

STATE OF MAINE

KNOX, ss.

Superior Court  
Criminal Action  
Docket No. KNO-CR-89-126

STATE OF MAINE, :  
 :  
 vs. :  
 :  
 DENNIS DECHAINED, :  
 Defendant. :

**AFFIDAVIT OF M. MICHAELA MURPHY**

I, M. Michaela Murphy, being first duly sworn on oath depose and say:

1. My name is M. Michaela Murphy, and I, along with Attorney Steven Peterson, represent Defendant Dennis Dechaine.
2. Attorney Peterson and I were asked to pursue Mr. Dechaine’s rights under Maine’s Post-Conviction DNA Statute, 15 M.R.S.A. §2136 et seq, to request that this Court order testing of extant biological evidence, and to argue for a new trial for the Defendant.
3. I have read all eight volumes of trial transcripts, as well as all transcripts of the hearings conducted upon Mr. Dechaine’s Motion for New Trial, all briefs submitted and argued upon direct appeal, all Post-Conviction pleadings and briefs, all Federal pleadings and briefs, all decisions from the Maine Superior Court, the Maine Supreme Judicial Court, the Federal District Court, all discovery provided to Attorney Thomas Connolly, all materials contained in the files of Attorney Gene Libby (who represented Mr. Dechaine in the state post-conviction proceedings and all federal proceedings), the entire file maintained by the Maine State Police, the Maine State Medical Examiner’s Office, and the Maine State Police Crime Lab.
4. I personally reviewed all extant evidence maintained at the Maine State Police Crime Lab, the Maine State Medical Examiner’s Office, and the entire file maintained by the Attorney General for the State of Maine, including trial notes of counsel for the State, and what would commonly be referred to as “work product” for the State of Maine in this matter.
5. I have determined, with the assistance of Attorney Peterson and Private Investigators Thomas Cumler and Julia Vigue, that the following items of evidence still exist and may be conducive to testing for the presence of DNA evidence:
  - A. Histology slide and “block” containing vaginal tissue of the victim
  - B. Right thumbnail of victim

- C. Left thumbnail of victim
- D. Cigarette found next to Defendant's vehicle, previously tested with amylase
- E. Tissue from Defendant's truck, containing dried fluid, unidentified
- F. Jackknife from under passenger's seat of Defendant's truck
- G. Rope from victim's hands, and other pieces of rope seized from abduction scene and Defendant's farm
- H. Rope found 200 yards from victim's body
- I. Victim's tie-dyed T-shirt with blood
- J. Victim's bra with blood
- K. Bandana from victim's mouth used as gag
- L. Scarf used to strangle victim
- M. Stick from victim's vagina
- N. Stick from victim's rectum
- O. Ice cream wrapper found in Defendant's truck
- P. Defendant's sneaker with unidentified (perhaps animal) blood
- Q. Extract remaining and preserved from DNA testing of victim's thumbnails conducted by CBR Labs, Inc. (See B and C above)

6. I have also determined, from my review of the extant evidence at the Maine State Crime Lab (done with Deputy Attorney General William Stokes) that in 1991, the State incinerated certain items of evidence which might have contained evidence containing biological substances, including the "rape kit" taken from the victim, as well as all hair evidence found on or around the victim's person. The State incinerated this evidence with the express approval of Assistant Attorney General Fern Larochelle who was, at the time of the approval, head of the Criminal Division of the Attorney General's Office.
7. I have determined from my review of the files received from Attorney Gene Libby's office, as well as the files reviewed from the Attorney General's Office that the State of Maine in 1997 voluntarily sent to Dr. Bing a sample of the victim's whole blood, apparently at the request of Attorney Libby. The victim's blood was transmitted by Ron Kaufman of the Maine State Police Crime Lab, following procedures for maintaining chain of custody as required by both the State and Dr. Bing's laboratory. (See Defendant's Exhibit #3).
8. It also appears from a review of documents reviewed from the Attorney General's file, that the State may have also been motivated by the recommendation of their own expert, Dr. Harold Deadman, who advised Assistant Attorney General Stokes by letter dated February 18, 1997 as follows:
 

"...it cannot hurt to determine the victim's DQA1 type. If the DQA1 type of the victim is determined, it would allow the determination of possible types for a second contributor. Any laboratory doing DQA1 typing would be able to do the analysis. It would then be possible to check the DQA1 types or obtain samples from other individuals such as the infant who was being watched.....to see if the extra alleles can be accounted for." (See Defendant's Exhibit #4).
9. Dr. Deadman also advised Mr. Stokes that as to the two prior tests done by Dr. Bing, "Dr.

Bing's interpretation of his results seem to be correct." Mr. Stokes also reported by memo to Ron Kaufman dated 2/13/97 that Dr. Deadman indicated to Mr. Stokes that he knew Dr. Bing personally, believed him to be a "reputable scientist (who) he does not believe for a second would do anything improper in his testing."

10. Mr. Stokes then directed Mr. Kaufman to transmit the victim's whole blood to Dr. Bing, "to compare it to the test results he got on his analysis of the fingernail clippings."
11. Dr. Bing concluded that Sarah Cherry's blood was one of the two or more sources of DNA found under her fingernails, by report dated December 17, 1997.
12. Based upon a review of these documents, as well as interviews with Attorney Tom Connolly, his secretary Ida Bilodeau, Ms. Carol Waltman, and Attorney Gene Libby, I believe that the chain of custody of all three items (the victim's fingernails, the Defendant's whole blood, the victim's whole blood) was sufficient to ensure that none of the material tested was substituted, tampered with, replaced or altered in a material way.
13. Attorney Steve Peterson and I are working with New York attorney Aliza Kaplan, and Cardozo Law School student Carolyn Horan in this case.
14. Attorney Kaplan is the Deputy Director of the Innocence Project (run by the Cardozo Law School) and she is familiar with the DNA technology available at the time of Dennis Dechaine's conviction, and the DNA technology used now by all 50 states, including Maine, who participate in the federal DNA data bank, known as CODIS.
15. I am personally familiar with the DNA technology employed now by the Maine State Police Crime Lab, and Attorney Kaplan confirmed that all states, including Maine, employ so-called STR (short-tandem repeat) technology for DNA testing.
16. She also confirmed that at the time Dennis Dechaine was convicted, the only universally accepted technology was so-called RFLP testing, although what Attorney Connolly asked the Court to allow was testing by so-called PCR testing, which was less accepted. Finally, she confirmed that STR testing was not in existence at the time Mr. Dechaine was convicted.
17. That on May 17, 2003 I was informed by the Innocence Project that they had confirmed with that the DNA extract remaining from Dr. Bing's 1994 testing of the victim's thumbnails had in fact been preserved and properly stored since that time.
18. Attorney Steve Peterson and I believe that the items we are seeking to have tested (including the victim's fingernails) are material to the identity of the person who murdered Sarah Cherry, in that they may contain biological evidence which was shed at the time of the crime, specifically in the form of blood, semen, sweat, saliva, and tissue of the victim and/or the perpetrator.
19. The State committed itself to the position at trial that Dennis Dechaine did not have any scratch marks on him sufficient to explain whatever mixed sample of blood might possibly

be found under the victim's fingernails.

20. In addition, the evidence analyzed at Dr. Bing's laboratory confirms the existence of DNA under the victim's nails that definitely came from the victim, but not the Defendant. According to the Innocence Project, it is possible with STR testing to find a gender component to the DNA tested.
21. I am in possession of a letter from Mr. Stokes to Attorney Gene Libby dated September 27, 1996 which references a suggestion that "the material found on the fingernail scrapings contained a female and male component." If this is in fact confirmed, this would strongly suggest that the other DNA found under the victim's nails (besides the victim's) was in fact not donated by the female baby she was caring for when abducted by her murderer.
22. I have further learned through a review of police reports and documents reviewed from the Maine State Crime Lab that one of the sticks removed from the victim's body contained a creamy substance which was reportedly negative for the presence of semen (when tested in 1988) although the State incinerated all "rape kit" evidence, including vaginal aspirate.
23. It is unclear from the reports whether the stick was ever screened for semen, but it appears reasonable to test it.
24. I also learned from Jim Ferland of the Medical Examiner's Office that the State had saved a sample of the victim's vaginal tissue, which apparently was never tested for DNA.
25. The other items we are asking to be tested are primarily items containing blood, which may be the victim's blood, or could also be blood from the perpetrator.
26. Simply because Dennis Dechaine had no wounds on him sufficient to shed blood, does not mean that the person who killed Sarah Cherry did not shed blood.
27. In addition to gathering information regarding the extant evidence which might be available for testing, Attorney Peterson and I have, through our review of trial transcripts and discovery, become familiar with the evidence in this case which was admitted at trial, some of which was not admitted at trial, and some of which should have been made known to Attorney Connolly before trial.
28. We believe that the evidence regarding the time of death of the victim, taken in the light most favorable to the State, does not support the State's theory that only Dennis Dechaine could have killed Sarah Cherry.
29. Medical Examiner Ronald Roy testified under oath that it was his expert opinion that Sarah Cherry had been dead at a minimum of 30 to 36 (and perhaps more) hours at the time he examined her body in the woods at approximately two p.m. on Friday, July 8, 1988.
30. He also testified that his findings were consistent with her having been dead "for two days."
31. It appears from the available evidence that Sarah Cherry was abducted between noon and

three p.m. on July 6, 1988.

32. On cross examination by Attorney Connolly, Dr. Roy conceded that he could not say whether she was dead as of three p.m. or four p.m. on July 6, 1988.
33. He further conceded that all he could say is that she died on July 6, 1988, “and nothing more.”
34. He also conceded that she could have died as late as ten or eleven p.m., or even midnight of July 6, 1988.
35. Thirty to thirty-six hours from the time he viewed her body would actually place her time of death somewhere between two a.m. and eight a.m. on Thursday, July 7, 1988.
36. Dennis Dechaine’s time is accounted for from 8:30 pm on July 6, 1988 (when he was seen walking out of the woods) until 4:20 am Thursday, July 7, 1988 by State’s witnesses and/or law enforcement officers.
37. We are aware that the State relied upon Dr. Roy’s testimony regarding the victim’s stomach contents (partially digested hot dogs) to support its theory that Sarah Cherry was killed soon after she was abducted.
38. We are also aware that it is well accepted that a person’s digestive processes can be slowed or halted under conditions of extreme stress, physical exertion or high temperatures.
39. All of the above conditions pertain to the circumstances of the death of Sarah Cherry.
40. We are aware of the trial Court’s decision in this matter regarding the “alternative suspect” evidence which Attorney Connolly tried to admit at trial.
41. We are also aware that the Maine Supreme Court held that because no objective or competent evidence existed (other than the “motive” evidence gathered by Mr. Connolly at trial regarding Douglas Senecal) that someone else could have killed Sarah Cherry, that the trial Court was within its discretion in not admitting such evidence.

42. We strongly believe that there now exists such objective, competent evidence in the form of DNA evidence which shows that the victim had, at the time she was killed, blood from two sources under her fingernails, one of which was hers, and one of which was not hers.
43. We believe this conclusion is supported if the Court considers Chemist Brinkman's concession that it was possible that the blood was a mixture (based on the presence or absence of certain antigens), as well as Dr. Bing's findings.
44. We also believe that had the Court at the time of trial had the benefit of Dr. Bing's findings, taken together with Chemist Brinkman's findings, that it might very well have decided differently about the Defense's use of this "alternative suspect" theory; and given the Law Court's decision, believe it would have been an abuse of discretion not to allow the jury to consider such evidence. (See Affidavit of Thomas Cumler, regarding updated information on Douglas Senecal).
45. We further believe that had the Court and Mr. Connolly been aware of evidence which we believe should have been disclosed to the Defense (see Thomas Cumler's Affidavit regarding Jason Fickett) that the Court might have allowed Mr. Connolly to obtain the scientific testing he did request, which included not just DNA testing, but also so-called protein antigen testing; we also believe the Court might have allowed this evidence about Mr. Fickett to be considered by the jury, with or without further testing.
46. Attorney Peterson and I would respectfully request that the Court order testing of the items of evidence listed above, and that it order that a hearing be conducted to consider testimony and argument, and that it order a new trial for Dennis Dechaine.

Dated at Waterville, Maine, this 20<sup>th</sup> day of May, 2003.

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M. Michaela Murphy

State of Maine  
Kennebec, ss.

Personally appeared the above named and made oath to the truth of the above statements by her subscribed.

Before me, \_\_\_\_\_  
Notary Public