

Cited Excerpts of Post-Conviction
Hearing Testimony from David Irwin
(2/5/2016) (Pages 123-25, 128, 148-149)

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February 5, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 A Yes.
2 Q And also relevant to the cell tower issue?
3 A That's correct.
4 Q Okay. Have you also looked at the filings of
5 both of the sides?
6 A I have.
7 Q So you are familiar with sort of the Defense
8 version of the facts?
9 A I am.
10 Q But also with the State's version of the facts?
11 A I am.
12 Q Okay. And you have had a chance -- we -- the
13 State introduced an exhibit consisting of the attorney
14 file. Have you had a chance to review that a little bit?
15 A Briefly.
16 Q Very briefly, okay.
17 A I think it was produced to you on February 2nd.
18 Q I think that's correct. Although in all
19 fairness it was our file, so --
20 A I understand.
21 Q -- it was in our possession.
22 A I've seen some stuff from your file and I've
23 seen the A Exhibits and I think they were denominated by
24 the State.
25 MR. BROWN: Your Honor, at this time we would

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1 offer Mr. Irwin as an expert in criminal defense practice
2 and Brady disclosure duties of the prosecutor.

3 MR. VIGNARAJAH: No objection, Your Honor.

4 THE COURT: Just one second.

5 All right, there's no objection to the motion or
6 is there any voir dire?

7 MR. VIGNARAJAH: No, Your Honor, thank you.

8 THE COURT: The Court does find that Mr. Irwin
9 is in fact an expert in the practice, or the field of the
10 defense practice as well as I guess Brady disclosure
11 obligations of a prosecutor.

12 MR. BROWN: Thank you, Your Honor.

13 All right, so I want to ask you some question
14 about alibis and I'm going to start in the general and
15 then at some point I will move into the specific. And
16 there's one other thing that I forgot to ask you before,
17 but I just want to make it clear. And maybe it's known to
18 the Judge because you've been around the courtroom, have
19 you had a chance to observe portions of this hearing?

20 MR. IRWIN: Yes, some of it's very interesting.

21 MR. BROWN: Okay.

22 MR. IRWIN: Some of it's not.

23 BY MR. BROWN:

24 Q Okay. So again we'll talk about alibi in
25 general. And I'm going to ask you some questions that

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1 might quite frankly seem silly, but nonetheless we need to
2 put this on the record. What is the role of investigation
3 in defending a criminal case?

4 A Well, first of all, by ABA standards, by
5 training, the investigation of all relevant facts, all
6 potential avenues of defense are mandated by the defense
7 attorney and his or her team or associates to prepare for
8 a trial, plea bargaining, whatever, but you're supposed to
9 do prompt investigation of all lines of defense which
10 would include alibi.

11 Q Okay. Now could attorneys, whether they be
12 defense attorneys perhaps even other kinds of attorneys,
13 can they make strategic decisions without having first
14 investigated?

15 A No.

16 Q What is an alibi witness?

17 A An alibi witness is a witness who can place the
18 defendant at a location other than the location of the
19 crime at the appropriate, relevant time.

20 Q And what is the significance of an alibi
21 witness?

22 A Well, the significance of an alibi witness is
23 that if for the Defense if you have a credible alibi
24 witness that's the best possible defense you can have.

25 Q If you have a credible alibi witness that's the

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1 hands-on approach. You have to at least send an
2 investigator or some associate to talk to the witness and
3 then have some sort of analysis. Without facts there can
4 be no strategy. Without intelligence there can be no
5 strategic decision.

6 Q Right. And part of the reason, if I'm correct
7 part of the reason it's so important to investigate in
8 this thorough manner is that there is some risk to putting
9 on an alibi witness, correct?

10 A Correct.

11 Q And what's that risk?

12 A Well, the risk is if you put on an alibi witness
13 that seems incredible to the finder of fact then you lose
14 your credibility with the finder of fact and that would be
15 -- that could be detrimental to the defense.

16 Q Right. Now are there times when an attorney
17 does not need to investigate an alibi witness?

18 A I can't think of any time that that could be
19 possible.

20 Q Are there times when the attorney does not need
21 to contact the alibi witness?

22 A I cannot think of a reason that that would be --
23 there may be some reason like the person's death notice is
24 in the paper or something. I can't think of a reason that
25 a live alibi witness isn't somebody you need to talk to.

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1 opinion based upon everything including what was not known
2 to her but you discovered afterwards; does that make
3 sense?

4 MR. BROWN: Thank you, Your Honor.

5 MR. VIGNARAJAH: Thank you.

6 (At 1:52:00 p.m., Counsel returned to trial tables
7 and the following occurred in open court:)

8 THE COURT: Objection duly noted.

9 MR. VIGNARAJAH: Thank you, Your Honor.

10 THE COURT: You may proceed, Mr. Brown.

11 BY MR. BROWN:

12 Q Okay, so now I'm going to ask the question again
13 but in the more broader term. Based on everything you
14 know, everything you've seen, everything you've read, what
15 would have been Asia McClain's significance to that trial
16 if she had been called as a witness in 2000 in a case of
17 State v. Adnan Syed?

18 A My opinion is based on what should have been
19 done. I get the whole picture you're looking for, but
20 what should have been done by Ms. Gutierrez and her team
21 back in 1999 and that is that on the basis of what she had
22 then and what she was on notice of then, she had to meet
23 the minimal objective standard of reasonable defense care.

24 She had to go talk to Asia McClain. She had to
25 investigate what Asia McClain was saying and she had to

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1 then determine if -- she had to investigate the two young
2 guys that were with her. She had to go talk to them.
3 Somebody had to talk to those people because the testimony
4 could have been critical.

5 Q Okay.

6 A And now we know, so everybody can have their
7 record, now we know that Asia McClain is a fabulous
8 witness, lovely lady, credible, intelligent and she would
9 have been material and changed the ball game's result.
10 It's pretty obvious to me.

11 Q Okay. Do you have an opinion of what Asia
12 McClain would have been like then as a witness from your
13 experience from what you've seen?

14 A Well, she might not have been as polished, but
15 she would have been instead of a diamond she would have
16 been a diamond in the rough and therefore probably even
17 more likable and more believable.

18 Q The State when they cross examined Asia McClain
19 they asked a lot of questions --

20 THE COURT: Just one second, please, Mr. Brown.

21 (Off record discussion between Court and Clerk.)

22 THE COURT: I'm sorry, Mr. Brown.

23 MR. BROWN: No problem, Your Honor.

24 Do you remember in the cross examination of Ms.
25 McClain there was a series of questions that we'll refer

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Hearing Testimony from Steven Mills
(2/8/2016) (Page 229)

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ADNAN SYED,	*	IN THE
	*	
Petitioner,	*	CIRCUIT COURT
V	*	
	*	FOR
	*	
STATE OF MARYLAND,	*	BALTIMORE CITY
	*	
	*	CASE NO. 199103042-46
	*	
	*	POST CONVICTION NO.
	*	10432
* * * * *	*	* * * * *

TRANSCRIPT OF OFFICIAL PROCEEDINGS
(Excerpt of Proceedings - Post-Conviction Hearing)

BEFORE: THE HONORABLE MARTIN P. WELCH, JUDGE

HEARING DATE: February 8, 2016

APPEARANCES:

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1 A Yes, sir.

2 Q Could you tell the Court what you meant by that?

3 A Well, on that particular -- most of the students
4 would come in, you know, every day just as they normally
5 would and for the regulars, I knew the regulars and they
6 knew me. If he was an outsider, they'd have stood out.
7 It was somebody who didn't calmly come to the library.

8 Q Do you recall if students at the school would
9 sometimes be picked up from the public library?

10 A Yeah. Many of them would. Many of them would.

11 Q And do you recall any people from the sports
12 teams coming to the public library?

13 A Occasionally, the track team, would come after
14 practice but, you know, that was after practice.

15 Q After practice?

16 A Uh-huh.

17 Q How about individuals on other sports teams, do
18 you remember?

19 A Some of them would also come, too, but they
20 would usually come a little later because, you know,
21 practice was late. That's where they would get picked up
22 from, the library.

23 Q I'm just going to show you what I've marked as
24 State's Exhibit 12. This is already in evidence as A0374.
25 I'm sorry. Forgive me. Mr. Nieto.

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