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May 17, 2023

Sarah Bosk, Clerk
Superior Court at Knox County
62 Union St
Rockland, ME 04841

RE: State of Maine v. Dennis Dechaine, KNO-CR-89-126

Dear Sarah:

Enclosed for filing is Dennis Dechaine's Pre-Hearing Memorandum Addressing Scope of the Evidence with three exhibits attached. We thank you for your assistance in this matter.

Sincerely,

/s/ John E. Nale

John E. Nale, Esq,
ME Bar No. 211

JEN:bc
Enclosure
cc: Donald W. Macomber

**STATE OF MAINE
KNOX, s.s.**

**UNIFIED CRIMINAL COURT
LOCATION: ROCKLAND
Docket # KNO-CR-89-126**

STATE OF MAINE)
)
v.)
)
DENNIS DECHAINED)

**DENNIS DECHAINED'S PRE-HEARING MEMORANDUM
ADDRESSING SCOPE OF THE EVIDENCE**

INTRODUCTION

At the March 1989 jury trial, the State told the jury that the human blood found under all 10 of the victim's fingernails was the victim's blood and that it came to be there as she struggled with the scarf used during the strangulation process. Old and new DNA test results show that the blood contains the victim's DNA and the DNA of an unknown male, not Mr. Dechaine. The unknown male DNA found in the blood under the victim's left thumbnail is also a probable inclusion on the scarf that was used to strangle the victim. This DNA connection allows Mr. Dechaine to proffer further evidence that the male DNA found in the blood under the victim's left thumbnail was that of the perpetrator and how blood came to be under all 10 fingernails.

Based on the now known connection between the DNA found in the blood under the victim's fingernails and the DNA on the scarf, it is Mr. Dechaine's

position that the male DNA blood found under the victim's fingernails came to be there as the victim struggled with her assailant during the strangulation process, digging his face, arms, hands, or neck.

Further, because the crime scene is located 500 feet into a heavily wooded area, the assailant would have left the crime scene that night with many scratches and bruises on his exposed skin, forest debris on his hands, clothing and hair as he assaulted, killed, and buried the victim, and 10 obvious dig marks on his face, arms, hands, or neck. Mr. Dechaine showed no physical signs of having been engaged in such violent activity just hours before his photo was taken at the local police department. Please see Photo Exhibit #1 showing Mr. Dechaine in police custody, evening of July 6, 1988; Photo Exhibit #2 showing victim's fingernails; and Photo Exhibit #3 portraying the actual strangulation process.

The trial record makes clear that Mr. Dechaine, at all times, voluntarily submitted his body, his blood, his clothing, his truck, his home, and his fingerprints for examination by law enforcement. No connection between Mr. Dechaine and the victim could be made. Further, before the March 1989 trial, Mr. Dechaine requested that DNA testing of the fingernail blood be done at his expense.

It is the lack of DNA evidence together with the lack of all other physical trace evidence, that Mr. Dechaine maintains his innocence and believes a Maine

jury would render a different verdict after hearing the evidence being presented herein.

The witnesses Mr. Dechaine intends to call will support this petition and their testimony in support of this petition is within the scope permitted by 15 M.R.S.A. §2138(10)(C)(1).

A BRIEF FACTUAL STATEMENT

On July 6, 1988, sometime between 1 and 3 p.m., twelve-year-old Sarah Cherry was abducted from a home on Lewis Hill Road, in Bowdoinham, Maine. Sarah's dead body was found two days later in the woods across a road from where Dennis Dechaine's abandoned truck was later found. Dennis was found by police around 9 p.m. on July 6, looking for his truck in the general vicinity where the body was discovered on July 8. The police were looking for Dennis because a piece of paper with his name and address on it had been found in the driveway of the house from which Sarah Cherry had been abducted.

Dennis, who was an organic farmer in Bowdoinham, testified that he had walked in the woods that afternoon and early evening, and eventually got lost, after having injected hard drugs. He testified that he could not explain why utility rope, a scarf, and an autobody repair estimate from his truck were present at the crime scenes, but he did not harm Sarah Cherry. Evidence suggested that someone had rifled his truck and taken items before locking the door. There were no physical

traces of Sarah Cherry found in the truck despite a meticulous search and inventory by forensic examiners at the Maine Crime Lab. There were also no physical traces of Dennis Dechaine found at the abduction site or at the crime scene. The victim's panties were missing from her body, as were a pair of gold-post earrings, and have never been found. They were not found on Dennis Dechaine despite that police took him into custody shortly after the crime he was accused of committing apparently occurred.

Dechaine was convicted after a 14-day trial that included testimony from a number of law enforcement officers who claimed Dechaine confessed to the crime. However, they produced no recorded or signed statement from Dechaine and their reports of his claimed confession were nothing more than versions of "He told me he did it." The trial also included ample testimony from neighbors as to Dechaine's reputation for peacefulness and non-violence.

For thirty-plus years now Dennis Dechaine has steadfastly maintained his innocence.

SCOPE OF THE EVIDENCE

1. Is Dechaine entitled to an evidentiary hearing?

The new test results require a hearing because "the results of the DNA analysis show that [Dennis Dechaine] is not the source of the evidence." 15

M.R.S.A. §2138(8)(B). The new test results conclusively *exclude* Dechaine as the

source of DNA on three items. While Dechaine is theoretically included as a possible source of DNA on two pieces of evidence, so are tens of thousands of other males. That shows that he is not *the* source of the evidence.

Therefore, under the terms of the statute, since the results of the DNA analysis “show that the person is not the source of the evidence . . . [t]he court shall hold a hearing pursuant to section 10.” *Id.* §2138(8)(B).

We offer the following in support of our contention that “The DNA test results and other evidence admitted at the hearing . . . are material to the issue as to who is responsible for the crime for which [Dechaine] was convicted.” *Id.* §2138(10)(C)(4).

1. What is the scope of the evidence at the hearing under section 10?

The scope of evidence allowed under section 10 is “all the other evidence in the case, old and new.” *Id.* §2138(10)(C)(1). The Legislature further defined what it meant by “all the evidence in the case, old and new” in an unnumbered paragraph at the end of section 10. “For purposes of this subsection, ‘all the other evidence in the case, old and new,’ means the evidence admitted at trial; evidence admitted in any hearing on a motion for a new trial pursuant to Rule 33 of the Maine Rules of Unified Criminal Procedure; evidence admitted at any collateral proceeding, state or federal; evidence admitted at the hearing conducted under this section relevant to the DNA testing and analysis conducted on the sample; and the

evidence relevant to the identity of the source of the DNA sample.” Thus, plain language shows that the scope includes evidence admitted at the trial in 1989, evidence admitted at the DNA hearings in the case in 2012 and 2013, and any evidence (whether DNA related or not) that is relevant to the identity of the perpetrator.

The Law Court, in *State v. Dechaine*, 2015 ME 88, 121 A.3d 76, construed “all the evidence in the case, old and new” and “evidence relevant to the identity of the source of the DNA sample” in the context of whether to allow a claim of innocence *not* based on DNA evidence. The petitioner had sought to introduce expert testimony from a forensic medical examiner that Sarah Cherry was murdered at a much later time than testified to by the medical examiner at trial. *Id.* ¶¶36-42, at 96-97. The later time of death would have exonerated Dennis because he was in police custody then and could not have been the perpetrator. *Id.* The problem, however, was the time-of-death evidence was not based on DNA test results. “The statute says nothing about reopening or supplementing the evidence introduced in prior proceedings; rather, it allows the admission of DNA-related evidence that could not have been known at those prior proceedings, namely, new DNA results and their impact on identifying the perpetrator.” *Id.* ¶39, at 96. Thus, because the testimony was based on insect activity and other non-DNA-related

evidence, it was disallowed. The Law Court termed this evidence a “free-standing claim” because it was not based on DNA-related evidence.

No part of petitioner’s case at the upcoming hearing is “free-standing” in the sense prohibited by the Law Court. All of our evidence is based on the DNA test results either because it explains the DNA test results or because it proves that the identity of the killer, which is called into question by the DNA test results, is not Dennis Dechaine. The Legislature added the phrase, “and the evidence relevant to the identity of the source of the DNA sample,” to the end of the sentence defining evidence old and new to show that evidence bearing on the identity of the perpetrator is admissible. 15 M.R.S.A. §2138(10)(C).

The ultimate issue is whether “The DNA test results, when considered with all the other evidence in the case, old and new . . . would make it probable that a different verdict would result upon a new trial.” *Id.* §2138(10)(C)(1). The initial paragraph of section 10 defines the burden of proof as clear and convincing evidence. *Id.* §2138(10).

Working within these guidelines, Dechaine will present (a) expert testimony that explains that the new DNA test results exculpate Dechaine; (b) expert testimony that presents a detailed crime reconstruction to show that the source of the thumbnail DNA is likely the perpetrator; (c) fact witness testimony that describes the defense at trial and how the addition of the new DNA test results

would have strengthened the defense; and (d) expert testimony that opines on the impact the new DNA test results would likely have on a Maine jury and how the new evidence would probably lead to a different verdict.

2. DNA Tests, Old and New.

The two major differences in the DNA test results from SERI Lab, as opposed to earlier DNA test results from Orchid Cellmark, are that (1) Dechaine is excluded from items the perpetrator handled that were tested inconclusively in the past and (2) the unknown male DNA under the victim's thumbnail can be included on the scarf that was used as the ligature. The more conclusive readings are a result of the better DNA collection method of the MVAC system and of the increased sensitivity of testing software since 2012-2013.

Richard Staub, PhD, a forensic DNA scientist and crime scene evaluator, will explain the new test results, which will be introduced as a series of reports from SERI Lab. These reports include a number charts with numbers representing alleles found at various locations, or loci, on the DNA samples. Staub will explain to the court how to read the charts and what the numbers mean. Staub will also explain what the absence of numbers means when missing information is germane to understanding the results.

Staub will explain where the new results from SERI represent an advancement over the old results from Orchid Cellmark Labs. Staub is uniquely

qualified to contrast the old DNA test results with the new DNA test results because he testified at the 2012-13 hearings on DNA evidence. He is the best witness available to contrast the new test results with the old test results and to explain how and why the new results are a significant advancement. This testimony will fit squarely within the scope of “all the evidence old and new.”

One area where Staub will focus is how the new test results disprove the conclusion, based on the old results, that the unknown male DNA under the victim’s thumbnail was contamination from the old morgue. Staub testified at the 2013 hearing that the thumbnail DNA was most likely not contamination but evidence of the perpetrator, which lodged under the victim’s fingernails when she fought back with the only weapons at her disposal, her fingernails. Staub explained at that time how to know that the unknown male DNA was that of the perpetrator: “Because if we could get a result on another piece of – another one of those samples [of crime scene evidence] and it had the same Y-STR profile as the fingernail, then there goes your theory about the fingernail profile having coming from the clipper itself.” Transcript June 13, 2012 Hearing, at 55:16-21.

The Law Court picked up on this testimony and upheld the finding of contamination as not clearly erroneous because the thumbnail DNA did not show up on any other crime scene evidence. “[T]here was no evidence that the DNA is connected to the crime at all . . . [given] the fact that none of the profiles generated

from items known to be intimately connected to the crime in the second round of tests matched the thumbnail DNA.” *State v. Dechaine, supra*, ¶34, at 95.

This crucial, missing connection of the thumbnail DNA to the crime scene evidence has now been made. This connection will be the single most important part of the DNA evidence presented at the hearing. Staub will testify that the new testing performed by SERI with more sensitivity and power produced a probable inclusion of the left thumbnail DNA to the DNA on the scarf that was used to strangle Sarah Cherry. In his professional opinion, that new DNA evidence goes a long way towards quashing the contamination argument that has been promoted. He will testify that it would be hard to argue that the same individual whose DNA is under Sarah Cherry’s left thumbnail is a contaminant when he is also included as a component of the DNA extracted from the scarf used to strangle her.

Staub will also help the Court to understand the full ramifications of Dechaine’s exclusion from the bra, the rectal stick, and the handkerchief, all items intimately connected to the crime scene. (These items either previously yielded no DNA samples or the tests were inconclusive as to whether Dechaine could be excluded.) Staub will also help the Court to understand the limited relevance of Dechaine’s theoretical inclusion (along with many tens of thousands of other males) in the DNA sample on the vaginal stick. Finally, Staub will help the Court understand background contamination and secondary transfer of DNA, given that

items belonging to Dennis were taken from his truck and used by the killer at the crime scene.

Staub's opinion as a DNA expert, forensic scientist, and former CSI unit manager is that these results give him pause and make him question whether Dennis Dechaine would have been convicted of the sexual assault and murder of Sarah Cherry had they been known at the time of the trial.

Other expert witnesses are Rod Englert and Melissa Fernandez. Rod Englert has over 54 years of combined law enforcement and forensic experience. His expertise is in homicide reconstruction and blood stain pattern analysis. He has lectured at over 600 training seminars in 35 states. He has testified as an expert over 400 times in crime scene reconstruction and blood pattern analysis in 28 states. His colleague, Melissa Fernandez, retired as a captain from the Union County Sheriff's Office, Elizabeth, NJ. She is certified by the International Association of Identification and crime scene analysis and blood pattern analysis.

After review of crime scene photos, victim photos, and trial court testimony, they will offer their expert opinion on these subjects. That Sarah Cherry was removed from the Henkel residence unwillingly, and was taken to the crime scene 3.5 miles away, and then taken unwillingly approximately 500' through a heavily wooded area and with crime reconstruction to prove that the thumbnail DNA is that of the perpetrator. Not only does the inclusion of the thumbnail DNA on the

scarf create a reasonable inference, as a matter of abstract logic, that the thumbnail DNA was the perpetrator. The evidence of how the strangulation occurred provides a concrete factual basis on which to visualize that the thumbnail DNA was that of the perpetrator.

The Law Court has provided a template for the admissibility of crime reconstruction testimony in *State v. Williams*, 2020 ME 128, 241 A.3d 835. In that case prosecutors from the Attorney General’s Office introduced crime reconstruction testimony in a murder case to show how the shooting occurred. The Law Court upheld the admissibility on the grounds that the State’s expert “testified in great detail about his specialized training and experience in shooting reconstruction. He then testified as to his opinion of how the shooting may have occurred and thoroughly explained what he did at the scene and the basis for this opinion. His conclusions were drawn from the facts of the case, and his work was peer-reviewed by longstanding experts in the field.” *Id.* ¶27, at 843.

Rod Englert’s and Melissa Fernandez’s testimony will follow this template. Their reconstruction will be based on the facts of the case as learned through careful study of the record. Their opinions will help the Court to understand that the identification of the perpetrator as the source of the thumbnail/scarf DNA is very consistent with a realistic view of how the strangulation occurred.

Englert and Fernandez will testify that Sarah Cherry's wrists were bound in front of her, under her chin and in front of her neck, where the scarf was knotted. This is relevant in looking at the DNA evidence that was recovered from her fingernails. Sarah Cherry's hands being bound in front would not preclude her from fighting off her attacker. She would have been able to dig her nails into her attacker, which is an explanation of how blood and DNA were recovered from the left thumbnail. Although blood and DNA were only tested from the left thumbnail, it is confirmed by the State's chemists that there was blood under all ten of the victim's fingernails.

These witnesses will further testify that if someone were to forcibly lead a child into the woods, get on or near the ground to bind and stab them, undress and redress the victim, and then cover the body with a substantial amount of forest floor debris, would be expected to have evidence of these actions on his clothing, arms, hands, face, or hair. There is no documented or collected evidence from the body or clothing of Dennis Dechaine to indicate that he performed any of these actions. Englert relied on the testimony of Maine Warden Sargent William Allen that the area, which was approximately 500' into the woods, was "quite thick" and "heavily wooded." The hypothesis that one could walk through such an area and further, struggle over control of another, and surface bury a person in the same

wooded debris without any debris or dishevelment of their clothing is not a reasonable one.

Englert and Fernandez will finally testify as to their conclusion that once the DNA results were available, a prosecutor would be remiss not to question whether Dennis Dechaine's proximity was coincidental based on the DNA and other factors regarding the lack of trace and other evidence. In his view, charges at that point may not be filed, and if they were a secondary hypothesis would have to be presented to the court to explain the lack of Dennis Dechaine's DNA and simultaneously explain the presence of other male DNA.

Rod Englert's testimony will be supported by a computer animated video showing how the crime most plausibly happened, knowing that the perpetrator's DNA was on both the victim's thumbnail and the scarf and the blood under all her fingernails as the result of her digging the assailant. The computer animated video will also show the assailant's likely appearance of his skin, hair and clothing as he emerged from the woods after committing this crime.

Thomas J. Connolly, Esq. will testify as a fact witness. He will testify as to what the defense theory of the case was, how he believed the key to the identity of the perpetrator lay in the matter packed beneath the victim's fingernails, how he was not allowed to pursue that line of defense, and how the recent DNA tests vindicate his initial judgment. Attorney Connolly will also testify as to how he

would have used the new DNA test results, if they had been available, and how they would have provided strong basis for reasonable doubt to argue to the jury.

Petitioner will also present expert opinion testimony from a qualified Maine attorney, with ample experience before Maine juries, that proof that DNA testing excluded Dechaine, and pointed to another unknown male as the perpetrator, would probably make a difference to a Maine jury. Maine juries take DNA evidence seriously (“the CSI effect”), and the DNA exclusion, together with all the other documented absences of physical evidence of Dennis Dechaine’s person from the crime scene (and of Sarah Cherry’s person from Dennis’ truck) would be a difference maker to a Maine jury.

This expert opinion will be helpful to the Court in two respects. First, in speaking with lawyers at Innocence Projects in Massachusetts and Virginia, it has been brought to our attention by these practitioners, who litigate DNA exonerations regularly, that it is important to keep the hearing tightly focused on the right standard. Namely, whether the new DNA test results would be decisive to a *jury* (not the court). There is a subtle but important difference between these formulations. Expert testimony from a lawyer familiar through long experience with what makes a difference to Maine juries would be helpful because it would provide a foil against which this Court might test its own sense of the evidence’s probable impact on a Maine jury.

Second, the testimony would also assure any observers of the hearing, regardless of the outcome, that the petitioner was allowed to keep the hearing focused on the right issue.

CONCLUSION

In sum, Petitioner understands the scope of the evidence allowed by the terms of the statute. The fact witness and expert opinion witness testimony intended to be elicited by the Petitioner and his counsel fit within that allowed scope.

Dated at Waterville, Maine this 17th day of May 2023.

Respectfully submitted,

/s/ John E. Nale, Esq.

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CERTIFICATE OF SERVICE

I, John E. Nale, Esq., certify that I have sent a copy of this motion to Donald W. Macomber, Assistant Attorney General, by email.

/s/ John E. Nale, Esq.

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PHOTO EXHIBIT #1

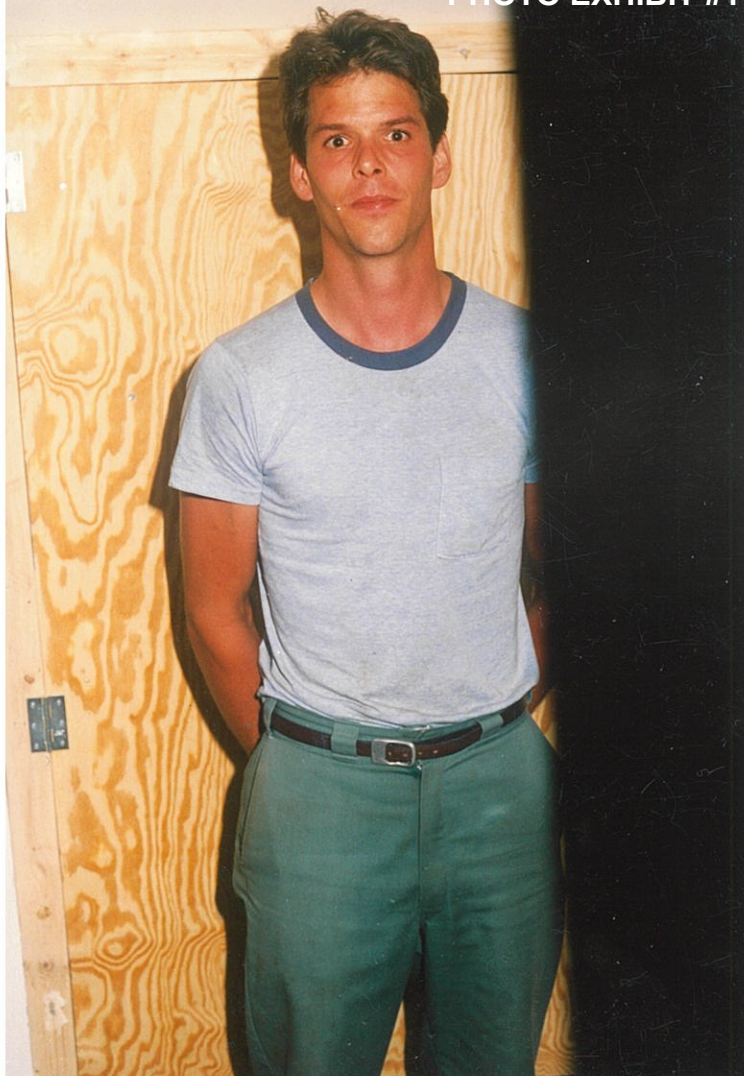


PHOTO EXHIBIT #3

