

1 IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

2 STATE OF MARYLAND

3 vs.

CT12-1375X

4 KOBINA EBO ABRUQUAH,

5 Defendant.

6 _____/

7 REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

8 (Trial on the Merits - Volume I)

9 Excerpt: Motion in Limine

10 Upper Marlboro, Maryland

11 Wednesday, December 11, 2013

12 BEFORE:

13 HONORABLE MICHAEL R. PEARSON, ASSOCIATE JUDGE

14 (and a jury)

15 APPEARANCES:

16 For the State:

17 JONATHAN CHURCH, ESQ.

18 For the Defendant:

19 ELIZABETH L. CAWOOD, ESQ.

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24 EVADNEY R. KEY, RPR

Official Court Reporter

25 P. O. Box 401

Upper Marlboro, MD 20773

1 P R O C E E D I N G S

2 (The following is an excerpt from the
3 aforementioned case concerning a motion in limine before
4 the trial commenced.)

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6 (Recessed for lunch from 12:20 p.m. to 1:32
7 p.m.)

8 THE COURT: Back on the record in State v.
9 Abruquah, CT12-1375X. Mr. Abruquah is present. Counsel
10 is present.

11 We have a pending motion in limine from the
12 State. I guess I will hear from you.

13 MR. CHURCH: Your Honor, the State has moved to
14 exclude two of what the defense noted as expert witnesses
15 from testifying. Essentially, what was being sought was
16 called a reverse robbery, hearing the challenges, the
17 admissibility of firearms and tool mark examination, the
18 science behind it. I think I laid most of it out in my
19 motion; but, essentially, what it boils down to, rather
20 than having the State being gatekeeper in Daubert and
21 Kumho Tires - going back to law school - and Frye-Reed,
22 those cases deal with the admissibility of scientific
23 evidence.

24 I think the law is very clear that firearms and
25 tool mark identification are generally accepted in the

1 scientific community. Not only that, but the Court has
2 held that trial courts can take judicial notice of the
3 admissibility of that testimony.

4 THE COURT: Well, she's not necessarily
5 challenging the admissibility of the firearms evidence.
6 She wants to be able to impeach your representatives with
7 evidence counter to it. That's where your problems lie.

8 MR. CHURCH: Exactly. And I don't believe
9 that's permissible under the case law. Because if it's
10 the opposite of what's generally accepted in the
11 scientific community, then it would be something not
12 reproducible. With that issue with respect to being the
13 gatekeeper, the other issue is whether the witness is
14 qualified to provide that testimony. I know that will be
15 accomplished by voir dire, but I also challenge that. I
16 incorporate all my objections in my motion.

17 MS. CAWOOD: We would argue that while we're not
18 presenting a Frye-Reed or Daubert challenge with regard to
19 admissibility of the State's evidence, the opinions the
20 experts would offer, they haven't done any independent
21 testing. That's not really the issue.

22 It's simply their expert is going to come in and
23 say the bullets were a match. Our experts would say you
24 can't say it's a match. You can only say it's consistent
25 with the firearm.

1 THE COURT: Why couldn't you flesh that out with
2 cross-examination? How are you going to bring in an
3 expert to render an opinion in a case when the rules
4 specifically state they must have a factual basis for
5 issuing that opinion, and they've done no type of
6 examination, analysis, or done anything in particular in
7 this case in terms of establishing a factual basis for
8 their opinion?

9 MS. CAWOOD: Because the opinion doesn't
10 require -- in this case, because it's not an opinion
11 that's specific or particular to this firearm or these
12 bullets. It's a general opinion about the fact that an
13 expert cannot say conclusively that it's a match. And
14 it's not even an opposite opinion. It's merely a
15 variation in terms of a continuum of, I guess, scientific
16 certainty.

17 I think it would be equivalent to say
18 preponderance of the evidence and reasonable doubt, and
19 the experts would merely offer an opinion that one can't
20 say it's a hundred percent match. They can only say it's
21 consistent with. With that, Your Honor, I would submit.

22 THE COURT: I agree wholeheartedly with the
23 evidence put forth by Mr. Church in his pleadings to the
24 Court. I simply don't think that making general
25 presentations to the jury is going to help the factfinder

1 in making assessments as to what is a fact in this case
2 and what is not. Certainly the arguments, the general
3 impeachment that you're trying to do, would be appropriate
4 in terms of the cross-examination of any witnesses put
5 forth by the State. But just to bring in someone to
6 render a general opinion about the general nature of
7 firearms examinations without doing any type of specific
8 test or examination in this case, I'm not going to allow
9 it.

10 Motion in limine is granted.

11 MS. CAWOOD: Just to be clear, I am permitted to
12 cross-examine regarding and to argue regarding those
13 issues?

14 THE COURT: Well, definitely to cross-examine.
15 I'm not going to say argument yet, because I haven't heard
16 exactly what's going to come out, but absolutely you can
17 cross him on it.

18 MS. CAWOOD: Thank you, Your Honor.

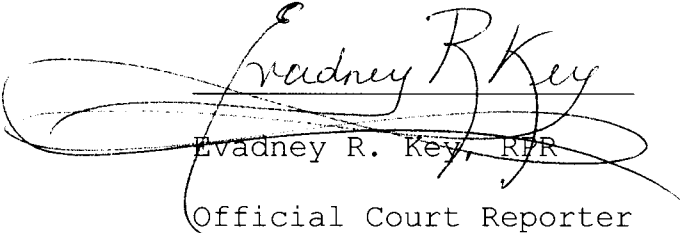
19 (Whereupon, the excerpt was concluded.)
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1 REPORTER'S CERTIFICATE
2

3 I, Evadney R. Key, an Official Court
4 Reporter for the Circuit Court for Prince George's County,
5 Maryland, do hereby certify that I stenographically
6 recorded the proceedings in the matter of State of
7 Maryland vs. Kobina Ebo Abruquah, CT12-1375X, on December
8 11, 2013, before the Honorable Michael R. Pearson,
9 Associate Judge.

10 I further certify that the page numbers
11 1E-1 through 1E-5 constitute an official transcript
12 excerpt of the proceedings as transcribed by me from my
13 stenographic notes to the within typewritten matter in a
14 complete manner to the best of my knowledge and belief.

15 In Witness Whereof, I have affixed my
16 signature this 16th day of January, 2014.

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24 Evadney R. Key, RFR
25 Official Court Reporter