

THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS

SUPERIOR COURT

\* \* \* \* \*  
THE STATE OF NEW HAMPSHIRE  
V.  
GORDON MacRAE  
\* \* \* \* \*

93-S-0218, et. al.

TRIAL BY JURY

Volume 10

Pages 10-1 through 10-14

BEFORE

The Hon. Arthur D. Brennan,  
Presiding Justice  
Cheshire County Superior Court  
Box 444  
Keene, New Hampshire 03431

DATE:

Friday, September 23, 1994

APPEARANCES:

For the State:

Bruce Elliott Reynolds, Esquire  
and Robert Gainor, Esquire  
Assistant County Attorneys

For the Defendant:

James R. Davis, Esquire and  
Ron Koch, Esquire

CLERK:

Stillman D. Rogers, Esquire  
Clerk

STENOGRAPHER:

Susan Ronayne, RMR  
CSR Certificate #26

1

2

INDEX

3

Page

4

Hearing re: Jury Question

10-3

5

Verdicts

10-12

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

# PROCEEDINGS

(Jury commenced deliberations at 8:58 a.m.)

HEARING OUT OF THE PRESENCE OF THE JURY

THE COURT: We need Attorney Reynolds, and he appears. Okay.

And Attorney Davis. I don't know if there's a statutory definition or not. I'll tell you what we've got. We've got a question from the jury in the MacRae case and it says,--. The time stated is 9:10, today, and it says, "We need to know the definition of `coerce.'" I don't believe it's defined in any of the statutes. Do you know?

MR. REYNOLDS: I don't have my ---. Do you have a criminal law handbook up there, your Honor? If I could wade through that just for a moment. That would be the only place it would be. Thank you. Other than that, it would just be the--

THE COURT: Do I have one of these in my chambers? Don't get up or anything. I'm just going to go look.

(Pause)

**THE COURT:** Do you want to look at it?

MR. DAVIS: No, your Honor. Actually, I would ask whether the Court has Black's?

THE COURT: I think Lori has that.

MR. DAVIS: It's the blue covered one.

1 MR. REYNOLDS: I've got a copy downstairs, if we need it.

2 THE COURT: Without a definition, my inclination is to just say  
3 that, "You have to use the plain meaning of the word as you  
4 understand it." I mean, that's the statutory standard in  
5 interpretation, and I really don't think that we have a  
6 definition.

7 MR. REYNOLDS: I don't see anything in the statute, your Honor.

8 THE COURT: Have we got the Black's? If we can agree on a  
9 definition, I don't have a problem.

10 MR. REYNOLDS: I'd agree to the definition of the common meaning  
11 of the word as the jury understands it to be.

12 MR. DAVIS: Your Honor, if I could just have a brief second to  
13 check to see if any other places in the statute, whether  
14 the case law addresses it?

15 THE COURT: Oh, yes. I'll let you look at that definition, if  
16 you want to. To me, it's more confusing than the term  
17 itself.

18 MR. REYNOLDS: Black's Law Dictionary does that.

19 THE COURT: There's two of them; there's a short and a long  
20 definition.

21 MR. DAVIS: They specifically asked regarding "coerce"?

22 THE COURT: Yes. Here's the question.

23 (Question handed to Mr. Davis)

1 THE COURT: If you two want to agree on a definition, that's  
2 fine.

3 MR. DAVIS: Your Honor, I'm sorry to be a pain. Just out of  
4 curiosity, could I check words and phrases in the New  
5 Hampshire Digest?

6 THE COURT: Oh, yes.

7 (Pause)

8 MR. REYNOLDS: Do you have a dictionary that's been published in  
9 the last 50 years?

10 MR. DAVIS: Why?

11 THE COURT: I've got a case where there was an appeal to the  
12 New Hampshire Supreme Court. The law clerk is getting  
13 another one so that you can look at it too. Go ahead and  
14 take a look at this. I've read the case.

15 (Pause)

16 MR. REYNOLDS: Well, this basically says coercion means  
17 everything.

18 (Pause)

19 MR. DAVIS: Your Honor--

20 THE COURT: Let me just finish.

21 MR. DAVIS: Certainly, your Honor.

22 THE COURT: Well, my suggestion is that coercion may involve  
23 undue influence, physical force, threats or any combination



1 MR. REYNOLDS: This is out of Black's. "It denotes something  
2 wrong, according to that standard of morals which the law  
3 enforces in relations of men, and in fact illegal, and  
4 qualifies the purpose with which influence is exercised or  
5 results which it accomplishes." Undue influence.

6 THE COURT: Do you want to do that one?

7 MR. REYNOLDS: "Any improper or wrongful constraint, machination  
8 or urgency of persuasion whereby the will of a person is  
9 overpowered and he is induced to do or forbear an act which  
10 he would not do or would do if left to act freely.  
11 Influence which deprives a person influenced of free agency  
12 or destroys his will and renders it more the will of  
13 another than his own. Misuse of position of confidence or  
14 taking advantage of a person's weakness, infirmity, or  
15 distress to change improperly that person's actions or  
16 decisions." And, "Term refers to conduct by which a  
17 person, through his power over mind of testator--" I don't  
18 know if that's the right context-- "made the latter's  
19 desires--." I'm sorry. I was trailing off there. I don't  
20 think it's applicable.

21 MR. DAVIS: I think my position would be on that that it would  
22 be perfectly acceptable to quote the language from State v.  
23 Collins and then as to undue influence, I think it would be

1       appropriate, in light of where it is, in light of the other  
2       factors of coercion, that undue influence should focus on  
3       subverting the free will. I think Black's uses "free  
4       agency" but I think that that's more--

5       MR. REYNOLDS: And they use "free will." They use the free will  
6       as well. I'd give them that paragraph from Black's.

7       THE COURT:     With "free will" in instead?

8       MR. REYNOLDS: Well, it includes that as well.

9       THE COURT:     "Free agency" is confusing to me.

10      MR. DAVIS:     I think this one sentence, just, "influence which  
11      deprives--." I would put--

12      THE COURT:     Off the record

13                     (Discussion held off the record.)

14      THE COURT:     I don't have to worry too much about this, just  
15      what we finally agree on and if there's an objection.  
16      Okay. "Coercion may involve undue influence, physical  
17      force, threats or any combination thereof. Undue  
18      influence. Influence which deprives or destroys a person  
19      of his free will and renders it more of the will of another  
20      than his own."

21      MR. DAVIS:     That's acceptable, your Honor. My only additional  
22      thought or concern is, is it appears to me that under  
23      what's currently 632-A:2(I), which formerly was designated

1           as 632-A:2(X), that it appears to me that it's clear that  
2           the coercion has to be that of the defendant.

3   MR. REYNOLDS: Sure.

4   MR. DAVIS:     In other words, it has to be the defendant who is  
5           effectuating the coercion.

6   MR. REYNOLDS: Sure.

7   THE COURT:     So we've got to plug that in.

8   MR. REYNOLDS: Well, no. That was part of the language of the  
9           complaints, of the indictments.

10   MR. DAVIS:     Well, they don't have the indictments, though.

11   MR. REYNOLDS: Well, they were read to them.

12   THE COURT:     Well, how do you think we should modify this?

13   MR. DAVIS:     Well, give me one second, your Honor.

14   THE COURT:     I mean, sit down and work with it, if you want. I  
15           don't have any problem.

16   MR. REYNOLDS: Well, no, your Honor. I'd object to that because  
17           the language in the indictments is specific with regard to  
18           who is doing what. The actor is the person who is doing  
19           the coercing, not the victim.

20   MR. DAVIS:     My concern--

21   THE COURT:     No, what you want is it to be clear.

22   MR. DAVIS:     That it's the defendant who is the coercer in  
23           order for the elements to be met. My concern with that,

1       your Honor, is that there was testimony from Thomas Grover  
2       that, or it could have been his testimony, could well have  
3       been understood that he felt forced to go to counselling by  
4       his mother as well.

5       MR. REYNOLDS: Oh, okay. So you're looking for the coercion  
6       would apply to the actions of the defendant.

7       MR. DAVIS: Right.

8       MR. REYNOLDS: I'd have no objection to that.

9       THE COURT: Okay, I understand your reasoning.

10      MR. REYNOLDS: I just say add it on at the top of the page to  
11      read, "Coercion applies to the actions of the defendant,"  
12      or, "Coercion would apply to the actions of the defendant."

13      THE COURT: I think it should be within the definition because  
14      if we do that, we're making some kind of a statement that  
15      could be I think prejudicial.

16      MR. DAVIS: Well, where you have coercion, actually what I  
17      would say is rather than coercion, I would say we could do  
18      it this way because they specifically asked coerce and the  
19      reason for that is I know that in your instructions it uses  
20      the words "to coerce" I so say in this case, to coerce  
21      would involve whether the defendant--. I wouldn't suggest  
22      you write it out.

23      MR. REYNOLDS: Would involve undue influence, physical force,

1 threats or any combination thereof on the part of the  
2 defendant.

3 MR. DAVIS: Directed to Thomas Grover.

4 MR. REYNOLDS: Well, that's unnecessary because we know who it's  
5 directed to.

6 THE COURT: Give me it again.

7 MR. REYNOLDS: To coerce involves undue influence, physical  
8 force, threats, or any combination thereof on the part of  
9 the defendant.

10 MR. DAVIS: That would be agreeable.

11 THE COURT: On the part of the defendant.

12 MR. DAVIS: It might even be on the part of the defendant,  
13 period. Change the period to a comma.

14 (Pause)

15 THE COURT: Okay. Here's how it will read, then. "Coercion  
16 may involve undue influence, physical force, threats, or  
17 any combination thereof on the part of the defendant.  
18 Undue influence is influence that deprives or destroys a  
19 person of his free will and renders it more of the will of  
20 another than his own."

21 MR. DAVIS: Acceptable, your Honor.

22 THE COURT: Okay.

23 MR. REYNOLDS: Thank you.

1 MR. DAVIS: Your Honor if I could just make the same request--

2 THE COURT: We're making the copies.

3 MR. DAVIS: Yes, they are, and I'd appreciate that, your  
4 Honor.

5 THE COURT: Okay.

6 (Hearing concluded)

7 HEARING BEFORE JURY - 10:50 A.M.

8 THE COURT: Please be seated. Mr. MacRae, will you please  
9 rise and face the jury.

10 THE CLERK: Will the Foreman of the jury please rise? What  
11 say you, Mr. Foreman, has the jury arrived at verdicts in  
12 the matters against Gordon MacRae?

13 JURY FOREMAN: We have.

14 THE CLERK: What say you, Mr. Foreman, as to indictment number  
15 93-S-0224, which alleges the crime of aggravated felonious  
16 sexual assault in the rectory office, does the jury find  
17 the defendant Gordon MacRae guilty or not guilty?

18 JURY FOREMAN: Guilty.

19 THE CLERK: What say you, Mr. Foreman, as to 93-S-0225,  
20 aggravated felonious sexual assault in the rectory office,  
21 does the jury find the defendant Gordon MacRae guilty or  
22 not guilty?

23 JURY FOREMAN: Guilty.

1 THE CLERK: Mr. Foreman, as to indictment 93-S-0226,  
2 aggravated felonious sexual assault in the rectory office,  
3 does the jury find the defendant Gordon MacRae guilty or  
4 not guilty?

5 JURY FOREMAN: Guilty.

6 THE CLERK: As to 93-S-0227, aggravated felonious sexual  
7 assault in the rectory office does, the jury find the  
8 defendant Gordon MacRae guilty or not guilty?

9 JURY FOREMAN: Guilty.

10 THE CLERK: Sir, as to 93-S-0223, which is a felonious sexual  
11 assault taking place in the rectory apartment, does the  
12 jury find the defendant Gordon MacRae guilty or not  
13 guilty?

14 JURY FOREMAN: Guilty.

15 THE CLERK: So say you, Mr. Foreman and ladies and gentlemen  
16 of the jury, that the defendant Gordon MacRae is guilty of  
17 the indictments in 93-S-0224, 225, 226, 227, and 223? So  
18 say you all, ladies and gentlemen of the jury?

19 JURORS: Yes.

20 THE COURT: Attorney Davis, do you want to poll the jury?

21 MR. DAVIS: Yes, your Honor. I respectfully request that each  
22 member of the jury be polled as to each indictment.

23 (Jury polled as to each indictment)

1 THE CLERK: Thank you. Your Honor, the jury has returned  
2 guilty verdicts in all matters against the defendant.

3 THE COURT: Thank you. Mr. MacRae, since you've been  
4 convicted of four charges of aggravated felonious sexual  
5 assault and one conviction for felonious sexual assault,  
6 under RSA 597-1(a) of the New Hampshire Statutes, there  
7 will be no bail and you will be held at the Cheshire County  
8 House of Corrections pending sentencing in this matter.

9 MR. REYNOLDS: Your Honor, may I ask that the defendant be put on  
10 suicide watch at the jail?

11 THE COURT: Yes. Bailiff, take charge of the jury.

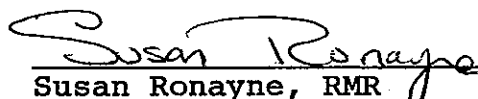
12 (Trial concluded)

13 CERTIFICATE

14  
15 I, Susan Ronayne, Certified Court Reporter for the State  
16 of New Hampshire and Official Court Reporter in the  
17 above-captioned matter, do hereby certify and affirm that the  
18 foregoing transcript, consisting of Volumes 7 through 10,  
19 represents a true and accurate transcription, to the best of my  
20 skill and ability, of my stenotype notes taken in the  
21 above-captioned matter.

22  
23 Date

2/24/95

  
Susan Ronayne, RMR  
CSR Certificate #26