# IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS CRIMINAL DIVISION

People of the State of Illinois, Plaintiff,

v.

Hyungseok Koh,

Defendant.

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) No. 09 CR 9151

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) Hon. Garritt Howard

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# DEFENDANT’S BENCH MEMO ON ADMISSIBILITY

**OF ENTIRE VIDEOTAPE OF CUSTODIAL INTERROGATION**

The Illinois Rules of Evidence provide: “When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part . . . which ought in fairness to be considered contemporaneously with it.” Ill. R. Evid.

106. This permits a party to introduce the remainder of a statement to explain, qualify, or otherwise shed light on the portion of a statement introduced by the adverse party, so as to correctly convey the statement’s true meaning to the trier of fact. *In re W.D.*, 194 Ill. App. 3d 686, 702-703 (1990). “It is well established that where a conversation is related by a witness, the opposing party has a right to bring out all of the conversation on cross-examination. One cannot introduce a portion of a conversation and then bar the opposing party from bringing out the rest of that conversation.” *Id.* at 702.

Where there is a possibility that jurors would be misled by hearing part of a conversation, the court should admit the remainder of the relevant conversation. *People v. Weaver*, 92 Ill. 2d 545, 556-57 (1982). In *Weaver*, a witness testified to the defendant’s statements that two armed men had broken into her home and shot her husband, but, on cross-examination, the court prohibited the witness from testifying to the defendant’s statements about the two men. *Id.* at

557. The court held that the defendant’s complete statement should have been admitted because

the introduction of the partial statement may have misled the jury into thinking the defendant had given no details about the men she claimed had entered her home, making the jury more likely to believe her story was false. *Id*. The court in *In re W.D.* held it was reversible error to limit the defendant’s cross examination of a police officer where the excluded questions related to the same conversations the officer testified to earlier and to the same incident that formed the substance of that testimony. 194 Ill. App. 3d at 703.

The Illinois Supreme Court has held that refusal to admit a relevant tape recording is not remedied by allowing the testimony of witnesses to the recorded statements. *People v. Williams*, 109 Ill. 2d 327, 337 (1985). A tape recording of a conversation may have independent relevance and be clearer and more persuasive than oral testimony covering exactly the same points. *Id.* at

335. The court in *Williams* ordered a new trial where the lower court precluded the defendant from playing the recorded statements he made to the police. Although the defense counsel used a transcript of the tapes to extensively cross-examine the officers and was allowed to bring out all aspect of the conversation, the court held that a defendant is not limited in his rights to only oral cross-examination regarding a conversation. *Id.*

In *Williams*, the State argued that critical parts of the recorded statements were untrue and that there were inconsistencies between defendant's first and second statements, which showed that the defendant was lying. *Id.* at 336. Because the veracity of the statements was in issue, “the defendant's demeanor and voice inflections, as recorded on the tapes, was relevant wholly independent of the actual words spoken.” *Id.* at 337. The court in *Williams* stated, “The part of the statements excluded from evidence-the defendant's demeanor and voice inflections at the time of the statement-could have affected the jury's assessment as to the credibility of the statements.” *Id.* The court held that the trial court committed reversible error in refusing to play the tape for the jury. *Id.* at 337-38.

Dated: January 4, 2019

Respectfully submitted, Defendant Hyungseok Koh

By: One of His Attorneys

Terri L. Mascherin Andrew W. Vail Wade A. Thomson

Jenner & Block LLP (#05003) 353 N. Clark Street

Chicago, Illinois 60654-3456

(P) (312) 222-9350

(F) (312) 840-7799