William Hogan's testimony relating to how the statements of each witness were procured with the objective of preserving the veracity and integrity of the testimony. Each of these men has agreed to tell the 'truth' with regards to these events and each faces penalties if they fail to

do so. Many state and Federal courts have accepted their testimony as credible and upheld numerous convictions. While they are not the most reputable persons, they were believable."

¶ 39 After significant further discussion and analysis, the court concluded, regarding the third statutory prong of innocence:

"Petitioner Fields has the burden of proof here, but as this is a civil proceeding, the burden is by a preponderance of the evidence. 'A proposition proved by a "preponderance of the evidence" is one that has been found to be more probably true than not true.' *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 191 (2005). It is the opinion of this Court that Fields has not met this burden.

Fields introduced the testimony of Sandra Langston. As discussed above, Langston's testimony was not useful in weighing whether Mr. Fields has met his burden. She was argumentative, forgetful, and inconsistent. It is impossible to conclude based on her testimony in 1984 or at any other time whether she saw the shooters or simply two other men who happened to be running from the attack. She was not an eyewitness to the shooting and her testimony 30 years later does not assist this Court in making its determination.

Similarly, the street file does not contain any evidence of a quality to support this certificate of innocence. These undeveloped leads do not demonstrate with any level of reliability that any other individuals might be responsible for the Smith/Hickman shootings. In light of the multiple witnesses who have testified in this proceedings implicating Fields in this shooting, these undeveloped leads and notes do very little in developing evidence to help Fields sustain his burden that he is actually innocent.

Fields relies primarily on his own testimony in this case, which is why the State was required to introduce much of their historical evidence. Fields' testimony was unbelievable, in light of all the evidence presented and the historical documentation contained throughout numerous opinions. His assertions that he was unaware of the criminal aspects of the organization were particularly unbelievable based on his lengthy involvement with the organization, his rank, and his associations with others in the organization.

Further, he is frequently contradicted by his own testimony as related by other individuals. For example, former Assistant State's Attorney John Hynes recounted that Fields told him in 1985 that the Generals were the ones to plan and carry out hits and also about his understanding of the 'gorilla squad.' Multiple El Rukns stated that Fields was involved in the Smith/Hickman murders and admitted the fact openly. There is simply too much evidence inconsistent with Fields' testimony. Nathson Fields' testimony was simply unbelievable.

He has a history of being untruthful in courts of law. First, he admittedly perjured himself in 1972, where the jury rejected his testimony and convicted him of murder. Second, he attempted to incite a riot in the Cook County Jail in 2000, and the jury rejected his case as a plaintiff. Thirdly, his claims about the purely peaceful nature of the El Rukn organization were defeated by mountains of contrary evidence. Fourth, his denial of any involvement in the Smith/Hickman murders is contradicted by several witnesses. Consequently, Fields does not meet his burden of proving himself actually innocent, and his claim is not supported by the record."

¶ 40 Regarding the fourth statutory prong of whether the petitioner by his own conduct voluntarily caused or brought about his conviction, the court concluded:

"The issue of whether Fields helped bring about his own conviction is also a significant obstacle to this Court's issuance of a certificate of innocence. Fields asserts that he knew nothing of the bribe of Judge Thomas Maloney. However, the only support for that claim of lack of knowledge is his self-serving statement.

Most importantly, the recorded conversations in May and June of 1984 through the secret wiretaps conclusively demonstrate to this Court that the El Rukn Generals informed Fields of the bribe. The secretly recorded conversations between Jeff Fort and his Generals are particularly damning to Fields' case. Those persons spoke candidly because they clearly believed that their conversations could not be accurately translated by law enforcement officials. Additionally, Hawkins unequivocally testified that Fields knew of the bribe of Judge Maloney.

This Court therefore finds that Fields did have knowledge of the bribe. He agreed to proceed to a bench trial because of the bribe. Furthermore, he never informed authorities of this illegal conduct until after Judge Maloney had been indicted.

Fields' knowledge of the bribe gives him unclean hands in this proceeding. His voluntary actions thereby caused his conviction when Judge Maloney learned of the bribe, attempted to give the money back, and then found him guilty at the conclusion of the bench trial. It is simply not possible to conclude that he did not, by his own conduct, bring about his conviction through his association with the bribe. Therefore, he also fails to meet the fourth prong of the statute."

¶ 41 Concluding that petitioner failed to meet his burden by a preponderance of the evidence that he was actually innocent of the crimes charged and that he did not by his own conduct bring about his conviction, the court denied petitioner's request for a certificate of innocence.

¶ 42 Petitioner appeals.

¶ 43 II. ANALYSIS

¶ 44 i. The Mandate

¶ 45 On appeal, petitioner first contends the circuit court erred in denying his petition for a certificate of innocence where the court exceeded its jurisdiction by conducting a full evidentiary hearing rather than "simply comply[ing] with the specific instructions of this court's mandate." Petitioner concedes in his reply brief that, "[u]nder normal circumstances, the trial judge may have had the discretion to order an evidentiary hearing to make a certificate of innocence determination," but that discretion was "strictly limited" here by this court's mandate to "consider the 'materials attached to [petitioner's] petition in support of his innocence claim—his affidavit and the stipulated-to testimony of Sandra Langston—in relation to the evidence presented against him at both trials' " (quoting *Fields*¸ 2011 IL App (1st) 100169, ¶ 19). He argues that, because this court did not remand for a new hearing or the presentation of new evidence, the circuit court lacked jurisdiction to conduct such hearing, and its order denying the petition is void. Petitioner asks this court to reverse and remand for reconsideration of the petition of innocence, limiting that consideration to the evidence adduced in the original proceedings, that is, "petitioner's affidavit, the Langston stipulation, the court opinions, the trial transcripts, and the other evidence the circuit court initially reviewed." Petitioner also asks that we remand to a different judge.

¶ 46 "The mandate of a court of review is the transmittal of the judgment of that court to the circuit court, and revests the circuit court with jurisdiction." *PSL Realty Co. v. Granite*

Investment Co., 86 Ill. 2d 291, 304 (1981). When the reviewing court's directives are specific, the lower court to which the cause is remanded is under a positive duty to enter an order or decree in accordance with the directions contained in the mandate. *Bond Drug Co. of Illinois v. Amoco Oil Co.*, 323 Ill. App. 3d 190, 196 (2001). Further, " '[a]ny other order issued by the trial court is outside the scope of its authority and void for lack of jurisdiction.' " *Fleming v. Moswin*, 2012 IL App (1st) 103475-B, ¶ 28 (quoting *People ex rel. Bernardi v. City of Highland Park*, 225 Ill. App. 3d 477, 481 (1992)). When a reviewing court reverses and remands a cause with a specific mandate, the only proper issue on a second appeal is whether the trial court's order is in accord with the mandate. *Quincy School District No. 172 v. Illinois Educational Labor Relations Board*, 366 Ill. App. 3d 1205, 1210 (2006). In *PSL Realty Co.*, our supreme court stated:

> "The correctness of the trial court's action on remand is to be determined by the appellate court's mandate, as opposed to the appellate court opinion. [Citations.] However, if the direction is to proceed in conformity with the opinion, then, of course, the content of the opinion is significant. [Citations.] In construing the language, matters which are implied may be considered embraced by the mandate. [Citation.] The trial court has no authority to act beyond the dictates of the mandate. Thus, the controlling question in the appeal from the remand in this case is whether the trial court complied with the mandate." *PSL Realty Co.*, 86 Ill. 2d at 308-09.

¶ 47 We disagree with petitioner's interpretation of both our mandate and what occurred below. On the previous certificate of innocence appeal, this court agreed with the State that section 2-702 of the Code reflects the intent of the legislature to "distinguish between a finding of not guilty at retrial and actual innocence of the charged offenses." *Fields*¸ 2011 IL App (1st) 100169, ¶ 19. We considered the circuit court's comments at the hearing on the innocence

petition that it "could not 'look behind [Judge Gaughan's] finding and provide a judgment on actual innocence' and that it would 'follow the finding of Judge Gaughan' in granting the petition," and we held that the circuit court, contrary to statute, failed to distinguish between the finding of not guilty and actual innocence. *Fields*¸ 2011 IL App (1st) 100169, ¶ 19. We said:

> "Although the court entered a written order clarifying that Judge Gaughan's actual finding was that the State failed to prove defendant guilty beyond a reasonable doubt, not that defendant was not guilty beyond a reasonable doubt, there is no indication that the court considered anything but the result of defendant's retrial in determining his innocence. We believe that under section 2-702 in determining whether defendant showed by a preponderance of evidence that he is innocent of the murders, the court was required to consider the materials attached to defendant's petition in support of his innocence claim—his affidavit and the stipulated-to testimony of Sandra Langston—in relation to the evidence presented against him at both trials. The court erred in not doing so. We reverse and remand to the circuit court for this determination.
>
> Reversed and remanded with instructions." *Fields*¸ 2011 IL App (1st) 100169, ¶¶ 19-20.

¶ 48 After thoroughly reviewing the record before us, it is our opinion that the circuit court, upon remand, fully complied with this court's mandate and only ordered an evidentiary hearing after it considered the materials attached to the petition and determined that these materials were insufficient to support petitioner's request for a certificate of innocence.

¶ 49 The record reveals that, after Judge Biebel's original order granting the certificate of innocence was reversed by this court and remanded to the circuit court, the parties disputed what was required by this court's mandate. Initially, the court stated:

> "[THE COURT:] What I want to hear today is how we are going to proceed; what's the appropriate way to proceed. And I will tell you in candor I have read everything. And this has a lengthy and complicated history which takes [place] in many courts both in this building, the appellate court, and the federal court.
>
> With that in mind, I want to know today from you whether you think we should have an independent hearing, or I should decide this case on the pleadings we have, or whether supplemental pleadings beyond this are necessary."

Petitioner's counsel argued that, while the statute allows for hearings, it also contemplates "the fact that the Court does not need to hold an evidentiary hearing" when the facts are sufficient to allow the court to make the finding of innocence. The court responded that there had been "recantations of various sorts by various people and even recantations of recantations." The court discussed the stipulated testimony by Sandra Langston, and petitioner's counsel acknowledged that, in the stipulated testimony, Langston never said she saw a gun. Petitioner's counsel also agreed that the descriptions of the two men provided by Langston did not match petitioner's description.

¶ 50 The State argued that Sandra Langston was an "inconsequential" witness, and said there was "no indication that Sandra Langston was ever an eye witness in this case." It argued that an evidentiary hearing should be held so that Langston's credibility could be challenged and the court could make a credibility determination itself. The State also argued that the court should make a credibility determination with petitioner on the stand at an evidentiary hearing. The court took the arguments under advisement.

¶ 51 At the end of the second day, the court, after hearing arguments by the parties and again reviewing the petition, the supporting documents including the stipulated-to testimony of Sandra

Langston as well as petitioner's affidavit, and the record from petitioner's trials, determined that the materials were insufficient to satisfy petitioner's burden of establishing his innocence by a preponderance of the evidence, and found a hearing was necessary "because there's so much that's uncertain about everything here." In addition to an oral pronouncement, the court also noted in its memorandum order that "this Court finds it necessary to conduct a hearing to determine whether [Petitioner] is able to demonstrate that he is actually innocent of these crimes". The docket sheet reflects an entry from that day stating: "Ruling is a hearing will be held."

¶ 52 From our review of the record on appeal, it is clear that the circuit court fully complied with our mandate, ordering an evidentiary hearing only after considering the materials attached to the petition and determining that these materials were insufficient to support petitioner's request for a certificate of innocence. See *Fields*¸ 2011 IL App (1st) 100169, ¶¶ 19-20 ("We believe that under section 2-702 in determining whether defendant showed by a preponderance of evidence that he is innocent of the murders, the court was required to consider the materials attached to defendant's petition in support of his innocence claim—his affidavit and the stipulated-to testimony of Sandra Langston—in relation to the evidence presented against him at both trials.") After considering these materials as required by our mandate, the court recognized that factual questions remained. It stated that a hearing was necessary "because there's so much that's uncertain about everything here," and the court determined that an evidentiary hearing should be held in order to resolve these questions and allow petitioner the opportunity to satisfy his burden under section 2-702. We find no error here.

¶ 53 Petitioner's reliance on *People v. Abata*, 165 Ill. App. 3d 184 (1988), does not persuade us differently. Petitioner urges us to find that the "circuit court's extra-jurisdictional activity in

this case was fully comparable to the proceedings condemned in [*Abata*]." *Abata*, however, is inapposite here. In that case, the appellate court, Second District, held that it was improper for the trial court to reconsider the issue of the admissibility of evidence after it had reviewed and reversed a decision by the trial court quashing an arrest and suppressing the evidence even though the defendant was advancing additional grounds for suppression. *Abata*, 165 Ill. App. 3d at 188. After the appellate court reversed the trial court's ruling quashing a search warrant and remanding for further proceedings, the trial court conducted a new hearing on a second amended motion to quash. *Abata*, 165 Ill. App. 3d 186. The court granted the motion and the State again appealed. The appellate court again reversed, holding that the trial court erred in conducting a second hearing because the specific issue had already been resolved and "was therefore closed to further litigation in the trial court, and the trial court was obligated to proceed in a manner consistent with our opinion." *Abata*, 165 Ill. App. 3d 187-88. Here, in contrast, our previous opinion directed the trial court to consider the innocence petition along with specific accompanying materials. The court did so. This mandate necessarily implied that further proceedings on the petition might be necessary, and did not direct the circuit court to decide in one way or another. See, *e.g.*, *PSL Realty Co.*, 86 Ill. 2d at 308-09 ("matters which are implied may be considered embraced by the mandate").

¶ 54 As the circuit court properly followed our mandate in considering the petition for innocence and the specific accompanying materials, and only then determined that an evidentiary hearing was necessary, the court's action was within the scope of our mandate and did not exceed its jurisdiction.

¶ 55 i. The Witnesses

¶ 56 Next, petitioner contends the circuit court erred when it denied his motion to disqualify certain State's witnesses from testifying at the innocence hearing. Specifically, petitioner argues that fact witnesses who were compensated by the State in return for their testimony, in the form of either reduced prison sentences or cash payments, should not have been allowed to testify. He argues that, while there is a public interest exception in criminal cases that allows prosecutors to offer sentence reductions and other benefits to testifying witnesses, there should be no such exception in civil cases such as this one. He specifically complains of Hawkins, whose sentence was reduced from 42 years to 39 years in exchange for "truthful testimony," and of Kees, whose sentence was reduced from 55 years to 50 years in exchange for his testimony at the innocence hearing. He says:

> "The error in admitting the testimony of Hawkins and Kees was extremely prejudicial. The circuit court found Hawkins's testimony to be credible, and relied upon it heavily in denying the petition. Indeed since the court rejected the testimony of the only other eyewitness who identified Fields as a participant in the Hickman/Smith murders Hawkins was the only supposed eyewitness to the Hickman/Smith murders whose testimony the court relied upon. In addition, the circuit court relied upon the testimony of Derrick Kees that Fields had admitted to participating in the Hickman/Smith murders."

Petitioner asks this court to reverse and remand for a determination on the petition without the admission of the testimony by Hawkins and Kees.

¶ 57 Petitioner posits that the compensation offered here was tantamount to bribery. Citing *United States v. Singleton*, 165 F.3d 1297 (10th Cir. 1999), petitioner acknowledges that "there is a public interest exception which allows prosecutors to offer sentence reductions, and possibly other benefits, in criminal cases," but does not offer this court citation to any rules or case law

specifying that such public interest exception does not apply in innocence hearings such as the one at bar. Neither does the State provide citation to case law or rules providing that such public interest exception does apply in innocence hearings. We have found none in our research, either. Accordingly, we consider whether the court abused its discretion in allowing this testimony in.

¶ 58 The admission of evidence is a matter within the sound discretion of a trial court, and a reviewing court will only reverse the trial court upon a showing of an abuse of that discretion. *Snelson v. Kamm*, 204 Ill. 2d 1, 24 (2003); *People v. Caffey*, 205 Ill. 2d 52, 89 (2001). An evidentiary ruling constitutes an abuse of discretion when it is arbitrary, fanciful, or unreasonable (*People v. Hanson*, 238 Ill. 2d 74, 101 (2010)) or where "no reasonable person would agree with the position adopted by the trial court." *People v. Becker*, 239 Ill. 2d 215, 234 (2010) (internal citations omitted).

¶ 59 In *People v. Bannister*, 236 Ill. 2d 1, our supreme court considered a witness' plea agreement in the context of a direct appeal and held that, although the defendant did not have standing to object to the plea agreement the prosecution reached with a previously convicted codefendant in order to secure his testimony at the defendant's retrial and therefore could not disqualify the witness from testifying, the defendant could nonetheless challenge the witness' credibility based on the plea deal. *Bannister*, 236 Ill. 2d at 11. The court explained:

> "Our legal system tests a witness' credibility through cross-examination and leaves the determination of that credibility to the finder of fact. See *People v. Evans*, 209 Ill. 2d 194, 212 [] (2004), quoting *Hoffa v. United States*, 385 U.S. 293, 311 [] (1966).
>
> 'In most instances, any potential for prejudice to a defendant's case will be avoided by allowing the witness to testify subject to searching cross-examination intended to develop fully any evidence of bias or motive on the part of the

> witness, or improper conduct on the part of the State. Every fact that might in some way influence the truthfulness and credibility of the witness's testimony should be laid before the [finder of fact]. [Citation.] This ensures no unnecessary barriers will be imposed on the State's ability to bargain for truthful testimony, and at the same time ensures the [finder of fact] will be able to determine what weight, if any, in light of all the evidence, to give the witness's testimony.' *State v. McGonigle*, 401 N.W.2d 39, 42 (Iowa 1987)." *Bannister*, 236 Ill. 2d at 17-18.

Our supreme court then determined that, on the facts before it, the court was fully aware of the plea agreement and could competently make a credibility determination, stating:

> "The State, on direct examination of [witness] Johnson, fully disclosed the terms of the plea agreement with him, and the defendant had an opportunity to cross-examine Johnson about the agreement and the benefits he would receive. The trial court heard the details of Johnson's plea agreement and found him to be credible nonetheless. As the finder of fact, it was the trial court's responsibility to resolve alleged inconsistencies and conflicts in the evidence, as well as to weigh the testimony and determine the credibility of the witnesses. See *People v. Sutherland*, 223 Ill. 2d 187, 242 [] (2006)." *Bannister*, 236 Ill. 2d at 18.

¶ 60 Similarly here, the State notified the court that witness Kees was "testify[ing] for us in exchange for a plea agreement" to reduce his sentence by five years. Then, on direct examination, the State questioned Kees about his plea agreement:

> "[ASSISTANT STATE'S ATTORNEY:] Q. You also testified * * * about the plea agreement that you reached; correct?
>
> [WITNESS DERRICK KEES:] A. Yes.

Q. [Is the new plea agreement] to reduce your sentence by five years?

A. Yes.

THE COURT: That was in the State court; right?

[ASSISTANT STATE'S ATTORNEY:] Yes, state court.

[ASSISTANT STATE'S ATTORNEY:] Q. And in both your federal plea agreement and in your state agreement, if you did not give full and complete, truthful testimony, those agreements are null and void; is that correct?

A. Yes."

During his testimony, Kees admitted he had participated in many murders on behalf of the El Rukn organization. He translated recordings of coded conversations between various El Rukn members in open court. This included a conversation showing that petitioner was aware of the bribe of Judge Maloney. Kees was cross-examined extensively about his 1993 plea deal with the federal government, and was impeached by his grand jury testimony. He was also cross-examined about the plea agreement he entered into for his testimony at the innocence hearing:

"[DEFENSE ATTORNEY GORMAN:] Q. In return for your testimony today, you entered into another deal; isn't that correct

[WITNESS DERRICK KEES:] A. Yes.

Q. The State has knocked off five years from your state time, sentence?

A. Yes."

The court then took judicial notice that "he's testifying today, and that the plea deal was done yesterday."

¶ 61 Defense counsel continued to extensively cross-examine Kees regarding his plea agreements, how they came about, and what effect they might have on his State and Federal sentences.

¶ 62 When Hawkins testified at the innocence hearing, the State questioned him about his various agreements with the State and with the Federal government. Hawkins testified that, after his original conviction and death sentence, he began cooperating with the Cook County State's Attorney and the FBI regarding the Maloney bribe and the FBI investigation of the El Rukn organization. Hawkins testified in 12 or 13 Federal trials between 1991 and 1997 against the El Rukn organization. After his testimony, he pled guilty to charges of drug conspiracy and racketeering involving the murders of William Bibbs, Duke Thomas, Charles Tyler, Ronnie Bell, Adria Thomas, Lamont Timberlake, Barnett Hall, and Talman Hickman. He also pled guilty to involvement in the attempt murders of Jerry Little and Phillip Steel. In return for the plea and testimony, Hawkins received a 60-year sentence on the federal cases.

¶ 63 Hawkins testified that, when his State case was remanded, he pled guilty to a sentence of 42 years on a count of armed violence regarding Talman Hickman, and a consecutive sentence of 42 years for Jerome Smith, both to be served concurrently with his Federal sentence. Just prior to his testimony at the innocence hearing, the State reduced his 2 sentences of 42 years to 2 sentences of 39 years. The parties disagreed about whether this was a new sentencing deal, with the State claiming that these numbers reflected the actual terms of his original 2004 agreement with the State. Defense counsel cross-examined Hawkins regarding his agreement with the State:

> "[DEFENSE COUNSEL GORMAN:] Q. And I understand from [your deposition a couple of days ago] that you had a deal that was made that morning with the [S]tate's [A]ttorney's office regarding your testimony. Do you recall that?

[WITNESS HAWKINS:] A. Yes.

* * *

[DEFENSE COUNSEL GORMAN:] Q. This was a new deal for you, correct?

[WITNESS HAWKINS:] A. Yeah, they took some time off, yes.

Q. And your attorney said that this was not - - you didn't know anything about what the Government was saying about original intent, that this was a revision of the numbers regarding the time that you had left to serve, is that correct?

A. Something like that, yes.

Q. You stated a few minutes ago, actually you stated it twice today, that you swore to tell the truth in these proceedings, is that correct?

A. Yes."

¶ 64 Midway through the innocence hearing, the court denied the motion to disqualify witnesses, stating:

"THE COURT: * * * This is a bench hearing. I'm not going to disqualify witnesses, but I certainly will take into consideration the fact that either deals were made or some money was paid. As a matter of fact, I heard yesterday from both witnesses that somebody was paid. Your witness was relocated by the State's Attorney's Office at one time or another. I take that into consideration in a bench hearing."

¶ 65 We find no abuse of discretion here, where the circuit court made clear that, while it would allow the challenged witnesses to testify, it would consider the inducements when deciding what weight to give those witness' testimony. In its memorandum opinion, the court stated, in part:

"The testimony of the El Rukn witnesses was colored by the agreements each has made with the government. They have testified extensively in the Federal and State litigation which has resulted from the investigation and prosecution of the El Rukn organization. Some, like Derrick Kees and Earl Hawkins, received benefits from the State for their participation in this innocence hearing. Each of these men are convicted felons, most murderers, and significantly interested in reducing their sentences or upholding their deals with state and Federal prosecutors to avoid additional incarceration beyond their lengthy sentences.

Despite these personal interests, these El Rukn witnesses were believable. Throughout the years they have testified relatively consistently both internally with their prior testimony and also with regards to the testimony of one another. These witnesses were well spoken and believable on the witness stand and had adequate memory and decent recollection of the El Rukn organization in the 1970s and 1980s.

While each of these men has their own incentives to testify, their testimony is bolstered by their apparent honesty and the consistency of their testimony through time. Also important to this Court's assessment of the quality of the witness testimony was AUSA William Hogan's testimony relating to how the statements of each witness were procured with the objective of preserving the veracity and integrity of the testimony. Each of these men has agreed to tell the 'truth' with regards to these events and each faces penalties if they fail to do so. Many state and Federal courts have accepted their testimony as credible and upheld numerous convictions. While they are not the most reputable persons, they were believable. "[6]

[6] Defendant does not challenge the court's credibility findings in this appeal.

¶ 66 The State fully disclosed the terms of the plea agreements to the court and the parties, and petitioner had ample opportunity to cross-examine the witnesses about the agreements and the benefits they would receive. The trial court heard all of these details, understood that each were felons "significantly interested in reducing their sentences or upholding their deals with state and Federal prosecutors to avoid additional incarceration beyond their lengthy sentences," and still found the witnesses to be credible. As the finder of fact, it was the trial court's prerogative to resolve any inconsistencies and conflicts in the evidence and to weigh the testimony and make credibility determinations. See *Bannister*, 236 Ill. 2d at 18. The trial court did this in the case at bar, and we cannot say that its ruling was an abuse of discretion where he allowed the challenged witnesses to testify, but specifically considered the inducements when deciding what weight to give their testimony.

¶ 67 In addition, even if the circuit court's ruling regarding the challenged witnesses was in error, petitioner was not prejudiced by this error. A person who was wrongly convicted and imprisoned may file a petition for a certificate of innocence in the circuit court of the county in which he was convicted to seek compensation in the Court of Claims. See 735 ILCS 5/2-702(a), (b) (West 2012); 705 ILCS 505/8(c) (West 2012). A petitioner seeking a certificate of innocence has the burden to prove, by a preponderance of the evidence, that: (1) the State of Illinois convicted him of a felony, he was sentenced to a term of imprisonment, and he served all or any part of the sentence; (2)(a) the conviction was reversed or vacated and the charging instrument was dismissed, or, if a new trial was ordered, he either was found not guilty on retrial or was not retried and the charging instrument was dismissed, or (2)(b) the statute underlying the charging instrument or its application was unconstitutional; (3) he is innocent of the charges or his acts or omissions did not constitute a felony or a misdemeanor; and (4) he did not voluntarily cause or

bring about his conviction by his own conduct. 735 ILCS 5/2-702(g) (West 2012). "A proposition proved by a 'preponderance of the evidence' is one that has been found to be more probably true than not true." *Avery*, 216 Ill. 2d at 191. Whether or not a petitioner is entitled to a certificate of innocence is committed to the sound discretion of the circuit court, and we cannot overturn the circuit court's decision unless the court abused its discretion or the findings underlying its decision were clearly erroneous. *Rudy v. People*, 2013 IL App (1st) 113449, ¶ 11.

¶ 68 Here, as the circuit court stated in its memorandum opinion, it was petitioner's burden to establish his own innocence by a preponderance of the evidence, and he failed to meet this burden. As quoted *inter alia*, the court considered Sandra Langston's testimony and found it was "not useful in weighing whether [petitioner] has met his burden," that she was an incredible witness, and that she was not an eye witness to the shooting. The court also found that the street file did not "contain any evidence of a quality to support" the certificate of innocence. The court noted that petitioner himself was an untrustworthy witness, stating:

> "[Petitioner] Fields relies primarily on his own testimony in this case * * * [which was] unbelievable, in light of all the evidence presented and the historical documentation contained throughout numerous opinions. His assertions that he was unaware of the criminal aspects of the organization were particularly unbelievable based on his lengthy involvement with the organization, his rank, and his associations with others in the organization.
>
> Further, he is frequently contradicted by his own testimony as related by other individuals. For example, former Assistant State's Attorney John Hynes recounted that Fields told him in 1985 that he Generals were the ones to plan and carry out hits and also about his understanding of the 'gorilla squad.' Multiple El Rukns stated that Fields was

involved in the Smith/Hickman murders and admitted the fact openly. There is simply too much evidence inconsistent with Field's testimony. Nathson Fields' testimony was simply unbelievable.

He has a history of being untruthful in courts of law. First, he admittedly perjured himself in 1972, where the jury rejected his testimony and convicted him of murder. Second, he attempted to incite a riot in the Cook County Jail in 2000, and the jury rejected his case as a plaintiff. Thirdly, his claims about the purely peaceful nature of the El Rukn organization were defeated by mountains of contrary evidence. Fourth, his denial of any involvement in the Smith/Hickman murders is contradicted by several witnesses. Consequently, Fields does not meet his burden of proving himself actually innocent, and his claim is not supported by the record."

The court also considered the fourth statutory prong regarding whether the petitioner, by his own conduct, voluntarily caused or brought about his conviction, and concluded that petitioner did so, stating:

"The issue of whether Fields helped bring about his own conviction is also a significant obstacle to this Court's issuance of a certificate of innocence. Fields asserts that he knew nothing of the brief of Judge Thomas Maloney. However, the only support for that claim of lack of knowledge is his self-serving statement.

Most importantly, the recorded conversations in May and June of 1984 through the secret wiretaps conclusively demonstrate to this Court that he El Rukn Generals informed Fields of the bribe. The secretly recorded conversations between Jeff Fort and his Generals are particularly damning to Fields' case. Those persons spoke candidly because they clearly believed that their conversations could not be accurately translated

by law enforcement officials. Additionally, Hawkins unequivocally testified that Fields knew of the bribe of Judge Maloney.

This Court therefore finds that Fields did have knowledge of the bribe. He agreed to proceed to a bench trial because of the bribe. Furthermore, he never informed authorities of this illegal conduct until after Judge Maloney had been indicated.

Fields' knowledge of the bribe gives him unclean hands in this proceeding. His voluntary actions thereby caused his conviction when Judge Maloney learned of the bribe, attempted to give the money back, and then found him guilty at that conclusion of the bench trial. It is simply not possible to conclude that he did not, by his own conduct, bring about his conviction through his association with the bribe. Therefore, he also fails to meet the fourth prong of the statute."

¶ 69 In assessing the court's memorandum opinion denying petitioner's petition, it is clear that petitioner was not prejudiced here where, even if the court had barred evidence from the challenged witnesses, the outcome would be the same: the court would still have found that petitioner failed to meet his burden under section 2-702(g) (3) and (4). 735 ILCS 5/2-702(g) (West 2012).

¶ 70 III. CONCLUSION

¶ 71 In summary, from our review of the record on appeal, including prior cases, petitioner's filings, and transcripts of hearings below, it is clear the circuit court fully complied with our mandate and only ordered an evidentiary hearing after it considered the materials attached to the petition and determined that these materials were insufficient to support petitioner's request for a certificate of innocence. We also find the court did not err in allowing the challenged witnesses to testify, where it deliberately and appropriately considered the inducements provided to the

witnesses when deciding what weight to give their testimony. Additionally, after careful review of all the evidence, including the evidence adduced at the innocence hearing, we find the circuit court did not err in determining that petitioner failed to meet his burden of demonstrating by a preponderance of the evidence that he was innocent.

¶ 72 For all of the foregoing reasons, the decision of the circuit court of Cook County is affirmed.

¶ 73 Affirmed.

¶ 74 JUSTICE PUCINSKI, dissenting:

¶ 75 "Even bad guys have rights." I heard that the first day of law school in Criminal Law from the late and well respected Attorney-Professor Elmer Gertz. No matter what we think of Nathson Fields' life choices in 1980's or now, he still has rights and I do not believe those rights have been properly protected.

¶ 76 Fields is appealing the denial of his Petition for a Certificate of Innocence. Fields was found guilty of murder, sentenced to death, filed a post conviction petition and an amended post conviction petition which resulted in a new criminal trial in which he was acquitted of murder. He filed a Petition for a Certificate of Innocence and the Petition judge granted it based solely on the acquittal. The state appealed. We remanded an on remand the Petition judge held an entire new criminal trial and denied the Petition.

¶ 77 **Is the Certificate of Innocence Act Unconstitutional?**

¶ 78 To be successful in a Petition for a Certificate of Innocence ("Certificate") it is the rule of law in this state that after a conviction is vacated or on retrial a finding of not guilty has been entered, and no retrial is possible, the defendant has to prove he is innocent beyond a reasonable

doubt. That is the wording in the Act, and our courts have consistently pointed out that "not guilty" is not the same as "innocent." See *People v. Perez,* 2016 IL App (1st) 152087 ¶ 18.

¶ 79 However, I think that the U.S. Supreme Court's recent decision in *Nelson v. Colorado, Madden v. Colorado*, 137 S.Ct. 1249, April 9, 2017, must now be taken into consideration.

¶ 80 The Petition for Certificate of Innocence, the Petition hearing and this appeal were all filed before *Nelson*. The Petitioner did not raise a constitutional argument, probably because *Nelson* had not been issued when he filed his case or his appeal. The Majority, once informed of *Nelson*, did not request supplemental briefing or remand the case for the Petition court to get an amended Petition, supplemental briefing or consideration of Nelson.

¶ 81 Shannon Nelson was convicted of two felonies and three misdemeanors in Colorado. The trial court imposed a prison term of 20 years and ordered her to pay $8,192.50 in court costs, fees and restitution. On appeal her conviction was reversed for trial error and on retrial she was acquitted of all charges. She wanted her money back and the state declined to refund it. Her trial court denied her motion, the state appellate court said she was entitled to the refund, and the state Supreme Court reversed.

¶ 82 Louis Madden was convicted of two felonies in Colorado and the court imposed a prison sentence and ordered him to pay $4413.00 in costs fees and restitution. One of the convictions was reversed on direct appeal and one was vacated after he filed a post conviction petition and the state declined to appeal or retry the case. He wanted his money back. The state said no, the post conviction court allowed a refund of the costs and fees but not the restitution. The state appellate court said he could get all of his money back, and the Colorado Supreme Court reversed.

¶ 83 Neither Nelson nor Madden filed actions under the Colorado's Compensation for Certain Exonerated Persons statute ("Exoneration Act" or "Act"). Colo. Rev. Statute 13-65-101, 13-65-102, 13-65-103 (2016). The Colorado Supreme Court reversed in both cases holding that the Act was the exclusive remedy for exonerated defendants seeking a refund and that their trial courts lacked jurisdiction, and that the Act posed no due process problem.

¶ 84 The U.S. Supreme Court held that the Colorado Exoneration Act's method of obtaining refunds did not provide these defendants with their Fourteenth Amendment due process.

¶ 85 I am aware that the Colorado cases were based on the state's refusal to refund money after the defendants were exonerated one way or another and that Nathson Fields is not directly asking for money in his Petition for a Certificate of Innocence. He is really seeking a Certificate of Innocence which will give him the right to file a claim in the Illinois Court of Claims for wrongful incarceration. Under Illinois law the claim for money against the state is indirect for those whose convictions have been reversed. But it is still about money, and it is still a civil case.

¶ 86 The language in the two state laws is roughly parallel and the reasoning of the U.S. Supreme Court is clear.

¶ 87 To get a refund in Colorado the Petitioner must file a Petition for compensation based on actual innocence. The Petition can be filed if the Petitioner was convicted of a crime and was incarcerated and then the conviction is vacated or overturned; when no further criminal prosecution for the crimes charged has been initiated by the State; the reason for vacating or reversing the criminal conviction was not legal insufficiency of the evidence or legal error; all charges have been dismissed; or the petitioner was acquitted of all charges; the petition is timely; and the trial court determines that the petitioner committed neither the act or offence that led to the conviction and incarceration or any lesser included offense, and meets the definition of actual

innocence . CRSA 13-65-102 (West, 2013). Actual innocence is defined as: "a finding by clear and convincing evidence by a district court…that a person is actually innocent of a crime" CRSA 13-65-101 (West 2013)

¶ 88 In Illinois to get a Certificate of Innocence the Petitioner must present documentation that he or she was convicted of one or more felonies by the state; was sentenced to and served all or part of a term of imprisonment; the conviction was reversed or vacated, or if a new trial was ordered was found not guilty and was not retried or the statute which led to the conviction was found unconstitutional. If a hearing is held the Petitioner must 1) establish all of the above; and, 2) prove by a preponderance of the evidence that (a) he or she is innocent of the offenses charged; and, (b) that he or she did not by his or her own conduct voluntarily bring about the conviction. 735 ILCS 5/2-702 (a) – (g) (West 2014.)

¶ 89 The burdens of proof are different, even though both the Colorado and Illinois procedures are civil not criminal. In Colorado the Petitioner has to show actual innocence by clear and convincing evidence and in Illinois it is by a preponderance of the evidence.

¶ 90 But in both states it is up to the petitioner to prove innocence after having his conviction reversed or vacated or being found not guilty in a retrial with no chance the state will file the case again.

¶ 91 In *Nelson* the U.S. Supreme Court was emphatic that "absent a conviction of a crime, one is presumed innocent." *Ibid* p. 1252. It went on to say "Under the Colorado law before us in these cases *** the State retains conviction-related assessments unless and until the prevailing defendant institutes a discrete civil proceeding and proves her innocence by clear and convincing evidence. This scheme, we hold, offends the Fourteenth Amendment's guarantee of due

process." *Ibid*., p. 1252. The Colorado Supreme Court was reversed and the Act was held unconstitutional.

¶ 92 In reaching this conclusion the Court relied on the balancing test for procedural due process in *Matthews v. Eldridge*, 424 U.S. 319, (1976). Under *Mathews* the court evaluates: "(A) the private interest affected; (B) the risk of erroneous deprivation of that interest through the procedures used; and (C) the governmental interest at stake." *Ibid*., p 1255, internal quotes removed.

¶ 93 Acknowledging that Nelson and Madden had a clear interest in getting their money back, the Court concluded that "once those convictions were erased, the presumption of innocence was restored." *Ibid* p. 1255. The Court cited *Coffin v. United States*, 156 U.S. 432, 452 (1895):

" 'Axiomatic and elementary' the presumption of innocence ' lies at the foundation of our criminal law.' " *Ibid*. p. 1255-6.

¶ 94 The Court was specific: "***"to get their money back, defendants should not be saddled with any proof burden. Instead ***they are entitled to be presumed innocent." *Ibid.*, 1256.

¶ 95 *Nelson* was decided after Fields filed his Petition for a Certificate of Innocence. I think that *Nelson* casts a shadow on the constitutionality on the Illinois Certificate of Innocence Act and I would therefore remand to the Petition court for an amended Petition and briefing on the impact of *Nelson* on the Illinois Act.

¶ 96 Fields was acquitted in his second criminal trial. He was found not guilty. He should therefore enjoy the presumption of innocence.

¶ 97 **Stay of Appeal**

¶ 98 I did not agree when my colleagues denied Field's Motion for a Stay of Appeal in this case (filed January 30, 2017, denied May 9, 2017, and refused to remand it back to the Petition

court for consideration of the testimony and result in the related federal case, *Fields* v. *City of Chicago, et. al.,* No. 10 C 1168, 2014 WL 477394, ND Ill. (filed) Feb. 6, 2011. In the federal case Judge Kennelly ordered a new trial on April 7, 2015 which started *after* the Petition court held its hearing and entered the order (entered March 4, 2014) denying the Certificate of Innocence at issue here. The testimony in the federal case undermined some of the findings of the Petition court and remand would have given the Petition court an opportunity to review the testimony, pleadings and findings in the federal case to determine what did or did not line up in the Petition hearing.

¶ 99 For example, testimony in the federal civil rights case established that the police kept a "street file" hidden from the defense in this case. In *Kluppelberg v. Burge*, 2017 WL 338717, our well respected colleague down the street, Judge Joan Lefkow, on August 7, 2017, cited *Fields v. City of Chicago, et. al.,* 10 C 1168 2014, 2/6/14 WL 477394 at *2 and at *6,7*)* when she ruled in different case that the City of Chicago could not "[contest] that it had a policy or practice of withholding material exculpatory and/or impeachment information, because "the general verdict in *Fields* is sufficient for purposes of collateral estoppel." That is, Fields' claim that the City withheld its police "street file" from the defense, that the withholding violated his civil rights and was caused by an official policy or practice of the City of Chicago "was submitted to the jury and the jury ultimately found for Fields and against the City." J. Lefkow held that "because determining whether the City had a policy or practice of withholding street files was necessary to the jury's finding of liability, the general verdict in *Fields* is sufficient for purposes of collateral estoppel." *Kluppelberg v. Burge,* 2017 WL 3381717, N.D Ill. 13 CV 3963, Opinion and Order, 8/07/2017.

¶ 100 Fields filed his first federal civil rights action against the City of Chicago and several named defendants and was awarded less than $100,000 after a jury trial. (*Fields v. City of Chicago, et. al.,* U.S. District Court, N.D. Ill. No. 10C 1168, Document # 695, filed 5/1/14.) It then became clear to the judge that the city withheld information from Fields about a new plea deal with the state's star witness, Earl Hawkins, which the judge stated plainly was a "bonanza" for Hawkins. The judge ordered a new trial. (*Fields v. City of Chicago, et. al.,* U.S. District Court, N.D. Ill. No. 10 C 1168, Memorandum Opinion and Order, Document # 812, Filed 04/07/15.)

¶ 101 The new federal civil rights trial resulted in a jury finding for Fields and awarded him $22 million in compensatory damages from the City of Chicago, $30,000 in punitive damages from Chicago Police Detective David O'Callaghan, and $10,000 in punitive damages from Chicago Police Detective Joseph Murphy. (*Fields v. City of Chicago, et. al.,* U.S. District Court, N. D. Ill. No. 10 C 1168, Judgment in a Civil Case, Document # 1175, Filed 12/16/16.) A review of the Federal docket reveals that the case is in the trial court on post trial motions for attorneys' fees and that no Notice of Appeal has been filed by the City.

¶ 102 From these records it was clear that most, if not all, of the state's witnesses lied, recanted or recanted their recantations, were given sweet deals to testify for the state, that there was bad behavior by a couple of rogue cops, that there was a street file that was never produced to the defendant in his original criminal trial, that at least some parts of the testimony in the federal trials of El Rukns was problematic as it related to Fields' guilt in these murders; and that there was evidence of non-cooperation to Fields by the state, the Chicago Police Department, and the federal prosecutors. This also met the first threshold, the "likely to succeed standard."

¶ 103 **Petition Court Procedure on Remand**

¶ 104 I do not agree that the Petition court followed the correct procedure after remand and before holding the hearing on the Petition for Certificate of Innocence ("Petition"). Our mandate in *People v. Fields*, 2011 IL App (1st) 100169 ¶ 19 stated; "We believe that under section 2-702 in determining whether defendant showed by a preponderance of evidence that he is innocent of the murders, the court was required to consider the materials attached to defendant's petition in support of his innocence claim – his affidavit and the stipulated to-testimony of Sandra Langston – in relation to the evidence presented against him in both trials. The court erred in not doing so."

¶ 105 The first time this Petition judge considered the Certificate of Innocence he took a shortcut when he entered the order granting the Certificate of Innocence, based only on what the previous criminal trial judge did in the criminal trial on remand, that is, finding the defendant not guilty. Instead of first looking to the documentation presented with the Petition (which included the finding of not guilty) and then making a finding based on the Petition and supporting documents whether the Petitioner had provided sufficient information to determine that he was likely to succeed, the Petition judge ignored the requirements for the first step. I believe the mandate of the Appellate Court was to send it back for a do-over on that first required finding: did the petitioner file sufficient information for the Petition court to believe he would succeed in any Petition hearing and prove his innocence? And, did the Petition court take that information into account when it made its decision. When the Petition court jumped over the need to review the documentation and made a decision only on what the criminal trial judge did we sent it back because that is not permitted.

¶ 106 On remand the Petition judge had the testimony of Sandra Langston which was stipulated to by the state and the defendant. The state agreed that if Sandra Langston testified at the Petition

hearing she would say that she saw two men following the victims on the night of the murder; and that they were two light skinned black men in their 20's. It is interesting to me that the State, having in its possession this statement to the police at the time of the murder, did not call Sandra Langston to the original criminal trial. Fields observes that he is and was at that time of the murders a dark skinned black man and that at the time he was in his 30's. There is no way to reconcile the description of the only eye-witness to the men following the victims to the actual characteristics of Fields. The Petition judge was obligated to take the stipulated-to testimony of Sandra Langston into serious consideration. The stipulation clearly helped Fields meet the first threshold, the "likely to succeed" standard. The state rebutted with transcripts showing that Sandra Langston was not an actual witness to the shooting itself. Fields included testimony from other witnesses to the shooting that at best raised some questions. The Petition judge had the record and transcripts from each of the earlier Fields cases: the original criminal trial, the trial of the original criminal trial judge, the appeals, the second criminal trial, the first Petition hearing, and the remand. If he did not feel that Fields met his burden he could have denied the Petition at that point. If he felt, as he obviously did, that he needed clarification on some issues, then it was his responsibility to turn to the prior records and make a decision. This he did not do. Instead he decided to hold a whole new live trial on the underlying murder charge. The hearing at this point should have been arguments from the attorneys. To stretch that into an entire new live trial is not authorized by the Act.

¶ 107 **Should there have been an evidentiary hearing?**

¶ 108 When the Petition judge took the case back on remand, instead of making the finding that the Petitioner did or did not satisfy the "likely to succeed" standard, he went directly to a whole

new trial which, in my opinion turned out to be a fishing expedition for a bunch of "gotcha's!" with various witnesses and gave the state yet another bite at the apple.

¶ 109 To be sure, the Act itself contemplates a hearing on the Petition: "(f) In any hearing seeking a certificate of innocence, the court may take judicial notice of prior sworn testimony or evidence admitted in the criminal proceedings related to the convictions which resulted in the alleged wrongful incarceration, if the petitioner was either represented by counsel at such prior proceedings or the right to counsel was knowingly waived." 735 ILCS 5/2-702 (f) (2014).

¶ 110 I do not believe that the Act contemplates an entire new trial of the underlying criminal case. I believe the hearing permitted in the Act is for the purpose of the Petitioner presenting evidence that he meets the requirements and is innocent and then the state calling the judge's attention to those parts of the records, transcripts and evidence from the original trial or from the retrial if one was held and the defendant was found not guilty which rebut the Petitioner's claim. There is nothing in the Act that specifically authorizes a new, start from scratch trial and I think having a brand new trial frustrated not only the spirit of the Act but its language as well. By this point the state had the original criminal trial, the appeal of that criminal trial, the criminal trial on remand, the petition for Certificate of Innocence, the appeal of that, and then an entire new criminal trial during the hearing on the Petition on remand: really, at some point the state should not be allowed keep eating its cake and having it too.

¶ 111 After the remanded criminal trial the state lost the case, Fields was acquitted. With the second criminal trial within the Certificate hearing the state got yet another chance to parade out its case, one which had already been rejected.

¶ 112 Are we to believe that the Act contemplate that a Petitioner, already found not guilty or whose conviction has been reversed must now navigate through a hall of mirrors: a trial within a

hearing after being found not guilty? That is, have the same witnesses and the same evidence that have already been found wanting by one court, come again on the same charges for which the Petitioner has already been found not guilty or whose conviction has been reversed. How is it possible that the state gets yet one more chance to make its case?

¶ 113 And, on top of that the Petitioner now has to prove a negative: "I didn't do it," when the state has already failed to prove he did. There is a fundamental inconsistency between the procedure outlined in the Act and the way it has been interpreted, and that inconsistency is wrong. The state gets a good chance—better than even—to prove a defendant is guilty. If they are successful and get a guilty verdict then the defendant has a chance to appeal. So far everything is fair and pretty even-keeled. But once the defendant is found not guilty on retrial or the case is reversed, in what alternate universe does the state get to go at him again for the same crime? Even if we weren't talking about due process, we could still be and should be talking about innocence. And, all of this is in the context of a civil procedure, not a criminal case. If the state blew it, then that should be it.

¶ 114 The Act contemplates that the Petition hearing judge will take "judicial notice of prior sworn testimony or evidence admitted in criminal proceedings related to the convictions which related in the alleged wrongful incarceration…." 735 ILCS 5/2/702 (f) (2014). I take this to mean that the trial judge has the opportunity to review any and all records and transcripts in the underlying criminal trial and no more. I do not see any authority for the Petition hearing judge to start gathering new testimony about the acts which led to the underlying criminal trial.

¶ 115 This is borne out by the legislative intent debate led by its author and chief sponsor, Rep. Mary Flowers on House Bill 0230: "I have attempted to address the concerns of the Jud II Criminal Law Committee that the process of petitioning for a certificate of innocence would

force the court to try to make the original criminal case…will try to….try to original criminal case over again. I added the language that says the court may take judicial notice of prior sworn testimony or evidence admitted in the criminal court….pre…proceeding." Illinois House Debate, Public Act 95-0970, 5/18/2007, pp 5-6). Public Act 95-0970 amended several Illinois statutes, and specifically added new provisions to 735 ILCS 5/2-702 by amending the Code of Civil Procedure to add: "(f) In any hearing seeking a certificate of innocence, the court may take *judicial notice* of prior sworn testimony or evidence admitted in the criminal proceedings related to the convictions which resulted in the alleged wrongful incarceration, ***" (735 ILCS 5/2-702 (f). (Emphasis added.) There is not one word about an entire new criminal trial. I think the Petition judge over-reached when he decided to begin at the beginning with an entire new evidentiary trial on the original criminal charge. Instead he should have kept any hearing to answering the question put before him: did Fields present sufficient documentation to prove his innocence, or did the state provide sufficient documentation to cast that question into doubt? If Fields did his job, then the certificate should have been entered. If the state cast doubt on it then the certificate should have been denied.

¶ 116 **Relying on Criminal Case Law in Civil Case matter**

¶ 117 I do not agree that the state and this court can rely on criminal cases for the authority of the Petition court to hold an evidentiary hearing, since this is a civil case and there is no corollary and no case law supporting that conclusion. If majority wishes to make this a rule for all civil cases then so be it, but relying on the state's assertion that the process for Petition for Certificate of Innocence is a "quasi criminal" matter makes no sense. The standard of proof and the burden of proof are clearly civil. The interest at stake is purely civil: will this petitioner be able, with the Certificate of Innocence, make a claim on the state to the Court of Claims for reimbursement for

wrongful incarceration. This is a money issue. Money. Civil. Not "quasi criminal." I don't see how using criminal case law to support an evidentiary hearing that is not provide for in the actual law itself is appropriate, and I think that morphing criminal procedure onto civil cases is a troubling and slippery slope.

¶ 118 **Detective O'Callaghan**

¶ 119 Because my colleagues refused to stay the appeal and remand for an amended Petition as requested by the Petitioner, the bad acts of Det. O'Callaghan were ignored in this matter. Det. O'Callaghan is a well documented rogue cop and this entire mess started in Area 2 when Jon Burge was leading his pack of "anything goes" cops. The truly dedicated men and women of the Chicago Police Department have been tarred by the actions of Burge and company, and the City of Chicago has already paid out millions to compensate their victims including the actions of Det. O'Callaghan on this very case. The actions of Det. O'Callaghan needed to be considered in the Petition court and by us. This was not done, however, because without the remand and an amended Petition this information is only in our record because it is a supplement to the motion to stay filed here. It was never before the Petition judge and it should have been.

¶ 120 **Testimony of "bought" witnesses**

¶ 121 I do not agree that it was permissible for the Petition judge to allow the testimony of witnesses for the state that had been given some benefit for their testimony. This is not done in civil cases.

¶ 122 Fields claims that "No Illinois statute recognizes or condones otherwise illegal witness inducements offered by the State in civil cases." Fields attorneys couldn't find any, the state couldn't find any, I can't find any and my colleagues can't find any. Case or statute support for bought witnesses in civil cases does not exist because it is a bad idea and no one who believes in

the structure of our civil jurisprudence could justify it. The whole civil process would go haywire if sides could buy witness testimony. And the purchase price in this case was a dozy!

¶ 123 Hawkins' benefit was a classic backdoor deal to shave off a couple of years on his state sentence for murder --originally the death penalty, later changed to 42 years to be served consecutively for each of two counts of armed violence and then as if by magic the state shaved off another 3 years to 39 years, and then, again in some sleight of hand he was placed in the custody of the federal government to serve the remainder of his sentence and the federal sentence was changed from an out date of 2027 to 2016: what a deal!! All this for a man whose conviction has never been reversed, a confessed serial killer and a known perjurer who admitted he would do anything to get out of prison. There is something seriously wrong with a civil hearing process that permits bought or traded for testimony. The Petition judge should not have had an evidentiary hearing to begin with, but having made that decision he should certainly not have permitted the testimony of Hawkins. Maybe the basic problem is that Certificate of Innocence petitions are brought in criminal court. Since the procedure is civil assigning these cases to a civil court, familiar with civil rules of evidence and procedure, might make more sense.

¶ 124 When he ordered a new federal civil rights trial, this is what Judge Kennelly said about the Hawkins deal: "***in l989 Hawkins entered into an agreement to plead guilty to federal racketeering, narcotics and conspiracy charges and to cooperate with law enforcement, in return for a 60 year prison sentence. As part of the plea agreement, the Cook County State's Attorney agreed not to oppose allowing Hawkins to serve his time for his state murder conviction in federal custody. In 2002 Hawkins entered into a plea agreement with the Cook County State's Attorney. He agreed to plead guilty to armed violence charges in connection with the murders for

which he had previously been convicted. He also agreed to cooperate with law enforcement and testify in return for two consecutive 42 year prison terms – for a total of 84 years – to run concurrently with his federal prison term. The plea agreement stated that it was both sides intent that Hawkins would remain in custody until age 72 – that is, until the year 2027 (Hawkins was born in 1955).

¶ 125 In December 2013, Hawkins entered into a revised plea agreement with the Cook County State's Attorney. At (*sic*) the Court has indicated, this took place in connection with Hawkins's (*sic*) testimony against Fields in connection with his petition for a certificate of innocence, a proceeding that essentially ran in tandem with the present case, though Fields was opposed by different parties in the two matters. The new plea agreement reduced Hawkins['s] prison sentence to two consecutive 39 year terms, for a total of 78 years – six years less than his previous state sentence. In addition, the new plea agreement eliminated the statement about Hawkins serving until age 72 and replaced it with a statement that '[i]t is the intent of both parties that defendant Hawkins not serve any additional time in state custody beyond what he is already serving on his federal sentence. Defendant Hawkins will receive credit for time spent in state custody dating back to his original arrest on May 18, 1985.'

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*** Less than three months after Hawkins testified he had a hearing before a hearing examiner of the U.S. Parole Commission.

*** Once Hawkins was released on federal parole, the terms of his revised Cook County plea agreement apparently kicked in – specifically, the newly created term stating that '[i]t is the intent of both parties that defendant Hawkins not serve any additional time in state custody beyond what he is already serving on his federal sentence.' Thus, rather than going into state

custody upon his federal parole, Hawkins was released from prison outright in September 2014 and is now a free man." *J. Kennelly, Memorandum Opinion and Order, entered April 7, 2015, U.S. District Court, ND Illinois # 10 C 1168 document #812)* Fields was granted a new federal civil rights trial because the information about Hawkins' sweet deal was not disclosed to Fields. The Petition court should have had access to the same information which was not available until after the first Petition order was entered, after the remand, and after the second Petition order was entered.

¶ 126 Instead of serving until he was 72 years old, Hawkins was fully released from custody at the age of 59.

¶ 127 **Fields did not bring about his own conviction**

¶ 128 How was this supposed to work?

¶ 129 The Act authorizes a hearing on the Petition to determine whether or not the petitioner meets the standards for the Certificate, not a trial within a hearing. Petitioner was convicted, was incarcerated, the conviction was later reversed when on retrial petitioner was found not guilty, and no further retrials are possible, so Nathson Fields proved those elements. Then Nathson Fields produced the stipulated-to testimony of Sandra Langston which shows he cannot have been one of the men she saw following the victim and showed Fields was likely to succeed on the Petition. Then, Nathson Fields showed that the original criminal trial judge took a bribe to fix the case and who then pulled a double cross, returned the money and found Fields guilty of first degree murder. It is hard for me to say that Fields brought about his own conviction. I could see how he brought about his own *acquittal* with a bribe if the judge had kept the money. But you had a crooked judge and a crooked attorney. Even if Fields knew about the bribe he got no benefit from it and it is clear that the crooked judge was going to be extra hard on Fields to

demonstrate that he was clean. If anything, all the bribe and its return shows is that the judge was determined to save his own skin at the expense of anyone who could make him look hard on crime. That judge's mind- set cannot be attributed to Fields and it is wrong to say that he contributed to his own conviction

¶ 130 I think the Petition judge should have had the benefit of the federal trial testimony, record and evidence and the benefit of the U.S. Supreme Court's reasoning in *Nelson*.

¶ 131 I would reverse the Order denying the Petition for a Certificate of Innocence and remand for a rehearing with an amended Petition including briefing on *Nelson*.