

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.

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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  
P. O. Box 401  
Upper Marlboro, MD 20773

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## 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.)

5 \* \* \* \* \*

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.

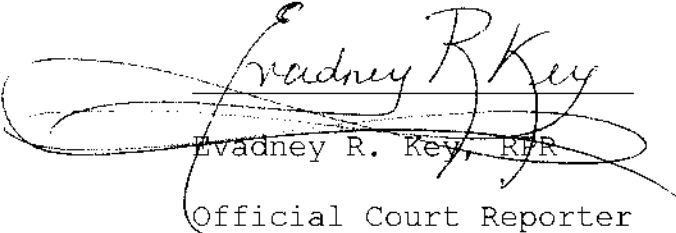
19 (Whereupon, the excerpt was concluded.)  
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1 REPORTER'S CERTIFICATE  
2

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