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## TRANSCRIPT OF PROCEEDINGS

(This matter came on before the Honorable Carl O. Bradford, at Rockland, Maine in the Superior Court, Knox County Courthouse on July 9, 1992 for hearing commencing at 9:05 a.m.)

THE COURT: Good morning, Mr. Connolly.

MR. CONNOLLY: Good morning. There's one housekeeping matter if I may, sir. I have in my hand a document which has been marked as Defendant's Exhibit Number 7 for identification purposes which I submit is a certified copy of a State of Maine motor vehicle registration which was certified by the Secretary of State on the 23rd of June in 1992.

The state has had an opportunity to review this, I am going to be offering this as the certification of the registration of the vehicle identified in Defendant's Number 4 as belonging to Douglas Senecal of Phippsburg, Maine.

THE COURT: Mr. Wright.

MR. WRIGHT: That's fine.

THE COURT: It is admitted. Thank you.

1 MR. CONNOLLY: The defense would call  
2 Edward Senecal.

3 THE CLERK: Please raise your right  
4 hand and state your name.

5 THE WITNESS: Edward Senecal.  
6 Thereupon,

7 EDWARD SENECA  
8 was called as a witness and, after having been  
9 duly sworn, was examined and testified as  
10 follows:

11 DIRECT EXAMINATION

12 BY MR. CONNOLLY:

13 Q State your full name again, sir, for the  
14 record.

15 A Edward Senecal.

16 Q How old are you, sir?

17 A 66.

18 Q What do you do for work?

19 A I'm retired.

20 Q Yes, sir, and from what, what was your work  
21 during your active years?

22 A I was a shipping clerk a while and then I was  
23 a security guard for the government, SB  
24 Manufacturing in New York.

25 Q Where do you currently reside, sir?

- 1 A North Carolina, Pilot Mountain.
- 2 Q How long have you lived there?
- 3 A Well, I have lived there for a short while but I  
4 have been there in that township for four years  
5 and two months.
- 6 Q So you have a new residence but you live in the  
7 area?
- 8 A Yes.
- 9 Q Are you married?
- 10 A Yes.
- 11 Q How many children do you have, sir?
- 12 A I have step children.
- 13 Q How many of those?
- 14 A Three.
- 15 Q Yes, sir. Do you have brothers and sisters?
- 16 A I do.
- 17 Q How many?
- 18 A There's eight -- nine. Nine.
- 19 Q Are you the youngest then?
- 20 A No, I am right in the middle.
- 21 Q Is one of your brothers named Pat Senecal?
- 22 A Yes.
- 23 Q Is another brother named Luis (phonetic)?
- 24 A Yes.
- 25 Q And do you keep in touch with your family, sir?

- 1 A As much as I can.
- 2 Q On a sporadic basis, not on a regular basis?
- 3 A Uh-huh.
- 4 Q Do you also have a nephew by the name of  
5 Douglas?
- 6 A Yes, I do.
- 7 Q And do you keep in contact with him, sir?
- 8 A I sure do.
- 9 Q What do you mean by "sure do"? Are you closer  
10 to him?
- 11 A Yes, I am, I see him all the time.
- 12 Q And he currently is residing in North Carolina;  
13 is that right?
- 14 A Yes.
- 15 Q So is that how you come to see him on a regular  
16 basis?
- 17 A Yes.
- 18 Q Have you been seeing him on a regular basis  
19 since he went down to North Carolina more or  
20 less?
- 21 A As much as I could, yes. That means that I was  
22 away for a while.
- 23 Q Okay. Were you on some -- did you live other  
24 places or did you travel?
- 25 A I was in Maine for a while with Pat and I was in

1 Massachusetts for a while with Nancy, my sister.

2 Q Nancy? How many sisters do you have, sir?

3 A Four.

4 Q So there are nine of you, five of them are males  
5 and four of them are females?

6 A That's right.

7 Q And so you lived in Maine with Patrick and his  
8 wife?

9 A I stayed with him for a month. I got there the  
10 15th of January and left Valentine's Day.

11 Q Of what year, sir?

12 A This year.

13 Q '92?

14 A (Motions head up and down.)

15 Q Where does Patrick fit in in the family in so  
16 far as age wise?

17 A He is the baby.

18 Q And he has children that you know?

19 A Yes.

20 Q Do you know Brenda?

21 A I do.

22 Q Sir, you came up voluntarily today; is that  
23 right?

24 A Yes, I did.

25 Q And you came up with Douglas?

- 1 A I did.
- 2 Q During the course of your time with Douglas down  
3 in North Carolina or otherwise are there times  
4 when you and he have conversations of a personal  
5 nature?
- 6 A Sure.
- 7 Q Often?
- 8 A Yes.
- 9 Q Would you say that you two are closer than other  
10 members of the family?
- 11 A Absolutely.
- 12 Q And to that extent you share confidences?
- 13 A Yes.
- 14 Q Excuse me.
- 15 And how long have you been that close with  
16 him?
- 17 A Since his last two years of high school.
- 18 Q Which would have been approximately when, '72,  
19 '73?
- 20 A Oh, '70, '71.
- 21 Q Plus or minus. At least 20 years you have been  
22 fairly close then?
- 23 A Uh-huh.
- 24 Q Do you recollect, sir, yourself the time frame  
25 in which the incident which led us here today



1 occurred in July of 1988?

2 A When I heard it?

3 Q Yes, sir.

4 A I believe -- I have to think just a minute.

5 Q Sure.

6 A It would be July '88.

7 Q And where were you at when you heard about it?

8 A I lived in Cana, Virginia.

9 Q You were still employed at the time working?

10 A I retired..

11 Q At that time you were retired?

12 A Yes.

13 Q What was the source of your information, just  
14 how did you come to know about the incident?

15 A The stepdaughters were grieving over their  
16 sister.

17 Q Did they come down to visit or did you hear it  
18 on the phone?

19 A Douglas come down to visit.

20 Q So in July of 1988 Douglas came down. About  
21 what date was that, if you know, sir?

22 A I really can't give you the number.

23 Q Approximate if you can. The early part in the  
24 month or the latter part?

25 A I would say the latter part.

1 Q Who was accompanying him, other members of the  
2 family?

3 A Maureen, his wife.

4 Q Anyone else that you recollect?

5 A No.

6 Q Would it be fair to say that that incident was a  
7 significant event in the family?

8 A Give me that again.

9 Q Sure. This incident that we are referring to  
10 was a significant event in the family?

11 A Yes.

12 Q The subject of much conversation over time?

13 A No, no, no. It was just told.

14 Q I am sorry?

15 A I say it was just mentioned to me and we were  
16 sad so I didn't carry on with it.

17 Q Over the course of the time since 1988 you have,  
18 have you not, had opportunity to discuss this  
19 matter further with Douglas?

20 A No.

21 Q You are saying that you never have had any  
22 discussions at all about this?

23 A No.

24 Q Have you had any discussions whatsoever with  
25 other members of your family, Luis Senecal for

1 example?

2 A No.

3 Q Have you had any discussions whatsoever with  
4 your brother Eddie Senecal?

5 MR. WRIGHT: He is Eddie.

6 BY MR. CONNOLLY:

7 Q I am sorry. Patrick. Have you had discussions  
8 with Patrick?

9 A Oh, yes. He is -- all right.

10 Q That's all right, you can finish if you want.

11 A No. Go on.

12 Q On how many occasions do you believe that you  
13 have had discussions with Patrick on this issue?

14 A I didn't have any discussion in the first place,  
15 he would say things and wait for me to agree  
16 with him, which I never did.

17 Q How often did these kind of statements occur?

18 A From him?

19 Q Yes, sir.

20 A From him all the time. All the time.

21 Q Do you have any particular recollection of  
22 incidents or events or just in general you know  
23 there's been a lot of discussion about it, talk  
24 about it?

25 A There's a little echo.

1 Q That's all right, I am not so loud today yet.

2 Do you have any particularized  
3 recollections of any specific conversations with  
4 Patrick or is it just in general that you  
5 remember there have been a number of different  
6 conversations?

7 A Nothing specific.

8 Q Do you recall Patrick visiting with you on July  
9 of last year?

10 A I do. It was the 1st -- I believe it was around  
11 the 10th.

12 Q Right after the 4th of July last year?

13 A It was the 1st.

14 Q The 1st of July, sir?

15 A (Motions head up and down.)

16 Q I am sorry, I thought you said the 10th. Did  
17 you say the 10th and I misunderstood?

18 A That's what I said.

19 Q Did he stay from the 1st to the 10th?

20 A The 1st to the 10th. I don't know about the  
21 10th but I know the 1st.

22 Q So in any event the 4th of July would be a date  
23 of last year which you would remember to have  
24 had such a meeting with or discussions with  
25 Patrick?

- 1 A Yeah. I believe he was at Pilot Mountain.
- 2 Q At empire --
- 3 A Pilot Mountain.
- 4 Q P-I-L-O-T, Pilot?
- 5 A That's right.
- 6 Q And who else was present for that, sir?
- 7 A I have to think a minute. Maureen.
- 8 Q Anyone else?
- 9 A Pardon?
- 10 Q Was there anyone else present, sir?
- 11 A My wife and I.
- 12 Q Your wife's name?
- 13 A Margaret.
- 14 Q Sir, did there come a time in July during that
- 15 July visit in which you and Patrick had a
- 16 discussion about --
- 17 A I never discussed anything with him about this.
- 18 Q Okay, at all, that's your testimony?
- 19 A Not at all.
- 20 Q At any time?
- 21 A At any time.
- 22 Q Turning your attention to your brother Luis
- 23 Senecal, have you had occasion to discuss this
- 24 matter with Luis?
- 25 A No.

- 1 Q Never?
- 2 A No. It could have been mentioned but no  
3 discussion.
- 4 Q I am sorry, sir, I didn't hear the first part.
- 5 A It could have been mentioned but no discussion.
- 6 Q During this period of time or earlier did you  
7 have discussions with Douglas about this matter?
- 8 A No.
- 9 Q Prior to coming into court today did you have an  
10 opportunity to discuss your presence here today  
11 with the attorney for the state, Mr. Eric  
12 Wright?
- 13 A To discuss it?
- 14 Q Yes, sir.
- 15 A What do you mean discuss it?
- 16 Q Did you have a conversation with him about what  
17 purpose you were coming up here today?
- 18 A I was in the presence --
- 19 Q I am sorry, sir?
- 20 A I was in the presence of conversation.
- 21 Q But not participating in the conversations?
- 22 A No.
- 23 Q Were words directed to you as part of the group?
- 24 A No.
- 25 Q They were directed to somebody else?

1 A (Motions head up and down.)

2 Q So as far as you are concerned you had no  
3 discussion whatsoever with anyone as to why you  
4 were coming up here today; is that right?

5 A No.

6 Q So you did -- I am sorry, I am not trying to  
7 trick you. Did you talk with anybody about why  
8 you were coming up here?

9 A Other than Doug himself.

10 Q So Doug himself would be one person that you had  
11 a conversation with about why you were coming up  
12 here?

13 A Well, I am sure he knows.

14 Q Did you have conversation with anybody else as  
15 to why you were coming up here?

16 A No.

17 Q The attorney for the state or any members of the  
18 Attorney Generals Office or police department,  
19 you had no conversations?

20 A No.

21 Q In the time from leaving North Carolina to  
22 arriving here you had no conversations  
23 whatsoever in reference to the issue that brings  
24 you to court today?

25 A Just what I just got through saying. What you

1 just got through asking me, that's all.

2 Q How do you know what the issue is here today  
3 then?

4 A What do you mean by that?

5 Q Well, you understand based upon the services  
6 of the subpoena downstairs this morning as to  
7 what --

8 A Well, I knew what I was here for.

9 Q How did you know that?

10 A Because I come from North Carolina up here to be  
11 here.

12 Q That's my question, sir. How did you know why  
13 you had to come up if you have had discussions  
14 with nobody about it?

15 A I just can't understand this part of it.

16 Q That's all right, sir. I am asking you straight  
17 forward, you came from North Carolina to Maine  
18 to say some things, correct?

19 A (Motions head up and down.)

20 Q How did you know of what was at interest to  
21 anybody if you never talked to anybody about  
22 it?

23 MR. WRIGHT: Your Honor, I object. He  
24 has indicated that he spoke with Douglas Senecal  
25 about it and therefore he is here. That is what



1 I understood the testimony to be.

2 THE COURT: Thus far it seems this  
3 witness' testimony is that the only one that he  
4 has had any discussion with about this case at  
5 all was his nephew, Douglas. So perhaps you may  
6 want to pursue that angle.

7 MR. CONNOLLY: Yes, sir. I am  
8 attempting to get there.

9 BY MR. CONNOLLY:

10 Q You had conversation then, the only conversation  
11 in reference to what you are going -- what you  
12 are here for was with Douglas?

13 A Yes.

14 Q Did you have conversation about what was  
15 anticipated that you would testify to?

16 A I don't understand.

17 Q Okay.

18 THE COURT: Well, let's approach it  
19 this way in the interest of time: Did anyone  
20 ask you, whether it was Mr. Senecal or anyone  
21 else, what you were going to say when you got on  
22 the witness stand?

23 THE WITNESS: No. This is -- no.

24 BY MR. CONNOLLY:

25 Q Sir, did you have at any point -- did you at any

1 point tell your brother Patrick or your brother  
2 Luis Senecal that you had conversation with  
3 Douglas --

4 MR. WRIGHT: Your Honor, excuse me.  
5 Any statement that he made outside of court to  
6 anybody is by definition hearsay and I object.

7 MR. CONNOLLY: I am asking for the  
8 fact, not the content.

9 THE COURT: Let's limit it to the fact  
10 about the topic of this case.

11 MR. CONNOLLY: Yes, sir.

12 BY MR. CONNOLLY:

13 Q Can you answer that question, sir?

14 A Oh, finish it.

15 MR. CONNOLLY: I am sorry, may I have  
16 a read back on that? I am sorry.

17 (Thereupon, the pending question was  
18 read by the court reporter.)

19 BY MR. CONNOLLY:

20 Q In reference to the matters about the death of  
21 Sarah Cherry.

22 A Not a conversation. He would say things and  
23 wait for an answer and I said nothing.

24 Q And that was Patrick?

25 A That was Patrick.

1 Q What about Luis?

2 A No, not Luis, no.

3 Q It's your testimony then, sir, that at no point  
4 did you indicate to either Patrick or Luis that  
5 you had a conversation with Douglas involving  
6 the death of Sarah Cherry?

7 A No.

8 Q Did you at any point have a conversation as it  
9 related to the death of Sarah Cherry with any  
10 private investigator from the State of Maine?

11 A Yes.

12 Q How often was that?

13 A Too many times.

14 Q Do you know how many approximately?

15 A I couldn't tell you -- 20 maybe.

16 Q During the course of those -- were they  
17 telephone calls or personal contacts?

18 A Telephone calls.

19 Q During the course of those discussions did you  
20 indicate whether or not you had conversation  
21 with Douglas Senecal in reference to the death  
22 of Sarah Cherry?

23 A It was talk about it.

24 Q Did you express concern to the private  
25 investigator at any time that if you provided

1 testimony or a statement that you would be in  
2 physical fear of your own life?

3 MR. WRIGHT: Object. Again, it's an  
4 out-of-court statement.

5 THE WITNESS: No, never, never.

6 THE COURT: The answer may stand.

7 MR. CONNOLLY: I have no further  
8 questions.

9 CROSS EXAMINATION

10 BY MR. WRIGHT:

11 Q Just one or two questions. You understood,  
12 Mr. Senecal, from talking with me that the court  
13 had asked me to arrange for you to come to  
14 Maine?

15 A Yes.

16 Q And therefore you came voluntarily?

17 A Yes.

18 Q And you were given a subpoena by Mr. Connolly  
19 this morning?

20 A Just a few minutes ago.

21 Q Had he spoken to you about what he wished to  
22 question you about before you came in the  
23 courtroom?

24 A No.

25 Q Do you know the name of the private investigator

1 with whom you spoke?

2 A I think I know how -- I might not know how to  
3 pronounce it. Ron either Morin or Morin.

4 Q And you say that you spoke with him I think you  
5 said too many times?

6 A Yes.

7 Q Could you explain what you mean.

8 A He used to call all the time.

9 Q Speak right into the microphone.

10 A He used to call all the time.

11 Q How often?

12 A Oh, sometimes a couple of times a day.

13 Q And this was during what time period?

14 A What time period? That's a tough one. I was  
15 drunk. I am an alcoholic. Most of the time he  
16 called I was drinking.

17 Q So you can't remember when it was, how long ago?

18 A I can remember some.

19 Q In any event you have as I understand it no fear  
20 for your own safety or well-being --

21 A None whatsoever. No, sir, none whatsoever.

22 Q -- with respect to Douglas Senecal or any other  
23 member of your family?

24 A No.

25 Q I have tried to cover everybody.

1 A Yes.

2 Q And when the private investigator, Mr. Morin/  
3 Morin spoke with you too many times you said it  
4 was talked about. What --

5 A He asked me questions and I wouldn't know how to  
6 answer him because I didn't know anything about  
7 it. That's all I can tell you.

8 Q You didn't know anything about the death of  
9 Sarah Cherry?

10 A Yes.

11 Q You were in Virginia in July of 1988 you said?

12 A Yes.

13 Q So you had obviously no -- you weren't here to  
14 be paying attention to any of it?

15 A No.

16 Q And I guess the question is at no time did  
17 anybody tell you anything about any involvement  
18 of anybody in the case --

19 A No.

20 Q -- is that correct?

21 A That's correct.

22 MR. WRIGHT: Thank you, sir.

23 MR. CONNOLLY: Briefly, your Honor.

24

25

## REDIRECT EXAMINATION

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BY MR. CONNOLLY:

Q Mr. Senecal, you indicated that there were some memory gaps on the dates because of drinking?

A Probably all of it.

Q So it's fair to say -- you are sober now, right?

A I believe it, yes.

Q You worked hard to get there, I am sure?

A Yeah, yes, I did. I have been -- I haven't had anything since November the 30th, past.

Q Congratulations.

A Thank you.

Q During that time when you were drinking, though, things are different for you than they are when you are sober, isn't that so?

A Yeah.

Q Very much so?

A Yeah.

Q One of the things is that you don't have as good control over your emotions as you would otherwise; is that right?

A Yes.

Q The same with your memory, it is not quite as sharp as when you are not drinking?

A Yes, sir.

1 Q Were there periods of time in which you would go  
2 through memory lapses or blackouts or what have  
3 you?

4 A I wouldn't say so, no.

5 Q At times things would become fuzzier?

6 A Just for a few hours.

7 Q And during the period from 1988 until November  
8 30th of last year off and on were there times  
9 when you were -- had difficulty with your  
10 alcohol?

11 A Yes.

12 Q So during the time frame from the incident until  
13 November 30th there are times in which your  
14 memory is less reliable than at other times?

15 A That's right.

16 Q Similarly, sir, your memory is not just fuzzier  
17 for those times but it would be fuzzy about  
18 things that you learned during those times or  
19 that you may have said during those times; is  
20 that right?

21 A I suppose so.

22 MR. CONNOLLY: Thank you, sir. That's  
23 all the questions I have.

24

25



## 1 RE CROSS EXAMINATION

2 BY MR. WRIGHT:

3 Q Mr. Senecal, let's not play games, at any time  
4 whether you were drinking or not drinking did  
5 Douglas Senecal ever tell you that he killed  
6 Sarah Cherry?

7 A No.

8 Q Are you sure about that?

9 A Absolutely sure.

10 MR. WRIGHT: That's all.

11 MR. CONNOLLY: Your Honor, I have no  
12 further questions at this time. I would request  
13 since this witness is subpoenaed that he remain  
14 subject to the Court's jurisdiction until the  
15 completion of the evidentiary portion of the  
16 hearing to be recalled. It may be necessary  
17 that he is subject to that process.

18 THE COURT: Very well, if you will  
19 remain here in the vicinity until we tell you  
20 it's okay to leave, okay, sir?

21 THE WITNESS: Okay.

22 THE COURT: Thank you.

23 (Witness excused).

24 MR. CONNOLLY: The defense calls  
25 Patrick Senecal.

1 THE CLERK: Please raise your right  
2 hand and state your name.

3 THE WITNESS: Patrick Senecal.  
4 Thereupon,

5 PATRICK SENECA  
6 was called as a witness and, after having been  
7 duly sworn, was examined and testified as  
8 follows:

9 DIRECT EXAMINATION

10 BY MR. CONNOLLY:

11 Q Good morning, sir. Could you again state your  
12 name nice and loud for the record.

13 A My name is Patrick Senecal.

14 Q How old are you, sir?

15 A 50 years old.

16 Q And what do you do for work?

17 A I'm a carpenter and also I run a store.

18 Q And where do you live?

19 A Oxford, Maine.

20 Q How long have you lived in Maine?

21 A All my life.

22 Q Are you married?

23 A Yes, I am.

24 Q And your wife's name?

25 A Millie Senecal.

- 1 Q And do you have children?
- 2 A Yes, I do.
- 3 Q How many?
- 4 A Four.
- 5 Q And their names?
- 6 A Brenda, David, Matthew and Amanda.
- 7 Q Do you have brothers and sisters?
- 8 A Yes, I do.
- 9 Q And how many?
- 10 A I have four brothers and four sisters.
- 11 Q One of your brothers is named Ed?
- 12 A Yes, he is.
- 13 Q And can you characterize your relationship with
- 14 Ed as close or not close or what?
- 15 A We were very close.
- 16 Q Were or are, sir?
- 17 A I hope to think that we still are, but...
- 18 Q It's fair to say, sir, that there's tension
- 19 within the family?
- 20 A Yes, there is.
- 21 Q And without going into detail of that tension
- 22 does the tension in the family revolve around
- 23 Douglas Senecal?
- 24 A Yes.
- 25 Q It's fair to say, is it not, sir, that you have

1 no love loss for Douglas?

2 A That's true.

3 Q And these relate to personal matters within the  
4 family?

5 A Yes.

6 Q How well do you know Douglas?

7 A Quite well.

8 Q Prior to the incident that we are here about in  
9 July of 1988, were you close with Douglas?

10 A No.

11 Q Did you become closer to him in the time between  
12 this incident and the time you came to court?

13 A No.

14 Q I am sorry, are you close or not close to  
15 Douglas --

16 A I am not close to Doug.

17 Q Are you close to Eddie, though?

18 A Close to Eddie, yes.

19 Q In the family you are the youngest?

20 A Yes, I am.

21 Q And Ed is two above you?

22 A Yes, I believe.

23 Q And you grew up in the same household?

24 A No.

25 Q You did not?

1 A No.

2 Q Have you had opportunities over the years,  
3 though, to form a closer bond with him?

4 A Yes.

5 Q And did you live with -- did you live together  
6 at any point when you were adults?

7 A He stayed with me, you know, for a while.

8 Q Do you recollect when that was?

9 A Just recently he came from Virginia and stayed  
10 with me for a couple of weeks.

11 Q In reference to Douglas, did Douglas ever say  
12 anything?

13 A When he was in his teens, yes, he stayed at my  
14 house.

15 Q But not recently?

16 A Not recently.

17 Q When was the last time you saw or spoke with  
18 Douglas?

19 A About 11 years ago.

20 Q Have you had conversation --

21 A Correction, he called me on the phone.

22 Q Okay, you have spoken to him on the phone since  
23 that 11 years?

24 A Yes.

25 Q But before that there had been a hiatus, a gap

1 of a long time?

2 A Yes.

3 Q When did you have conversation last with  
4 Douglas?

5 A He called and threatened me on the phone.

6 MR. WRIGHT: I object.

7 THE COURT: Sustained.

8 MR. WRIGHT: Not responsive.

9 BY MR. CONNOLLY:

10 Q Nice and slow. You received a phone call from  
11 him at some point, sir?

12 A Yes.

13 Q Approximately when was that?

14 A Right around the time I would say about three to  
15 four -- three and a half years ago.

16 Q Do you have some kind of incident to put into  
17 context the time -- so far as time is concerned?

18 A When they came on the news about Sarah Cherry.

19 Q So this would be in 1988 to the best of your  
20 recollection?

21 A Yes.

22 Q Was this around the time of the incident or the  
23 time of the trial, if you know?

24 A It was -- I don't know if it was the trial or  
25 exactly what it was. I tried to distance myself

1 right away from him but it was in that period  
2 where it was in the trial, he was being  
3 investigated, it was in the trial.

4 Q So there was a time when his name became  
5 associated at least in the media with --

6 A With --

7 Q -- with the case?

8 A With the case.

9 Q If that were -- if I were to tell you that that  
10 occurred only after the trial, would that place  
11 things within some kind of time frame for you?

12 A Yes.

13 Q And you indicated that you received a phone call  
14 from him?

15 A Yes, I did.

16 Q And did you recognize his voice?

17 A Yes, I did.

18 Q How did you recognize his voice?

19 A Well, he's got kind of a distinctive voice,  
20 different from the rest of us.

21 Q And he called you directly?

22 A He called me, yes.

23 Q And spoke with you?

24 A Yes. It was brief and short but he made his  
25 point.

1 Q The conversation was one-sided? Did you talk  
2 back with him?

3 A It was mostly one-sided.

4 Q We will go slow here, okay?

5 Do you remember what he said without saying  
6 it? Yes or no?

7 A Yes.

8 Q Was the phone call in reference to the  
9 accusation that he was involved in this case?

10 MR. WRIGHT: I object.

11 THE COURT: Sustained.

12 BY MR. CONNOLLY:

13 Q Don't answer this question until the court has a  
14 chance. Can you tell us what he said?

15 MR. WRIGHT: Object.

16 MR. CONNOLLY: I will get to the next  
17 question.

18 BY MR. CONNOLLY:

19 Q What did he say? Don't answer.

20 MR. WRIGHT: Object.

21 THE COURT: Sustained.

22 MR. CONNOLLY: May we approach  
23 sidebar?

24 (Thereupon, the following sidebar  
25 conference took place:)



1 MR. CONNOLLY: Your Honor, my next  
2 question would be to elicit from him what was  
3 said. My understanding of the objection is that  
4 it is hearsay. Is that the objection?

5 MR. WRIGHT: Yes.

6 MR. CONNOLLY: My response to that  
7 objection would be that the statement made is a  
8 statement against interest, that the statement  
9 against interest would be an exception to the  
10 hearsay rule and therefore none hearsay by  
11 definition and admissible.

12 THE COURT: Well, as I understand, and  
13 I am always willing to be reeducated by counsel  
14 or by the Law Court, but in order to get a  
15 declaration against interest that as an  
16 exception to the hearsay rule by definition it  
17 must be an out-of-court statement made by the  
18 person affecting the person's interest and used  
19 against that person as -- so as to affect that  
20 person's in-court testimony. That's the very  
21 purpose of the exception to the hearsay rule.

22 MR. CONNOLLY: My understanding, sir,  
23 is that an out-of-court declaration which is  
24 against an interest either moral, social or  
25 penal which would likely subject the declarant

1 to an adverse potential holding, either social,  
2 moral or political or criminal, is not hearsay  
3 and is admissible by a person with personal  
4 knowledge to establish independently the truth  
5 of the matter asserted.

6 If I may --

7 THE COURT: Give me Field and Murray  
8 -- never mind.

9 MR. WRIGHT: I have it on my desk.  
10 365.

11 THE COURT: Well, the exception to the  
12 hearsay rule that we are talking about here is  
13 under 804 (b) (3), statements against interest.

14 MR. CONNOLLY: Correct.

15 THE COURT: Statements against penal  
16 interest, and it's discussed in 804.4 of Field  
17 and Murray found in the volume that I have at  
18 page 377, and it sets down preliminary  
19 safeguards, and they say that they discuss the  
20 dangers of allowing in statements made by  
21 someone who has allegedly confessed to a crime  
22 in the trial of the defendant, in other words,  
23 some third person having admitted having  
24 committed the crime.

25 As I understand what is being sought here

1 is a statement from Patrick Senecal to the  
2 affect that Douglas Senecal made some kind of a  
3 threat against him.

4 MR. CONNOLLY: Yes, sir. If the court  
5 would allow me I will make an offer of proof as  
6 to the statement.

7 THE COURT: I think you better.

8 MR. CONNOLLY: The offer of proof  
9 would be that if the witness were allowed to  
10 answer the question he would say to the affect  
11 that the exact language to the effect however  
12 that Douglas said you better not testify against  
13 me, that you have a young daughter too, that  
14 after he received that call he knew it was  
15 Douglas, that he immediately understood the  
16 communication to be a reference to his young  
17 daughter, Brenda, who based upon his experience  
18 and background had a legitimate reason to fear  
19 Douglas Senecal in reference to her, that was  
20 the end of that message, that he was afraid as a  
21 result of that message and he was concerned for  
22 his -- the well-being of his daughter, Brenda.

23 THE COURT: But let's assume for the  
24 purposes of this discussion, we will put this  
25 thing in context, if that call had not been made

1 to Patrick what else could Patrick have  
2 testified to?

3 MR. CONNOLLY: On this issue I believe  
4 that he could not testify to anything except  
5 that he knows from personal knowledge that  
6 Douglas' reputation, Douglas' background -- and  
7 he is concerned and afraid of Douglas, and  
8 further that he knows from his own personal  
9 experience that Douglas has had involvement with  
10 his daughter, Brenda, and that she if necessary  
11 can be brought forward to testify as to those  
12 underlying facts.

13 THE COURT: Well, let's assume that he  
14 could testify to the whole thing.

15 MR. CONNOLLY: Yes, sir.

16 THE COURT: In the entire scenario  
17 there is nothing by way of personal knowledge  
18 that Patrick Senecal has, either by observations  
19 or by statements by way of confessions or  
20 admissions by Douglas Senecal to him, that  
21 Douglas Senecal has had any involvement in Sarah  
22 Cherry's kidnapping, rape, torture and murder.

23 MR. CONNOLLY: If I may, sir, except  
24 insofar as the context in which this statement  
25 was made. If you mean other than this, you are

1 correct, but the context in which this statement  
2 was made is clearly the response to the news  
3 articles in which this man was finally released  
4 after the Law Court lifted the order, that it  
5 occurred at that time, that he said that you  
6 have a young daughter too, the clear implication  
7 being that it was a threat to the young daughter  
8 relating to what happened to Sarah Cherry.

9 THE COURT: Let me play the devil's  
10 advocate here. I don't mean to shut Eric out.

11 MR. WRIGHT: That's all right.

12 MR. CONNOLLY: I understand.

13 THE COURT: But at that point his name  
14 had been released, okay? His name had been  
15 released upon an order from Chief Justice  
16 McKusick when the Gannett Publishing Company was  
17 -- sued to demand the contents of those DHS  
18 records, and those DHS records pertained to  
19 Douglas Senecal's involvement with Jackie  
20 Crosman, and I was the one who gave the state  
21 the deadline to produce Jackie Crosman in court  
22 in Sagadahoc County, the case was going to be  
23 dismissed because Joe Field was then  
24 representing Douglas Senecal, you either try my  
25 client, bring him forward, you have these

1 charges against him or bounce him, okay?

2 MR. CONNOLLY: Yes, sir.

3 THE COURT: All right, so his name is  
4 released in that context, okay?

5 MR. CONNOLLY: Yes, sir.

6 THE COURT: Prior to that time,  
7 assuming for purposes of argument that Patrick  
8 Senecal had known or someone had told him that  
9 Doug Senecal had been fooling around with  
10 Patrick's youngest daughter, Brenda, okay, all  
11 of a sudden Douglas' name appears in the paper  
12 as someone who likes little girls for sexual  
13 purposes, that being the case if Douglas Senecal  
14 was aware that Brenda had made certain  
15 accusations against him to her own father  
16 Douglas Senecal could just have well called up  
17 her father, Patrick, and said you have a young  
18 daughter too and had -- could have been taken in  
19 the context of if you decide to bring forward  
20 charges and start making statements about my  
21 sexual preferences of young girls, true or not,  
22 then, oh, you have a young daughter.

23 All I am saying is we are trying to get to  
24 the indicia of trustworthiness that the Law  
25 Court is speaking about here.

1 MR. CONNOLLY: Yes, sir, I understand  
2 that.

3 THE COURT: Now --

4 MR. CONNOLLY: I am sorry.

5 THE COURT: Now, in the context of  
6 Douglas Senecal having made statements by way of  
7 an admission, they were certainly inculpatory  
8 statements as they would relate to his conduct  
9 vis-a-vis Sarah Cherry, that is a different  
10 issue altogether, but all we have here at this  
11 point in front of -- and the discussion of Field  
12 and Murray talking about the safeguards starting  
13 with State versus O'Clair, 1972, 292 A.2d 186,  
14 or State versus Gervais where they open the door  
15 to discuss this as it applies to a statement  
16 against penal interest, and 317 A.2d 796, a 1974  
17 case, going on through State versus Holt, 1978  
18 case, 391 A.2d 822, and then going on and  
19 bringing it up to 1980, State versus Barden,  
20 B-A-R-D-E-N, 432 A.2d 404, 1981 case, and State  
21 versus Collins, 1983 case, 456 A.2d 362. This  
22 is not the type of statement against penal  
23 interest if you could arguably say that it was a  
24 statement against penal interest that the Law  
25 Court is talking about in this context, but as I

1 say to repeat myself again, to make my position  
2 perfectly clear on this, I have not been given  
3 any offer of proof for any statement made by  
4 Douglas Senecal to this person, to this witness,  
5 because this is all we are dealing with right  
6 now is his Uncle Patrick --

7 MR. CONNOLLY: That's right.

8 THE COURT: -- that would indicate  
9 that he knew anything about -- that he, being  
10 Douglas Senecal, had any evidence or made any  
11 statements that he had anything to do with the  
12 death of Sarah Cherry, and in the absence of  
13 that I am not going to carve out an exception  
14 here under Rule 804 (d) (4) -- (b) (4) --  
15 (b) (3) -- I am sorry, 804 (b) (3) as to this,  
16 and the objection will be sustained.

17 MR. CONNOLLY: I take exception and  
18 it's as simple as that.

19 THE COURT: Yes.

20 MR. CONNOLLY: All right, sir.

21 (Sidebar conference concluded).

22 BY MR. CONNOLLY:

23 Q Turning to other matters, you had an opportunity  
24 over the course of the past two years, three  
25 years or so since 1988, sir, to have



1           conversations with your brother, Eddie Senecal?

2       A    Yes, I did.

3       Q    And you have been to his house or the place  
4           where he is living in North Carolina?

5       A    Yes.

6       Q    And also down in Virginia, did you go down there  
7           or did you just speak with him when he was  
8           there?

9       A    In Virginia, yes.

10      Q    You actually visited, went down there?

11      A    Yes.

12      Q    And you indicated on Direct that there was a  
13           time when Eddie lived with you or stayed with  
14           you for a month or so?

15      A    Yep.

16      Q    During those times was Eddie drinking?

17      A    Very heavy.

18      Q    And did you notice a change in Eddie when he  
19           drank?

20      A    A lot of change. Completely different person he  
21           was.

22      Q    And would you and he have conversations during  
23           those periods of times?

24      A    Yes, we would.

25      Q    And were those conversations of an intimate

1 nature on occasion?

2 A Yes.

3 Q Both back and forth?

4 A Yes.

5 Q And do you have specific recollection of various  
6 times and places as to some of the  
7 conversations?

8 A Yes, I do.

9 Q What I would like to do, sir, is talk to you  
10 about a couple of things, if I may. During the  
11 course of some of those conversations did the  
12 issue of the death of Sarah Cherry come up?

13 MR. WRIGHT: Objection.

14 THE COURT: He may answer.

15 THE WITNESS: Yes.

16 BY MR. CONNOLLY:

17 Q And was there discussion by Eddie as to Douglas  
18 Senecal?

19 A Yes, there was.

20 MR. WRIGHT: I object again. This is  
21 clearly just hearsay.

22 THE COURT: The general topic I will  
23 allow.

24 BY MR. CONNOLLY:

25 Q So that if Eddie Senecal said that the

1 conversation did not occur, that would be  
2 incorrect?

3 MR. WRIGHT: Object.

4 THE COURT: Overruled.

5 BY MR. CONNOLLY:

6 Q You may answer that.

7 A I didn't catch it.

8 Q That's all right.

9 If Eddie Senecal had testified that no such  
10 conversations about Douglas occurred in  
11 reference to the death of Sarah Cherry, that  
12 would be not correct?

13 A True.

14 Q Were there specific times in which you can  
15 recollect conversations occurred between  
16 yourself and Eddie about Douglas' involvement?

17 A Yes.

18 MR. WRIGHT: I object.

19 THE COURT: Sustained.

20 BY MR. CONNOLLY:

21 Q Were there times, sir, in which Eddie Senecal  
22 related to you statements made by Douglas  
23 Senecal?

24 MR. WRIGHT: Object.

25 THE WITNESS: Yes.

1                   MR. WRIGHT: I object. This is double  
2 hearsay.

3                   THE COURT: Sustained.

4                   MR. CONNOLLY: Again may we approach  
5 sidebar, sir?

6                   (Thereupon, the following sidebar  
7 conference took place:)

8                   MR. CONNOLLY: Your Honor, this is  
9 obviously a different matter than the one we  
10 just discussed. I am not trying to go over the  
11 previous court's ruling obviously.

12                   My offer of proof would be that if the  
13 witness were allowed to answer the question that  
14 he would indicate that he has had several  
15 conversations with Eddie Senecal, that he can  
16 remember them specifically and articulate where  
17 they took place and the circumstances under  
18 which they took place, and he would testify if  
19 allowed that on at least two occasions Eddie  
20 under circumstances which indicated  
21 trustworthiness made direct statements to  
22 Patrick that Douglas Senecal had admitted  
23 directly to Eddie that he in fact had killed  
24 Sarah Cherry.

25                   THE COURT: The rule you are relying

1 on for that?

2 MR. CONNOLLY: I am looking right now,  
3 Judge. I am trying to use it to impeach the  
4 statement by Eddie Senecal that no such  
5 statements were ever made.

6 I would further say that based upon what  
7 took place at the original trial that for  
8 purposes of this offer of proof Douglas Senecal  
9 is unavailable because at the original trial he  
10 was subpoenaed, I attempted to use him, I could  
11 not use him. At that time he was not allowed to  
12 testify. Further, at page 23 of the chambers  
13 conference of March 16th, he indicated that he  
14 would claim a privilege, that because he is  
15 unavailable my only means of impeachment for  
16 what Eddie Senecal said is through Patrick  
17 Senecal, and Patrick has direct knowledge of  
18 these statements made by Eddie.

19 THE COURT: He has direct knowledge of  
20 those statements made by Eddie but not direct  
21 knowledge of the statements made by Doug  
22 Senecal.

23 MR. CONNOLLY: That's correct, I agree  
24 with the Court, I understand that, my evidence  
25 does not indicate otherwise.

1           THE COURT: It seems to me that --  
2 well, I am not going to say anything more at  
3 this point.

4           MR. WRIGHT: First of all, the  
5 reference to the chambers conference to  
6 unavailabilities may have been my misspeaking.  
7 As I recall, Joe Field said his client was  
8 prepared not to take any privilege with respect  
9 to any issue that we are here about now on Sarah  
10 Cherry. Secondly, both from Eddie -- Page 23  
11 you said?

12           MR. CONNOLLY: The March 16th hearing,  
13 sir.

14           MR. WRIGHT: I thought I was talking  
15 at that point.

16           MR. CONNOLLY: Both of you -- my  
17 understanding is both The Court and Mr. Wright  
18 indicated that the privilege would be -- that  
19 the privilege would be used.

20           MR. WRIGHT: Well, I clearly misspoke  
21 because Joe Field said otherwise on behalf of  
22 his client. I had never spoken to Douglas  
23 Senecal about that issue --

24           MR. CONNOLLY: When I subpoenaed him  
25 he told me he would take the 5th Amendment, and

1 I can bring him in to say that if necessary,  
2 that's what he said on the night that he was  
3 subpoenaed.

4 MR. WRIGHT: Well, in any event that  
5 was three and a half years ago.

6 MR. CONNOLLY: I understand, but one  
7 of the points I believe for a new trial is to  
8 look at where things were at that time.

9 THE COURT: Those are statements by me  
10 on page 23.

11 MR. CONNOLLY: Yes, sir, that's right,  
12 which I believe is an articulation of what was  
13 happening in chambers and what the Court's  
14 understanding was as well as mine.

15 THE COURT: Well, without having it  
16 definitely represented on the record by  
17 Mr. Field that Douglas Senecal would either  
18 claim the 5th Amendment or would simply deny any  
19 involvement with the death of Sarah Cherry, the  
20 cases that I was referring to in the discussion  
21 of 804 (c) (4) was the very problem addressed  
22 here in State versus Fitts that was set forth --  
23 set forth at footnote 29 -- I am sorry, State  
24 versus Holt, Fitts was the proffered witness,  
25 and defense counsel proposed to quote in Fitts

1 when saying no when asked if he committed the  
2 burglary with which the defendant was charged,  
3 and defense counsel would then call one Leonard  
4 to testify that Fitts -- it says committed the  
5 crime to him but I think it must be a misprint,  
6 admitted the crime to him. It's clearly a  
7 statement against Fitts penal interest. Fitts  
8 lived near the scene and Fitts was on probation  
9 for breaking and entering, and quoting the court  
10 they said that those, quote, unquote, indicia of  
11 trustworthiness were insufficient of the trial  
12 justice's judgment, and the Law Court agreed  
13 that exclusion of the evidence were proper under  
14 804 (b) (3), and so -- I mean, that's even aside  
15 from the problem that we have double hearsay  
16 here.

17 MR. CONNOLLY: I will address double  
18 hearsay. 805, if we can get it in otherwise I  
19 think we could say that we could get it in so  
20 the double hearsay is of less concern.

21 MR. WRIGHT: But --

22 MR. CONNOLLY: If I may argue for a  
23 moment.

24 MR. WRIGHT: Sure.

25 MR. CONNOLLY: The Court's concern



1       seems to be that somehow this would make the  
2       whole process less trustworthy or reliable,  
3       which is ultimately the most important issue in  
4       a motion for a new trial. The defense in the  
5       case has not had the opportunity and does not  
6       have the ability otherwise to be able to  
7       establish these links, that the -- that doesn't  
8       obviously allow inadmissible evidence to get in,  
9       but at the same time insofar as the testimony  
10      that we are eliciting does have indications of  
11      credibility, and I would refer to the offer of  
12      proof that those are definitely probative, that  
13      they are definitely material to the issue  
14      ultimately of whether or not the wrong person  
15      was convicted in the case.

16             We can assume for the purpose right now  
17      that the witness will be able to state in a  
18      condition such that reliability will be  
19      established that the statement was made, that it  
20      clearly is against penal interest, clearly  
21      within the context of Sarah Cherry, and that as  
22      a result of that the court clearly has  
23      discretion to let it in. You can choose not to  
24      absolutely, I think that it's not ultimately  
25      something the Law Court is likely to do me any

1 good on, but at the same time I have been  
2 stopped from every inch and every avenue of  
3 proceeding in this when I have tried. We still  
4 have a file that's been impounded, I still have  
5 witnesses that won't talk to me, I have  
6 witnesses that I subpoenaed to come in and say  
7 things that I can show are not true.

8 A defendant has a constitutional right to  
9 present a fair and adequate defense, the rules  
10 of evidence should not work to deny basic  
11 fairness when other indications on reliability  
12 are there that ultimately within the court's  
13 discretion this kind of evidence could be  
14 allowed in.

15 THE COURT: Well, addressing in a  
16 moment my discretion in this thing, under your  
17 best-case scenario right now if allowed to  
18 testify Patrick Senecal would say that his  
19 brother made statements to him when he was  
20 drunk.

21 MR. CONNOLLY: In part, yes. Yes,  
22 sir, that's right.

23 THE COURT: And by his own testimony  
24 Eddie Senecal is a totally different person when  
25 he is drinking.

1 MR. CONNOLLY: That's correct. And if  
2 I may, that's part of my indication of  
3 reliability and credibility.

4 THE COURT: Reliability when a person  
5 is an alcoholic blackout -- statements when a  
6 person is in an alcoholic blackout are reliable  
7 and trustworthy?

8 MR. CONNOLLY: Absolutely, insofar as  
9 they were repeated, repeated under circumstances  
10 of emotion, that they were repeated under  
11 circumstances in which they were sworn to in the  
12 sense of telling Patrick never to reveal this  
13 otherwise he was afraid that he would be killed,  
14 under circumstances where it happened time and  
15 again.

16 My analysis would be that that is the kind  
17 of evidence that is trustworthy, not a situation  
18 where somebody can come into court and basically  
19 be protected from the beginning to the end, not  
20 be allowed to have to -- that basically came up  
21 with Douglas Senecal -- can be protected from  
22 having said anything.

23 THE COURT: Response.

24 MR. WRIGHT: Well, I was going to make  
25 the same points the court just made as to

1           circumstances under which these statements come  
2           in. Eddie Senecal himself, the first witness,  
3           testified he was an alcoholic and there was lots  
4           he couldn't remember during times that he was  
5           drinking, this witness has indicated that his  
6           brother -- Patrick has indicated his brother  
7           Eddie was drinking -- I forget how he phrased it  
8           -- virtually all the time when he was visiting  
9           and it was during that time that the statements  
10          were made. To say that that is the essence of  
11          the reliability turns that concept.

12                 As for the defendant's right to a fair  
13          trial, I have started into a fair trial.  
14          Mr. Connolly does not have a right to develop  
15          something outside the bounds of the rules of  
16          evidence, it's that simple.

17                 Now, he says the witness is stopped at  
18          every turn. Well, he has been stopped at every  
19          turn because the evidence just isn't there,  
20          that's why he has been stopped.

21                 Now, as for Rule 805 I still haven't heard  
22          -- I still haven't heard how both prongs, let  
23          alone the first prong, but how both prongs of  
24          how Rule 805 are both totems of the pole --  
25          under what hearsay objection do the statements

1 of Eddie Senecal come in?

2 Finally if they do come in for such reason  
3 as impeachment they don't come in as substantive  
4 evidence but only impeachment. They are not  
5 substantive evidence. They are merely  
6 impeaching, they are not substantive.

7 MR. CONNOLLY: If I may respond.

8 First the real world is such, Judge, and I  
9 know you see alcoholics in front of the court  
10 every day, they operate in an alcoholic's fear,  
11 that is how they listen, that's how they  
12 remember, that's how they act. If this person  
13 was an alcoholic for a period of years, the fact  
14 that he was intoxicated at the time I would say  
15 is a indication particularly when the witness  
16 will state that he -- that Eddie explained he  
17 learned about this during a drinking spree  
18 between Doug and Eddie, that that's how the  
19 evidence came in, that's how Eddie learned about  
20 it during --

21 MR. WRIGHT: So --

22 MR. CONNOLLY: Let me finish.

23 -- that that's the kind of evidence in the  
24 real world that really does occur. Two guys sit  
25 down, they get hammered, they cry together, they

1 talk and they tell things. That's reliable, you  
2 don't tell secrets of the sole when you are  
3 sober and that's why in part sometimes people  
4 use alcohol to loosen up.

5 Insofar as the double hearsay argument, if  
6 it is a statement against interest it is not  
7 hearsay, we meet the first prong of the hearsay  
8 objection, the second part would be  
9 discretionary with the Court, and that the court  
10 has to rule to let it in.

11 MR. WRIGHT: Under what theory is the  
12 second prong of 805 satisfied? It is not. Now  
13 we know from the offer of proof that both Eddie  
14 and Doug were drunk when the statements were  
15 made, even less reliability in the statements.

16 MR. CONNOLLY: At least one statement  
17 that's absolutely true, both were drunk, I know.

18 MR. WRIGHT: On top of which Rule 804  
19 requires unavailability which has not been  
20 shown.

21 THE COURT: Well, all I am saying is  
22 that I have quoted the language of State versus  
23 Holt as relates to the statements made by Fitts,  
24 the intent to call him and if called he would  
25 deny it, then I do not find under the offer of

1 proof that the test of reliability has been met  
2 and those statements are excluded.

3 MR. CONNOLLY: Yes, sir.

4 (Sidebar conference concluded).

5 MR. CONNOLLY: No further questions.

6 MR. WRIGHT: I have no questions.

7 THE COURT: Thank you, you may step  
8 down, sir.

9 (Witness excused.)

10 THE COURT: Let me explain what's  
11 going on here, folks. We are not trying to hide  
12 anything from you, the whole purpose of the  
13 sidebar conference was to take place outside the  
14 presence of the witness. Over here were  
15 statements made by Edward Senecal and the  
16 content within which the offer of proof was made  
17 was that certain statements were made by Edward  
18 Senecal to his uncle Patrick -- to his brother  
19 Patrick, I apologize, at a time when Edward  
20 Senecal was drinking, and drinking heavily, and  
21 what we were talking about here is a Rule Of  
22 Evidence under exceptions to the hearsay rule at  
23 a time when the delcarant is otherwise  
24 unavailable, and we are talking about statements  
25 against interest, statements against penal

1 interest, and these statements would be ones  
2 that were reported by Edward Senecal to Patrick  
3 Senecal dealing with statements made by Douglas  
4 Senecal, and in order for statements made by a  
5 person against penal interest in this case the  
6 penal interest would have to have been the penal  
7 interest of Douglas Senecal, that they would  
8 have to pass the trustworthiness test, and I  
9 have made a finding that based upon the  
10 circumstances in which these statements were  
11 made by Edward Senecal to Patrick Senecal at a  
12 time when Edward Senecal was drinking that they  
13 do not pass what our Supreme Judicial Court has  
14 laid down as the trustworthiness test and  
15 therefore those statements have been excluded.

16 Mr. Connolly.

17 MR. CONNOLLY: Your honor, may we take  
18 the morning break at this time?

19 THE COURT: Yes.

20 (Brief recess.)

21 THE COURT: Mr. Connolly.

22 MR. CONNOLLY: The defense calls  
23 Robert Lapierre.

24 THE CLERK: Please state your name.

25 THE WITNESS: Bob Lapierre.



1       Thereupon,

2                               ROBERT LAPIERRE

3       was called as a witness and, after having been  
4       duly sworn, was examined and testified as  
5       follows:

6                               DIRECT EXAMINATION

7       BY MR. CONNOLLY:

8       Q   It's very early in the morning for you,  
9       Mr. Lapierre, being on California time?

10      A   Pardon?

11      Q   It's very early in the morning for you,  
12      California time?

13      A   It sure is.

14      Q   So good morning.

15      A   Good morning.

16      Q   Mr. Lapierre, can you spell your last name?

17      A   L-A-P-I-E-R-R-E.

18      Q   It's my understanding that you deny that you  
19      made any statements to Margaret Senecal about  
20      knowing things about Doug Senecal's involvement  
21      in the Sarah Cherry death; is that right?

22      A   Correct. With your vague interpretation,  
23      correct. Yeah, yeah.

24      Q   Is it your testimony that you never said such  
25      things to Margaret?

1 A Right.

2 Q You were, were you not --

3 A Said what things? If you could tell me what  
4 things then I could -- God, this is loud.

5 THE COURT: Push it away a little  
6 bit.

7 BY MR. CONNOLLY:

8 Q Let's start from the beginning, Mr. Lapierre.  
9 How old are you?

10 A 48.

11 Q What do you do for work?

12 A I'm a writer.

13 Q Where do you live?

14 A California.

15 Q Are you married, have any children?

16 A Nope. Widowed.

17 Q Do you know a person by the name of Douglas  
18 Senecal, sir?

19 A Yes.

20 Q How did you come to know Douglas?

21 A I have known Doug since he was wearing  
22 knee-quarter pants down at Allen Pond, he had a  
23 cottage next to ours.

24 Q So you grew up together?

25 A Uh-huh. For part of it, yeah.

1 Q How old are you compared to he?

2 A I am 48.

3 Q Similar?

4 A I never had a birthday party for him so -- no,  
5 he is younger than I am.

6 Q How would you characterize the relationship,  
7 friendly or close or how would you characterize  
8 it?

9 A It's still on a talking basis. I haven't seen  
10 him for a while but I have lived with them.

11 Q You lived with them? Them meaning who, sir?

12 A Doug and his wife and Ike and Erin.

13 Q Did you come to know Sarah during that time?

14 A I have never met Sarah. I met Hillary but not  
15 Sarah.

16 Q You also know Jackie?

17 A Yes.

18 Q And when did you come to live with that family,  
19 with the Senecals, sir?

20 A Well, I guess the first time was about maybe in  
21 '80 -- '87, summer of '87.

22 Q For how long did you live with them at that  
23 time?

24 A That summer I was there for about six weeks.

25 Q Then you left and you lived somewhere else?

1 A Yeah, I just -- it is a routine of mine to come  
2 to Maine in the summertimes, I like to do that.

3 Q And you were living in California then as well?

4 A Yeah.

5 Q So you went back to California?

6 A Yeah.

7 Q Did you come the following summer of '88?

8 In July of 1988 you lived with the family,  
9 the Senecal family?

10 A I was there part of the time, yeah.

11 Q Do you know from what time to what time, sir?

12 A Not exactly, no.

13 Q Approximately then?

14 A I'd say May through the beginning of July.

15 Q Of '88?

16 A '88, yeah.

17 Q Where was it that you were living?

18 A In the house, and then there was also a cabin  
19 too.

20 Q You lived in both places?

21 A Uh-huh, yeah.

22 Q The cabin is kind of a retreat place or  
23 something?

24 A Sort of, yeah.

25 Q Is it nearby there?

- 1 A Yeah, close by.
- 2 Q Where was your room, in the main house or the  
3 cabin or back and forth?
- 4 A Most of the time I stayed in the main house  
5 upstairs.
- 6 Q Do you recollect the date when you left Maine to  
7 go to California?
- 8 A It was the day after the 4th of July, I believe  
9 it was either the 5th or the 6th. Whatever day  
10 Jennifer Dox came to the house, that's --
- 11 Q Let's -- Jennifer Dox, do you know who that is?
- 12 A No. I just know the name.
- 13 Q But that is a time -- a piece of information  
14 that helps you put things into a time context?
- 15 A Well, I remember because you don't forget the  
16 4th of July, and Doug and Maureen and Ike and  
17 Erin always had a goodbye Bob party and they  
18 would put banners on the house and put my name  
19 up there. We had a party every time I got ready  
20 to go back at the end of the summer or if it was  
21 earlier they would have a party for me.
- 22 Q And you recollect such a party?
- 23 A Pardon?
- 24 Q And you recollect such a party?
- 25 A They had one that year for me.

1 Q And to the best of your memory that would be  
2 immediately after the 4th of July?

3 A Uh-huh.

4 Q And what time of day did that take place,  
5 approximately?

6 A The party?

7 Q Yes, sir.

8 A All day long, yeah.

9 Q So from what time to what time?

10 A I think some of the guests left at probably 6 or  
11 7 o'clock.

12 Q That was on the 4th or that was on the day  
13 after?

14 A No, I left the day after, so it was on the 4th.

15 Q So the party itself was all day on the 4th and  
16 then you believe you -- the 5th is the day you  
17 believe you left?

18 A Yeah.

19 Q If I tell you that the 4th in 1988 was on a  
20 Monday then Tuesday is --

21 A Tuesday would have been the day I left.

22 Q And you left early in the morning, sir, or --

23 A I left about 9:30, 10 o'clock.

24 Q Plus or minus?

25 A Knowing my travel habits I am not a person that

1 starts at 5 o'clock in the morning and then has  
2 to sleep at 3:00 in the afternoon. I leave  
3 later and drive later in the evening.

4 Q Now, at the time that you were living with the  
5 Senecals from May to July of 1988 were you aware  
6 that there was another house that Doug was  
7 trying to sell?

8 A I know there was a house that the Babines lived  
9 in.

10 Q Yes, sir, that's the one I am referring to.

11 A Uh-huh.

12 Q You are aware of that?

13 A I painted the house before, the interior. I had  
14 done some work there.

15 Q And were you familiar with the Babines, Richard  
16 and Pamela?

17 A Yes, yeah.

18 Q Were you also familiar at any point with anyone  
19 by the name of Paradis?

20 A Not -- that's the last name I assume?

21 Q Yes, last name.

22 A No. First names would help. I remember Babine  
23 because there aren't a lot of Babines.

24 Q Gerald Paradis, sir?

25 A What was his wife's name?

1 Q I believe Barbara.

2 MR. WRIGHT: Denise.

3 A Oh, Denise. I know Denise and her -- I think  
4 her husband was -- maybe some people called him  
5 Frenchy.

6 Q And you remember seeing them around?

7 A Yes.

8 Q Do you remember seeing around --

9 A They -- yeah, they were in the house, they were  
10 the last ones that I saw occupying the house.

11 Q So by the time that you left on or about July  
12 5th they were pretty much in place at that  
13 point?

14 A I think so. I will tell you, there were the  
15 Babines and then Frenchy and his wife, yeah.  
16 It's very vague, they both occupied the house,  
17 and to be honest with you I couldn't give you  
18 their tenancy dates.

19 Q You didn't consort with them, you weren't  
20 friendly with them?

21 A No, I wouldn't. I -- I would say hi. I think I  
22 helped her pull -- pull Mr. Paradis' truck out,  
23 he was stuck in the mud somewhere on Devil's  
24 Highway and I helped pull him out.

25 Q You remember that in that kind of contemporary



1 time frame?

2 A Yeah, I remember that.

3 Q Sir, you -- is it fair to say that when you were  
4 with the Senecals you were a member of the  
5 family for most intents and purposes?

6 A No, I wasn't a member of the family, even in --  
7 for your purpose, no, I wasn't a member of the  
8 family. They were very nice to me, they were  
9 kind to me. I had to have emergency surgery and  
10 Maureen Senecal brought me to the hospital and  
11 she cared for me after. They did that sort of  
12 thing for me, those people. She was very, very  
13 kind. It was a very nice gesture on her part.

14 Q Were you aware, sir, of dynamics happening in  
15 the family at the time, were you able to observe  
16 dynamics in the family?

17 A As -- explain that a little further.

18 Q Sure.

19 A Dynamics is a pretty general world.

20 Q I see. Are you able to know who Jackie is?

21 A Sure, I know Jackie.

22 Q Now, did Jackie live in that house for a period  
23 of time?

24 A Off and on, yeah. Between there and the  
25 Crossmans.

1 Q How often would you say that she was there  
2 during the period of time that's relevant, May  
3 of '88 to July of '88?

4 A When I was there most often she would stay at  
5 the Crosmans, I think, because they let me have  
6 Jackie's bedroom and she would, you know, go  
7 home to be with her dad, stepmom.

8 Q And when she would come back she would stay at  
9 the house, though?

10 A Uh-huh, yeah.

11 Q And how often was this that she was staying  
12 there at the house?

13 A Sometimes she would stay for a week, other times  
14 she would be there for two weeks, three weeks.  
15 She had a boyfriend at the time and they were  
16 often gone.

17 Q Were there other children in the family that  
18 would sometimes stay over at the Senecal  
19 residence?

20 A The only other person that stayed over any time  
21 when I was there was Penny (phonetic). She  
22 stayed there.

23 Q And her real name is?

24 A Jessica.

25 Q At the --

1 A That was on weekends. School days she was  
2 home.

3 Q Excuse me.

4 Sir, during the course of going away, the  
5 goodbye Bob party on July 4th, were their  
6 children present at that time?

7 A Come again?

8 Q Sure. The July 4th party were there other  
9 family members present --

10 A Erin and Ike --

11 Q Besides those two?

12 A Jessica, yeah.

13 Q So Jessica was present at that time?

14 A Uh-huh, yep.

15 Q Were you yourself aware of her baby-sitting  
16 arrangements?

17 MR. WRIGHT: Object.

18 A Jackie or Jessica?

19 MR. WRIGHT: Excuse me, I object.

20 THE COURT: Sustained.

21 BY MR. CONNOLLY:

22 Q Were you aware, sir -- strike that.

23 Sir, during the period of time prior --  
24 just prior to your leaving you had an  
25 opportunity to live in the household and to be

1       aware of some of the things that were happening  
2       in the household; is that right?

3       A    I lived there.

4       Q    Did you eat meals together for example?

5       A    Yes, I prepared meals.

6       Q    You had a conversation with a variety of the  
7       members, the wife, Maureen, Doug and some of the  
8       children?

9       A    We played cards, we talked, we watched movies  
10       together, you know, television and all that,  
11       yeah, went clam digging together.

12      Q    So you were aware, were you not, at this time  
13      that there was a criminal proceeding involving  
14      Doug?

15      A    I had read it in the paper.

16      Q    That's all?

17      A    Right, I had read it in the paper and I had had  
18      a lot of people ask me about it because I was,  
19      you know, visiting, they knew that I knew the  
20      Senecal family and all that, the names are in  
21      the paper and it was pretty difficult not to  
22      know about it.

23      Q    Was that inquiry by people persistent, was there  
24      a lot of inquiry by various individuals about  
25      that issue?

1 A I'd say as gossip goes in the State of Maine it  
2 was above average. Shamefully above average but  
3 it was.

4 Q Were you aware of proceedings at all in any  
5 sense of timeliness, things happening in that --  
6 in reference to that matter?

7 A Proceedings as far as any litigation that was  
8 going to happen?

9 Q Yes, sir.

10 A Court trials and these kind of things?

11 Q Right.

12 A What I read in the paper. I am a voracious  
13 reader of newspapers.

14 Q Insofar as discussions with the family members,  
15 were you aware of things happening?

16 A It was in the paper, the paper was at the house,  
17 and I am sure it was discussed. If it happened  
18 to you, would you discuss it with, you know --

19 Q I am asking, sir, what happened to you and what  
20 you recollect, please. Do you recollect having  
21 discussions or is it just a vague memory that  
22 there was awareness of it?

23 A There was a general awareness of it and I don't  
24 think it was, you know -- I don't think Ike and  
25 Erin ever discussed, I don't think anybody -- I

1 don't think they read the newspapers.

2 Q You mentioned in the beginning of your testimony  
3 about Jennifer Dox. Did you see her come to the  
4 Senecal residence?

5 A No.

6 Q You never met her?

7 A No.

8 Q Did you ever meet Bonnie Holladay?

9 A No.

10 Q Were you aware that --

11 A If I met Bonnie Holladay I didn't know what her  
12 name -- I don't know what she looks like --

13 Q Were you aware that some persons from the  
14 Department of Human Services were coming to the  
15 house?

16 MR. WRIGHT: Object, if he's never met  
17 any of them the only way he would know is by  
18 somebody else, is from hearsay.

19 THE COURT: Maybe somebody else.

20 BY MR. CONNOLLY:

21 Q Were you aware of that, sir?

22 A No.

23 Q Were you aware of sheriffs coming to the house?

24 A No, I never saw any sheriffs come to the house.  
25 One sheriff came up the road but he was going

1 after me for speeding and having a headlight  
2 out. Other than that there was no sheriffs  
3 around.

4 Q You never saw --

5 A At least while I was there.

6 Q While you were there?

7 A Right.

8 Q You did become aware of Jennifer Dox, that's  
9 correct?

10 A Uh-huh.

11 Q And that was of consequence, was it not?

12 A Her name was in the paper.

13 Q When?

14 A It was in the paper. I read it in the paper.

15 Q When was it in the paper, sir?

16 A That same time, right about that same time,  
17 yep.

18 Q You are sure of that?

19 A I am almost absolutely sure, yep, yeah.

20 Q In reference to what was her name in the paper?

21 A This, the whole situation, yep.

22 Q What whole situation?

23 A What you are asking me about.

24 Q Her name was in the paper in reference to  
25 Douglas Senecal?

- 1 A Yep.
- 2 Q As --
- 3 A Not -- it was in with the Department of Human  
4 Services, that's the title that she was given in  
5 the newspaper, something like that.
- 6 Q And it was involving the death of Sarah Cherry?
- 7 A No, no.
- 8 Q What was it in reference to, sir?
- 9 A It was in reference to what you were asking me  
10 about, what I read in the papers. Maybe we are  
11 talking about two different things, I don't  
12 know.
- 13 Q I am speaking about the charge that was pending  
14 at that time against Douglas.
- 15 A Right.
- 16 Q Not against -- as it related --
- 17 A Correct.
- 18 Q You are -- you testified earlier that she was at  
19 the house on the 5th of July?
- 20 A The day that I left.
- 21 Q You did not see Jackie at the household on the  
22 5th of July, the day that you left, did you?
- 23 A No.
- 24 Q Do you know when she left the household?
- 25 A No, I don't.



1 Q There was concern about her, was there not, at  
2 the time that you left?

3 A There was concern as to where Jackie was.  
4 Everybody was concerned that she had run away --

5 Q How did you know that?

6 A -- two or three -- well, I heard it, you know.  
7 I guess you would -- you don't want to hear  
8 gossip, so.

9 Q But you yourself didn't know personally as to  
10 where she was?

11 A No.

12 Q You were given instructions however as to where  
13 to find her; is that right?

14 A I was heading back to California and I was asked  
15 to see if I could find her in San Diego.

16 Q And in fact you did find her there, did you not?

17 A I did find her in San Diego.

18 Q When she was found where was she living, sir?

19 A She was on the street.

20 Q Do you know how long she had been on the street  
21 to that point?

22 MR. WRIGHT: Object to how he knows.

23 THE COURT: Sustained.

24 BY MR. CONNOLLY:

25 Q Can you describe what condition at the time you

1 saw her in?

2 A She was very upset, her clothing was not --  
3 hadn't been recently washed, she was just very,  
4 very, very upset. She had been through a lot in  
5 California, it was a bad time on the street, as  
6 is the situation with a lot of people that are  
7 out on the street.

8 Q Did she manifest a concern to you about  
9 returning to Maine?

10 MR. WRIGHT: Object.

11 THE COURT: Mr. Connolly.

12 MR. CONNOLLY: I will try to ask the  
13 question so it doesn't elicit a statement. I  
14 withdraw the question, Judge.

15 BY MR. CONNOLLY:

16 Q When you saw her in California was she concerned  
17 for her physical well-being, for her safety?

18 MR. WRIGHT: Object.

19 THE COURT: Sustained.

20 BY MR. CONNOLLY:

21 Q When you saw her in California would you say  
22 that she was doing poorly or was she doing well?

23 A Poorly.

24 Q Extremely poorly?

25 A Poorly.

1 Q You had been aware from the newspaper about  
2 Jennifer Dox; is that right?

3 A Uh-huh.

4 Q And you understood that to be a continuing  
5 situation with the Senecal family in July of  
6 1988; is that right?

7 A I don't know if I would use the word continuing  
8 but, you know, her name was -- I guess that she  
9 was handling the state's side of the pending  
10 litigation against Doug, according to the Times  
11 Record.

12 Q Other than that were there any discussions about  
13 the pending litigation within the household?

14 A No, it -- nothing except to the extent of there  
15 was something in the paper today, that type of  
16 thing, you know.

17 Q So you are saying you had no conversation with  
18 Doug whatsoever about that issue?

19 A No, it was not something that -- no.

20 Q So you kept quiet about it?

21 A Well, if you are not talking you are pretty  
22 quiet.

23 Q Were you able to determine based upon knowing  
24 Doug Senecal whether or not -- are you able to  
25 say whether or not he was concerned about the

1 pending charge? If you are able to say.

2 A I don't think it would be fair for me to make  
3 that kind of a judgment. It would be a gut  
4 reaction, I don't believe in gut reactions, I  
5 don't believe in -- you know, it's just -- it's  
6 wrong.

7 Q So you can't say whether or not --

8 A I think it would bother anybody to have their  
9 name in the paper that links them with anything  
10 that is of a, you know, negative atmosphere. I  
11 am very upset with having my name appear --  
12 appearing in every newspaper, every TV station,  
13 and that bothers me a lot.

14 Q Yes, sir. It's fair to say that kind of  
15 reaction would have been the kind that you had  
16 seen from Doug Senecal?

17 A Pardon?

18 Q That's the same kind of reaction -- was the same  
19 kind that you saw from Doug Senecal?

20 MR. WRIGHT: I object, he said he  
21 couldn't characterize it.

22 THE COURT: Sustained.

23 BY MR. CONNOLLY:

24 Q So the reaction that you just articulated was a  
25 normal reaction, correct?

1 MR. WRIGHT: I object.

2 THE COURT: His answer was more  
3 speculation than it was an observation.

4 BY MR. CONNOLLY:

5 Q Did you see other family members react to the  
6 newspapers and what have you?

7 MR. WRIGHT: I object. What relevance  
8 it has --

9 MR. CONNOLLY: Your Honor, I am trying  
10 to establish relevance, the totality of what  
11 happened on July 5th, 6th of 1988.

12 THE COURT: You may answer the  
13 question.

14 A Not Erin and Ike, no, they didn't read the  
15 papers, and I think due to their age maybe they  
16 weren't able to read the papers. So there was  
17 no reaction from either of them. And Maureen  
18 the same reaction as me, I don't know if her  
19 name was in the paper or not -- her last name is  
20 Senecal so obviously the Senecal name was in the  
21 paper and had that kind of reaction the same as  
22 myself, the same way as I react. I guess I am  
23 speculating again.

24 Q So you don't remember one way or another then  
25 whether Maureen Senecal had a reaction to what

1 was happening at the time with the newspapers  
2 and what have you?

3 MR. WRIGHT: I object, he just  
4 answered the question.

5 MR. CONNOLLY: I can't understand his  
6 answer.

7 THE COURT: He may answer.

8 THE WITNESS: So you want to know --

9 BY MR. CONNOLLY:

10 Q I want you to answer the question, sir.

11 A If I -- ask me the question again.

12 Q Yes, sir. Did you see Maureen have a reaction  
13 to what was happening with the press and with  
14 the situation involving the allegation?

15 A Yes.

16 Q How would you characterize her reaction?

17 A Disgust at the newspapers.

18 Q So the reaction was to the newspapers, not to  
19 the allegation?

20 A Right.

21 Q Were you able to determine a reaction from first  
22 Maureen as to the allegation as opposed to the  
23 newspapers?

24 A No.

25 Q As to Doug, were you able to determine the

1 reaction as first to the newspapers?

2 A No.

3 Q At -- go ahead.

4 A No, it was the newspapers.

5 Q As to the allegation?

6 A Right, right.

7 Q There was no reaction as to the allegation then?

8 A It was reaction to the newspaper. This is how I  
9 found out, was from the newspaper. I wasn't  
10 privy to --

11 Q There was a reaction that you observed to the  
12 allegation as opposed to what the newspapers  
13 were saying?

14 A There was a reaction to the newspaper.

15 Q My question is: Was there reaction other than  
16 to the newspaper, separate and distinct to the  
17 charge itself, to the accusation itself?

18 A Not that I can remember, nothing definite. I  
19 certainly couldn't quote anything.

20 Q So it's your testimony then, sir, that the  
21 accusation made by Jackie as to Doug did not in  
22 any way affect the family relationship that you  
23 could observe?

24 A Right.

25 Q Not at all?

1 A It didn't, no.

2 Q You don't know when Jackie left, though, do you?

3 A I haven't the slightest idea, I couldn't even  
4 guess.

5 Q Were you aware that she was the -- the accuser  
6 at the time?

7 A I think what I read in the newspaper was  
8 something to the effect of maybe the State  
9 versus Doug Senecal, I think that was the basis  
10 of the thing, and Jackie's name was in the paper  
11 so, you know, that's -- yeah.

12 Q So as a well-read person you understood she was  
13 the one accusing Douglas Senecal of the charge  
14 in --

15 A I --

16 MR. WRIGHT: I object. It's the state  
17 apparently accusing.

18 A I don't remember reading anything in the paper  
19 that was quoted, I honestly don't remember there  
20 being a quote that Jackie said this, I don't  
21 remember reading that in the paper.

22 THE COURT: The answer may stand.

23 MR. CONNOLLY: Thank you.

24 BY MR. CONNOLLY:

25 Q Did you yourself know who was accusing Douglas



1 Senecal of anything at the time other than the  
2 state?

3 A No.

4 Q Did you understand at all that it involved  
5 accusations of sexual contact?

6 MR. WRIGHT: I object.

7 THE COURT: Basis?

8 MR. WRIGHT: Lack of any firsthand  
9 knowledge on this witness' part.

10 THE COURT: He knows the nature of the  
11 charges, we have been going from start to finish  
12 here about what he has been reading in the  
13 newspaper, I assume that would be the source of  
14 his information, and he may answer if he knows.

15 BY MR. CONNOLLY:

16 Q If you know, sir, do you understand the nature  
17 of the charge?

18 A Yes, yeah.

19 Q And it's your testimony that the nature of the  
20 charge did not play a significant role in the  
21 household during the period of July of 1988?

22 MR. WRIGHT: Object, that's been asked  
23 and answered.

24 THE COURT: He may answer.

25 THE WITNESS: Come again?

1 MR. CONNOLLY: Yes, sir.

2 BY MR. CONNOLLY:

3 Q It's your testimony that the nature of the  
4 charge played no role in the family in July of  
5 1988 aside from the newspapers?

6 A Right.

7 Q Who told you that Jackie was in San Diego?

8 MR. WRIGHT: Object.

9 A Maureen.

10 THE COURT: The answer may stand.

11 BY MR. CONNOLLY:

12 Q Were you aware of whether or not Doug knew of  
13 Jackie being in San Diego?

14 A I don't -- I am not sure.

15 Q Could have been but you just don't remember?

16 A Yeah.

17 Q Were you aware based on any discussions whether  
18 or not Sarah was a witness in that case?

19 MR. WRIGHT: Oh, I object.

20 THE COURT: Sustained.

21 BY MR. CONNOLLY:

22 Q Did you yourself know whether or not Sarah was a  
23 witness in that case?

24 MR. WRIGHT: I object unless he was  
25 there to see it.

1 THE COURT: Sustained.

2 BY MR. CONNOLLY:

3 Q In reference to Jessica, was Jessica around  
4 during the period of July 4th and 5th, 1988?

5 A She was there for the party.

6 Q Was she there when you left on July 5th?

7 A No.

8 Q Do you know where she was?

9 A I think she was home. I am not positive but I  
10 assume she was home.

11 Q So Jessica was at the Senecal residence on July  
12 4, 1988?

13 A Uh-huh.

14 Q And you don't know whether she came back on the  
15 5th or not but you know she didn't stay there  
16 that evening?

17 A Right, she was home.

18 Q When you became aware that Jennifer Dox was at  
19 the household was that something of consequence  
20 to the Senecals based on what you observed?

21 A Would you repeat that, please?

22 Q Sure. When you became aware that Jennifer Dox  
23 had been to the household was it of consequence  
24 to the family?

25 A I don't know. I wasn't there.

1 Q It came to your attention, though, and it was  
2 pointed out to you, was it not --

3 A Uh-huh.

4 Q -- is that correct?

5 A Mentioned on the phone, uh-huh.

6 Q And that's how you timed it with the time in  
7 part when you left?

8 A Right.

9 Q Not totally but in part?

10 A Right, right.

11 Q That information was provided to you -- how  
12 would you characterize the concern about that  
13 visit?

14 MR. WRIGHT: Object, first of all he  
15 hasn't said there was any concern, secondly,  
16 since he wasn't there he doesn't have any  
17 firsthand knowledge of it, it's only what  
18 somebody may have later told him.

19 THE COURT: Response?

20 MR. CONNOLLY: If he is able to  
21 determine from the context of the information he  
22 can certainly infer that there was concern, that  
23 there was worry or that there was not concern  
24 and not worry and that it was just a matter of  
25 fact and that information is of consequence.

1 THE COURT: You may answer.

2 THE WITNESS: Repeat the question,  
3 please.

4 MR. CONNOLLY: Yes, sir.

5 BY MR. CONNOLLY:

6 Q Were you able to determine the import of the  
7 visit by Jennifer Dox based upon what was told  
8 to you in the context of the family?

9 A Not that it was of any great importance either  
10 way, just I remember the name, it was in the  
11 paper, on the phone Jennifer Dox had probably  
12 just -- I don't know, maybe it was important,  
13 maybe it wasn't, I don't know. I really -- I  
14 would be guessing.

15 Q Well, you remembered it; is that right?

16 A I remembered it because I had seen the name in  
17 the paper, so it --

18 Q So it had been mentioned to you by whom?

19 A By Maureen.

20 Q Did you speak to Doug on the 5th?

21 A No, I didn't.

22 Q So Maureen mentioned --

23 A Wait, on the 5th, that was the day that I left.

24 Q I am sorry, the conversation that we are talking  
25 about took place when then, sir?

1 A Days later, a couple of days later. It wasn't  
2 the day that I left.

3 Q Now, let's stop and let's get our times back  
4 now.

5 A Okay. The 4th of July was on Monday, the 5th I  
6 left in the morning.

7 Q It's your testimony that you believe Jennifer  
8 Dox came to the house after the 5th?

9 A The day of the 5th. I left in the morning,  
10 9:00, 9:30.

11 Q And your conversation took place after that?

12 A On the -- it should have been and if I have  
13 calculated my traveling it was -- I was in grand  
14 New Mexico at the time, which would have been my  
15 third day on the road, having traveled across 60  
16 times I usually get there on the third day, so  
17 that would have been the 8th and this would have  
18 been evening here when I would have called from  
19 the hotel, I was having car trouble and it was  
20 very hot.

21 Q So the conversation --

22 A I was very upset over the car that I had  
23 purchased from Charlie Holbrook.

24 Q So your testimony is that the conversation which  
25 involved the Jennifer Dox visit took place on

1 the 8th?

2 A Uh-huh.

3 Q But that the visit itself took place three days  
4 earlier?

5 A Right.

6 Q And was that the news that came from --

7 A Oh, Maureen and I talked for 20 minutes. We  
8 talk all the time about anything that's going on  
9 and the newspapers, on television. I was in New  
10 Mexico all by myself, I was upset, and she  
11 says: Now, calm down, you are not going to die  
12 of heat prostration, we are talking to Charlie  
13 and all that, and that was the kind of  
14 conversation that we had. It was banter, idle  
15 banter.

16 Q And it involved Jennifer Dox?

17 A Her name came up in it, yes, and I had seen her  
18 name in the paper, yeah.

19 Q And to the best of your recollection then that  
20 took place on the evening of the 8th of July  
21 1988?

22 A Uh-huh. I had asked Maureen if there had been  
23 any other things in the paper and all that, and  
24 that led to her telling me, no, nothing more in  
25 the paper, there wasn't anything else in the

1 paper, and then she mentioned that there was a  
2 Jennifer Dox had been by the house, and she was  
3 giving me sort of like an update and all that  
4 because I had read the newspapers.

5 Q Was that the end of the update more or less  
6 then?

7 A Yeah. I can't remember anything else about, you  
8 know, that -- on that particular day, yeah.

9 Q Did you at some point after having contact with  
10 Jackie in San Diego notify Maureen and/or Doug,  
11 you yourself notified them?

12 A No, not -- no. Jackie didn't want to go home,  
13 she didn't want to -- she was upset at what had  
14 happened in California to her. This was her  
15 major concern and it was my concern for her.  
16 She had a real bad time in California and I  
17 wanted her to get help. She had been raped in  
18 San Diego, it wasn't pleasant, I wanted her to  
19 go to the police and she didn't want to go to  
20 the police, she said I am a runaway, they will  
21 give me a real hard -- they will put me in --  
22 she mentioned juvenile hall, and she had all  
23 these thoughts of where they would put her and  
24 -- yeah.

25 Q At that time she was concerned about not going



1 home also?

2 A Pardon?

3 Q She didn't want to go home also?

4 A She didn't want to go home. She ran away, she  
5 didn't want to go home.

6 MR. CONNOLLY: I have no further  
7 questions. Thank you, sir.

8 THE WITNESS: You are welcome.

9 CROSS EXAMINATION

10 BY MR. WRIGHT:

11 Q Do I understand you to say it was Maureen who  
12 asked you to go see if could you find Jackie in  
13 San Diego?

14 A Maureen didn't ask me to go, I was leaving, it  
15 was my time to leave, and she said, "Will you  
16 look for Jackie," and I said, "Yes, I will."

17 Q How was it you happened to find her?

18 A She was standing in front of the Greyhound Bus  
19 Depot in San Diego. You have to be familiar  
20 with southern California and the way the cities  
21 are, it is not like Maine. It's very easy to  
22 find these runaways so to speak. They usually,  
23 you know, end up hanging around a place like,  
24 you know, the bus depots, and that's where I  
25 looked and that's where she was.

1 Q Did you have any idea why she had run away?

2 A I think -- I am not -- I will be speculating.

3 Do you want me to speculate?

4 Q No, I don't think so.

5 A Then I can't answer your question truthfully

6 because it would be speculation.

7 MR. WRIGHT: Thank you. That's all.

8 REDIRECT EXAMINATION

9 BY MR. CONNOLLY:

10 Q Without speculating as to why she ran away, she

11 gave a reason, right?

12 A She didn't want to go home.

13 MR. CONNOLLY: No further questions.

14 RECROSS EXAMINATION

15 BY MR. WRIGHT:

16 Q Well, did she give you a reason, that was the

17 question.

18 A No, Jackie was more -- nuh-huh.

19 Q She was more concerned about what had happened

20 to her in California?

21 A She was more concerned about that, yeah.

22 Q What by the way then happened, did she stay in

23 California?

24 A She got a job working for this couple

25 baby-sitting for them. She worked for them I

1           guess a couple of months then she took care of a  
2           young girl that had MS, took care of her for a  
3           short time, she met Ralph, married him and had  
4           two children and she has lived happily every  
5           after, I hope.

6           Q    Did you have any role to play in her securing  
7           employment?

8           A    I introduced her to this couple.

9           Q    For whom she began doing work?

10          A    Yeah.  It was a Navy couple and they had two  
11          children and they needed a baby-sitter and they  
12          were in a pinch and Jackie was on the street and  
13          they offered her board and room and a small  
14          salary.

15                         MR. WRIGHT:  Thank you.

16                         THE WITNESS:  Yeah.

17                         MR. CONNOLLY:  Nothing further, Judge.

18                         THE COURT:  Thank, sir, you may step  
19          down.

20                                 (Witness excused.)

21                         THE COURT:  May this witness be  
22          finally excused?  He is here by subpoena.

23                         MR. CONNOLLY:  He is here by subpoena,  
24          your Honor?  I would request that he be subject  
25          to recall if necessary.  I would certainly not

1 delay his return to California unless it was  
2 absolutely critical. I don't anticipate that  
3 that would happen but we went through pains to  
4 get him here and I would just as soon not give  
5 up jurisdiction unless if necessary.

6 THE WITNESS: You tricked me to get me  
7 here.

8 THE COURT: You will remain available,  
9 sir.

10 THE WITNESS: Sure. Can I sit in the  
11 courtroom now or do I have to go outside?

12 MR. CONNOLLY: I would request  
13 sequestration.

14 THE COURT: You better not sit in the  
15 courtroom then.

16 MR. CONNOLLY: Judge, I have another  
17 housekeeping matter, if I may.

18 May we have a moment, sir?

19 THE COURT: Yes.

20 MR. CONNOLLY: Judge, if I may, I am  
21 offering what has been marked as Defendant's  
22 Number 8, which are certified copies of the  
23 Sagadahoc 88-119 entries. Judge, these are not  
24 new or -- they are the basis upon which most of  
25 the offer of proof on March the 15th and 16th --

1 1989 were made. I don't believe that they had  
2 been included in the record per se, I read from  
3 them at length, I paraphrased them, I indicated  
4 to the court what the records indicated, and I  
5 would like to have -- I have certified copies of  
6 the docket entries of the actual documents which  
7 were admitted into the file on that docket  
8 number and the file except for the jacket, and  
9 the docket entries is complete here, so I would  
10 offer that at this time.

11 MR. WRIGHT: Your Honor, with respect  
12 to a couple of pages of what has been marked as  
13 Defendant's Exhibit 8, and there are actually  
14 three separate items, one is the criminal trial  
15 list of May and June 1988, one is a motion for a  
16 continuance dated July 15, 1988 and granted by  
17 Justice Cole, if I recognize his signature  
18 right, on the 18th of July, and the other is an  
19 order of the court signed by your Honor on  
20 January 25, 1989 dismissing the underlying  
21 prosecution in criminal 88-119, along with a  
22 couple of other documents.

23 Among those other documents are two  
24 reports, one being a report from Sheriff Haggett  
25 and another being an affidavit from apparently

1 Jennifer Dox containing matters which are not  
2 otherwise in evidence before this court and I  
3 believe are not the kind of records, court  
4 records nor material contained within the court  
5 records for which the exception for hearsay  
6 rules to which judicial proceedings apply, this  
7 is an effort to get into evidence simply because  
8 they happen to be located in a court record  
9 statements by other individuals, and I object to  
10 the court's using or relying upon the  
11 substantive content of those two reports of  
12 Miss Dox and Sheriff Haggett for any purpose.

13 I don't contest that they are certified  
14 copies that came from the court but these are  
15 different kinds of records and ought not to have  
16 -- as to those two pieces of paper ought not to  
17 be relied on.

18 MR. CONNOLLY: If I may respond.

19 MR. WRIGHT: I don't mind the court  
20 receive them so that they are in the record, of  
21 course, but it's a question of what evidence is  
22 properly before you for consideration in ruling  
23 upon the motion for a new trial.

24 MR. CONNOLLY: If I may, your Honor,  
25 these are certified copies of the actual

1 Sagadahoc file 88-119, these were included by  
2 the prosecution in the matter, they were  
3 affidavits attached to a motion to continue,  
4 they have been in so far as that's the case.  
5 More to the point they were the basis of an  
6 offer of proof which I understand according to  
7 our rules of procedure is operative during the  
8 period of this motion for new trial, in the  
9 sense that the court may and in fact must rely  
10 upon the totality of evidence that was offered  
11 at the time of trial plus looking at the  
12 evidence which is offered during the course of  
13 this motion in its totality. These documents in  
14 chambers were quoted from, they were discussed,  
15 and the offer of proof was based upon that.

16 The -- what the transcript does show is  
17 that these were made subject to the offer of  
18 proof, that the contents of these documents were  
19 stated in the offer of proof and that they are  
20 part of the offer of proof. I merely for a  
21 sense of completeness am establishing a -- an  
22 admissible manner.

23 THE COURT: Exhibit 8 is admitted in  
24 its entirety.

25 MR. CONNOLLY: Thank you.

1           If I may just have a moment.

2           Your Honor, at this pint in the proceeding  
3           the defense will either rest or call one  
4           additional witness. I request that we take the  
5           noon break now and I will give the court an  
6           answer at that time. It's a question of just  
7           the one witness that will be discussed, whether  
8           that will be done or not I would like an  
9           opportunity to discuss with Mr. Wright.

10           THE COURT: All right. We will --

11           MR. CONNOLLY: Thank you.

12           THE COURT: -- recess at this time  
13           until 1:00 p.m.

14           MR. CONNOLLY: Thank you, Judge.

15           (Thereupon, the lunch recess was taken  
16           between 11:50 a.m. and 1:00 p.m., afterwhich the  
17           following proceedings took place:)

18           THE COURT: Mr. Connolly.

19           MR. CONNOLLY: The legal language,  
20           Judge, is the defense rests, which I always  
21           thought that was somewhat inappropriate language  
22           but the concept is the claim, so we are  
23           officially done with our formal presentation and  
24           now we are going to see what we can make out of  
25           Eric's.



1 THE COURT: It's kind of a damp day.

2 MR. CONNOLLY: Yes, sir.

3 MR. WRIGHT: I have a few witnesses I  
4 would like to present, your Honor.

5 THE COURT: Very well.

6 MR. WRIGHT: Al Hendsbee.

7 THE CLERK: Raise your right hand and  
8 state your name, please.

9 THE WITNESS: Alfred L. Hendsbee.

10 Thereupon,

11 ALFRED HENSBEE

12 was called as a witness and, after having been  
13 duly sworn, was examined and testified as  
14 follows:

15 DIRECT EXAMINATION

16 BY MR. WRIGHT:

17 Q Would you state your name again for the record,  
18 please.

19 A Alfred L. Hendsbee.

20 Q And your present occupation?

21 A Private detective, retired from Maine State  
22 Police.

23 Q Are you self-employed as a private detective?

24 A Yes, I am.

25 Q When did you retire from the Maine State Police?

- 1 A June 29, 1990.
- 2 Q How long had you been with the Maine State  
3 Police?
- 4 A 20 years.
- 5 Q And your rank at the time of your retirement?
- 6 A Detective Corporal.
- 7 Q Mr. Hendsbee, the record in this case already  
8 establishes that you became involved in the  
9 investigation of the murder of Sarah Cherry --
- 10 A Yes, I did.
- 11 Q -- and as time wore on -- pretty quickly wore on  
12 did you take on a particular designated role in  
13 some nomenclature of the state police?
- 14 A Yes, I was the primary investigator of this  
15 case.
- 16 Q Being a primary investigator or the means what?
- 17 A It's my responsibility to bring the case to  
18 conclusion, to court.
- 19 Q All right. Now, Mr. Hendsbee, I would like to  
20 ask you if I might just a couple of questions  
21 with respect to a few issues surrounding the  
22 days of the 6th, 7th and 8th of July 1988.
- 23 A Yes.
- 24 Q I don't want to ask you questions that simply  
25 repeat all your trial testimony so let me just

1 get right to some things.

2 Were you involved in some fashion in the  
3 towing of Mr. Dechaine's truck?

4 A Yes, I was.

5 Q There may have been at the time of the trial  
6 some -- I think there was in the record some  
7 evidence on this but could you indicate for the  
8 court what your role was in that, first of all?

9 A Yes. I had the truck towed to the state police  
10 barracks in Augusta, to have it secured at the  
11 crime lab.

12 Q At your request somebody came to tow the truck?

13 A Yes.

14 Q Do you recall approximately what time it was and  
15 on what day that you made the request for the  
16 truck to be towed?

17 A It was the early morning hours of July the 7th.

18 Q Early morning hours meaning?

19 A Sometime after midnight, shortly after midnight.

20 Q Shortly after midnight?

21 A Yes.

22 Q Later that morning, that same morning of the 7th  
23 did you have yourself occasion to go to the  
24 state police crime laboratory in Augusta?

25 A I went to headquarters in Augusta which is

1       beside the crime lab.

2       Q    What time was that?

3       A    05:35 hours.

4       Q    5:35 a.m.

5       A    Yes.

6       Q    At that time did you go over to the crime lab  
7       which was next to the state police headquarters?

8       A    No, I didn't. I didn't go over to it, no.

9       Q    No, okay. Did you while there at the state  
10       police crime lab or outside the crime laboratory  
11       see Mr. Dechaine's truck?

12      A    No, I didn't.

13      Q    Do you at the time of this case -- let me ask it  
14       to you this way: At any time during the  
15       investigation of this case was it of concern to  
16       you as the primary investigator whether or not  
17       Mr. Dechaine's truck was diesel?

18      A    No, it wasn't.

19      Q    Did you during the course of the investigation  
20       ever bother to learn? Do you recall whether it  
21       was a diesel or not?

22      A    No, I didn't.

23      Q    What is -- by the way, when a vehicle such as in  
24       this case Mr. Dechaine's truck is requested by  
25       an officer such as yourself towed to the crime

1 laboratory, where are they particularly put?

2 A There's a garage in the crime lab which vehicles  
3 that detective's request, state police requests  
4 are placed there so they can be examined later  
5 on by the crime lab technician, secured there.

6 Q I don't know that I specifically asked you and I  
7 meant to and I am sorry, you said that you asked  
8 that the truck be towed shortly after midnight.  
9 When was it towed?

10 A Shortly after midnight.

11 Q So that by 5:35 when you went up to Augusta the  
12 truck had already left the scene in Bowdoin?

13 A Yes.

14 Q With respect to the truck itself did you take  
15 any further actions as the primary investigator?

16 A With the truck?

17 Q With respect to Mr. Dechaine's truck.

18 A At a later time I checked to see how the doors  
19 locked.

20 Q Well, not necessarily physically but did you do  
21 anything to allow others at the crime laboratory  
22 to work at -- with the truck?

23 A Yes, I gave them the keys to the vehicle.

24 Q Let me see, I don't want to -- do you remember  
25 putting together a search warrant for the truck?

- 1 A Yes.
- 2 Q When was that that you put together a search  
3 warrant to allow those at the crime laboratory  
4 to search through the truck?
- 5 A I believe it was on the morning of the 8th.
- 6 Q Do you recall getting that warrant, search  
7 warrant approved by a judge that same morning,  
8 the 8th?
- 9 A Yes.
- 10 Q And upon getting it approved by a judge did you  
11 notify taking action with the crime laboratory  
12 to allow them then to begin their work, search  
13 of the vehicle?
- 14 A Yes, I called in to tell them that I had a  
15 search warrant and they could start searching  
16 the vehicle.
- 17 Q What time was it -- it was on the morning of the  
18 8th?
- 19 A Yes.
- 20 Q What time was it that you notified the  
21 laboratory that the search warrant had been  
22 approved and they could go ahead?
- 23 A I don't know the exact time. It would be in my  
24 reports.
- 25 MR. WRIGHT: Excuse me, your Honor. I

1 am just eliminating needless paperwork.

2 Why don't you eliminate it.

3 MR. CONNOLLY: Judge, may I know what  
4 the witness is being handed so I could follow  
5 along?

6 MR. WRIGHT: Sure.

7 BY MR. WRIGHT:

8 Q I am handing you, am I not, Detective, copies --  
9 a copy of several pages of reports which you  
10 prepared?

11 A Yes.

12 MR. CONNOLLY: I am sure I have them,  
13 I have no question about that, I just want to be  
14 able to have them indicated so that I can  
15 follow.

16 BY MR. WRIGHT:

17 Q When you get to the specific page of concern,  
18 that is when if it's reflected in the record  
19 that you notified the laboratory, before you go  
20 into any contents of it give us the page  
21 number. I think there's a page number with my  
22 handwriting for discovery purposes on the bottom  
23 right-hand corner.

24 A Yes.

25 Q And the page number is, just so Mr. Connolly can

1 make reference to it in his work -- his reports?

2 A 234.

3 MR. CONNOLLY: Thank you.

4 THE COURT: Is that p.m.?

5 THE WITNESS: I am sorry, page  
6 number. It will be 11:25 hours. It will be  
7 a.m.

8 BY MR. WRIGHT:

9 Q Looking at that now, that reflects the time at  
10 which you notified the crime laboratory that  
11 they could go ahead and begin searching?

12 A Yes.

13 Q That was at what time again?

14 A 11:25.

15 Q A.m.?

16 A Yes.

17 Q Mr. Hendsbee, after the truck, Mr. Dechaine's  
18 truck had been towed to the laboratory as you  
19 know it was, would it have been possible for any  
20 media to -- before the 8th when the laboratory  
21 began work on the truck, were any members of the  
22 media, television stations able to do a video of  
23 the truck?

24 A No.

25 Q Were tire tracks along the Dead River Road of



1 any concern to you during the period of the 6th  
2 through the 8th?

3 A No, they weren't.

4 Q Why not?

5 A When I first arrived at the scene and found  
6 Mr. Dechaine's truck I was advised that a search  
7 party had traveled all the roads in and around  
8 that area, and not only that but Dennis Dechaine  
9 himself had taken the police cruiser on several  
10 roads looking for his pickup truck, and the  
11 whole area I figured was contaminated with  
12 vehicle tracks.

13 Q Did you on the morning of the 7th of July or  
14 even the afternoon of the 8th -- 7th of July or  
15 at any time meet a Ralph Jones?

16 A No, I did not.

17 Q Or speak with him with respect to his having  
18 claimed to have seen a truck on the road with  
19 screaming from a little girl coming from it and  
20 so on?

21 A No, I did not.

22 Q Did you ever go look for tire tracks along the  
23 Dead River Road?

24 A Not that I recall, no.

25 Q A couple of days, a day or two after the 7th of

1 July did you go to the residence of Mr. Jones to  
2 interview or reinterview him, take notes?

3 A No, I didn't.

4 Q As the primary investigating officer do you know  
5 -- did it ever come to your attention that any  
6 officer ever did such a thing?

7 A No.

8 MR. WRIGHT: Thank you.

9 CROSS EXAMINATION

10 BY MR. CONNOLLY:

11 Q Were you not aware that Deputy Sheriff Ackley  
12 had in fact made a notation in his notes that he  
13 had spoken with Ralph Jones about hearing  
14 screams coming from a red and white pickup  
15 truck?

16 A I don't recall that, no.

17 Q Because it wasn't important to you at the time?

18 A Well, if it was reported to me on July the 7th  
19 that would have been extremely important to me.

20 Q And so you admit that had the information been  
21 passed upon to you on July 7th you would have  
22 acted on it?

23 A Oh, yes.

24 Q Yes or no, sir?

25 A Yes.

1 Q And if you had obtained that information you  
2 would have taken perhaps photographs or castings  
3 of the tire tracks that were pointed out; is  
4 that true?

5 A I don't know what you are referring to about  
6 photographs of tire tracks or castings. There  
7 were some photographs and tire tracks castings  
8 made in the Henkel residence.

9 Q Let's stop there. You took those in the Henkel  
10 residence because tire tracks are very important  
11 in determining whether a vehicle had been in a  
12 location or not; is that true?

13 A Exactly.

14 Q And it is extremely important in some instances  
15 because that can be the basis of an  
16 identification?

17 A Yes.

18 Q And the basis of an identification can be  
19 dispositive as to whether one vehicle as opposed  
20 to another vehicle was there?

21 A Yes.

22 Q The tire treads in this particular instance were  
23 problematic to the prosecution insofar as the  
24 Henkel residence is concerned, isn't that right,  
25 that they didn't match the tire tracks entirely

1 to Dechaine's vehicle?

2 MR. WRIGHT: I object.

3 MR. CONNOLLY: He brought it up,  
4 Judge.

5 MR. WRIGHT: Well, I didn't bring up  
6 anything about the Henkel residence but that is  
7 not my objection. The record should speak for  
8 itself with respect to the match or lack of  
9 matches as one may wish to say of any tire  
10 tracks in the Henkel residence, that's a matter  
11 of record and there's no indication that there's  
12 any absence of matches.

13 THE COURT: Well, it's been four years  
14 since the trial, over four years. My  
15 recollection is that there was a problem as to  
16 the tracks because of the contamination of the  
17 driveway, but if you have a reference to the  
18 record let's look it up.

19 MR. CONNOLLY: I was asking the  
20 detective so that we could -- could I get an  
21 answer from him?

22 THE COURT: The way you phrased the  
23 question, though, was in terms that any tracks  
24 that were made there, if they were made by the  
25 Dechaine's vehicle that they somehow didn't

1 match the tracks that were found at the place  
2 where the vehicle was ultimately found.

3 MR. CONNOLLY: That's my recollection,  
4 Judge, and I spent a long time on it on trial on  
5 that issue and the result was not dispositive in  
6 the sense that there had been concern about  
7 contamination, exactly. Exactly, that's my  
8 point and that is why I want the detective to  
9 indicate.

10 THE COURT: Well, why don't you  
11 rephrase your question because that was not the  
12 sense in which I understood your question. I  
13 think the way the question was asked was to  
14 Mr. Wright's objection.

15 MR. CONNOLLY: Let's rephrase it then.

16 BY MR. CONNOLLY:

17 Q Sir, do you remember one way or another as the  
18 primary investigating officer whether or not the  
19 tracks at the Henkel residence were  
20 contaminated? Let's start that way.

21 A Parts of them, yes.

22 Q To that end, sir, is it true based on your  
23 recollection of the facts of those casts that  
24 were made at the time that the match was not  
25 dispositive of the Dechaine vehicle?

1 MR. WRIGHT: I object, the record will  
2 speak for itself in that respect.

3 MR. CONNOLLY: Judge, he has called  
4 this witness as an expert on the investigation.

5 THE COURT: If the witness knows the  
6 answer he may answer.

7 MR. CONNOLLY: Thank you, Judge.

8 BY MR. CONNOLLY:

9 Q If you know, sir.

10 A Would you give me the definition of your  
11 dispositive?

12 Q In other words they weren't conclusive, were  
13 they?

14 A You mean absolute?

15 Q No, I meant conclusive, sir.

16 A Conclusive as to what?

17 Q As to the identity of the Dechaine truck being  
18 in that driveway at the time in question.

19 A I can answer that by my recollection is that  
20 they were similar to.

21 Q Similar to. Do you recall that the Dechaine  
22 vehicle had snow tires on it?

23 A Yes.

24 Q Do you recall that there was discussion at the  
25 time that the matched part applied only to the

1 front tires, not to the snow tires?

2 A I don't recall that.

3 Q The record would speak to that --

4 A Yes.

5 Q -- more clearly?

6 It's true, is it not, that if you had been  
7 informed that there were other tire tracks that  
8 a witness thought was important as part of an  
9 investigation on the 7th of July of 1988, it was  
10 proper procedure to check those out?

11 A Yes.

12 Q To that end a casting of those tire tracks or  
13 photographs of those tire tracks would be  
14 important evidence in determining whether or not  
15 those tire tracks were consistent with those in  
16 the Henkel driveway?

17 A No, not necessarily.

18 Q Okay. If the information that you had as a  
19 primary investigating officer was that during  
20 the period of July 6, 1988 a truck was seen in  
21 the area of the Dead River Road in which a young  
22 girl was heard either crying or laughing  
23 somewhat loudly and that a person chased after  
24 them, those tracks may have been of consequence;  
25 is that fair to say?

1 A Yes.

2 Q Police procedure would be to check those tracks  
3 and preserve the evidence, would it not be?

4 A Yes.

5 Q Because without that preservation there can be  
6 no adequate documentation as to whether a match  
7 existed or not; is that correct?

8 A That's correct.

9 Q Similarly if there were other tracks which were  
10 of -- which were pointed out to be of  
11 significance the only way that you can verify  
12 their importance would have been to document  
13 them; isn't that right?

14 A That's right.

15 Q So that you as primary investigating officer had  
16 you known of information which related to tire  
17 tracks, prudence would have dictated that you  
18 document those tire tracks?

19 A Yes.

20 Q Because they could lead to evidence which would  
21 implicate someone or exclude someone?

22 A That's correct.

23 Q It's the same kind with fingerprints, isn't it;  
24 is that right?

25 A That's correct.



1 Q To that end at the time that you towed the  
2 Toyota into the Maine State Police Crime Lab as  
3 is photographed in Defendant's Number 12, do you  
4 recollect that photograph, sir?

5 A Yes.

6 Q That was admitted at the original trial, there  
7 were a large number of fingerprints that were  
8 taken from the truck that did not match either  
9 Mr. Dechaine or Sarah Cherry; is that right?

10 MR. WRIGHT: I object, that is  
11 retrying the case, all this was gone over at the  
12 trial.

13 What I have put the witness on for was to  
14 address issues raised by Mr. Connolly in this  
15 proceeding on the motion for new trial. We are  
16 not here to retry the case from three and a half  
17 years ago. It's all in the record. The record  
18 will speak for itself.

19 MR. CONNOLLY: I am not here --

20 THE COURT: Is this newly discovered?

21 MR. CONNOLLY: No, sir, it is not,  
22 it's just trying to establish a loss on the  
23 investigation and I have a right to go after  
24 that loss.

25 THE COURT: Up to a point. We are not

1 going to retry the case.

2 MR. CONNOLLY: I have no intention do  
3 that, sir, but at the same time I do want to let  
4 the court know that there is some observations  
5 here that I have a right to contend with.

6 THE WITNESS: Repeat the question,  
7 please.

8 MR. CONNOLLY: May I have a read  
9 back?

10 (Thereupon, the pending question was  
11 read by the court reporter.)

12 A I don't know how many fingerprints were taken  
13 off the truck. I feel as though that's best  
14 left to the technicians that did that.

15 Q And you have no recollection as the primary  
16 investigating officer whether or not  
17 fingerprints had been taken from the truck that  
18 did not match? You don't recollect one way or  
19 another?

20 A I recollect there was some fingerprints taken  
21 but I don't know what they matched.

22 Q Do you recall me cross examining you at the time  
23 of the trial and showing you Number 13 here,  
24 sir? Do you remember that diagram?

25 A This diagram of the truck?

- 1 Q Yes, sir.
- 2 A Okay.
- 3 Q Do you remember that writing? These red marks  
4 -- blue marks are one, two, et cetera, is that  
5 your handwriting, sir?
- 6 A I don't believe so.
- 7 Q Is it Judy Brickman's, do you know?
- 8 A I don't know.
- 9 Q You sat through the whole trial?
- 10 A I did.
- 11 Q You recognize this exhibit?
- 12 A Vaguely.
- 13 Q Just vaguely. So you don't know one way or the  
14 other whether or not the information that was  
15 obtained when the truck was towed was as to  
16 fingerprints, do you?
- 17 A No.
- 18 Q Similarly, sir, when was the photograph which  
19 has been marked as Defendant's Number 12 taken,  
20 do you know?
- 21 A I don't recall. I didn't take those  
22 photographs.
- 23 Q So photographs were taken of the truck, it's  
24 fair to say that you had no control over?
- 25 A It was -- I had control over it being the

1 primary investigator but the purpose of that  
2 truck being in the location that it is is for  
3 police examination by the Maine Police Lab,  
4 that's their expertise.

5 Q When was the first press conference that the  
6 state police had in reference to this case?

7 MR. WRIGHT: I object, I don't know  
8 what relevance that could possibly have.

9 MR. CONNOLLY: Judge, Mr. Wright has  
10 elicited testimony during the course of direct  
11 examination of this witness about ten minutes  
12 ago which indicated no photographs could  
13 possibly have been released.

14 THE COURT: He is talking about  
15 video.

16 MR. CONNOLLY: That's my point, Judge,  
17 that there are other things than video, there  
18 are photographs and that those became available.

19 THE COURT: To whom?

20 MR. CONNOLLY: To the press.

21 THE COURT: Go ahead.

22 BY MR. CONNOLLY:

23 Q Do you remember, sir?

24 A I was not allowed to talk to the press, that  
25 was --

1 Q That was whose duty?

2 A LaMontagne's or a commanding officer or  
3 lieutenants. I was not allowed to talk to the  
4 press.

5 Q Do you know how that -- they went about their  
6 business then?

7 A The press?

8 Q No, sir, Captain LaMontagne.

9 A I didn't see him do a press release. I was  
10 doing what I was doing, I wasn't -- I am sure  
11 they did but I wasn't aware of it.

12 Q So you don't know what the content of that press  
13 release was?

14 A No.

15 Q So if that included a photograph that was  
16 reproduced on video you would have no knowledge  
17 of that, would you?

18 A That's correct.

19 Q Sir, you indicated that you towed the truck  
20 approximately just after midnight on the morning  
21 of the 7th?

22 A Yes.

23 Q The truck was found at what time, do you  
24 recollect, sir? Shortly before that time?

25 A No, it was found -- well, sometime prior to

1 11 o'clock, I believe, when I arrived at the  
2 scene.

3 Q When did you become involved in the case,  
4 approximately?

5 A It was late in the evening of the 6th.

6 Q And you were on the scene at the time the truck  
7 was found?

8 A It was found prior to my arrival.

9 Q Shortly before your arrival?

10 A Yes, they took me to the location of it.

11 Q And they had -- based on your experience as the  
12 primary investigating officer in the case they  
13 had been looking for that truck for some time?

14 A No, not for some time. My understanding was  
15 that they were looking to help Dennis Dechaine  
16 find his truck sometime prior to that. Once  
17 again I don't know the exact time on that, but  
18 Dennis Dechaine and the deputies were looking  
19 for his truck.

20 Q But you knew based upon your discussions, did  
21 you not, that early in the day on the first  
22 report of disappearance Mr. Dechaine's name was  
23 associated with that damage -- bill for repair  
24 of damage was found and that there was a lookout  
25 at that time, approximately 4:30 in the

1 afternoon looking for his truck?

2 MR. WRIGHT: Your Honor, I object.

3 THE COURT: That's a compound  
4 question.

5 MR. CONNOLLY: I guess it is, I will  
6 start back from little pieces.

7 BY MR. CONNOLLY:

8 Q Do you remember, sir, that documents were found  
9 in the driveway?

10 A Yes.

11 Q And that was early in the afternoon,  
12 approximately 4:00, when Miss Henkel came home?

13 A Yes.

14 Q That was in the area of between 3:30 and  
15 4 o'clock?

16 A Yes.

17 Q Plus or minus somewhat?

18 A Yes.

19 Q And at that time Mr. Dechaine's truck was  
20 suspected?

21 A I can't say Mr. Dechaine's truck was suspected.

22 Q You said that they were looking for it.

23 A I can say they were maybe wanting to talk with  
24 Dennis Dechaine but my recollection is they were  
25 looking for Sarah Cherry, and I don't think

1 Dennis Dechaine was the one they were looking  
2 for.

3 Q There is no question in your mind that no tire  
4 track impressions other than the ones of the  
5 Henkel driveway were taken except for the ones  
6 from Dechaine's truck for comparison purposes?

7 A That's correct.

8 Q And it's your testimony that at no point did you  
9 provide to Mr. Wright a written report as it  
10 related to Ralph Jones?

11 A I don't recall -- I might have read Ralph Jones  
12 name in the report. I don't recall ever talking  
13 with Mr. Ralph Jones.

14 Q You're indicating in response to Mr. Wright's  
15 question that you had no concern whether or not  
16 the truck was a diesel; is that right?

17 A That's correct.

18 Q You are aware, are you not, that the fact of a  
19 truck being diesel is an identifying mark, isn't  
20 it?

21 A That was just brought to my attention a couple  
22 of weeks ago.

23 Q But you didn't even know at the time that there  
24 was a difference between a diesel truck and  
25 another truck; is that right?



1 A There's a difference between a diesel and a gas  
2 truck, sure, there is.

3 Q Insofar as the sound that they make, that's one  
4 difference, correct?

5 A Some diesels make -- make a different sound than  
6 a car, yes.

7 Q And also a diesel can be jumpstarted very  
8 differently because it doesn't rely on the same  
9 kind of spark?

10 A I don't know that.

11 Q But for your perspective it made no difference,  
12 it didn't matter to you whether a truck was a  
13 diesel or not a diesel at the time of the  
14 investigation, sir?

15 A That's correct.

16 MR. CONNOLLY: Thank you, sir. I have  
17 no further questions.

18 THE COURT: Any redirect?

19 MR. WRIGHT: No, nothing else. Thank  
20 you.

21 THE COURT: Thank you, sir.

22 THE WITNESS: Thank you, your Honor.  
23 (Witness excused).

24 MR. WRIGHT: Ron Jacque.

25 THE CLERK: Raise your right hand and

1 state your name, please.

2 THE WITNESS: Ronald B. Jacque.

3 Thereupon,

4 RONALD JACQUE

5 was called as a witness and, after having been  
6 duly sworn, was examined and testified as  
7 follows:

8 DIRECT EXAMINATION

9 BY MR. WRIGHT:

10 Q State your name again, please, sir.

11 A Ronald B. Jacque.

12 Q Your occupation?

13 A Sergeant with the Maine State Police.

14 Q How long?

15 A Since January of 1977.

16 Q Sergeant, where do you live?

17 A I live on the Lewis Hill Road in Bowdoinham.

18 Q How long have you lived there?

19 A I moved in in September of 1976.

20 Q Living on Lewis Hill Road you did become  
21 familiar I take it, did you not, intervening  
22 years with the roadways, whether they were  
23 paved, dirt roads, topography of the land, that  
24 kind of thing?

25 A Yes, sir.

1 Q Do you know a Ralph Jones?

2 A Yes, sir.

3 Q Do you know where he lives?

4 A Yes, sir.

5 Q All right. Now, a couple of questions if I  
6 might. In July of 1988, particularly I direct  
7 your attention to the 7th of July, do you  
8 remember what the weather was like?

9 A Yes, sir, I do.

10 Q Could you tell the court what your recollection  
11 is?

12 A It was extremely hot, bright sunshiny day and  
13 very, very dry.

14 Q Extremely hot meaning what, what would you  
15 estimate the temperature to have been?

16 A Somewhere in the 90s.

17 Q What was the condition of the Dead River Road at  
18 that time, was it paved or a dirt road?

19 A Dirt road.

20 Q And to what extent would traffic along the Dead  
21 River Road particularly in that area between  
22 Mr. Jones' house westerly towards the Hallowell  
23 Road and up then towards the Buttricks -- do you  
24 know where the Buttricks lived?

25 A I think so.

1 Q At the end of the road by the Litchfield Road?

2 A Yes.

3 Q Let's see. We have State's Exhibit 1 behind  
4 you. You recognize the Lewis Hill Road  
5 intersecting with the Dead River Road?

6 A Yes, sir.

7 Q And where I am pointing my finger where it says  
8 Varney Corner, this is called the Hallowell Road  
9 going north?

10 A That's correct.

11 Q And the Buttricks lived out at the end and I  
12 called this the Litchfield Road.

13 A Yes, Bowdoin, Litchfield.

14 Q Now, the question I asked you was: What was the  
15 condition of the Dead River Road in that portion  
16 between where Mr. Jones lived westerly to the  
17 Hallowell Road and beginning up towards where  
18 the Buttricks lived?

19 A That was a dirt road, sir.

20 Q And to what extent during that time period and  
21 on that day in particular would traffic be able  
22 to kick up dust or not kick up dust?

23 A Well, being a dirt road the roads have never  
24 been treated with any product to keep the dust  
25 down so on a dry day such as this it would be a

1       dusty road with vehicles going over it.

2       Q   Have changes been made in the road since?

3       A   Yes, sir, completely rebuilt.

4       Q   From your own observations can you compare the  
5       road today with its appearance and condition in  
6       1988, July of '88?

7       A   What the town has done is put in between 18 and  
8       24 inches of fill, they raised the road up  
9       between 18 and 24 inches, they have widened it  
10      out and then they have hired or had people go  
11      and cut bushes along the side of the road so the  
12      road would be higher and be wider and the bushes  
13      would be trimmed back.

14      Q   Are you speaking of the area between Mr. Jones'  
15      house and the Hallowell Road?

16      A   Yes, sir.

17      Q   As well as other areas along the Dead River Road  
18      too?

19      A   Yes, sir.

20      Q   You are familiar with the location where  
21      Mr. Dechaine's truck was found up the Hallowell  
22      Road which is noted on State's Exhibit 1 with  
23      the orange sticker saying Truck?

24      A   Yes, sir.

25      Q   Were you familiar with that area that's been

1 described as a turn-in off that road? Were you  
2 familiar with it at the time?

3 A Excuse me?

4 Q Were you familiar with it at the time?

5 A Yes, I was.

6 Q And have you seen it more recently in the last  
7 couple of weeks as well?

8 A Yes, I have.

9 Q How does it compare between 1988 and now, the  
10 summer of 1992?

11 A It's still there, it's still passable by a  
12 vehicle. In other words, a vehicle can still  
13 pull in, it's well defined.

14 Q Is it more grown up now, more clear now or what?

15 A I would say if anything the trees are larger. I  
16 don't notice that it's any more grown up along  
17 through there.

18 Q With respect to the roads also, just one last  
19 question, two, have you measured a distance from  
20 Mr. Jones' house westerly towards the Hallowell  
21 Road?

22 A Yes, I have.

23 Q And the length -- the distance from Mr. Jones'  
24 -- the front of Mr. Jones' house, the front of  
25 his driveway to the road is how long?

1 A Four tenths of a mile.

2 Q Is there kind of a little knoll or rise at some  
3 point in between those two spots?

4 A Yes, there is.

5 Q Where does that fall along the four tenths of a  
6 mile?

7 A Almost exactly in half. It would be two tenths  
8 of a mile from Mr. Jones' driveway to the crest  
9 of the knoll.

10 Q Now, you indicate that you had knew Ralph Jones?

11 A Yes, sir.

12 Q Did you know him at the time, that is, in the  
13 summer of 1988?

14 A Yes, sir.

15 Q The question I would like to ask you, Sergeant  
16 Jacque, is whether on the morning of July 7,  
17 1988 you had any conversation whatsoever with  
18 Ralph Jones?

19 A No, sir, I did not.

20 MR. WRIGHT: Thank you.

21 CROSS EXAMINATION

22 BY MR. CONNOLLY:

23 Q Officer Jacque, you filed no reports in this  
24 case, did you?

25 A Excuse me?

- 1 Q Did you file any reports in this case?
- 2 A No, sir.
- 3 Q Not a one?
- 4 A No, sir.
- 5 Q Were you in the command post on the morning of  
6 July 7, 1988?
- 7 A Yes, sir, I was.
- 8 Q What was your job?
- 9 A Keep the telephone.
- 10 Q Did you do that?
- 11 A Yes, I did.
- 12 Q And was there a computer there?
- 13 A A computer?
- 14 Q Yes, sir.
- 15 A No, sir.
- 16 Q Not at all?
- 17 A No, sir.
- 18 Q Was there any kind of -- in the command post  
19 itself any kind of screen at all, kind of video  
20 screen?
- 21 A No, sir.
- 22 Q Sir, you say that you are familiar with the area  
23 in which the pull-off was described, is that  
24 right, that little area where the truck was  
25 ultimately found?



1 A Yes, sir.

2 Q Turning your attention to what's been marked as  
3 Defendant's Number 5 for identification  
4 purposes, is that the location that we are  
5 talking about, sir?

6 A I don't have any idea, sir.

7 Q So you have no idea where the truck was found  
8 then, do you?

9 A Personal knowledge, no, sir.

10 Q So when Mr. Wright asked you whether or not that  
11 pull-off was changed, do you know what pull-off  
12 we are talking about?

13 A I know the pull-off we are talking about, yes,  
14 sir.

15 Q On the map if you refer to it, please. 1-A  
16 behind you, sir.

17 A It would be right here, sir, (indicating)..

18 Q You don't know then that the truck was in fact  
19 found on that spot?

20 A I don't have any personal knowledge, no, sir.

21 Q How do you know about that spot, that pull-off?

22 A I investigated a break of a trailer that was  
23 there during hunting season where rifles were  
24 stolen so I am familiar with that specific  
25 place.

1 Q And that spot is not secreted, it is not far  
2 back from the road, is it?

3 A We are talking about like a driveway going in,  
4 so exactly what spot on that driveway I don't  
5 know what you are talking about, sir.

6 Q How far can you go in on that spot, if you know?

7 A From the road I would say that you could go in  
8 there 50 to 60 feet.

9 Q 50 to 60 feet? Have you measured that or is  
10 that an estimate?

11 A No, that's purely guesswork.

12 Q The photograph 5 in front of you, if I were to  
13 tell you that has been identified and admitted  
14 into the case as to the location where the truck  
15 was found and it is the same spot -- you just  
16 take a look at that -- if I were to represent to  
17 you that that's the spot where we are talking  
18 about is the pull-off, does that look consistent  
19 to where the pull-off in your recollection is?  
20 Does it look to be about the same?

21 A Is this -- you are telling me this photograph is  
22 exactly the same as on that?

23 Q Yes.

24 A Yes, sir.

25 Q It looks about right to you?

- 1 A Yes, sir.
- 2 Q And generally speaking when you went to do that  
3 break on the trailer, is the trailer visible  
4 from the roadway?
- 5 A Yes, sir.
- 6 Q No obstruction of it?
- 7 A No obstruction of the roadway going in but  
8 there's trees on both sides.
- 9 Q But straight ahead there's no obstruction?
- 10 A Well, the road kind of goes at an angle. No,  
11 not in the roadway.
- 12 Q Do you have a specific recollection of the  
13 weather on July 6, 1988?
- 14 A July 6th?
- 15 Q Yes.
- 16 A Yes.
- 17 Q And do you remember thunderstorms occurring at  
18 all that day?
- 19 A No, I don't.
- 20 Q Do you remember that during the course of the  
21 search for Sarah that there was wetness on the  
22 ground? You don't remember that during say the  
23 7th and 8th?
- 24 A No, during the 7th, Thursday, I was right there  
25 at the intersection of Dead River Road, so,

1           that's all I can talk about. Right there at the  
2           command post.

3       Q    But do you know whether or not there had been a  
4           thunderstorm?

5       A    No, sir.

6       Q    You don't know?

7       A    (Motions head sideways.)

8       Q    So you can't -- do you know if on the morning of  
9           the 5th there had been a thunderstorm?

10      A    No, sir.

11      Q    So you don't know whether or not there had been  
12           some kind of precipitation in the area  
13           surrounding that day?

14      A    No, sir.

15      Q    The roadway as it existed at that time was more  
16           gravelly than it is now; is that right?

17                    THE COURT: Are you talking about Dead  
18           River Road?

19                    MR. CONNOLLY: Yes, sir.

20      A    I would say it's more gravelly now, sir.

21      Q    The three inches or so of fill that they put on  
22           is more gravel than it was dirt?

23      A    No, they put between 18 and 24 inches of fill on  
24           and then this spring they put a shim on top, and  
25           about several inches, they did the same last

1 year and I believe the year before.

2 Q You did not take any notes as did any persons  
3 that you met on the time frame of July -- did  
4 you get -- excuse me.

5 Did you get to the command post on July  
6 6th, sir, or July 7th did you start commanding  
7 the command post?

8 A I got to the command post the morning --  
9 Thursday morning, I believe, July 7th.

10 Q Okay, so from Thursday morning until you were  
11 finished with the command post did you take any  
12 notes about anyone you talked to or spoke with?

13 A No, sir, I did not.

14 Q As a trooper would your normal responsibility be  
15 as a director of information such that if  
16 something came to you you would send it to the  
17 appropriate channel?

18 A Yes, sir.

19 Q And you were busy I assume on that morning?

20 A Which morning are we talking about?

21 Q Excuse me, July 7th.

22 A July 7th? With the radio and phones, yes.

23 Q And you were covering both the radios and the  
24 phone at the time?

25 A Yes, sir.

1 Q Was there anybody else covering that?

2 A Not at that specific time, no.

3 Q Later on you got relieved or something?

4 A Yes.

5 Q But during that period of time on the morning of  
6 July 7th you were covering radio and phone. Did  
7 you have any other duties?

8 A Nothing that I remember specifically, no.

9 Q Again the only notes that you recollect would be  
10 in reference to the log, the phone log that you  
11 kept?

12 A That is correct.

13 Q So were you keeping a phone log, answering the  
14 phone and listening to the radio?

15 A Yes, sir.

16 Q Who did you speak with that morning?

17 A From what time, sir?

18 Q I am sorry, say the area from 9:00 to 11:00.

19 A I spoke with the people inside the command post,  
20 there were times when one of the detectives  
21 would take over, I was allowed to step outside.

22 Q At any time when you were in the command post  
23 did any civilians at all come in?

24 A Yes, sir.

25 Q How many?

- 1 A I did not keep track, sir.
- 2 Q Do you know who they were?
- 3 A No, sir.
- 4 Q Do you know if they were family members?
- 5 A No, sir.
- 6 Q Do you know if they were press people?
- 7 A To my knowledge none of the press came into the  
8 command post.
- 9 Q So you would remember if they were press people  
10 but you don't remember whether they were family  
11 members or any other such persons?
- 12 A There were family members in the command post  
13 but you have to understand there are two doors,  
14 the only door I am aware of is the door right by  
15 -- it would be by the left front of the command  
16 post, there was a back door.
- 17 Q When was the last time you spoke with Ralph  
18 Jones, do you know?
- 19 A I believe the last conversation I have had with  
20 Mr. Jones was the day I arrested him.
- 21 Q When was that?
- 22 A I have no idea. It's been many years since I  
23 have talked with Ralph Jones.
- 24 Q But since you arrested him he is likely to  
25 remember you, though, isn't he?

1 MR. WRIGHT: I object.

2 THE COURT: Sustained.

3 BY MR. CONNOLLY:

4 Q Based on your experience as a police officer --  
5 never mind, strike that.

6 Based on your experience of living in the  
7 area where the Dead River Road is -- and you  
8 have been there how long, sir?

9 A Since 1976.

10 Q You can look out that road a fair piece, can't  
11 you, from the area where Ralph Jones' house is?

12 A What do you mean by "look out"?

13 Q Sure, you can see down the roadway at least .4  
14 miles to the knoll, can't you?

15 MR. WRIGHT: .2?

16 A Which knoll?

17 Q I am sorry, sir, I understood you to say on  
18 direct examination that from Mr. Jones' house to  
19 the top of the knoll was .4 miles; is that  
20 correct?

21 A No, sir.

22 Q I am sorry, what did you say?

23 A I was asked the distance from Ralph Jones'  
24 driveway intersecting the Dead River Road to the  
25 intersection of the Dead River Road and the



1           Hallowell Road, which is four tenths of a mile.  
2           I was asked another question as to where the  
3           knoll is in between, that's approximately two  
4           tenths of a mile.

5       Q    Can you see from Ralph Jones' house to the top  
6           of that knoll?

7       A    Two tenths of a mile?

8       Q    Yes, sir.

9       A    Yes, sir.

10      Q    What about beyond that?

11      A    You cannot see the intersection. You can see  
12           the road way beyond it, way beyond it.

13      Q    So that it swirls?

14      A    Yes, sir.

15      Q    So you can see the second knoll or not, do you  
16           know?

17      A    Not the end section but following the  
18           intersection there's another knoll that rises?

19      A    Now you can.

20      Q    Back then?

21      A    I don't believe you could have seen the top of  
22           the knoll beyond the intersection, no, sir.

23                   MR. CONNOLLY: Thank you, sir. No  
24           further questions.

25

## REDIRECT EXAMINATION

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BY MR. WRIGHT:

Q Can you see along the road better now or then?

A Much better now, sir.

Q And if Mr. Jones had reported to you hearing a little girl screaming you would especially recall that?

A Yes, I believe so.

Q And you heard no such report made?

A No, sir.

Q Can you see any turn-in beyond the intersection of the Dead River Road and the Hallowell Road as you look westerly along the Dead River Road?

A Have I seen any?

Q Can you standing in Ralph Jones' driveway looking westerly along the Dead River Road, as the Dead River Road continues up towards the Buttricks, can you see any turn-ins off the road?

A Now you can see almost to the turn-in, there's -- beyond the intersection in the westerly direction I didn't measure it but I am gonna guesstimate approximately 150 feet, 200 feet, you come to the top of a knoll and just as you crest the top of the knoll there is a turn on

1 the right-hand side of the road, it would  
2 actually be headed northeasterly, but you cannot  
3 see that roadway at all from the intersection of  
4 his driveway and the Dead River Road.

5 Q Even now?

6 A No, sir.

7 MR. WRIGHT: Thank you.

8 MR. CONNOLLY: Nothing further.

9 THE COURT: Thank you, sir. You may  
10 step down.

11 (Witness excused.)

12 MR. WRIGHT: Steven Drake.

13 THE CLERK: Raise your right hand and  
14 state your name, please.

15 THE WITNESS: Steven Drake.

16 Thereupon,

17 STEVEN DRAKE

18 was called as a witness and, after having been  
19 duly sworn, was examined and testified as  
20 follows:

21 DIRECT EXAMINATION

22 BY MR. WRIGHT:

23 Q Again, although you testified last week for  
24 purposes of this hearing proper would you state  
25 your name and your occupation, please.

1 A Steven Drake.

2 Q And your occupation?

3 A Detective for the Maine State Police.

4 Q You have been with the state police  
5 approximately 10 years you told us last week?

6 A Yes.

7 Q And as a detective I think you said six?

8 A A little over six. It will be ten in September  
9 for the state police.

10 Q A couple of questions and that's all. Were you  
11 involved along with others on the morning of the  
12 7th of July of 1988 into the -- involved in the  
13 investigation of the murder of Sarah Cherry?

14 A Yes, I was.

15 Q Not known yet for a murder because her body  
16 hadn't been found?

17 A That's correct.

18 Q At that -- on that day, that is the 7th of July,  
19 did Deputy Ackley of the Sagadahoc County  
20 Sheriffs Office report --

21 MR. CONNOLLY: I will object, that's  
22 hearsay.

23 THE COURT: I don't know what the  
24 question is yet.

25 BY MR. WRIGHT:

1 Q If you recall, whether Detective Ackley reported  
2 anything to you?

3 MR. CONNOLLY: I object. I was  
4 stopped from having anything that anyone  
5 possibly said.

6 MR. WRIGHT: I am not going to get  
7 into the contents of it at all.

8 MR. CONNOLLY: He would not have known  
9 of it but for the statement.

10 MR. WRIGHT: All I am seeking is a  
11 time.

12 THE COURT: Objection overruled.

13 BY MR. WRIGHT:

14 Q Did Detective Ackley make a report to you?

15 A Yes, he did.

16 Q What time was that?

17 A About 11:30, I believe.

18 Q Okay. Now, much more recently did you have  
19 occasion to interview Kristin Comee?

20 A Yes, I did.

21 Q And that was when?

22 A It was this month, I can't remember the exact  
23 day.

24 Q Approximately around June 24th?

25 A Approximately around that time, yes.

1 Q Do you recall if when you spoke with Miss Comee  
2 she indicated anything to you with respect to  
3 Pam Babines' feelings towards Douglas Senecal?

4 MR. CONNOLLY: I object, that's  
5 clearly calling for hearsay.

6 MR. WRIGHT: Well, it's offered only  
7 for impeachment purposes since Miss Comee  
8 specifically denied a remark that I asked her on  
9 cross examination, that's all.

10 MR. CONNOLLY: It's still an  
11 out-of-court statement being offered for the  
12 truth of the matter.

13 MR. WRIGHT: I am not offering it for  
14 the truth, only for impeachment of --

15 MR. CONNOLLY: He is asking for an  
16 out-of-court statement that was not under oath,  
17 Judge.

18 THE COURT: Prior inconsistent  
19 statement.

20 MR. CONNOLLY: Prior inconsistent  
21 statement --

22 THE COURT: It's overruled for  
23 purposes of impeachment of in-court testimony.  
24 The objection is noted, it's overruled.

25 THE WITNESS: Can you say that again,

1           sir?

2           BY MR. WRIGHT:

3           Q   Yes.  The question is whether Miss Comee had  
4           anything to say with respect to Miss Babines'  
5           feelings about --

6                         MR. CONNOLLY:  I will object to the  
7           feelings about a witness who is not in court  
8           today.

9                         THE COURT:  Rephrase your question.

10                        MR. WRIGHT:  All right.

11           BY MR. WRIGHT:

12           Q   Did Miss Comee indicate, say anything to you  
13           when you interviewed her on June 24th of this  
14           year with respect to Pam Babine and Douglas  
15           Senecal?

16           A   Yes, she said that she --

17                        MR. CONNOLLY:  I will object and ask  
18           that anything that they said -- that is double  
19           hearsay.  He is being asked to quote a witness  
20           who is not in court who is quoting someone else  
21           who is not in court.

22                        MR. WRIGHT:  Yes, but again I am not  
23           offering it for the truth of what's asserted,  
24           only for impeachment of Miss Comme's denial of  
25           the statement.

1 THE COURT: Objection overruled.

2 A She stated that --

3 THE COURT: Just a moment.

4 Does there seem to be a problem here? I am  
5 trying to conduct a hearing and I am trying to  
6 conduct that hearing in a judicial environment  
7 free from any reactions on the part of the  
8 audience, and I will do this either in a quiet  
9 environment or I will do it closed to the public  
10 if there is any more reaction to any of my  
11 rulings.

12 Having said that, let's proceed.

13 Read back the pending question, please.

14 (Thereupon, the pending question was  
15 read by the court reporter.)

16 A She stated that Pam Babine has a chip on her  
17 shoulder against Doug Senecal and there's been a  
18 never-ending battle with Pam and Doug over  
19 property or just about anything, you know, on  
20 that line.

21 Q Do you recall whether she said anything along  
22 the lines that she would do anything to get Doug  
23 Senecal?

24 MR. CONNOLLY: I will object.

25 THE COURT: Sustained.



1 MR. WRIGHT: Thank you. That's all I  
2 have, your Honor.

3 THE COURT: Redirect -- I am sorry,  
4 recross.

5 CROSS EXAMINATION

6 BY MR. CONNOLLY:

7 Q Do you know what day that conversation took  
8 place?

9 A I don't recall, sir.

10 Q Is it fair to say that you also told her that  
11 day that since she wasn't subpoenaed she didn't  
12 have to show up in court?

13 A No. I did say she -- she asked me if she wanted  
14 to come to court and I advised her that I  
15 wouldn't show up unless I was subpoenaed.

16 Q And you knew I had been in conversation with her  
17 and that she told me that she was going to come  
18 voluntarily, didn't you?

19 A No, I did not. It was -- my indication was that  
20 I know that she had talked to you but I did not  
21 know, sir, that -- I told her to be there with a  
22 subpoena, to come with a subpoena. That's how  
23 you do things, sir.

24 Q Unless someone gives you their word that they  
25 are going to show; isn't that true?

1 A No, sir, you always serve a subpoena even when  
2 they get here. You served a subpoena today,  
3 sir.

4 Q So you admit that you told one of my witnesses  
5 that she didn't have to bother to show up  
6 because I didn't subpoena her, didn't you? Yes  
7 or no?

8 A No, sir. I told her that if she wasn't  
9 subpoenaed she didn't have to come. I told her  
10 she could come over here if she wanted to, it's  
11 totally up to her, but if she was subpoenaed  
12 that's the proper way to do it.

13 Q And you had a badge and you showed her the  
14 badge, didn't you, sir?

15 A Of course. I always identified myself.

16 Q And you showed her a badge and said, hey, lady,  
17 you don't have to show?

18 MR. WRIGHT: I object, that is not  
19 what is indicated.

20 A No, sir.

21 MR. CONNOLLY: No further questions.

22 THE COURT: Anything further?

23 MR. WRIGHT: Nothing else.

24 THE COURT: Thank you.

25 THE WITNESS: Thank you, sir.

1 (Witness excused).

2 THE COURT: Mr. Wright.

3 MR. WRIGHT: Pat Lehan.

4 THE CLERK: Raise your right hand and  
5 state your name, please.

6 THE WITNESS: Patrick Lehan.

7 Thereupon,

8 PATRICK LEHAN

9 was called as a witness and, after having been  
10 duly sworn, was examined and testified as  
11 follows:

12 DIRECT EXAMINATION

13 BY MR. WRIGHT:

14 Q State your name again, please.

15 A Patrick Lehan.

16 Q Your occupation?

17 A Maine State Detective, State Police.

18 Q How long have you been with the state police?

19 A 15 years.

20 Q How long working as a detective?

21 A Approximately seven.

22 Q During part of that time working as a detective  
23 did you work doing undercover work, drug work?

24 A Yes.

25 Q When was that?

- 1 A I believe it was in 1982 until 1987.
- 2 Q And during that time when you worked undercover  
3 with the Maine State Police was there a policy  
4 which you followed with respect to the naming of  
5 informants in police reports?
- 6 A Yes, sir.
- 7 Q What was that policy?
- 8 A We were to write the reports without naming the  
9 confidential informant.
- 10 Q How would a confidential informant be referred  
11 to in a police report under that policy?
- 12 A It would not.
- 13 Q At all?
- 14 A At all.
- 15 Q And is that a policy that you follow?
- 16 A Yes.
- 17 Q Was the policy at some point changed?
- 18 A Yes, it was.
- 19 Q As a result of what, do you know?
- 20 A As a result of a hearing with a subject by the  
21 name of Barker.
- 22 Q Did that involve you?
- 23 A Yes.
- 24 Q And did contacts or -- the substance of that  
25 which led to the change of policy was what?

1 A The naming of the informant in the reports.

2 Q Well, what -- you were present, what happened at  
3 that hearing that led to a change in policy?

4 A At that hearing I was asked about the writing of  
5 the reports, and the question was asked of me  
6 regarding that I fabricated reports, and I  
7 answered that I had been writing reports like  
8 that for five years, and I did say, yes, I  
9 fabricated reports.

10 Q And had done so insofar as the report did not  
11 accurately reflect the existence of or the  
12 identity of an informant?

13 A Correct.

14 Q Under the policy that was then in effect?

15 A Yes.

16 Q That hearing was in what court, do you recall?

17 THE COURT: York County Superior  
18 Court.

19 MR. WRIGHT: Thank you.

20 BY MR. WRIGHT:

21 Q Detective Lehan, how tall are you?

22 A Five foot five.

23 Q And for the record your color of your hair?

24 A Brown.

25 Q You were working on the morning of the 7th of

1 July 1987?

2 A Yes.

3 Q Along with others in the investigation as it  
4 developed of the murder of Sarah Cherry?

5 A Yes.

6 Q At some point or at any point that morning, the  
7 morning of the 7th or any time that day, did you  
8 meet with or speak to a Ralph Jones?

9 A No.

10 Q Did you at any time go down the Dead River Road  
11 with Mr. Jones or anybody to look for tire  
12 tracks?

13 A No.

14 Q Did you that day, that morning at any time  
15 receive any information with respect to a truck  
16 and a little girl and screaming?

17 A No.

18 MR. WRIGHT: Thank you. That's all.

19 CROSS EXAMINATION

20 BY MR. CONNOLLY:

21 Q Trooper Lehan, the policy that was in affect at  
22 the time that Mr. Wright went through was to  
23 file search warrants and other affidavits  
24 indicating that you had personal knowledge of  
25 information that actually came from a

1 confidential informant, isn't that true, sir?

2 A Could you restate that, please?

3 Q Yes, sir.

4 At the time the policy that you were  
5 complying with was to not name a confidential  
6 informant but to use the information as if it  
7 were your own?

8 A The policy regarding writing the reports was not  
9 to put the identification of the informant in  
10 that report.

11 Q And the same was true for application for search  
12 warrants; isn't that true?

13 A Yes.

14 Q And a search warrant is a sworn statement under  
15 oath, is it not?

16 A Yes.

17 Q That you had personal knowledge of the facts  
18 that pertained therein?

19 A Yes.

20 Q So you are saying it was the Maine State Police  
21 policy at that time to lie under oath?

22 A That is not what I am saying.

23 Q Do you know what a sin of omission is, sir?

24 A Why don't you go ahead and explain it to me.

25 Q Do you know what it is?

1 A No.

2 Q Do you consider it at all troublesome to you to  
3 state that you had knowledge yourself when  
4 in fact it came from a different person? Does  
5 that concern you at all?

6 MR. WRIGHT: I object.

7 MR. CONNOLLY: Your Honor, if I may,  
8 the state opened this can of worms about  
9 harassing and I have a right to inquire.

10 MR. WRIGHT: He is asking for a  
11 personal opinion whether that's of concern which  
12 seems to me to be irrelevant.

13 THE COURT: As it relates to the oath  
14 the objection is overruled.

15 MR. CONNOLLY: Yes, sir.

16 THE WITNESS: Please restate it.

17 MR. CONNOLLY: Yes.

18 BY MR. CONNOLLY:

19 Q As it relates to the issue of taking an oath in  
20 which you say that you have personal knowledge  
21 of matters but in fact you do not have personal  
22 knowledge of those matters, they are based on  
23 what somebody else told you, do you find that  
24 that causes you individually any difficulty when  
25 testifying?



- 1 A Yes.
- 2 Q So for five years you admit that you had false  
3 reports and it was bothering you; is that right?
- 4 A No.
- 5 Q It didn't bother you for five years? When did  
6 if bother you, when you got caught?
- 7 A I just explained what the policy was, and I  
8 adhered to that policy.
- 9 Q The policy was to not tell the truth under oath,  
10 wasn't it?
- 11 A No.
- 12 Q It was to fudge it a little then, is that the  
13 way you are characterizing it, sir?
- 14 A No.
- 15 Q It was to omit things that were of personal  
16 knowledge of someone else and to subsume that  
17 personal knowledge yourself, wasn't it? . . .
- 18 A No.
- 19 Q What was the policy?
- 20 A The policy was to not include the confidential  
21 informant in the report.
- 22 Q But in the case of State versus Michael P.  
23 Barker, docket 86-425 in York County, you said  
24 that you had that personal knowledge, didn't  
25 you?

1 A I don't know if I --

2 Q Do you remember state versus James Munson, a  
3 Cumberland County case, jury waived, I was the  
4 defense lawyer, Judge Bradford was the judge?

5 A Yes, I do.

6 Q The same issue came up, didn't it?

7 A Yes.

8 Q In fact, there were a string of cases, were  
9 there not, sir?

10 A I don't know the exact number but there wasn't a  
11 string of cases.

12 Q It was more than three?

13 A Three or four, yeah.

14 Q And it's your testimony under oath now that the  
15 Maine State Police instructed you pursuant to a  
16 policy to mislead an affidavit and under oath?

17 A It was a policy to write the report in that  
18 fashion and to notify the prosecutor of the  
19 confidential informant, if there was one in a  
20 particular case.

21 Q And the particular case we are talking about  
22 there were, weren't there?

23 A Yes.

24 Q Turning your attention to this particular matter  
25 is there a policy of the Maine State Police to

1 not say things in court that might hurt this  
2 case?

3 MR. WRIGHT: Oh, I object.

4 MR. CONNOLLY: I am trying to find out  
5 if there's a policy existing today, I don't know  
6 whether there is or not. There was in the past,  
7 he did it for five years. I have a right to  
8 inquire.

9 THE COURT: You may answer.

10 A Is there a policy?

11 Q Right.

12 A No.

13 Q Have you been instructed today as to the  
14 importance of your testimony?

15 A I was instructed to come here and testify.

16 Q About -- do you know about what?

17 A About this particular case, yes.

18 Q Did anyone prior to you taking the oath this  
19 morning -- this afternoon mention Ralph Jones'  
20 name?

21 A Yes.

22 Q Who mentioned it?

23 A Mr. Wright.

24 Q When?

25 A Approximately two weeks ago.

- 1 Q Did you check your notes?
- 2 A I did just last night, yes.
- 3 Q The original notes?
- 4 A I don't have original notes.
- 5 Q Where are your original notes?
- 6 A I don't have original notes. After I transcribe  
7 those onto a report form, the original notes are  
8 thrown away..
- 9 Q So you destroyed those, whatever they were?
- 10 A Yes.
- 11 Q Where were you working on the morning of July 7,  
12 1988?
- 13 A If I could refer to my report I can be as  
14 accurate as possible.
- 15 Q Well, do you remember without looking at your  
16 notes?
- 17 A No, I don't remember the name of the road, I  
18 wasn't familiar, I was in the Bowdoin area.
- 19 Q Without looking at your notes for a moment, you  
20 don't know the name of the road without checking  
21 your notes; is that right?
- 22 A It's something Hill Road, it's the first and the  
23 last I got there.
- 24 Q Do you know what time you got there and left?
- 25 A Yes.

- 1 Q What time did you get there?
- 2 A Approximately 9:00 or 9:30.
- 3 Q What time did you leave?
- 4 A I believe I left there approximately 3 o'clock  
5 because I was home by 4:30.
- 6 Q Where were you at during those morning hours,  
7 were you in the van, in the command post or  
8 otherwise?
- 9 A When I first arrived I went to the command post  
10 and I was instructed to go with Detective  
11 Fascelle (phonetic) to do a neighborhood  
12 interview.
- 13 Q So you were with another person then, another  
14 detective?
- 15 A Yes.
- 16 Q Describe Detective Fascelle for us, if you  
17 would, please.
- 18 A Well, Detective Fascelle is approximately five  
19 foot four and a female.
- 20 Q And it's your testimony that at no point you  
21 talked to anybody by the name of Ralph Jones?
- 22 A Correct.
- 23 Q What time did you start working with Detective  
24 Fascelle, do you remember?
- 25 A Shortly after we arrived at the command post.

- 1 Q Who was the first person you talked with at the  
2 command post, do you remember?
- 3 A Sergeant Phippen, I believe, he was the one that  
4 gave us the instructions.
- 5 Q Sergeant Phippen?
- 6 A Yes.
- 7 Q Are you sure it is not Michael Harriman?
- 8 A Positive. Michael Harriman wasn't there.
- 9 Q Please turn your attention to page 1 of your  
10 notes dated 7-7-88 when you first arrived at the  
11 command post at 7:30, not 9:30, the top  
12 paragraph and see if that refreshes your  
13 recollection, sir.
- 14 A Yes, it does.
- 15 Q Who was it?
- 16 A Sergeant Phippen.
- 17 Q It says Sergeant Phippen -- didn't it say I was  
18 contacted by Sergeant Harriman?
- 19 A And advised to report to the Bowdoin area on the  
20 Lewis Hill Road. He called me at home.
- 21 Q So Harriman was the first one that contacted  
22 you?
- 23 A By telephone, yes.
- 24 Q But your assignment was to do interviews on  
25 Lewis Hill Road; is that right?

1 A Correct, correct.

2 Q And you were looking at that time for a red  
3 pickup truck, weren't you, if anyone had seen  
4 it?

5 A Yes.

6 Q You were also inquiring as to whether anyone had  
7 seen Dennis Dechaine; isn't that right?

8 A Yes.

9 Q So it's fair to say at that time you had a  
10 specific function to look for a red pickup truck  
11 and statements about Dennis Dechaine?

12 A That's what was told to me by Sergeant Phippen.

13 Q And that was your task and assignment; isn't  
14 that right?

15 A Yes.

16 Q It was a narrow task to look for that  
17 information in particular, wasn't it?

18 A To do the interviews asking that information.

19 Q And the interviews were geared towards eliciting  
20 information as to the task which was for Dennis  
21 Dechaine and that red truck, wasn't it?

22 A Correct.

23 Q So it would be fair to say that other  
24 information was not within the scope of your  
25 assignment?

1 A Correct.

2 MR. CONNOLLY: Thank you, I have no  
3 further questions.

4 THE COURT: Any redirect?

5 MR. WRIGHT: Nothing else. Thank you.

6 THE COURT: Thank you, sir, you may  
7 step down.

8 (Witness excused).

9 MR. WRIGHT: Tom Austin.

10 THE CLERK: Raise your right hand and  
11 state your name, please.

12 THE WITNESS: Thomas Austin.

13 Thereupon,

14 THOMAS AUSTIN

15 was called as a witness and, after having been  
16 duly sworn, was examined and testified as  
17 follows:

18 DIRECT EXAMINATION

19 BY MR. WRIGHT:

20 Q State your name, please.

21 A Thomas Austin.

22 Q Your occupation?

23 A I own and operate the Winnegance General Store  
24 in Bath.

25 Q Is that located on Route 209?



- 1 A Yes, it is.
- 2 Q And one goes on Route 209 down towards -- to get  
3 to Phippsburg and back; is that right?
- 4 A Right.
- 5 Q Do you know Doug Senecal?
- 6 A Yes.
- 7 Q Do you also know Pam Babine?
- 8 A Yes.
- 9 Q How well did you know either of them?
- 10 A They were both pretty steady customers of the  
11 store.
- 12 Q Do you recall, Mr. Austin, if not the specific  
13 date the event itself of the homicide, the  
14 murder of Sarah Cherry?
- 15 A Uh-huh.
- 16 Q And do you recall if you had before that time  
17 period but in that general time period but  
18 before the actual events of early July 1988 --  
19 I wish I could tell you when it was -- had seen  
20 Pamela Babine in your store?
- 21 A Yes.
- 22 Q And when she came in did you ever hear her make  
23 any remarks about Douglas Senecal?
- 24 A There were times that she did, yes.
- 25 Q How many occasions?

1 A Two or three that I can remember.

2 Q What specific remarks if you remember did you  
3 hear her say?

4 MR. CONNOLLY: I will object, that's  
5 hearsay.

6 THE COURT: Overruled.

7 A She came in a couple of times and made some  
8 offhanded remarks that didn't really mean too  
9 much at the time but there was one particular  
10 time when there was another customer in the  
11 store that we were having kind of a three-way  
12 conversation that she seemed really -- got  
13 really agitated and was angry and used some  
14 profanity against Doug Senecal.

15 Q What profanity was used?

16 A There were quite a few but I can remember  
17 "fucking asshole" as being the one that most  
18 sticks in my mind.

19 MR. WRIGHT: Thank you, that's all.

20 MR. CONNOLLY: May I have a minute,  
21 Judge?

22 CROSS EXAMINATION

23 BY MR. CONNOLLY:

24 Q How many times have you heard that phrase that  
25 you just used, "fucking asshole," since that

1 time?

2 A Oh, many.

3 Q Thousands?

4 A Well, maybe not thousands but.

5 Q What was the date that you heard that?

6 A I couldn't tell you the exact date but it was  
7 before the Sarah Cherry murder.

8 Q When did someone inquire as to this of you, sir?

9 A A couple of weeks ago or a month ago.

10 Q So let's get this straight, four years ago  
11 someone in a store in a conversation that you  
12 were not even part of said to the effect, oh, he  
13 is a fucking asshole, and you remember that, is  
14 that your testimony?

15 A Uh-huh.

16 Q What was she wearing at the time?

17 A I don't remember.

18 Q Who was she with at time?

19 A I think she was alone.

20 Q And the date was approximately just prior to the  
21 incident that we are talking about?

22 A Excuse me?

23 Q The incident, the date that you heard this  
24 conversation was just prior to what we are  
25 talking about now?

1 A I couldn't say how close it was but it was prior  
2 to it.

3 Q Do you remember at the time what other things  
4 were happening in that time frame, let's say --

5 A In the store?

6 Q Yes, in the store.

7 A At that particular instance I think it was just  
8 the three of us that were in the store.

9 Q Okay, and do you remember during that period of  
10 time what was happening let's say in the news?

11 Do you remember what was happening?

12 A No.

13 Q Do you remember anything at all about any major  
14 news stories occurring --

15 A No.

16 Q You have no recollection of those kind of  
17 things?

18 A No.

19 Q Do you have recollection then of who was  
20 coaching the Red Socks?

21 A No, I don't.

22 Q Do you have any recollection of what the weather  
23 was that day?

24 A Not that particular day, no.

25 Q Who asked you to come in and testify about this?

1 A Mr. Wright.

2 Q Mr. Wright?

3 A Uh-huh.

4 Q Did someone come and ask you at your store about  
5 this or did you volunteer it to them?

6 A Someone came in.

7 Q Do you know who that was?

8 A Mr. Wright..

9 Q Himself?

10 A Yes.

11 Q And he was asking you whether or not you ever  
12 heard Pamela Babine, is that how he was  
13 approaching you?

14 A I got a call from -- the state police previously  
15 had asked me and I said that I did remember this  
16 incident, and then he followed up and came and  
17 saw me about it.

18 Q And you yourself know Doug Senecal?

19 A Yes.

20 MR. CONNOLLY: No further questions.

21 MR. WRIGHT: Nothing else. Thank you.

22 THE COURT: Thank you, sir. You may  
23 step down.

24 (Witness excused).

25 MR. WRIGHT: Your Honor, may I have

1 just a second, please?

2 Lucien Tardif.

3 THE CLERK: Would you raise your right  
4 hand and state your name, please.

5 THE WITNESS: Lucien A. Tardif,  
6 Junior.

7 Thereupon,

8 LUCIEN TARDIF

9 was called as a witness and, after having been  
10 duly sworn, was examined and testified as  
11 follows:

12 DIRECT EXAMINATION

13 BY MR. WRIGHT:

14 Q State your name if you would, please, sir.

15 A Lucien A. Tardif, Junior.

16 Q Why don't you spell your last name.

17 A T-A-R-D-I-F.

18 Q And your occupation?

19 A General manager, Bath Lumber.

20 Q Speak right up for us.

21 A Yes. General manager, Bath Lumber Company.

22 Q And it may be self-explanatory but could you  
23 describe for the record, the court, what the  
24 business of Bath Lumber Company is?

25 A It's a building home center.

- 1 Q How long have you been with Bath Lumber Company?
- 2 A 19 years.
- 3 Q And how long have you been the general manager?
- 4 A Since 1980.
- 5 Q And where is Bath Lumber Company located?
- 6 A Now at 325 Old Bath Road, Brunswick.
- 7 Q How long have you been at that location?
- 8 A Since -- three years now.
- 9 Q Three years and previously where was the Bath  
10 Lumber Company located?
- 11 A 500 Washington Street in Bath.
- 12 Q In Bath?
- 13 A Yes.
- 14 Q In the summer of 1988 where were you located?
- 15 A Bath.
- 16 Q Bath, all right.
- 17 Q What are your responsibilities generally,  
18 speaking if you can tell the court as general  
19 manager?
- 20 A Basically oversee all the employees in  
21 purchasing and manufacturing and also take care  
22 of the invoices and stuff.
- 23 Q Can you tell us what kind of records are kept of  
24 purchases within the Bath Lumber Company?
- 25 A Everything now is on computer, it's on journals

1 and everything is all filed.

2 Q Well, in addition to your work as a general  
3 manager have you had occasion to deal with  
4 customers at the counter when they come in to  
5 buy things?

6 A Yes, I do.

7 Q A host of a variety of different kinds of things  
8 that you sell? I mean, you might deal with  
9 people buying a variety of different kinds of  
10 things?

11 A Yes, yes.

12 Q And when somebody comes in to purchase an item  
13 from the counter, what kind of record is  
14 produced at the time of the purchase?

15 A Well, an invoice is produced out of the computer  
16 automatically.

17 Q All right. In the summer of 1988 was there a  
18 computerized system for keeping track of  
19 purchases?

20 A Yes, there was.

21 Q Then the computer generates an invoice for each  
22 purchase throughout the day?

23 A Correct.

24 Q Is there in addition to the invoice computerized  
25 -- the invoice itself which is computerized,



1 another listing of purchases or record of  
2 purchases made on --

3 A The following morning they are, there's a  
4 journal printed out of that previous day's work.

5 Q Can you describe the journal, what information  
6 does that contain?

7 A It lists the purchases and order, it shows the  
8 charged purchases especially in order as they  
9 were produced during the day.

10 Q Is there some kind of numbering system that you  
11 can associate the individual invoices from a  
12 given purchase with the computerized listing in  
13 the journal record?

14 A You mean --

15 Q Well, did the invoices have numbers on them?

16 A Yes.

17 Q And --

18 A The computer generates the numbers.

19 Q All right, and are those numbers -- do those  
20 numbers appear also on the computerized listing  
21 of purchases throughout the day?

22 A Yes.

23 Q Okay. That's -- you call that the journal?

24 A The journal.

25 Q All right, and do you have the journal for July

1 of 1988 with you?

2 A Correct.

3 Q Is it on the floor there?

4 A It's right here.

5 Q Could you put it up, just put it up on the desk  
6 there.

7 A (Witness complies.)

8 Q And we have now a stack of papers in a rust  
9 folder, how thick would you estimate?

10 A Six inches. Six, seven inches.

11 Q That's for the entire month of July 1988?

12 A That's for July only, correct.

13 Q And does that journal list by the computer  
14 number the purchases in sequence throughout the  
15 day?

16 A Yes, it does.

17 Q And within that list are you then able to break  
18 down a specific day within the month?

19 A Yes.

20 Q And how do you go about doing that?

21 A Well, they are all in order by the date, and we  
22 just do actual July -- it would be the following  
23 day, the following business day was when this  
24 report is produced.

25 Q Did you know Douglas Senecal?

- 1 A Yes.
- 2 Q How did you know him?
- 3 A Basically just as a general contractor, he was  
4 coming into the lumber yard.
- 5 Q Try and keep your voice up a little for us.
- 6 A Yes.
- 7 Q Had you dealt with him at the counter?
- 8 A Yes, I have.
- 9 Q Have you sold items to him?
- 10 A Yes, I have.
- 11 Q And when one is sold an item at the counter does  
12 the invoice contain a place where one signs a  
13 name particularly if one is charge?
- 14 A Correct, they have to sign.
- 15 Q Had you dealt with Mr. Senecal whereby he had  
16 purchased items, charged them and signed the  
17 invoices?
- 18 A Yes.
- 19 Q I would like you if you could -- you at our  
20 request went through your records for the 6th of  
21 July?
- 22 A Correct.
- 23 Q Did you not?
- 24 A Yes.
- 25 Q Now, first of all on the 6th of July did you

1 find any purchases by Douglas Senecal?

2 A Yes, there is.

3 Q And do you have -- first of all we will deal  
4 with the invoices first.

5 Do you have the originals of those invoices  
6 or that invoice of that purchase on July 6th?

7 A It's right here.

8 Q All right, now marked an item that is marked as  
9 State's Exhibit Number 4 for identification, and  
10 so the record reflects what it is could you tell  
11 us, please.

12 A On July 6th he purchased a 7-inch combination  
13 blade.

14 Q That's an invoice of Mr. Senecal's?

15 A Yes, it is.

16 Q Indicating the purchase by him of a -- of a saw  
17 blade?

18 A Yes, a saw blade.

19 Q All right, and do you recognize his signature as  
20 being on that form?

21 A Yes, it is, because he has a distinct signature.

22 Q Are those records that are kept -- prepared in  
23 the ordinary course of business by Bath Lumber  
24 Company?

25 A Yes.

1 Q Are they maintained as a regular part of the  
2 business of the Bath Lumber Company?

3 A Yes. They are stored in the back room.

4 Q And they are prepared as I understand it  
5 contemporaneous with a purchase?

6 A What's that again?

7 Q They are prepared at the same time a purchase is  
8 made?

9 A Correct.

10 MR. WRIGHT: I would offer State's  
11 Exhibit 4.

12 MR. CONNOLLY: No objection.

13 THE COURT: Thank you. Admitted.

14 BY MR. WRIGHT:

15 Q Why don't you hold onto it for just a second.

16 Now, is there a number on that anywheres?

17 A Yes, there is.

18 Q And the invoice number is what?

19 A 092026.

20 Q Say it again for me.

21 A 092026.

22 Q Okay. All right. Going then to the large stack  
23 of items which you have got --

24 A Uh-huh.

25 Q -- the journal?

1 A Yes.

2 Q Were you able to find that purchase within the  
3 journal?

4 A Yes, sir.

5 Q That is that invoice number?

6 A Yes.

7 Q Now, I know that's a pretty voluminous record so  
8 maybe I can just get a copy?

9 MR. CONNOLLY: No objection.

10 MR. WRIGHT: Rather than have him tear  
11 apart --

12 MR. CONNOLLY: The same thing, no  
13 objection.

14 BY MR. WRIGHT:

15 Q In utilizing the journal are you able to locate  
16 first of all the first and the last purchases of  
17 the day of the 6th of July?

18 A Yes.

19 Q Let me show you next then State's Exhibit 5 for  
20 identification. Do you recognize those records?

21 A Yes.

22 Q And those are what?

23 A The first invoice of the day on the front cover,  
24 the middle page is the invoice that Doug Senecal  
25 has with a continuation on the following page,

1 and the last page is the final sale of the day.

2 Q And the number, invoice number for the first  
3 purchase of the day was what, sir?

4 A 091742.

5 Q And the invoice number for the last purchase of  
6 the day was what?

7 A 092138.

8 Q Now, if one were to take the last purchase of a  
9 larger number and subtract from it the first  
10 purchase or the smaller number as it were, would  
11 that determine how many purchases you had  
12 throughout that day?

13 A Correct.

14 Q And have you done that?

15 A Yes.

16 Q And how many total purchases were there?

17 A 396.

18 Q Okay, and Mr. Senecal's purchase of a saw blade  
19 invoice number 92026 within those 396 purchases  
20 fell where?

21 A 284th. Yes, 284th purchase.

22 Q Now, what -- when does the store open for the  
23 day, a week day?

24 A 7 o'clock. 7:00.

25 Q I guess I should ask it to you in terms of the

1 summer of 1988, was that the case?

2 A Yes.

3 Q And is there a pattern to the purchases  
4 throughout the day, throughout the day?

5 A Normally the mornings are heavier, sales in the  
6 afternoon would be -- and again around lunchtime  
7 to about approximately 1 o'clock is another mass  
8 hit of contractors picking up stuff for the rest  
9 of the day.

10 Q And did Mr. Senecal maintain an account with  
11 you? You said you knew him as a general  
12 contractor?

13 A Yes, he had an account with us.

14 Q By the way, looking at invoice -- the original,  
15 that is State's Exhibit 4?

16 A Yes.

17 Q Does that tell you who the clerk, if that's the  
18 right term, the clerk was who sold the saw blade  
19 to Mr. Senecal?

20 A Yes.

21 Q And have you checked to determine who that is?

22 A Yes, I have.

23 Q And that person's name is what?

24 A Ano Hordeman.

25 Q And does he work with you any longer?



1 A No, he does not.

2 Q All right. Now, keeping in mind, Mr. Tardif,  
3 where Mr. Senecal's purchase fell given the  
4 number of purchases, that was the 284th that  
5 day, there is no time on the invoice; is that  
6 correct?

7 A Correct.

8 Q All right. Based however on your experience and  
9 given where this one falls on that day would you  
10 be able to estimate the time of purchase of the  
11 saw blade of Mr. Senecal?

12 A Yes, we average in which this invoice is  
13 probably produced -- would probably be someplace  
14 between 12:30 and 1 o'clock.

15 Q 12:30 and 1:00?

16 A Yes.

17 Q Might it have been earlier or later?

18 A It could have been a little later, because we  
19 normally do about two-thirds of our business at  
20 about that point, and that's about what that  
21 would be.

22 MR. WRIGHT: Okay. Thank you.

23 THE WITNESS: You are welcome.

24

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## CROSS EXAMINATION

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BY MR. CONNOLLY:

Q Sir, turning your attention to State's Exhibit 1-A behind you, that map?

A Yes.

Q Take a moment and look at that. Can you identify what it is?

A A map of Bowdoin.

Q Is the route that you were located on in 1988 discernable on that map? Do you see it there, sir?

A No.

Q I am showing you what has been previously admitted in the trial as Defendant's Number 35 for identification purposes and ask if you can take a moment and look at this map -- if I can get it up there -- and tell us if you can identify where your store is located, if you would, sir.

A Yes.

Q And can you point it out to the judge, please.

A It should be approximately --

THE COURT: I can't see.

MR. CONNOLLY: If you would draw a large circle in blue ink on that spot.

1 THE COURT: That exhibit number?

2 MR. CONNOLLY: That one, sir, is  
3 Defendant's 35.

4 THE COURT: Thank you.

5 BY MR. CONNOLLY:

6 Q Approximately a little bigger. Approximately  
7 there?

8 A Right.

9 Q And that is on route what?

10 A That's on Washington Street.

11 Q Does Washington Street have a route number, sir?

12 A No, it doesn't.

13 Q Washington Street, does it connect with any  
14 routes that you are aware of, that the map would  
15 show us?

16 A Well, Route 1 goes above it, and it also  
17 connects to Route 209 which is at the south end  
18 of town.

19 Q Now, compared to Phippsburg, Phippsburg would go  
20 off where, sir?

21 A To the south.

22 Q To the south?

23 So shortly after noon to 1 o'clock or maybe  
24 even as late as 2 o'clock; is that right?

25 A I would say probably around 1 o'clock.

1 Q But that's based upon an estimate?

2 A Right.

3 Q Based upon sales that vary, don't they?

4 A Right.

5 Q Because you anticipate that about two-thirds of  
6 your sales are completed by midday?

7 A Between 1 and 2 o'clock.

8 Q And that's because contractors generally do  
9 their business in the morning?

10 A Right.

11 Q But it is based on seasons and idiosyncrasy,  
12 aren't they?

13 A Yes.

14 Q So one day you may have all your sales three  
15 quarters in the morning and one quarter in the  
16 afternoon or you may have a variance depending  
17 and a variety of things, isn't that right, sir?

18 A Yes.

19 Q It's just average that you are looking at?

20 A Correct.

21 Q You have no specific recollection, do you, of  
22 this transaction?

23 A No, because I didn't do it.

24 Q So you don't know whether it took one minute to  
25 take place, do you?

1 A An item like this is just basically go to the  
2 rack and pull it off and go to the counter.

3 Q You can leave the car running practically,  
4 right?

5 A Correct.

6 Q And this route on the spot is -- strike that  
7 question.

8 The customer knows that they are going to  
9 get a receipt, don't they?

10 A Yes.

11 Q And in fact they are given the receipt right  
12 there?

13 A Correct.

14 Q When was the first time you were contacted in  
15 reference to this, sir, do you know?

16 A A couple of weeks ago.

17 Q So just very recently?

18 A Correct.

19 Q Do you know how he paid that day?

20 A What's that, sir?

21 Q Do you know how he paid that day, sir?

22 A Charge, in-house charge.

23 Q Were other persons authorized to make that house  
24 charge?

25 A What's that, sir?

1 Q Were other persons authorized to make a house  
2 charge?

3 A Yes, if he sends somebody up that works for him,  
4 yes.

5 Q And it would be possible for that person,  
6 because it I says agent on the bottom, doesn't  
7 it?

8 A It says what?

9 Q It says agent underneath where it says the  
10 signature?

11 A Purchaser or agent, yes.

12 Q Is this practice that a signature is required at  
13 that time where an agent can come in and later  
14 on have a signatures --

15 A No, they sign for it right then.

16 Q May I see those documents for a moment, sir?  
17 I am sorry, the one which is marked -- yes,  
18 Number 5.

19 Sir, why is it that all these other  
20 transactions have a variety of different items,  
21 is it because more items were purchased and this  
22 one was just a one --

23 A Correct.

24 Q And this here indicates what -- what are the  
25 numbers? I am sorry, I am referring to State's

1 Exhibit Number 5, and I am on the second page,  
2 the spot where it says Doug E. Senecal, it's a  
3 one-line item, and is that a description? What  
4 does NO stand for?

5 A That's delivery.

6 Q It was delivered to him?

7 A No.

8 Q What does it mean, it means delivered to the  
9 store?

10 A That means that we deliver it, and that means  
11 no.

12 Q So that means he picked it up?

13 A Right.

14 Q So you know that you didn't deliver it then?

15 A Right.

16 Q Do you know whether or not that order was picked  
17 up at that time?

18 A That was picked up.

19 Q How do you know that, because of the other  
20 document which is number --

21 A Right. He signed for it right then.

22 Q Okay, so that would establish that he was there  
23 sometime during that day?

24 A Correct.

25 Q But again the time frame is variable depending

1 on a number of different things and you can't be  
2 sure, can you?

3 A No.

4 Q All you know is that in the sequence it's about  
5 two-thirds of the way there?

6 A Right, which on the average puts it about that  
7 time on an average day.

8 Q If it wasn't an average day the time could be  
9 anywhere from earlier to later?

10 A Correct.

11 MR. CONNOLLY: No further questions.

12 MR. WRIGHT: Nothing else. Thanks.

13 THE COURT: Thank you, sir. You may  
14 step down. We will take a recess at this time.

15 (Brief recess.)

16 MR. WRIGHT: That's all the state's  
17 evidence.

18 THE COURT: Mr. Connolly.

19 MR. CONNOLLY: Defense rests finally,  
20 sir.

21 THE COURT: All right. I do want to  
22 have the benefit of oral argument in this case  
23 and I will scheduled oral argument for 9:30  
24 tomorrow morning. I will hear both sides final  
25 arguments at that time.



1 Thank you, and I guess the court will be in  
2 recess.

3 (Thereupon, at 3:12 p.m., the foregoing  
4 proceedings were concluded.)

5 \* \* \* \* \*

6  
7  
8  
9 CERTIFICATE

10 I hereby certify that the foregoing is a  
11 true and correct transcript of my stenographic  
12 notes of the Motion For New Trial held in the  
13 above-entitled cause.

14 Dated this 8th day of September 1992.

15  
16  
17 Kimberly M. Culloch

18 Kimberly McCulloch,

19 Official Court Reporter  
20  
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23  
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