

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1319

KA 10-01432

PRESENT: CENTRA, J.P., CARNI, VALENTINO, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CHARLES M. THOMAS, SR., DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (DAVID R. JUERGENS OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (NANCY GILLIGAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Frank P. Geraci, Jr., A.J.), rendered April 21, 2010. The appeal was held by this Court by order entered October 3, 2014, decision was reserved and the matter was remitted to Supreme Court, Monroe County, for further proceedings (121 AD3d 1536). The proceedings were held and completed (Alex R. Renzi, J.).

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law and a new trial is granted on count one of the indictment.

Memorandum: We held this case and remitted the matter to Supreme Court to conduct a reconstruction hearing with respect to the lost recording of a 911 call (*People v Thomas*, 121 AD3d 1536). At the hearing, the People called only one witness, a police officer who had only a "vague" recollection of what was said by the complainant on the 911 call. We agree with defendant that the People were unable to meet their burden of establishing the content of the 911 call, and thus meaningful appellate review of defendant's contentions is not possible (*see People v Hasenflue*, 48 AD3d 888, 890, *lv denied* 11 NY3d 789; *People v Ha*, 18 AD3d 1068, 1068, *lv denied* 5 NY3d 788; *People v Jacobs*, 286 AD2d 404, 405; *see generally People v Yavru-Sakuk*, 98 NY2d 56, 59). We therefore reverse the judgment and grant a new trial on count one of the indictment.

Entered: December 23, 2015

Frances E. Cafarell
Clerk of the Court