

SHANNON D. MCGEE, SR., v. JOSEPH MCFADDEN, WARDEN

BRIEF IN OPPOSITION

APPENDIX "B"

JURY OUT/ON RECORD

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1 may be discussing matters to come before this Court and you  
2 should not, again, be influenced by any of those discussions  
3 as well.

4 So we are going to excuse you for lunch. Be back in  
5 your jury room at 2 o'clock this afternoon.

6 Thank you very much. You are free to go at this time.

7 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE  
8 JURY.)

9 THE COURT: All right, gentlemen, it's my understanding  
10 that the next witness in the gentleman who is the -- is Mr.  
11 Kinloch, and there is some question concerning his record. I  
12 will be available at 1:30, if you would like to reconvene for  
13 that -- for a hearing on that subject, just let me know.

14 Mr. Axelrod, after you have had a chance to look over  
15 what information -- I don't know if they have gathered any  
16 information at this point in time to confirm his situation as  
17 far as incarceration, but if you wish for me to conduct a  
18 proffer on that question, I'll be happy to do so, so everyone  
19 should be prepared to begin again at 1:30.

20 We will break for lunch. Thank you.

21 (THE FOLLOWING TAKES PLACE AFTER A LUNCH BREAK, AND  
22 OUTSIDE THE PRESENCE OF THE JURY.)

23 THE COURT: All right, is Mr. Kinloch available?

24 MR. BRYAN: He's right here, Your Honor.

25 THE COURT: Okay. All right. There was some

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1 indication that you wanted to make a proffer concerning his  
2 prior record, and other issues. Do you wish to go forward, or  
3 have we settled that issue, gentlemen?

4 MR. BRYAN: I think we have settled it, Your Honor. My  
5 belief is that that '95 burglary would be admissible, as well  
6 an '03 petty larceny, an '06 receiving stolen goods.

7 The issue that was -- has since been raised is, the  
8 State is objecting -- I would like to make a motion in limine  
9 to exclude any reference to the fact that he was charged with  
10 burglary on his most recent conviction of receiving stolen  
11 goods, based on the fact that it was prior to any discussion  
12 that we ever had with him -- that I ever had, in reference to  
13 this case, and as well as, it was never contemplated any deal,  
14 simply the facts are, he was charged with burglary second,  
15 which includes no evidence of burglary. He pled to what the  
16 State could prove. Dori Beaugiani of our office prosecuted  
17 him. He was offered and accepted a deal. I never spoke to  
18 Dori. As an officer of the Court I was never aware Mr.  
19 Kinloch would be involved in this case, never heard from him,  
20 talked to him, nor Ms. Beaugiani, and so we would say that it  
21 would be unfairly prejudicial to raise the implication that  
22 this was some kind of deal which he received for his  
23 testimony. It would be misleading to the jury, as well as  
24 unfairly prejudicial.

25 THE COURT: Mr. Axelrod.

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1 MR. AXELROD: Thank you, sir.

2 Your Honor, what concerns me -- on the last issue that  
3 Mr. Bryan raised was that Mr. Kinloch was -- Kinloch was  
4 arrested on a burglary charge, but on the N.C.I.C. that's not  
5 even there, and that concerns me. If the State can help me,  
6 that all the other charges of burglary it says burglary, but  
7 on this -- on this N.C.I.C. it's void, and that, in itself, if  
8 he was arrested for burglary, should be there, and I have  
9 concerns why it's not on his permanent record.

10 THE COURT: What I've decided to do is allow the State  
11 to put him up and offer a proffer concerning the circumstances  
12 of his prior plea. I'll give you an opportunity, obviously,  
13 to cross-examine on that point, if you wish to.

14 So, Mr. Kinloch, come forward and be sworn.

15 MR. AXELROD: And Your Honor, one other point, if I  
16 may. I would ask the Court to protect my record. I know we  
17 had a ruling earlier, but I would ask that we rule once again  
18 at this point, because Mr. Kinloch is going to be here, that --  
19 -- I still maintain -- I would ask the Court to rule on that --  
20 under Rule 609(A)(2), the prior record should be admissible,  
21 and I'm just trying to protect this record.

22 THE COURT: Well, anything older than ten years I have  
23 ruled inadmissible, both because of it's age, and because it's  
24 my belief that the probative value would not outweigh it's  
25 prejudicial effect.

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1 MR. AXELROD: Thank you, Your Honor.

2 THE COURT: All right. You can bring him forward --  
3 sir, come forward and be sworn.

4 AARON PEREZ KINLOCH, being first  
5 duly sworn, testifies as follows:

6 DIRECT-EXAMINATION BY MR. BRYAN:

7 THE COURT: All right. Your witness, Mr. Bryan.

8 Q. Mr. Kinloch can you -- what's the most recent thing you  
9 have been convicted of?

10 A. Receiving stolen property.

11 Q. And that was here in Georgetown County?

12 A. Yes sir.

13 Q. And you were prosecuted by who? Do you know?

14 A. Ms. Beaugiani.

15 Q. Ms. Beaugiani, Dori?

16 A. Yes sir.

17 Q. Okay. And is she present in the courtroom? Do you see  
18 her?

19 A. Yes.

20 MR. BRYAN: Let the record reflect he has identified  
21 Dori Beaugiani, Assistant Solicitor in our office.

22 THE COURT: The record shall so reflect.  
23 You may proceed.

24 Q. And you pled guilty to what?

25 A. Receiving stolen property.

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1 Q. And what were you originally charged with?  
2 A. Burglary first, and then the burglary second.  
3 Q. Okay. And at any time -- when is the first time you  
4 ever talked to me?  
5 A. Yesterday when I first came by here.  
6 Q. And how is it that -- did I contact you first, or you  
7 contacted me first?  
8 A. No. I contacted you.  
9 Q. Okay. And when did you do that?  
10 A. July -- the end part of July, after I came out of  
11 court.  
12 Q. Okay. Did you plead guilty to receiving stolen goods,  
13 or did you contact me first? Which happened first/  
14 A. No. I pled guilty first.  
15 Q. And did we have any discussion -- do you ever remember  
16 your having a conversation with me about this case ---  
17 A. No, uh uh.  
18 Q. ---Prior to pleading guilty?  
19 A. No.  
20 Q. Did you receive any benefit, to your knowledge?  
21 A. No.  
22 Q. Did anyone ever negotiate with you and say if you would  
23 come forward and testify you would get a better deal or ---  
24 A. No, uh uh.  
25 MR. BRYAN: I don't have any other questions.

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1 THE COURT: All right.

2 Mr. Axelrod, your opportunity to cross-examine the  
3 witness on this point.

4 MR. AXELROD: Thank you, Your Honor.

5 CROSS-EXAMINATION BY MR. AXELROD:

6 Q. Mr. Kinloch, are you in prison currently?

7 A. Yes, I am.

8 Q. Which prison?

9 A. Broad River Correctional Institution.

10 Q. Broad View?

11 A. Broad River.

12 Q. Broad River. When you were arrested on the burglary  
13 charges, you said burglary first ---

14 A. Yes.

15 Q. ---And then burglary second. Were you given warrants  
16 for the burglary first and the burglary second?

17 A. I was given warrants for burglary first.

18 Q. When were you arrested?

19 A. I got arrested March the 31st, of '06.

20 Q. And how many burglaries in the past have you been  
21 convicted of?

22 A. I wasn't convicted. I pled to it.

23 Q. Pled. How many have you pled to, sir ---

24 A. Twice, two times.

25 Q. Twice?

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1 A. Uh huh (indicating positive)

2 Q. So it's safe to say that another burglary conviction  
3 could have been -- could have possibly spent the rest of your  
4 life in prison with another burglary conviction?

5 A. Yes, that's if I committed the burglary.

6 Q. Yes.

7 MR. AXELROD: Your Honor, I have nothing further. I  
8 have an argument though -- for the Court though.

9 THE COURT: Anything further from the State from this  
10 witness on this point?

11 MR. BRYAN: No. I can clarify just something briefly  
12 for Mr. Axelrod ---

13 THE COURT: Yes sir, you might.

14 MR. BRYAN: ---Because I think there is a little  
15 confusion.

16 There is only one incident. The reason why it was a  
17 burg first and a burg second is, the arrest warrant was burg  
18 first, and he was indicted for burg second, the same incident,  
19 not two incidents.

20 MR. AXELROD: Sir -- but Your Honor, my argument is, if  
21 I may, it's not on his N.C.I.C..

22 THE COURT: What does that indicate to you?

23 MR. AXELROD: Well, it indicates to me that -- my  
24 belief is, every time somebody gets arrested for something on  
25 the N.C.I.C. they put the arrest and the warrant number.



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1 THE COURT: Again though, what does that indicate as  
2 far as implications for this trial? There may be a mistake,  
3 could be an error. I don't know. What does it implicate?  
4 Tell me some solid evidence or proof that you have that there  
5 is anything other than it's not on the report.

6 MR. AXELROD: Nothing, Your Honor. It just seems that  
7 it's improper that it's not listed, and it might go to his  
8 benefit in the future.

9 THE COURT: Well, again, if there is any evidence that  
10 there was any wrongdoing, a deal, or this witness has  
11 improperly testified, I'll be glad to let you put that up. As  
12 of this time I've heard nothing other than the charge is not  
13 listed on the N.C.I.C.. Again, I'm going to ask you if there  
14 is anything you have that would indicate that this witness has  
15 misled the Court, if there was a deal made that we are not  
16 aware of, anything of that nature, this is your opportunity to  
17 put that up.

18 MR. AXELROD: Yes sir, Your Honor.

19 CROSS-EXAMINATION BY MR. AXELROD CONTINUED:

20 Q. Mr. Kinloch, was a deal made with you at all?

21 A. No sir.

22 Q. Did the Solicitor, Ms. Beaugiani, did she -- did she  
23 talk to you about the burglaries you had had in the past?

24 A. No. It was already on my record, and I already had  
25 done my time for it too. There wasn't no need to talk about

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1 that.

2 Q. And how much time are you serving now in the  
3 penitentiary?

4 A. A year, for receiving stolen property.

5 Q. Were you sentenced to three years ---

6 A. No, I wasn't.

7 Q. ---Suspended on one year?

8 A. No, I wasn't.

9 Q. What was your sentence you received?

10 A. A year.

11 MR. AXELROD: Nothing further, Your Honor.

12 THE COURT: Anything further, Mr. Solicitor?

13 MR. BRYAN: No, Your Honor. I do have a motion,  
14 actually, to exclude any question about whether -- where he's  
15 incarcerated, or whether he's incarcerated right now. I don't  
16 think it's relevant, and I don't think it's ever admissible.  
17 We are never allowed to ask it, and I don't know why it would  
18 be admissible in this instance, where he is currently  
19 residing. He can ask -- he can impeach him by what he was  
20 convicted of, and also whether it's three years suspended on  
21 one year.

22 THE COURT: Mr. Axelrod, what's your position on that?

23 MR. AXELROD: Your Honor, I think I should be allowed  
24 to -- for the veracity of the witness, to ask him if he's  
25 incarcerated at this point. I don't think that's improper.

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1 THE COURT: Can you tell me why it would be improper to  
2 ask him if he's incarcerated or not? He's going to -- I  
3 assume ---

4 MR. BRYAN: I think it's prejudicial. I think it's ---

5 THE COURT: It's going to be on the record that he was  
6 convicted, or pled guilty or whatever he -- I guess he pled  
7 guilty, a month ago.

8 MR. BRYAN: Well, I guess my objection is that it's not  
9 relevant, and I object on the basis of lack of relevance, that  
10 it would provide any information to the jury that's useful for  
11 them to decide this case, and therefore -- there's a rule that  
12 states only relevant evidence is admissible, and I don't think  
13 it's relevant.

14 MR. AXELROD: Your Honor, for impeachment purposes I  
15 believe it is relevant.

16 THE COURT: Well, I'm going to let you get the  
17 conviction in. I'm not sure the fact that he's in jail  
18 impeaches him. Tell me how that impeaches him.

19 MR. AXELROD: It goes to his veracity that, you know --

20 -

21 THE COURT: Well, if he deny -- if he says something  
22 that's not true, then you could get into that, but ---

23 MR. AXELROD: But I believe I should be allowed the  
24 latitude, Your Honor, to go into that he's actually a felon  
25 serving prison time, and the jury can take it for what it's --

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1 it can look at -- normally -- most times when they come back  
2 from prison they are dressed in prison clothes. You know, I  
3 thought Mr. Kinloch was on probation, and that's not the case.  
4 I think that -- if a witness is going to testify to some  
5 statement that was made in jail ---

6 THE COURT: I'll allow you to ask that question, but  
7 don't go any further.

8 MR. AXELROD: Okay. And the question being, Your  
9 Honor?

10 THE COURT: Are you incarcerated at the present time.

11 MR. AXELROD: Thank you, Your Honor.

12 THE COURT: You may step down.

13 All right. My ruling on the question of the -- whether  
14 or not there is some kind of a deal or something like that,  
15 unless there is other foundation laid, my ruling is in favor  
16 of the State. You can't go into that line of questioning.

17 MR. AXELROD: Your Honor, I'm not going to go there.

18 THE COURT: Okay. Solves that problem then.

19 MR. BRYAN: Thank you, Your Honor.

20 THE COURT: Anything else, gentlemen?

21 MR. BRYAN: Nothing from the State, Your Honor.

22 THE COURT: Bring the jury back.

23 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE  
24 JURY.)

25 THE COURT: All right, the record should reflect that

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1 all jurors have returned to the courtroom.

2 I trust everyone had a good lunch, and you are ready  
3 this afternoon now to continue with the trial of the case.

4 When we broke earlier the State was still presenting  
5 it's evidence in the trial.

6 You may call your next witness.

7 MR. BRYAN: Thank you, Your Honor. If it please the  
8 Court.

9 Excuse me. The State calls Aaron Kinloch.

10 THE COURT: Come forward and be sworn, sir.

11 AARON PEREZ KINLOCH, being first  
12 duly sworn, testifies as follows:

13 DIRECT-EXAMINATION BY MR. BRYAN:

14 THE COURT: Mr. Kinloch, state your name, please, and  
15 be sure you speak up, and into the microphone.

16 A. Aaron Perez Kinloch.

17 Q. Mr. Kinloch, ---

18 A. Yes sir.

19 Q. ---Do you know Shannon McGee?

20 A. Yes sir.

21 Q. How do you know him?

22 A. From the County Jail.

23 Q. And were you working at the jail, or were you in the  
24 jail?

25 A. No. I was incarcerated at the jail.

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1 Q. What were you incarcerated for?

2 A. At the time, burglary first.

3 Q. Okay. And what was he incarcerated for? I'm sorry. I  
4 take that back. What -- at what period of time ---

5 MR. AXELROD: Your Honor, can we approach?

6 THE COURT: Yes, you may.

7 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

8 THE COURT: All right, Mr. Solicitor, you may proceed.

9 Q. You and Mr. McGee were at the County Jail ---

10 A. Yes sir.

11 Q. ---Together?

12 A. Yes sir.

13 Q. When was that?

14 A. When I met him in March 31st ---

15 THE COURT: Lean forward and speak right in the  
16 microphone, please.

17 A. I -- when I met him, March 31st, when I got arrested.

18 Q. And you were in the Georgetown County Detention Center  
19 until when?

20 A. August the 9th, when I got transported to S.C.D.C..

21 Q. And in the meantime, did you plead guilty to something?

22 A. Yes, I did.

23 Q. What did you plead guilty to?

24 A. Receiving stolen property.

25 Q. Did you do that? Were you guilty of it?

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- 1 A. Yes sir.
- 2 Q. And that's not your only record, is it?
- 3 A. No sir.
- 4 Q. You were convicted in 1995 of burglary second degree?
- 5 A. Yes sir.
- 6 Q. And you were convicted in 2003 for petty larceny?
- 7 A. Yes sir.
- 8 Q. And did you do those things?
- 9 A. Yes sir.
- 10 Q. Did you have a trial, or did you plead guilty?
- 11 A. No, I pled guilty.
- 12 Q. To all of them?
- 13 A. Uh huh (indicating positive)
- 14 Q. At what point did you meet me?
- 15 A. Well, yesterday, when I came back from S.C.D.C..
- 16 Q. Did I ever -- you ever talk to me before yesterday?
- 17 A. No.
- 18 Q. How did -- who contacted who? Did I contact you, or
- 19 did you contact me?
- 20 A. I contacted you.
- 21 Q. And when did that happen?
- 22 A. The end part of July, after I came from court.
- 23 Q. Okay. And how did you contact me?
- 24 A. Through letter.
- 25 Q. So you wrote me a letter?

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1 A. Yes sir.

2 Q. And then shortly thereafter you got shipped off to  
3 S.C.D.C. ---

4 A. Yes sir.

5 Q. ---Where -- are you still at S.C.D.C.?

6 A. Yes sir.

7 Q. South Carolina Department of Corrections. And that's  
8 where you are obviously -- what you just pled to for receiving  
9 stolen goods?

10 A. Yes sir.

11 Q. During your stay at the Georgetown County Detention  
12 Center, did you ever see -- did you know Shannon McGee prior  
13 to that?

14 A. No, not really, because when I got in County Jail he  
15 asked me did I used to stay on Emanuel Street, which I did,  
16 and he say he knows me from back then, but I didn't really  
17 know him at that point in time.

18 Q. Did he say anything about whether you recognized him,  
19 or knew him or anything?

20 A. No, not really. He just asked me -- he just asked me  
21 if I stayed on Emanuel Street before. He said if I remembered  
22 him. I told him no, which I didn't, you know, and that was  
23 it, you know.

24 Q. He knew you but you didn't know him?

25 A. Yes.



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1 Q. Did he look the same as before, or did he say anything  
2 about that?

3 A. No. I mean, he just told me, you know, he told me he  
4 had -- when he had dreads. Like I say, I didn't remember him,  
5 but he remembered me.

6 Q. He said he used to have dreads when you had saw him  
7 before?

8 A. Yes. That's what he told me. You know, he was trying  
9 to get me to remember him.

10 Q. All right. And did y'all have any conversation about  
11 his charges, while he was in the jail?

12 A. Yes, then we went on down the line.

13 Q. Just tell -- okay, where did that conversation take  
14 place?

15 A. In my cell.

16 Q. And how was it that he was in your cell?

17 A. I mean, all of us ---

18 Q. Did he share a cell with you?

19 A. No, uh uh.

20 Q. Explain to the jury how the jail is configured so that  
21 you would be ---

22 A. After each count everybody would stand up within their  
23 own pod, and you know, you get to watch T.V. together, play  
24 cards, and so forth with each other in cells, you know, and  
25 just to talk and use the phone, things like that.

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1 Q. And so did you ask him to come in your cell, or did he  
2 just come in your cell?

3 A. No. He just came up there.

4 Q. And did anybody on the police's behalf, or my behalf,  
5 or the State, approach you and ask you to get him to talk to  
6 you?

7 A. No.

8 Q. Okay. Did you invite him into your cell?

9 A. No, uh uh.

10 Q. All right. So he came into your cell, and what did he  
11 say?

12 A. No, he just wanted -- he wanted to talk with me about  
13 his case, you know, and he was just explaining to me that, you  
14 know, he was on serious charges, so forth, like that, and ---

15 MR. BRYAN: Court's indulgence, Your Honor.

16 Can I stop him right there and approach?

17 THE COURT: Yes, you may.

18 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

19 THE COURT: Ladies and gentlemen of the jury, there is  
20 a matter concerning evidence that I do have to take up with  
21 the attorneys outside of your hearing at this point in time.  
22 I cautioned you that that might become necessary at some point  
23 in the trial.

24 I'm going to excuse you to the jury room. It shouldn't  
25 take but just a few minutes. Again, I'm going to instruct

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1 you, don't begin any discussions until I tell you to begin  
2 your deliberations.

3 Thank you very much. You may retire to the jury room.

4 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE  
5 JURY.)

6 THE COURT: All right. To put on the record the  
7 content of our sidebars concerning this witness, first of all  
8 that we had a sidebar concerning the question that was  
9 withdrawn by the Solicitor as to the -- it was approaching  
10 getting into the nature, or what the charge was that the  
11 Defendant was in jail on. I offered to strike that from the  
12 record. Defense attorney said that would not be necessary  
13 since the question had been withdrawn.

14 Secondly, the Solicitor has indicated to me that, in  
15 talking with this witness he does not recall having instructed  
16 this witness not to discuss the severity of the penalty that  
17 might result from a conviction in this case. At the beginning  
18 of the trial I did put the Defendant on notice that, were you  
19 convicted of the charge that he stands before this Court on,  
20 that the sentence would be a mandatory life without parole.

21 So I'm going to instruct the witness at this point in  
22 time, if you are aware of that fact, or if you are aware of  
23 what I just discussed concerning the prior convictions of the  
24 Defendant, and the mandatory nature of the sentence should he  
25 be convicted, I am instructing you at this point in time not

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1 to make that statement, or even refer to that in your  
2 testimony to the jury. I have already excluded that evidence  
3 from the case, and it cannot be discussed.

4 Do you understand that, sir?

5 A. Yes sir.

6 THE COURT: So, in responding to any of the Solicitor's  
7 questions, you should not refer to the type of penalty that  
8 the Defendant might suffer should he be convicted, or the  
9 length of time that he might have to serve. You understand  
10 that, sir?

11 A. Yes sir.

12 THE COURT: All right, Mr. Solicitor, is that  
13 sufficient for us to go forward?

14 MR. BRYAN: Yes sir, Your Honor, and my request would  
15 be that, basically that -- I think he said it perfectly, and I  
16 was just afraid he would say more, so if he can just pick up  
17 that he had -- he said he had serious charges, and then they  
18 had a conversation.

19 THE COURT: I think -- I don't find any fault with  
20 that. Obviously he does have serious charges. That's what  
21 he's here on, so I have no problem with that response, but I  
22 did want the witness to be aware of the fact that, if he did  
23 discuss the possible penalty that he could suffer, that should  
24 not be mentioned to the jury because it's not a factor to be  
25 considered concerning his guilt or innocence of the charges.

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1 Any objection to my statement from the defense?  
2 MR. AXELROD: No sir.  
3 THE COURT: All right. Bring the jury back.  
4 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE  
5 JURY.)  
6 THE COURT: All right. The record should reflect that  
7 all jurors have now returned to the courtroom.  
8 I have resolved the question with the attorneys.  
9 You may proceed with your examination, Mr. Solicitor.  
10 MR. BRYAN: Thank you, Your Honor.  
11 THE COURT: Yes sir.  
12 DIRECT BY BRYAN CONTINUED:  
13 Q. Mr. Kinloch, I apologize for interrupting you at that  
14 point. I had neglected to -- and you were saying that Mr.  
15 McGee had approached you and said that he had some serious  
16 charges.  
17 A. Yes sir.  
18 Q. And then what was the nature of your discussion with  
19 him after that?  
20 A. All he was explaining to me is, you know, what he  
21 didn't do, and what he did do, you know, but as far as saying  
22 well, he didn't use his penis sexually toward -- I guess it's  
23 his stepdaughter -- I don't know -- but he said he did use his  
24 finger, you know, and I -- you know, the conversation just  
25 went on, you know, just basically what had happened, what had

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1 took place, and that -- you know, that was mainly what it was,  
2 you know.

3 Q. Did you ask him about this, or did he ---

4 A. No. No. Because I'm the type person I don't like to  
5 get involved who is -- what they are locked up for because,  
6 you know, that's the way of the jail, you know. If they don't  
7 approach you about what you are locked up for, you know, you  
8 don't volunteer to ask, you know, unless you and that person  
9 are real close on the street, or whatever, like that.

10 Q. So it's very important that the jury understands what  
11 he said he did. What did he tell you he did?

12 A. He said he didn't sexually, you know, advance on her  
13 with his penis, you know, he said he used his fingers, you  
14 know, and that was it, you know, he said, but that's why the  
15 D.N.A. test came back inconclusive, you know, so you know,  
16 that's what made -- you know, that's what he told me, and that  
17 was it.

18 Q. And you said you thought it was his step-daughter. How  
19 did you get that information?

20 A. Through the guys that knew him off the street, you  
21 know. That was it.

22 Q. What -- when -- I think we have covered this, but you  
23 met me yesterday; is that correct?

24 A. Yes sir.

25 Q. And have I ever corresponded with you, written you a

JURY IN  
AARON PEREZ KINLOCH - DIRECT BY BRYAN

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1 letter?  
2 A. No, uh uh.  
3 Q. And has any representative of my office, or law  
4 enforcement, ever talked to you about this issue prior to me  
5 bringing you yesterday and speaking to you about it?  
6 A. No sir. I didn't even know I was coming.  
7 Q. And why did you -- why did you -- so somebody just came  
8 and got you and brought you to Georgetown without you knowing  
9 what was going on?  
10 A. Yes sir.  
11 Q. Okay. And then I came and spoke to you yesterday?  
12 A. Yes sir.  
13 Q. Why -- why did you send me a letter?  
14 A. Because the simple fact is, if that had ever -- if  
15 whatever he did took place, that's nasty to me, me myself.  
16 I've got kids of my own.  
17 Q. You got any daughters?  
18 A. I've got four.  
19 Q. Did you put that in your letter ---  
20 A. Yes.  
21 Q. ---That you wrote to me?  
22 A. Uh huh (indicating positive)  
23 Q. Okay. You got any grudge against Mr. McGee?  
24 A. No.  
25 Q. You got any reason to make some -- this up on him?

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1 A. No.

2 Q. And have I promised you anything, or even implied, in  
3 any way, given you any kind of deal? Is there any expectation  
4 on your part that you are going to get something out of what  
5 you just said?

6 A. No.

7 Q. And why did you say it?

8 A. Why did I say it?

9 Q. Yes sir.

10 A. Because it's nasty. I mean, you know, everybody --  
11 everybody here got kids, you know. If something would happen  
12 to that -- to my child, no telling what I'm going to do, you  
13 know. I would think about the consequences later on. My  
14 actions come first on that behalf. That's just me. And I'm  
15 the -- I'm the type of person I'm not afraid to take -- handle  
16 my consequences, because I meet my problems head on.

17 MR. BRYAN: Thank you very much.

18 THE COURT: Mr. Axelrod, your witness.

19 CROSS-EXAMINATION BY MR. AXELROD:

20 Q. But burglary is okay, correct?

21 A. Say again.

22 Q. Burglary is okay.

23 A. No, they are not.

24 Q. Excuse me.

25 A. No, they are not.



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- 1 Q. You said Shannon came into your cell and talked to you?
- 2 A. Yes, he did.
- 3 Q. When was that?
- 4 A. Probably about May or June.
- 5 Q. Okay. May or June?
- 6 A. Uh huh (indicating positive)
- 7 Q. Okay. Tell me what he said to you. Tell me
- 8 everything. Take your time.
- 9 A. The only thing he said, he came to me, asked me if I
- 10 had a moment. I told him, I said, yeah. So ---
- 11 Q. Did you have a T.V. in your room?
- 12 A. No. We don't allow T.V.s. They have the T.V.s. on the
- 13 rock.
- 14 Q. Playing cards?
- 15 A. Yes.
- 16 Q. Were you playing cards when he came over?
- 17 A. No.
- 18 Q. What were you doing when he came over?
- 19 A. I was coming out my room, and he was coming up the
- 20 steps.
- 21 Q. He said, hey, let's go into your room.
- 22 A. He said he needed to talk to me.
- 23 Q. And you went in your room?
- 24 A. Yes, I did.
- 25 Q. And you sat down. You both sit on the bed?

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1 A. No. We sat on the table, on the stool right there at  
2 the table, and I sat on my bed.

3 Q. Okay. Then what happened?

4 A. And we just started talking, and he was telling me  
5 about his charge, the severity of the charge, and what took  
6 place and what didn't took place.

7 Q. Well, tell me what he told you took place.

8 A. He told me on that particular night he was on cocaine,  
9 and he said that he entered his step-daughter's room, and he  
10 said that he didn't sexually assaulted her with his penis, but  
11 with his finger, and he said that's why the D.N.A. test came  
12 back inconclusive. And he said -- also he said that he had --  
13 -

14 Q. Wait, wait, wait, wait. He said the D.N.A. test came  
15 back inconclusive?

16 A. He said, that's why it came back inconclusive.

17 Q. He said the D.N.A. test came back ---

18 A. Exactly.

19 Q. ---Inconclusive because he was doing cocaine?

20 A. No, because of the sexual charge that was against him.

21 Q. Well, explain the D.N.A. test. I'm confused now.

22 A. I don't know. You'll have to ask him that.

23 Q. I'm asking you. You said that he told you the D.N.A.  
24 test came back inconclusive.

25 THE COURT: Mr. Axelrod, you are going to have to allow

AARON PEREZ KINLOCH - CROSS BY AXELROD

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1 the witness an opportunity to respond, so don't cut him off  
2 until he's finished his statement.

3 MR. AXELROD: Yes sir, Your Honor.

4 A. He said that that's why the D.N.A. test came back  
5 inconclusive.

6 Q. Because?

7 A. Because he did not sexually been with her with his  
8 penis wise ---

9 Q. Okay.

10 A. ---But with his fingers.

11 Q. Okay. And what else did he tell you?

12 A. That was it, on that -- as far as saying what he did,  
13 that was it. Then we got into a conversation about him having  
14 obtained medical records and so forth on.

15 Q. Let me ask you this.

16 A. Uh huh (indicating positive)

17 Q. Would it surprise you that there never was a D.N.A.  
18 test?

19 A. Well, I don't know. I have to go by -- I went by what  
20 he said. If he ---

21 Q. I'm going by what you said he said.

22 A. And I went by what he told me.

23 Q. Why would Shannon tell you something that wasn't true?

24 A. Why would he tell anybody in the County Jail anything?

25 Q. Are you making this up today?

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1 A. If I was I wouldn't have been sitting here. I ain't  
2 the only person he talked to.

3 Q. Excuse me.

4 A. I'm not the only person he had talked to.

5 Q. Who else did he talk to?

6 A. Oh, they gone home now. Let's see. He talked to Joe  
7 Nathan Lewis, which he got him involved with it.

8 Q. Who else?

9 A. Ah, what's his name, from Sampit? I forgot his name.  
10 He got -- as a matter of fact, he had him involved. Daryl  
11 Knowlin.

12 Q. Who else?

13 A. He talked to Mike Jones, Michael Jones.

14 Q. Who else?

15 A. That's about it, far as I know of.

16 Q. Talked to everybody in his pod about his case?

17 A. I wouldn't say everybody ---

18 Q. Told you the D.N.A. ---

19 A. ---But certain people.

20 Q. I'm sorry. Go ahead.

21 A. I said, certain people, as far as I know of.

22 Q. About a half dozen, or a dozen people?

23 A. I wouldn't say that much.

24 Q. But he told you that the D.N.A. test came back  
25 inconclusive?

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1 A. Yeah, we talked. Yes.

2 Q. And what did you tell him when he said that to you?

3 A. I said, well, if that's the case you are good then.

4 Q. But there never was one, was there?

5 A. I don't know. I'm not a doctor. I been going by what  
6 he told me.

7 MR. AXELROD: Nothing further from this witness.

8 THE COURT: Redirect.

9 REDIRECT-EXAMINATION BY MR. BRYAN:

10 Q. Are you absolutely positive that he said the word  
11 inconclusive?

12 A. Yeah. Cause we was trying to look it up in the  
13 dictionary.

14 Q. Okay. Who was trying to look it up in the dictionary?

15 A. All of us. Me, him, Cory Rutledge. We was trying to  
16 figure out exactly what it meant, on the legal term.

17 Q. Inconclusive?

18 A. Inconclusive.

19 Q. Did you -- what did you take that -- did you take that  
20 to mean that there was no semen to test, no -- no -- no  
21 D.N.A.?

22 A. There was no evidence, period, of saying he was with  
23 her sexually, you know what I'm saying, as far as any penis  
24 wise, you know.

25 Q. So there was no evidence?

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1 A. Yeah.

2 THE COURT: I'll ask the attorneys to approach.  
3 Gentlemen.

4 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

5 THE COURT: You may resume.

6 MR. BRYAN: Thank you, Your Honor.

7 REDIRECT-EXAMINATION BY MR. BRYAN:

8 Q. On cross-examination you mentioned several people -- I  
9 don't know how many -- and I can't call their names now. Did  
10 you mention all those people to me?

11 A. No.

12 Q. Okay. So, to your knowledge, is there any way that me,  
13 or another representative of the State would know that he had  
14 said that to all those people?

15 A. No.

16 Q. So you told what you know, but you didn't tell me that  
17 he told other people?

18 A. No, uh uh. I just told just what I knew.

19 Q. Is there any reason you didn't tell me, or you just  
20 didn't think about it?

21 A. No, I just didn't thought about it at the moment, you  
22 know, till Mr. Axelrod got out of hand.

23 MR. BRYAN: Thank you, Your Honor.

24 THE COURT: Anything on recross?

25 MR. AXELROD: Court's indulgence for one moment, Your

CAROL ANN RAHTER, M.D. - DIRECT BY BRYAN

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1 Honor.

2 THE COURT: Yes sir.

3 MR. AXELROD: Nothing further, Your Honor.

4 THE COURT: You may step down. Thank you very much.

5 The State may call it's next witness.

6 MR. BRYAN: Thank you, Your Honor. If it please the  
7 Court, the State calls Dr. Carol Rahter.

8 THE COURT: Come forward and be sworn, Ma'am.

9 CAROL ANN RAHTER, M.D., being first  
10 duly sworn, testifies as follows:

11 DIRECT-EXAMINATION BY MR. BRYAN:

12 THE COURT: All right, Mr. Bryan, your witness.

13 MR. BRYAN: Thank you, Your Honor.

14 THE COURT: Yes sir.

15 Q. Dr. Rahter, where do you work?

16 A. I work at Georgetown Hospital and Waccamaw Hospital.

17 Q. Okay. And are you also affiliated with the Children's  
18 Recovery Center?

19 A. Yes. I'm the Medical Director of the Children's  
20 Recovery Center.

21 Q. And how long have you been the Medical Director there?

22 A. Thirteen years.

23 Q. And what is the Children's Recovery Center, first of  
24 all?

25 A. The Children's Recovery Center is a multi-disciplinary