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SUPERIOR COURT
CRIMINAL A ON
LAW D ET NO * ENO-89-12G

STATE OP MAINE,

Plaintiff

vs.

DENNIS J. DECHAINE,

Defendant

JURY TRIAL

(VOLUME ***II***

B C B PO JUSTICE

Rockl do Maine

Mar 6-18, 1989

ES OP COUNSELs

beh If of the State: Eric E. Wright, q,
Asst. Attorney General

• behalf oft Defendant: Th as J, Connolly, Esq *
George Q *Carlton, Jr., Esq.*

Reported by Philip o 1u k r Official Court Reporter

(March 17, 1988)

(Chambers **conference)**

THE COURT: We *are now in* chambers. Present are *Eric* Wright for the State, Tom Connolly and George Carlton. And I've asked Elizabeth Scheffee, who I understand represents *Nancy* ons-Dechaine, to come in.

Liz, it came to my attention at the end of the day Wednesday, and I confirmed it yesterday, that someone observed you having discussions with Nancy before she took the stand and testified, which, of course, your presence was noted in the courtroom and there was a sequestration order in effect here. And if there was any conversation between you and your client as to what was being said in the courtroom, that would be a violation of the sequestration order and could have resulted in, at worse, a mistrial; but could have opened the matter up for the State to have the right to recall Nancy to the stand to inquire as to what she had heard directly or indirectly about the testimony of witnesses who had taken the stand and testified before she took the stand.

Now, I'm not saying any of this took place. There is the appearance here of a **violation** of the **sequestration** order, And I thought I would call you in before the case finally goes to the jury to bring this potential problem to **your** attention. **You** can **respond to** it **or** not, I'm not going

to require you to respond if you don't want to. But there is the appearance of an impropriety here.

MS SCHEFFEE: I take my duty as an officer of the Court very seriously. I can assure you there was never a violation of the sequestration order. My client and I never discussed the testimony of anybody who took the stand before she did. And I, several times, told her parents never to discuss the testimony. Told her friends in the courtroom not to discuss the testimony with her. I think they thought I was Ayhatolla about it because I was very direct and incredibly sincere and serious when I told them not to discuss anything with her.

So the only thing she could know about the testimony would be anything that was public record, what was published in the newspaper.

THE COURT: I can't ask you anymore than that. The record is clear as far as I'm concerned. Thank you.

(The chambers conference concluded and the jury returned at 9:09)

THE COURT: We've now reached the final stage of this trial, And I've indicated to you at the end of the day yesterday, the way our procedure will work is you will hear from Mr. Wright first and then Mr. Connolly and then Mr.

Wright will have the opportunity for a rebuttal; limiting his rebuttal marks to comments made by Mr. Connolly. That is because the State has the burden burden of proof. I will get into more detail in my instructions to you.

Ordinarily the time frame for final argument is usual a maximum of one hour on each side. Because of the length of this trial and because of the multiple charges that are involved, counsel and I have agreed that each side will have up to an hour and a half. Ur. Wright will have to gauge his time between *how much of his* direct argument and the time that he saves for rebuttal, Then I will have a brief recess for you before I give you my instructions on the law.

So now that you know the time frame *here,* I'm going to sit down and turn it over to counsel, Mr. Wright.

MR. **WRIGHT: May** it please the Court, Mr. Connolly, Mr. Carlton, Mr. Foreman and Ladies and Gentlemen of the **Jury, Although she did not know it when she went to the Henkels on Lewis Hill Road in** Bowdoin on July 6th, 1988 to baby-sit, Sarah Cherry, that day, had a rendezvous with death. That she was kidnapped, sexually assaulted and murdered is obvious. The only question is who did it.

To answer that **question, to prove this defendant's guilt, we have bombarded you, I** *know, with a very* great **many details. And although this was a lengthy trial in a compressed part of time, it was necessary to give you all the**

information however because the tapestry of the guilt woven by threads are many and often very fine. Now, perhaps better than ever, you can appreciate the sense in which I sought to say to you over a week ago in opening statements that we asked a lot of you. We ask you to sit quitely hour after hour simply listening to testimony and watching the witnesses. The testimony at times is fascinating and at *mes very tedious. It can be obviously compelling and at* other times more methodical and of a more subtle importance. But the time we've taken was required, because a murder trial is attempt to bring to life events in which a life was taken. Your duty now is simply to return a verdict consistent and compelled by that evidence. The evidence cannot be explained away *by innuendo or by,* as the evidence tells you the defendant's all contrived testimony or otherwise.

Before discussing that evidence *there are a few* preliminary points I would like to talk with you. First, the State, as you know, is required to prove *beyond a* reasonable doubt what lawyers call the elements of the offenses in the indictment® Justice Bradford will instruct and define those elements later this morning. You may, however, honestly and forever in your deliberations disagree among yourselves with respect to some **or** many of the things that you have heard and the importance you want to attach to those things. Its not

uncommon or unexpected that a group such as yourselves will find themselves in some disagreement and will never be unanimous as to certain matters. That doesn't matter. There is no requirement that you all agree let alone beyond a reasonable doubt as to what all the facts are on which you base an ultimate judgment leading up to the the commission of these crimes. Only when all is said and done that you all agree that it is your unanimous judgment as to the elements of the offenses on guilt or innocence.

Second, the Court will later instruct you on the elements of *count one* of murder. I wish to point out to you that as you hear those terms of a knowing or an intentional *killing you will not hear any aspect of premeditation or* planning. That is not required under Maine law to be guilty of murder. Murder in this state does not require any planning, any forethought or any deliberation prior to its occurrence. It requires the one act of intentionally or knowingly, and the Court will define those terms to you, at the time of the death.

Third, it is the *State's obligation to prove, as you* know, the defendant's guilt beyond a reasonable doubt, and the defendant as you have been told has no legal burden whatsoever. But by testifying in his own behalf the defendant assuredly tried to convince you that the State has *not* ***proven*** this case. You are therefore perfectly free to

judge his credibility as you would any other witness and to consider whether his testimony has convinced you of anything other than his guilt. In doing so I ask you always to remember what interest or stakes in the outcome does he have in telling the truth or not telling you the truth? It must be self-evident to all of you that his interest is greater than anybody elses. Did any of you say to yourselves after you heard him testify the day before yesterday and concluding yesterday with regarding his denial of guilt, now there was testimony that I feel comfortable with. Now there was testimony that I can accept. Now there was testimony that I can believe as being true. Or did you, as you should, lay it down against all the other evidence *in the case and conclude* of his denials this just cannot be so.

The defendant, the evidence tells you, is an admitted liar and finds it useful to portray himself differently to his friends and family. To his claims, for his claims of innocence to be true you must reject *the testimony of* **every law enforcement officer who** testified in this case who contradicted his denials, who told you what he had done, what he had said, you must conclude at best that those officers were mistaken in what they heard and observed or they **were** lying. If not lying **why not lie** better. *Why* not if these police officers wished **to** make up **confessions would** they not make up more direct **confessions with** fuller details. **Police**

officers knew what had happened. And yet you have instead very interesting, very interesting statements from the defendant, which I suggest to you no police officer would dare to create.

Fourth, to say that Sarah Cherry's death was unnecessary is not to say it was senseless. Death always makes **sense** to the murderer. So however much he hides them, the defendant had his reasons for killing Sarah. It may be that another part of him that he wishes to portray to the public killed her but *its* still a part of him. Whatever his reasons were, apart from the sexual overtones which must make up the other side of the defendant, the State is not required to prove his reasons or his motives.

Next, similarity, as I told you in opening statement there are in this case, to be sure, as there are in virtually *every criminal* case, unanswered questions. But you must decide this case on what the evidence is and not on what it is not. I gave you the example in this regard of fingerprint evidence. **You** may wonder why in the world did we bother to give you have evidence of the fingerprint of the defendant in *his own* truck. Think it through a little bit more than that. The claim will surely be, among others, that the defendant's fingerprints were not at the Henkel's residence, therefore he couldn't have been there. But you know for a fact that Sarah Cherry was there and her fingerprints were

not recovered either. The claim may be, among others, that Sarah Cherry could not have been abducted in the defendant's truck because her prints were not found in the truck. But you know for a fact that the defendant was in that truck yet piy of all of the mess of papers and items found in that truck and on the truck itself only a very few handfuls could be found to have the defendant's fingerprints. The point as we tried to make to you with regard to this kind of evidence, whether it be fingerprints or fibers or hairs or what have you, sometimes you have it and sometimes you don't. I can give you no better answer than to say that's the way God made it.

For 1 that appears from the evidence, Sarah Cherry's selection of a victim on July 6th, 1988 was random. That may also give you a moments concern; but it should only be a moments concern. For although Mr. Connolly suggested in opening statement isn't it more likely that somebody who knew Sarah Cherry killed her. The evidence is that only her folks, the Henkels, and a friend of Sarah's by the name of Julie Wagg knew she was baby-sitting that day. You know from the evidence that none of them committed this murder. And, more ever, if somebody she knew had come to the house, somebody with whom she was comfortable, she would not have left behind her in leaving the house her glasses and her shoes, She would not have left personal belongs of that sort

behind upon voluntarily leaving, nor would this responsible young lady have left voluntarily leaving behind the infant child with whom she was *caring for that day.* Like it or not her selection was random. Although the evidence leaves you with is that she did not know her killer. She did not know Dennis Dechaine. Obviously someone abducted and tortured and sexually abused and murdered Sarah Cherry. The only question is who.

It has been suggested during the trial of this case that the police had tunnel vision and focused only upon the defendant as a suspect. Ladies and Gentlemen of the Jury, police can have tunnel vision only if there exists obvious *clues which would suggest that someone else was the real* guilty person. But the police focused on the defendant for one very good reason. That is precisely to whom the evidence led them. It never led anywhere else nor would it *ever have* **done so. What clues led elsewhere?** ***None at all. It is*** sometimes said, perhaps flippantly, about some court cases its only a circumstantial case. That is remarkably often true, particularly in murder cases where after all a murderer **is not** going to invite you to watch him commit his atrocities. Don't get misled because the evidence such as this is largely circumstantial or inferential that it is somehow marginal, which it **is not in this case.**

You have in the evidence quite astounding evidence of

the defendant's guilt. His papers and his alone were found at the Henkels. They were in his truck on July 6th. There was a tire impression left at the Henkel resident consistent with the truck tire of his truck. The tire impression was precisely approximate to where the papers in the driveway were found. Holly Johnson, a neighbor **across** the road, heard a vehicle slow down at the Henkels and not go by. She heard the dogs barking as they will when people turn into the driveway. And then she saw 15 or so minutes later a dirty or old Toyota pickup truck heading northbound exactly in the direction *in which later Sarah Cherry's body was* found. All this between one and 1:15 in the after of July 6th, perfectly consistent with, as you now know, Sarah Cherry had to have been a abducted.

This defendant was absent from everybody, every one during precisely the time when Sarah Cherry was killed. This defendant and this defendant alone later emerged from the **very woods** where Sarah Cherry's body in the meantime had been **killed and later was to be found.**

No one knew where the defendant was that day but he alone. **So nobody** else could have gotten to his truck. He himself **said he saw no one else in** the **woods.** The **defendant's truck and no one elses in this entire world was found within just a few hundred yards of Sarah's body. The truck was locked. You know there was no spare Toyota key in**

it. So the truck had not been moved after the defendant had left. Indeed the defendant himself acknowledged to Detective Hendsbee early on the morning of the 7th, and to you in testimony, that no one else would have driven the truck as far as he could tell. It was this defendant and no one else who was trying to hide the keys to his truck. And despite this defendant's slick denials of why he was trying to do that, you know why he was. Be had to distance himself from that truck and it was worth the risk of the keys being found in the police car to avoid the other possibility of having been taken into custody that night and the keys would have been found on him; then he would *have had n answer.*

There is an addition as you know the rope in the defendant's truck, which this defendant has testified he knew was there and which Judy Brinkman physical matched to the rope with a noose at one end in the woods in a location between the truck and Sarah's body. It was a perfect match. And there is no doubt those two pieces of rope had been cut from the same rope. The other piece of rope in the woods appeared to match the rope on Sarah's wrists, but Ms. *Brinkman is* conservative and wouldn't call it a match unless it was a match because this rope frayed apart she could not make the match at that end of the rope. Still another another piece of the same kind of rope was found in the defendant's barn.

Although the defendant has predictably said he did not have his penknife on him on July 6th, the fact remains after her husband's arrest Nancy Dechaine told Detective Hendsbee when he inquiried if Hr. Dechaine owned any penknives, well, you know there is a penknife on his key ring because you've got the key ring. Detective Hendsbee said no. Its not there. And her reaction was to be surprised. Now you know what the murder weapon is. Where is it you know as well as we do;somewhere in those woods. What else did Nancy say at that point? She said I better not say anything more or else I will be getting my husband into *trouble.* *She* knew and now you do too. But there is more.

When *this defendant emerged from the woods and ran into* the Buttricks, the evidence tells you he *lied about* where he was from and what he had been doing to cover his identification. He says to prevent them from knowing what he *had been using drugs. Is this* plausible? Does this make any sense? There **is no** evidence that the Buttricks could have or would have spotted anybody that was high or was able to discern such a thing. To the contrary. They said he acted perfectly normal. **So** why did the defendant lie if that's what the evidence tells you he did.

He's a bright young man. He told you how smart he was. **Graduated** at **the top** of his class. He's able to think his way through problems, And he well knew that night he had a

big problem. He had to explain his presence in those woods. Yet with Mrs. Buttrick he let his inner guilt slip when he asked where he was from and he told them and he said softly, I should have stayed there.

Unfortunately for Mr. Dechaine and fortunately **for the** cause of justice Mr. Buttrick was unable to locate the truck for the defendant that night *and* the defendant did not make his escape. And so then began his contact with law enforcement and his interview with Officer Reed. The defendant says that Reed was intimidating. But isn't the truth of it that he must, himself, must have died a thousand deaths when he realized that the sheriff now had the papers. Reed was intimidating because he was effective in eliciting the truth from somebody who didn't want to give it up. Even the defendants mind could not race fast enough to figure out how he could absolve himself. Even he is not that good a liar. **How** intimidated was this defendant? Not so much so that he was unable to complain to Sheriff Haggett about Deputy Reed. Not so much he was able to invoke his Miranda rights which he previously waived or given up; had agreed to talk to the sheriff. Of course by the time he was read his Miranda *rights he* wanted to say no more. However, bright as he *is,* he then realized he could not play these trained officers for fools, just as I hope you would not let him play you. **He** was not so intimidated that he **was** unwilling to go

with Reed and Westrum to look for his truck. Leaving along the way a footprint which you may compare with the print in the brook near the body such as it was after the rainstorm that had occurred and which you may, I trust you will compare with his shoes, which are in evidence.

But then he was relieved when Detective Hendsbee arrived, So what reason is there to feel intimidated by Detective Hendsbee? Detective Hendsbee expressed concern for him. He was relieved. He at that point I suggested to you needed to show to Detective Hendsbee cooperation or else this detective would have been even more suspicious. But still the big question remained, What was he doing in those woods? Why had he been there? The defendant still had to have a story. And so even feeling relieved with Detective Hendsbee he maintained the same lie with regard to fishing, Another story you have now from his own lips was not true.

Friday, after the defendant had been taken home then we **move through Thursday** and on to Friday, the defendant was, **according** to the roommate, Richard Bruno, *nervous. When* did that change? **Upon learning** *upon the* discovery of Sarah **Cherry's body, What did** he do? He dropped his head. That folks is not an act consistent with innocence, The body he had tried so hard to hide had **been discovered.** He knew the game would be **up soon. Then, with no** place to run, he **waited, Detective Hendsbee arrived and upon his arrival the**

defendant said: "Do *what you have to do." And: "It must be* something else inside me that is doing it."

Those, Ladies and Gentlemen of the Jury, are not the words of an innocent person but words of a troubled man ridden *with guilt* ***and who*** *has* experienced with drugs for virtually half his life, not streetwise, who is now beginning to unburden himself. So later that evening he *continued with* Detective Westrum. "I don't know, he said, "whatever made me have do it. *I can't believe,"* he said, "that it happened. Oh my G ; it never should have happened. Mark, I went home and told my wife that I had done something *bad and she* laughed at me." In referring to what he had done bad he could hardly have meant drugs. That is *not what he* told her and certainly not because she would not have laughed *out that, given her* aversion to drug use. It had to be ***something*** **else, and you know as well** as I what it was. Be said **further to Detective** Westrum: "But I don't believe my **wife believes** me." If it were drugs he was talking about of **course she would believe** him. Be had such a longstanding **use that she knew about drugs. "Mark,"** he said, **"please** believe **me. Something *inside of* me have** must have made me do it." **Virtually** the **same statement** made to **Detective Hendsbee earlier.**

He sought comfort throwing himself around Mark W'estrum, please believe me, Why, Mark? Why? Then he said: "I didn't

I think it actually happened until I saw her face on the news. And it call came back. I remembered. Why did I kill her? What punishment could they ever give me that would equal what I have done?" And finally much as he said to Detective Hendsbee, it was something inside that must have made me do it." One more time he said it.

Now, it may be said to you by Mr. Connolly shortly that the defendant's emotional state undermines the unreliability of these statements. That would be fine to say except its unsupported by the defendant's own testimony in which he only denied some of the statements or put a convenient spin on others of them. I suggest to you that his emotional state is exactly what prompted him to *say what he said,* which tells you the accuracy of what Detective Westrum reported. It was at a time when, for a change, the defendant had not carefully planned every response that he would make.

So finally onto the Lincoln County Jail where the defendant said: "You people need to know that I'm the one that murdered that girl. You *may want to put me in isolation."* *Quite* predictly the defendant claims what he said he was the one accused, And he said what he said just to protect himself at the jail. But remember the jailers already knew he was coming and *had no plans to put him in* with the general population. Deputy Maxey and Deputy Dermody said to you that the defendant did not say I'm the one

accused but he said I'm the one who murdered that girl. You saw them testify. It takes no argument from me, Ladies and Gentlemen of the Jury, to persuade you that those two straight arrows heard exactly what they reported to you what they had heard. They told you what that was without ambiguity, without equivocation. Just as they wrote it down that very night, as they knew the significance of it.

Perhaps recognizing the creditability of those witnesses, as I'm sure you will find them to be, the defendant retreated in his testimony to saying, well, maybe I did say what they said I said. But if I did it was only get this - a regrettable error of semantics. That's almost laughable to maintain if somebody is making a regrettable error in semantics when one is charged with murder. Does that at all have *the ring of truth to you? Certainly not.* Is that also how this defendant would pass off his testimony in which he very unintentionally revealed his guilt when he said "we were losing the light in the woods." You saw him when he said that yesterday rock back on the witness stand as if somebody cuffed him on the side of the head and didn't know what had happened. That tells you his guilt. And yet this defendant, though he himself maintains he's not a **very good** liar, turned right around and came up with the quickest response that one **could** ever imagine and talked about snowstorms. It didn't ring true, did it? But instead

revealed just how quick and fast and accomplished a mind he has to talk himself out of anything.

Keep in *mind that rir.* Dechaine told you that the police had not talked him into believing that he had committed these crimes. Well, if they hadn't, *and he told you* they hadn't, the only explanation for why he would repeatedly admit to the murder is because he had to, the death of Sarah Cherry, is because he had done it. Yet through out all of those statements is there a word about drug usage? Not a word. Only later does that come up. And why not? It fits perfectly with his entire adult life, and given what he's facing he's got to come up with something.

finally, he said as you learned yesterday at the conclusion of all of the testimony, he said to Detective Reed: °I know what I've done is wrong; but I don't consider myself a murderer, I consider myself a drug addict.° That statement, Ladies and Gentlemen of the Jury, reveals this *defendant's* true arrogance. What he is saying to you is, in plain and simple terms, I know I killed her, but please excuse me from taking a human life because I'm a bit of a drug guy. Yet in that very assertion, in that very claim are the seeds of his own destruction. For he has said that he's not a drug addict. **He** can't bear that *thought; that must* have been **obvious** to **you** as he testified. Still, it's **one** thing **for someone who** has **never** done drugs not **to** know what

his reaction to drugs will be on any *given occasion how* he would react to drugs. It is quite another from somebody like this defendant, plausibly to maintain as he tried to do with you, that he would have had no idea what to expect from this so-called amphetamine that he so-called bought in Boston from a so-called drug dealer®

The defendant, apart from his assertions of a spotty memory and some confusion, was, he told you r well within his senses on the afternoon of July 6th in the woods. This is crucially important for you to know because it means that he acted purposefully and with awareness of his surroundings and awareness of the *consequences of his* actions, and that makes him guilty of murder under *count one and not the lesser* included offense, which you would be instructed on of reckless and criminallyly negligent manslaughter. You will want to listen with care to the Court's instructions, as I know you will. Principally the only way to reduce murder to manslaughter is through intoxication, and the defendant himself, although he says he was high, maintains he was well within his senses. That the effect on him was nothing like *it had been on* the one time he took LSD when he hallucinated * You may reduce this crime to manslaughter only if in good conscience you accept that the defendant was so intoxicated that he was unable to act with intention or knowledge with what was going on. And he *himself has not* given you that

option. He himself does not make out such a loss of his facilities. And moreover the sequence of events involved in this case shows purposeful goal directed conduct at every step. Why would the defendant bind a 12-year-old girl except to restrain her and make her submissive. Why would the defendant gag her twice over except to prevent her from screaming. Why would the defendant stab her over and over exempt to harm her. Why would the defendant torture her by using a sharp instruct lightly across the neck except to scare her and terrorize her further and for his own perverse pleasures, Why would the defendant strangle her except to cause her death. Why would the defendant jam two sticks into Sarah Cherry's vagina and anus except for his own perverse pleasure. Why would he bury her except to *hide her body from* discovery.

In the face of all of this evidence what is the **defense? First the defendant denies the claims. Its not surprising. You expect him to take the stand** and admit it? Only this defendant has an interest in hiding the truth from you. Only **this** defendant stands to gain if you were diverted from the truth. Only this defendant can accomplish a diversion either by his denials or his unlikely story of drug usage. **Here is** a defense born of **desperation** and necessity, and necessity, as you know, is the mother of invention.

Second, it seems, although assuredly the evidence does

not show you any realistic alternative killer * the defense seems to suggest in the evidence that all this is only an unfortunate set of coincidences. To put it plainly, that the defendant was set up. You have a stark choice: either the defendant is guilty or you believe the defendant°s claims that he was set up and you find him not guilty.

Let's examine this. Keeping in mind that the rope was in the truck * assuming there is another killer out there, that killer had to have gotten a hold of Sarah Cherry, and it just so happens come upon the defendant's truck. That person would have had to have left his own vehicle by the defend t®s truck, he had no idea where that person was or whether the person who came hack to the truck would come back in a minute or an hour. That person found, out of apparent view and hidden behind the seat in the truck * the yellow **rope. He somehow got into the locked vehicle. Of course** he **could have done it through the sliding glass window, all the while Sarah Cherry was waiting for him to take her into** the **woods. It** makes no sense. Then the mythical killer would have had to make his way back to his own vehicle and then he **would have** had to, from a **locked truck, stolen** the receipt and the **notebook** and returned to the Henkels and left it in **the driveway. A pretty risky thing to do considering the killer would have no way of** ***knowing*** **if anyone then would have been home** at the **Henkels.** If its a set up why *not do that*

then? Why take simply one piece of paper with the defendant's name and a notebook which does not have the defendant's name in it? You know from the evidence there were other autobody receipts there because of the damage to the defendant's truck. He had gotten estimates® There were other pieces of paper including his wallet with his name on it. Why not take those other pieces of paper to better set up the defendant? Why not leave those papers at the Henkels? Why not leave the rope that was found deep in the woods next to the truck, the rope which the searchers on their pass through even had missed. It makes no sense.

Ladies and Gentlemen of the Jury, do not allow yourselves to forget the unspeakable savagery of the death of Sarah Cherry suffered. The gag in her mouth and the scarf tied around her face, that her T-shirt was pulled down at the neck and she was stabbed in the chest, that her brassiere was then pulled up after being stabbed in the chest, thus **revealing the defendant's sexual motivations** at work, that **she** was tortured **by sharp** blade being scraped across her neck ***slightly, that*** **she was stabbed** repeatedly in the neck, that she was strangled with **a** scarf drawn **so tightly that the diameter of the small loop around her neck was no more than three inches. And still struggled causing petechiae hemorrhage in** her eye **area** and **blood on** her fingernails to fight against death. **But slowly, slowly** the life was drawn

out of Sarah Cherry. And in final viciousness, in one final act of deprivity while Sarah was still just barely alive and still conscious the defendant then assaulted her vaginally and anally. Then buried her body under forest debris.

You must not forget what happened because these acts show that the defendant acted with purpose; he could have stopped at any time except that his perversions overtook him. He acted with knowledge of what he was doing. And he is thus guilty of murder in count one of this indictment.

At the same time if these acts do not qualify as deprived, as the Court later will instruct you as to count two, by their very nature revealing an absence of any concern for the value of human life, then I don't know whatever will. So the defendant is guilty of count two. The defendant cannot defend his acts as to count two by drugs because the state of mind is not controlled. You focus on the nature of the acts themselves. Obviously Sarah Cherry was taken and restrained for purposes of inflicting harm to her so the defendant is guilty on count three, kidnapping.

Finally, the two acts of gross sexual misconduct speak for themselves. It remains only for you ladies and gentlemen of the jury to return your verdict consistent with and indeed compelled by the evidence of a verdict of guilty. Thank you very much,

THE COURT: Thank you, Mr. Wright. Mr. Connolly.

MR. CONNOLLY: Members of the Jury, good morning, Justice Bradford, Mr. Wright, Mr. Carlton, members of the press, family members on both sides. As you can well tell by the long weeks of trial that we've had I'm not exactly completely organized. There is a lot of information that is in front of you right now, and its my job in the closing argument to try to put it together for you as best I know how. I will invariably miss arguments that you will see. I will invariably not touch upon all of the evidence, and that is not only because I'm a little disorganized its also because there is a lot here, and your 12 collective minds are what will determine what the evidence is.

You folks have watched us carefully, both the prosecution and the defense during this trial and studied us. We are aware of that; we've studied you as well. You have worked very hard. And the hardest part of your job has get to begin. Before eleven **o'clock I will** be done. We'll sit down. It will be a short break. And the judge will instruct you as to what the law is. Then the hardest thing you **people have ever done in your lives will come** to you. That is the **price of citizenship in this country. Its the price of a democracy, It's the price of our system of justice. We are many times called upon to do various sacrifices for our country. We sometimes are asked as to go to war. We are asked to pay taxes always. We are asked to vote on occasion,**

and sometimes you are asked to do jury duty. That is your obligation now. It is not easy. You have seen during the course of this trial a very difficult, sometimes incredibly complicated, procedure of asking questions and eliciting testimony.

Many things that one side or the other wanted to bring forward have not been brought forward, but that is not your problem. Your exclusive and total attention must be focused, as the judge has told from you the beginning, on what was admitted into evidence; what the evidence before you as it came in through the various witnesses and as it exists in its physical form in case. And inferences and conclusions and a reasonable understanding of that evidence is what a ju system is all about. You 12 good people and true are obligated to take your common life experiences, to take what you know as human beings, what you have done during the course of your life and lives collectively, and analyze what is in front of you.

Unlike Mr. Wright in his opening statement as *to what he* says the question is, the question is not who did it. The question is has the State proven its case beyond a reasonable doubt. That is ultimately the issue before you. That is the only issue before you. That is what you must decide ultimately as to all 5 counts. During the course of my argument, *my explanation of* where I believe the evidence will

lead I will attempt to show you what the reasonable doubt is in the case.

There is a lot of evidence in front of you that is favorable to the State of course. The State has brought forward a large number of witnesses, a large number of exhibits. They have done a very thorough job of bringing forward much evidence. If you were to look only at their side of the issue, then the decision would be easy in this case for you. But as the judge has instructed you from that very first time that you walked in the courtroom here and we started that tedious process of jury selection, as you recall, as the judge has reminded you there is a presumption of innocence in this case, as there is in all criminal cases. That presumption of innocence is not mere words. Its not a game that people play. Its the cornerstone of liberty and the foundation of what makes our system separate and distinct and protects you jurors, protects the lawyers, protects this defendant at all times. That presumption of innocence has not dissipated, its not gone away. Its in existence as we speak. It will continue to be in existence as you are given the charge by the judge and Mr. Wright gives his rebuttal argument and you go back to deliberate, and while you are in that jury room deliberating the presumption of innocence operates at all time up until the time where you decide that the evidence is sufficient to prove the defendant beyond a

reasonable doubt. If you do not reach that point the presumption of innocence alone mandates that you find that this defendant not guilty as to all charges. That presumption of innocence is extremely important because if you start from the presumption that the defendant is innocent, and you look at the evidence that the defendant is innocent, the evidence can make sense to you. It can be reasonable. It can be understood. That is what I will attempt to show you during the course of my argument. If you start from the assumption that he did it the evidence can show that he did do it. But that is not what the judge will *tell you what the law is, and that's not your duty. You* presume innocence unless and until the State has proven its **case** beyond a reasonable doubt.

The State **asks** you ultimately to believe a scenario with extraordinarily unlikely possibilities. You *know,* based upon **your common experience and real life values** *and* **real life work that real life events sometimes do** have - forces **possibility.** The act of circumstances, acts of individuals **do come into play which are** extraordinarily unlikely. If you **give that benefit** to the State the presumption that under **some** circumstances an individual who is otherwise **normal** will commit an **atrocious** act like **this upon** a person that **he never *knew in an* area where he had never been before, if you give the State that presumption you have must give the *defendant***

the same presumption if not a greater presumption that the possibility, the probability, the likelihood of an alternative hypothesis is equal to or greater than the likelihood of what the State has told you. I would attempt to articulate that as best I know how during the course of this argument.

During the course of my opening statement I gave you a couple of equations that were in my mind that are very important. The first one, as you recall, was from Einstein: Every problem has a solution that is simple and easy and wrong. If you look only at the strict analysis, as the State has put forward to you, the conclusion is easy; that the defendant must be guilty. If you look a little bit closer at the facts as I will try to to articulate them to you that simple solution is easy. But it is wrong as well.

I also quoted in my opening statement from George Orwell which is: Freedom is the freedom to say two plus two is four. If that is granted all else follows. That will be the thrust of my argument during the course of my explanation of the evidence.

Now, the judge will tell you that proof beyond a reasonable doubt, as required by the State, is not a mathematical certainty. It may be argued that two plus two equals four is irrelevant because the State need not prove to a mathematical certainty that this defendant is guilty, but

they must only prove beyond a reasonable doubt. Which is not an exact science we are dealing with in this law business that we are dealing with. But if the facts do not add up, if the scenario, the hypothesis that the State puts before you is not for this defendant, this defendant must be found not guilty.

The evidence in front of you consists of a large number of items. I want to walk your way through some of the items *which 1 think are particularly important during the course of* my argument. But you should understand that at all times the evidence that is in front of you has a certain value. The physical evidence has a certain weight to be given to it. The testimony from various civilian witnesses has a certain weight to be given to it. The evidence from police officers has a weight to be given to it. The defense witnesses. And the defendant himself all have conflicting weight. It is your very difficult job during the course of your deliberations to determine what weight to be given to specific facts. You may not agree amongst yourselves how things fit together. Mr. Wright explained to you that you need not be consistent on all the facts in order to reach a unanimous verdict, which you must do. That is correct. But at the same time if there are facts that make it absolutely impossible for the State's ***hypothesis*** to be true, then you must return a verdict of not guilty under those

circumstances. If you find a series of physical facts which make it inconsistent that this defendant did it, you must return a verdict of not guilty as well. If you find a series of physical facts that make it unlikely that the defendant committed the offense the *same conclusion* is there.

So I want to talk about some of the physical evidence. I think now is as good as time as any. You've heard through the course of discussion and you've heard through the course of the presentation that was provided by all of the State's witnesses as to how the physical evidence developed. I will discuss three basic reasonable doubts in this case that I believe will result in a verdict of not guilty; that this defendant did not comfit the acts in question; that he did not do the deed. Not that he was suffering from something at the time, some drug induced aberration, *Mr. Wright argues* very forcefully that there is not good evidence in the case to indicate that this defendant was under some kind of delusions or some such thing as that. The evidence seems to show pretty clear that he **was** aware *of what he was doing.*

So reasonable doubt *number one that I want to articulate* **to you is the defendant himself.** The defendant himself is a reason in and of itself to find him not guilty. What are the components of that reasonable doubt? You **have** heard a large amount of character **evidence,** so-called. It was very difficult on the **Court** and on me and on the jury **to** get that

evidence in. You have may not have understood the importance of it. The witnesses that were called you had an opportunity to judge them, to view them, to analyze them. They knew Dennis Dechaine. They know *Dennis* Dechaine. They have worked with him. They have socialized with him. They have seen him under various circumstances. The *character evidence* as to his reputation for peacefulness and non-violence is not an insignificant factor in this case, especially when you juxtapose it with the enormous gravity of this crime. We *have an individual* here, according to the testimony, that has no proclivity, no tendency, no *indication, no history, no* desire for violence, no indication that he has within himself *the ability* to torture a little girl to death. That in and of itself should make you stop and *think* and wonder as to *what was happening in the area of the Hallowell Road on July* 6th, 1988.

The witnesses that came forward have described to you how he could not kill his chickens; how he could not under **various** circumstances do violent acts; *how he was* repulsed by violence. He has lived his whole life in this manner and not a blip has come in. Not a single instance has deviated from that by the prosecution. They have not brought forward a single fact that would cause **you** to think that this defendant was capable of this crime. His character in and of itself is sufficient to make you stop and think and ponder. By itself

it may not be enough, but in conjunction with other things I think you will find that is important evidence.

During the course of that discussion of character evidence you could see how stilted it was, how difficult, how limited it was. You did not have an opportunity to sit down and have coffee with any of those witnesses. All you were able to do was hear how they testified, what they were trying to say and the very limited context in which the rules allowed. That's the way the rules are. As the judge indicated at the beginning of the trial that is the way that evidence, is whether you like it or not.

You can infer from that, you can conclude from that enormous things. One of those things is that this defendant has not in him to do this crime. Reasonable doubt number one is that the defendant's character. In conjunction with that we have the defendant's denial of the allegation. We have him coming before you and under oath denying that he committed the offense. You had an opportunity to observe him. You had an opportunity to look at him. To understand him. To see him. To judge his creditability. Not in a police car where no other witnesses were. Not in a jail where no one else was around. Not in a situation that was beyond any kind of understanding as far as a courtroom goes. What you saw was Dennis Dechaine taking the stand and testifying that he did not do this crime.

Mr. Wright responds to his denials strongly by saying what is his interest in the outcome of the case. This is a catch that is involved any time a person is accused. I want you to stop and think about this argument very importantly. What Mr, Wright would have you believe is that every time an individual is accuse of an offense, when he gets on the witness stand and says I did not do it, whether it is this crime or any other crime whatsoever, because that person has a stake in the outcome you should not *believe them. I submit to you that the system* that we have of presuming a person innocent is exactly for that argument there. That that is *why the presumption of innocence is so important* because it directly negates that argument. It says that we presume that the defendant is not guilty and unless and until the State proves otherwise. The mere fact that a finger is being pointed at him, the fact that he is being accused of a crime does not in and of itself mean that he is not telling the truth. That is the presumption of innocence, and that is **profoundly** important in our system of justice.

Mr. Wright talks out the defendant being an admitted liar and giving a false portrayal of himself. And to that end discussion with the Buttrick's testimony, and I will come *back to the Buttrick's testimony.* But I should have you know one important fact. If this defendant had emerged from the **woods** after killing Sarah Cherry would he have given his

name? He told the Buttricks who he was. He did not tell them where he was from. He gave them false information as to that but he gave his name to them and to the police officers. He asked them to help him find his truck. A person, I submit to you, who was in a homicidal state, as the State would have you believe, would not have behaved like a gentlemen.

Mr. Buttricks testimony during the course of the trial *that you saw in State's Exhibit* Number 12 is extremely important for the defense in this case. If you recall the testimony of Mr. Buttrick the defendant behaved like a gentlemen. Helen Buttriek invited him in to have a glass of water. This is immediately upon leaving the woods. They noticed no wetness on his clothing. They noticed no blood. They noticed no abhorrent behavior. They *said he was a* gentlemen. That is profoundly significant because the first contact that he has with people that you can observe yourself and judge their **creditability is one which is** highly **favorable to the defendant. It is one where it is consistent with the defendant's *explanation*** *as* to his behavior on the **day of July 6th. The fact that he gave** them false information as **to some minor points is** consistent with his ***argument and explanation as*** **to the drug use.**

That is extremely important. Mr. **Wright also indicates that the defendant gives** a **false portrayal** to police **officers. I will talk at length** about the **police officer**

type of evidence. But I should have you understand that, again, the defendant did not try to give a false name to the police. He indicated that his truck was missing at the time. *He at no point* indicated or expressed any understanding that there was a murder involved here. What they were talking about for the first days until July 8th was an abduction. If the defendant was involved in a homicide where is the evidence of his knowledge prior to the press telling the public that a homicide *was involved?* It is not in this case. (That should cause you to stop and think and be concerned. His cooperation, the defendant's cooperation with the police officer bespeaks volumes as to his involvement in this crime. He voluntarily answered questions in the police cars. He was held for six and a half hours under conflicting circumstances. police officers say he was under our hospitality; he says he was terrified. I submit if you have ever been in a police car late at night being questioned by officer what is likely to be true? He's answers questions *until he* says he's terrified. Then he answers more *questions* later on, then more questions later on, then more questions later on. He gives the police permission to search his truck. He goes with them to try to find it. He voluntarily let's the police officers take photographs of his entire person; of his arm, of his back, of his clothes, of his person. He wasn't trying to hide at that point. He was

trying to be cooperative in the hope that would set him free.

He cooperated in the search of his home. The detective in the case during the course of the search says he had never seen - he said it was unusual to see a person cooperate in the search of his home. Would a *person who* cooperates in that kind of manner be hiding guilty *knowledge at* the time?

I submit to you that reasonable doubt number one is *that the* defendant himself. If you believe his testimony that in and of itself is enough to find him not guilty. Of course you would be troubled by the physical evidence and that's why where I'm going next.

Reasonable doubt number two is the physical evidence. The only way we can analyze this physical evidence is by looking at and discussing it. The first point I want to bring out under the physical evidence and its contradictory *nature is the lack of physical evidence, Its* somewhat a negative evidence saying the lack of forensic evidence shows that the defendant was probably not involved. I will later show you specific types of evidence that exist in the case that will **show** that he could not have been involved. But the first argument is is that the lack of physical evidence indicates that the defendant was not involved.

First of all we look to his person. On his physical person. When the defendant was taken to the Bowdoinham *police station he* was photographed. I want you to look at

that evidence carefully during the course of your deliberations. The photographs themselves show enormous things. What does it show us? It shows the defendant in the clothing he was taken in on. The clothes he was walking around in the **woods.** **Look** at it. It shows no blood, **no** significant amounts of dirt that would be consistent with a person that had buried a little girl. That is extremely important.

The detective during the course of his entire period of time with the defendant on that day took photographs of those things that he thought were significant. To that end he takes pictures of the defendant's arm, which I will discuss, he takes pictures of the defendant's clothing and he takes pictures of the defendant's back; the so-called scratches there. He doesn't take a photograph of that mark on the back of his arm. He doesn't show you the so-called scratch between the knuckles, not on the knuckles, between the knuckles was the testimony. They **show** nothing else. They don't show the *wet pants. They* don't show the mark on the back. I submit to you that the purpose of taking the photographs was to document things, to document physical evidence, And the physical evidence that can be concluded from these photographs is favorable to the defendant. When you examine that shirt and his clothing it does not appear that this person was **involved in a significant** amount of

digging and burying.

In addition, as to the defendant's person, there is no blood on his person that can in any way be linked in this case. I've talked about that at length. I think you understand that. I will talk about Dr. Roy's testimony when I get to Dr. Roy,

But the fact remains that no blood is upon this defendant. *no* hairs were taken from this defendant which match. No fibers were taken from the defendant's person that *match No fingernails scrapings were* taken from this defendant that match. No fingerprints off of this defendant were found anywhere that match on either of the sticks or at the Henkel residence or anywhere else whatsoever. If you look at the blood and the hair and the fiber evidence it does not in any way link this defendant to this crime.

Lack of physical evidence argument *number two is* the truck itself. The truck, which is noted in Defendant's Exhibit Number 13 and Defendant's Exhibit Number 14 shows you something very significant. It shoes the police did a very **careful job of exhuming evidence from** the truck itself. The **number of** items that were in that truck is enormous. Approximately 150 to 180. A very large number of items. They vacuumed the truck. They fingerprinted the truck. They photographed the truck, They examined the truck. They checked for blood. They checked for hairs. They checked for

fibers and seminal fluid. The truck is empty and devoid of *any indication whatsoever that that girl was in the truck.* Since its extremely important for you to understand that if the truck was not used in the abduction of the girl, then the defendant is not guilty of murder because if only instrumentalities, items, were taken from the truck and used in the murder but the truck itself was not used in the abduction then this defendant is not guilty.

The weakest link in the State's case is the abduction. If defendant did not abduct, if there is a reasonable doubt *as to the abduction, if he can't be shown* to have done that *abduction he's not guilty of the* murder and all the other crimes by that analysis. Only if the abduction was done by this defendant was the murder done *by the defendant.*

What proof ultimately do they have as to that? One of the items taken from the truck is important, the rope, and I **will discuss the rope. But *other than*** the rope being **involved** in the homicide, there is nothing inside the truck itself which indicates that Sarah Cherry was ever in that ***truck. That is important. Because you should,*** *despite* ***what the State officers have*** told you, find something. **Now** maybe you will grant that there was no blood, because **its possible** that there was **no blood. Maybe you will** grant that there were no fingerprints because its possible **there were no fingerprints. And maybe you will grant that there are no**

fibers because it possible that there were no fibers. And maybe you will grant that there are no hairs because its possible that there were no hairs. Jut it must scream at you that there is not one *of any of the above, and* the probability of not having one of any of the above is enormously small.

To that end we recall the testimony from Judy Brinkman, who indicated that on Sarah Cherry's person as she was recovered were a large number of her own hairs. That her own hairs were bound to the rope that bound her up; that her own *hairs were found on her* person. That her own hair was available to be transferred. So there is nothing in the truck at all that would link the truck to Sarah Cherry, except the notebook and except for the receipt. Which I will get to.

Thirdly, on the lack of physical evidence linking this defendant to the crime is the lack of evidence as to struggle at the house. That is of consequence. The testimony in this case establishes that as you go into the driveway of the Henkel residence the dogs bark, that as you look out the *window in* **at** least the living **room,** I believe there are two of those subject **to** what you remember the facts being, there **are windows** that you **look** out from where she was watching TV, **to the driveway, The television is down below and** the baby is upstairs. That **would** indicate, I think, a reasonable

inference is that the baby had been put down after lunch, *that the was* down low so as not to awaken the child. The location of the glasses I think would indicate that they were on the rocking chair and that they were folded neatly. It would seem to indicate that as a vehicle of unknown kind proceeded *into the driveway,* the dogs would respond as they always do, that Sarah Cherry would get up *and look out to see* what was coming up the driveway, that she would take off her glasses and place them down, *and if she* recognized the person *that - - she had specific instructions not to* answer the door, not to answer the phone if a stranger approached, and there is very strong testimony as to that that she proceeded from the living room through the first door and left it open about an inch and a half. That's what the *testimony was from Mrs® Henkel that when she entered the* house the top **door** was open an inch and a *half and* the **downstairs door, not wide-open. That indicates a deliberative process, a specific leaving of the door open** behind **so that it would not** lock behind you so that **the** bugs **would not come in and perhaps you could hear** the child if she **was disturbed, It indicates that she** voluntarily left the *living* ***room*** *and opened that first* ***door.*** *As to* **the second** door, the **evidence would indicate that the second door was open an inch** and a quarter left **behind deliberately for the same particular purposed.**

Would she have unlocked the door and gone out to a *person she* did not know when she had instructions on her second baby-sitting job *not to let any strangers in* the house? I submit to you that is not probable. There is no indication inside the house of any abduction or any struggle. There is no evidence outside of the house indicating any abduction or any struggle except for the notebook, which I will get to.

I *submit to you that the testimony* you heard from one of the officers, I believe it was Reed in reference to the dogs being close to the area where they parked and the d barking gives you idea of what a reasonable hypothesis could be, and that is that the dogs wire barking that we have 190 pounds of ds sore ing at you. *If Sarah Cherry* knew her abducter and the abducter was intimidated by the dogs he would beckon her to come to the vehicle. Or if she **voluntarily went in there for discussion** that would **leave** behind **no evidence of a struggle** whatsoever. **So** the fact, number three, that there is no struggle in the house is of consequence.

Fact number four is important in the absence of evidence pointing to **the defendant. There are no witnesses that observed *Dennis* Dechaine in that driveway, that observed Dennis Dechaine with that girl, that observed Dennis Dechaine whatsoever on that date in question. There are a number of**

witnesses that talk about red pickup trucks. I submit to you that the number of red pickup trucks in that area is large based upon the testimony that you've heard. That red pickup trucks for the most part are indistinguishable from another, and that nobody paid great attention on the day in question. That Holly Johnson in her own testimony indicated she did not know whether it was a Toyota or another pickup truck. tie have some testimony that talks about a person in a red pickup truck with a green shirt on. If that evidence is credible that is not the defendant. Although that tells you more about the reliability of eyewitness identification than anything else, I think, So there are no witnesses, and that is fact number four indicating the absence of physical evidence linking this defendant to the crime.

Number five is the lack of dirt on the defendant, and I've already discussed that,

Number six is the knife evidence. No knife has been recovered linking this defendant to the stabbing of Sarah Cherry, That is of real consequence in this case. The only testimony that you have in the case in reference to a knife is from a statement elicited from Nancy Dechaine during the course of the search at the house in which she indicated she thought that the defendant had on this key chain a knife. There is no knife on this key chain. Nancy indicated in her testimony and that was fully explored by cross examination

that the last time she saw the knife was many months before in April or thereabouts. Is she lying about that? The defendant says he had no knife on the key chain. Mike *Elite,* who borrowed the Toyota and borrowed the Chevrolet indicated there was no knife on the key chain. Its very important. The key chain has no blood on it. If a knife was on the key chain *and* used in the *commission of the* homicide when we are talking about an eighth of an inch wound , unless the knife was deliberately taken off of the key chain and used the fact that there is no blood bespeaks *to the fact that the* key chain did not have a knife on it. The State has not proven the existence of that knife.

More importantly is the fact that no knife was recovered on the defendant. And he was searched on the night of the 6th when he was taken into custody. The evidence has indicated during testimony that they searched the area where the defendant had **been where** he emerged from behind **Arthur *Spauling's house, That they* checked that area** behind Arthur **Spaulding's house with a metal detector,** that they checked ***the roadway with a*** metal detector, that they had a group of trained game wardens **looking for** instrumentalities left behind from the **defendant, and they did not** ***have such instrumentalities.*** **So number 6 is the** fact that there is no knife. **The** absence **of physical evidence.**

Number 7. ***No items from Sarah Cherry*** **were found. To**

this I refer specifically to her panties. They don't exist. They aren't in the defendant's dominion or control when he's arrested. They don't exist inside his truck. They looked in the woods for items that were left behind, and they found them not whatsoever. That should be a reason for you to stop and pause and think.

Number eight. The defendant has no connection whatsoever with either the victim in this case, Sarah Cherry, or with the Henkel residence. The fact that there was an absence of a connection makes the possibility, the probability, the likelihood that the defendant did this deed remote. Again remote things happen in the real world, but the fact that it doesn't is of consequence. The fact that *there is no connection is a significant fact. It is of* significant consequence in the case. There may be *other* absences of physical evidence that you will observe yourself. This is a list of items I consider to be important, and I may have missed one.

But there is an absence of physical evidence linking this defendant to the commission of the offense, of linking the person to the offense. I will concede that the truck, instrumentalities from the truck, items from the truck were used in the offense. That is I believe proven by the State, that items taken from the truck were used in the offense. But there is no **indication** that the truck itself was **used** to

do transport, in which case you have no abduction. If you have no abduction the defendant is not guilty of the crimes charged. You have nothing on his person. You have nothing of consequence whatsoever linking him to the offense other than items taken from his truck.

The second major argument under the second reasonable doubt as to the physical evidence is the contradictory physical evidence which has been produced in the case, which will excuiptate or prove this defendant not guilty. Number one, is two hairs found on the victim herself. There were two brown hairs - you will recall the testimony by Judy Brinkman that were taken off the victims person. They were not her own as you will recall that testimony. There is no link between those and this defendant whatsoever. No testing was done. The presumption of innocence I would indicate to you and the way that police do their other business would indicate to you that a reasonable inference, a reasonable conclusion to be drawn from that is the reason that they weren't testified to, the reason that they weren't explored was because they don't match. So we have inconsistent hair evidence on her person.

Number two. Defendant's Exhibit Number - it did not get introduced do evidence. But it was discussed. Number two is a fiber found between the struggle site and the victim's body. If you will recall the testimony it is a red or pink

polyester fiber that was found on a tree by Detective Gallant that I asked Detective Gallant about. That Detective Gallant testified about - that Judy Brinkman testified that it matched nothing, that it matched nothing on the defendant's person and it matched nothing on the victim. He marks this, to the best of my recollection, with either this red other dot, which I believe it is, or perhaps that one. One of those two red dots indicates the location of where that pink fiber was found. This green marking indicates where a site of a struggle took place. The fact that there is a fiber of synthetic quality between the struggle site and where the body was found - *Dr. Roy* testified that the body may well have been moved is profoundly significant. Because it is in in direct contradiction of what this defendant had in his possession, what the victim had on her person, and it must have come from whoever had done the deed. And it could not have come from the defendant.

Hr. Wright may argue or you may conclude it was just a random polyester found on a tree near the body and it has no more weight than that. I submit to you that in the woods, the deep woods that we have here, it would be unbelievable to find a random polyester fiber of red or pink color that is not connected to this case. Contradictory physical evidence is fiber on the tree.

Contradictory piece of evidence number three is

Defendant's Exhibit Number 23. You will recall the testimony from Judy Brinkman, the forensic chemist. She indicated she received a pile of debris, a large pile of debris that buried Sarah Cherry's body. That in *that pile of debris* there is a little tiny piece of metal, marked Defendant's Exhibit lumber 23. I want you to very carefully look at this when you go back and deliberate in the jury room. It is a little speck of metal about a centimeter by a centimeter. And that little piece of metal is inconsistent with anything that the defendant had on his person. That it is apparent from Defendant's Exhibit Number 23 that that piece of metal was left behind by the perpetrator; that the perpetrator left it behind during the course of his burying the body; that that little piece of metal, number 23, establishes that an item was left behind. **You** look at the little piece of metal and determine what it is. There is no testimony as to what it is, but it's a reasonable assumption it's a piece from a set of glasses, If **you** look at the swing part on a metal piece of glasses, the piece can **move** back and forth. If that piece was broken off it would be consistent with 23. Whatever you conclude about 23 it doesn't matter. It is absolutely certain that it is then inconsistent with *anything that the* defendant was wearing at the time or anything that the victim had on her person. Since it's a metal piece found on top of the body it's clearly left by whoever did the deed. If it's

inconsistent with the defendant he did not do the deed, and he's not guilty of any of it.

That is physical evidence that you can look at and understand and examine yourself.

Number four, physical evidence that contradicts the defendant. Number 22. A cigarette. Now you've heard testimony about a cigarette butt not having amylase on it, therefore it was therefore old. You heard other evidence indicating it was not wet. That the cigarette butt was found in the proximity to the truck before the scene was contaminated. That that is a cigarette butt; that's number 22. What type of butt is that? I tried to establish another kind for a variety of reasons that are no longer relevant. But it is clear that the defendant smokes Vantage cigarettes, that he had Vantage in his truck. That's all there was and *that's all he* had access to. Now, the officer indicates that he finds that cigarette butt, number 22 where the red dot is, althoagh he wasn't sure if it-was on the driver's side or *passenger side. I submit to you that if it was found on the* passenger side it will be very good for an argument that I better get to. Nonetheless, a cigarette butt inconsistent with the defendant is found at the scene. That means that it was left by the perpetrator. He didn't do it. The defendant could not have left behind a Winston Light; he was *smoking* Vantage. Unless he has a mixed package, which there is: no

indication of it, is a reasonable conclusion that based upon the hair evidence, which is contradictory fiber evidence, the metal piece, which is contradictory, number four is the cigarette butt.

Number five of contradictory evidence are fingerprints. I have discussed before the lack of fingerprints. Now I want to bring your attention to the conflicting fingerprint evidence. Its two-fold. First, at the Henkel residence. These could be anybody's. They could be John and Jennifer Henkel. There is no doubt about that. They can be the perpetrator's. We do know they are not the defendant's and they are not Sarah Cherry's. They are contradictory fingerprint evidence.

Secondly. You heard testimony from John Otis that the prints on the paper that were found on the passenger seat, I believe two of them, subject to check, two of them found on the passenger seat were not the defendant's fingerprints. That is found on Defendant's Exhibit Number 48. That there were fingerprints that did not match the finger defendant's on 48 and 58.

So the contradictory fingerprint evidence indicates that this defendant is not guilty of the offense.

The truck being locked, I will discuss that at length later on when I get to my ultimate conclusion. The fact that the truck is locked is of consequence. The State would have

you believe *that the* truck being locked indicates that only Dennis Dechaine could have done the crime. I submit to you that the truck being locked proves that he did not do it. We know that Dennis Dechaine does not have a habit of locking his truck. Fine. We know that he's found with the keys on him at the time. Fine. We know that at the time when he's first questioned he says he doesn't have the keys on him. That he hides them in the police car. Fine. What we do know factually is that in order to lock the Toyota pickup truck you must do one of two things. One, you use the key or, two, you push down the lock and you hold it in. Its a Japanese truck; they are designed so you can't lock your keys in.

In order for the State's theory to be *true* the defendant *would have had to* do the following. In order for this guy to be guilty he would have had to abduct the girl from the house, he would have have to drive down to Hallowell Road, go down here, jumped outside of his vehicle, go around to either the front of the truck or the back ® he'll go around the *truck - he'll* have to take out the girl either bound or not bound at that time, and he'll have to carry her across the roadway because her feet are clean, as you recall. He'll have to carry her across the roadway with the rope that was dropped behind right here. He would have to have been *carrying this, had to be carrying* the scarf and bandana, and **135 pound Dennis Dechaine has to be carrying 92 pound Sarah**

Cherry across the road.

What he would have had to have done if he locked his vehicle is when he got out of his side he did a non-habitual act; he got out and locked it went around taking her out of the vehicle, not dropping any debris because only the cigarette butt was found. He'll have to pick her up or drag her. Even if you dragger her he'll do the same thing; that is go to the truck and lock the door, physically making a conscious decision to lock the door at the time.

That does not make sense. That is *inconsistent. The* only other way that that could have happened is for him to have done the deed, go back to the truck, lock it, and go back to the woods and get lost. And I submit that is *inconsistent with what the* probabilities *are in the real* world. So inconsistent evidence that the defendant did the deed number five is the locked truck.

Number six is the dog evidence. Inconsistent. The dog evidedce, as you heard explained, was from Thomas Bureau. Thomas Bureau indicates, as you recall, at the end of my cross examination, that he cannot state whose tracks were followed. He does testify as to what he did find. at he finds - basically his marks are drawn on State's Exhibit Number two. He indicates that he gets the dog over to the truck. That the dog happens down to a circular motion and comes back to the truck. That the dog at that point goes

around to the front of the truck. And his testimony at that point was I circle around the truck with the d and he indicated here, noting the marker next to the drives side, But I brought him around the truck again and there was no indication across the front. His testimony is there is no dog track across the front of the vehicle. The dog did not sniff any tracks in front of the vehicle. So I brought him back to the passenger: door because gets no other scent from the driver's door going to the passenger door, where he indicated and he picked up a track at that location which came in this direction right here where the blue line is being drawn. Of course that night there were cruisers lined up across the road and people walking all over the place, which is important for this reason. I submit to you that the dog trail is accurate, that he did sniff this way but this is broken because there are police cruisers here, that there are all sorts of other activity that is going on there so he can't sniff across the road. But he does pick up a trail. He follows it in, as you recall, across the blue line here' ultimately leading the next day to the discovery of the rope. He gets to the stream and stops the first day because, as the officer explained, the dog was not familiar with body scents, On 7-7 that's what he finds. On 7 ®6, with the scene being contaminated with people walking across the plastic strip in and out and out and in, we don't know. It's very important,

and I will get to that later.

I want you to understand that the dog track evidence. is two-fold. Its either in and out or out-and-out or in and in. Its inconsistent with one person. Unless that person went in from the truck and then out to another vehicle. I'll get to that. But its inconsistent with Dennis Dechaine going from the truck into the *woods doing the* deed and then getting lost in the woods. The State, in order for their theory to be true, would have you understand that the defendant went into the woods following that blue line on 7-7, did the deed, went back to the roadway, which is a scant 150 feet from where his truck is parked, not be able to find his truck, then goes back into the woods and get lost. I submit to you that the dog evidence is inconsistent with the defendant's guilt based *upon that theory* there. Reasonable doubt conflicting evidence number* six is the dog evidence.

Number 7 is the knots, During the course of the trial you've seen a lot **of** rope testimony, You've seen testimony that the **rope** taken from the back of the defendant's vehicle **is consistent** with and in fact came exclusively from, was matched to the rope that **was** found in the woods. We have **no** dispute with that. That evidence seems fair and accurate. **Its probably true, You have seen a** ***number of items*** **which have been brought** before **you, which are in the nature of physical knots** that were tied by the defendant, Half hitches

and double hatch half hitches all over the place. They were I taken from his barn. There is a photograph during the course of the search that shows these ropes to indicate to you that the evidence is reliable.

I would turn your attention to that, Number 34. It's the knot right there. This knot right there indicates this defendant did not commit the offense. I'll show you how® The defendant has a habit of tying half hitching or double half hitches, which is a pretty good knot. Its a quick knot and a strong knot. It's not going anywhere. The rope that the defendant has in the back of his truck is consistent with the rope that found between the truck and the body.

This is the rope in the goat pen that they seized. Mr. Reed describes it as a noose in part. The rope I submit to you that was found between the truck and the body are half hitches. The defendant indicated in the direct case when I asked him about it says that he keeps them tied up for putting down cargo. If any of you folks have pickup trucks or have friends that do, its not unusual that you use them to hold down cargo on a regular basis. I submit to you that the knots found on the rope between the truck and the body are the defendant's knots. Entirely consistent with the defendant's knots, It's consistent that that was a precise pre-existing rope in the truck, The rope in between the truck and the body has the knots similar to the defendant's;

indicating a pattern and habit of tying the same knot. The ones that bound the very little girl's hands. I would ask to look at it carefully. That is junk. It's not a real knot. It's not a lark's head. It's not anything. It's a messed up granny knot that was tied to the little girl's hands. I submit to you that a person who is in a panic situation tying down a girl's hands in order to gain control over her so he could do abominable acts to her would do the knot you are most familiar with. You would tie a good knot on a regular basis that you are used to. Then at a time of extreme crisis *and extreme importance tie* something that is entirely unfamiliar to you.

I submit to you that the knot evidence will set this defendant free because it establishes, and it is an *indication that this* defendant did not commit the act of murder; that instrumentalities taken from his truck were used to commit the act of murder, and that means that he did not do the crime charged. Conflicting evidence number 7 are the knots.

Conflicting evidence is Exhibit Number eight. The tire tracks. You heard testimony from Detective Otis saying 52 and 51 are similar to what was found on the defendant's truck. You heard him talk **about** *fingerprint* evidence saying where there is an *insufficient* match that the evidence has very little probative value, That the ***indication*** *is that*

when you can't make a match on a fingerprint you can't talk about the evidence, These items taken from the defendant's truck are matched to a plastic plaster cast, and his conclusion is that it appears to be similar to what was found on the defendant's truck - the Henkel track was similar to what.was found at the defendant's truck. What he doesn't tell you is of consequence. That is is that the defendant's two back *snow* tires, which *there are photographs in* evidence and I ask ask you to look at those tires, would not likely leave behind tracks which would be distinguishable which would be observable and which at that time would prove that the defendant's truck was in the driveway. The fact that those tracks are not there from snow tires is inconsistent with that truck being in the driveway. The fact that we have a partial comparison between the tracks on the left front and the defendant's vehicle has very little probative weight. It could be any truck according **to** him- But the fact that the other three tires don't match anything that maybe seen in the photograph, State's nine, should scream at that you that truck was not used in the commission of this homicide. Its a doubt which is rational. Its not made-up. Its not whole cloth. Its real, Its tangible, If **there were snow tire tracks here they would have told you about it. There are not. That's exculpatory evidence which leads to a reasonable** doubt.

The physical evidence to that extent shows that the defendant, one, was not involved because he had nothing on his person or nothing in her truck. There is *contradictory* physical evidence consisting of hair fibers, a cigarette butt, fingerprints, a locked truck, dog evidence, and that shows this defendant is not guilty.

What did happen then? Its not the defendant's burden solve a crime. It is not the defendant's burden to establish for you who did the deed. As good evidence as would be if we were able to do that that is not our responsibility. It is not our ability.

What does the evidence show on an altern tive h othesis? at is reasonable? What is logical? What is consistent ***with the physical*** evidence as we know it? That is that the defendant was dragged into the coo ission of the offense by instrumentalities taken from his truck at the scene being used in the commission of the homicide, and then the notebook and the receipt being left behind. What possible **proof** do I have for that? It's an examination of the evidence. First things first. The truck itself. The truck is found at midnight. The time of death of Sarah Cherry is unknown. So during the period in - yes, we are talking between noon when he received the phone call from Mrs. **Henkel** to the discovery of the notebook at about 3:35. There is a three and a half hour time span. The defendant's

truck is available for being used in the commission of the offense for a limited purpose. Because of the defendant's drug use he's not entirely sure where he parked it, which means his truck was available to be ransacked and to be used.

Turning your attention to Defendant's Exhibit Number 7 and O F which are the photographs of the inside of the truck. These indicate, according to the testimony, that the tampon box which was in the glove box was taken out and that it was placed on the driver's side; that it was empty; that a tampon from that box was underneath. I submit to you that that evidence indicates that someone else was in that truck; that somebody else ransacked the truck looking for items, looking for a rope, looking for a scarf and looking for instrumentalities to use in the commission of the homicide. The fact that the truck is in this condition is an *indication* that somebody else has been in the truck.

Now, if you say that other person is Sarah Cherry I *submit to you that there would* be other evidence of her being in the trucks hairs, fibers, something that would be in *the* truck. The fact that there are two fingerprints of an unknown person on the passenger side on those paper is indication that the person went through the glove box, went **through** the paper box in order to find instrumentalities from *the truck.*

I submit to you that the location of the notebook is *an*

indication that somebOdy else put the notebook and put the receipt at the Henkel driveway. The reason that I'm arguing *that is this. If you* look *at the* testimony in the case, the left front tire of the car, the tire mark which has been identified by the State as the perpetrator's vehicle went that far. The left front tire is their theory. The notebook *is out in front of the left front tire mark on* the driver's side, not on the passenger side. I submit to you that it is illogical in the extreme that the notebook and the receipt would have come out of the driver's side if the girl was abducted at the house. It most likely would have come out of the passenger side, not out of the driver's side. And it is extremely unlikely *it would be in the left front part of the* truck. It's more likely it would be located on the right-hand side near the passenger side where the **alleged struggle would take place.**

Something else is profoundly troubling out the **notebook and out** the receipt. That is this. Out of the **180 items that were *found* inside of that truck,** how **is it that only two items are found at** *the* ***Henkel residence, both of which are linked directly to the defendant. The first one with his name on it and the second one a notebook of some significance with a stamp on it that links the defendant to his checking account number. The physical world does not work in that probability.***

It°s more likely that what would have happen during the course of a struggle is **some** of that junk would have been dropped out, with no association to the defendant. The fact that it it is located in the **wrong place** and the fact that it is two items out of hundreds of items without his name **on it.** Both of these items have his name on it bespeaks to the fact that it was put there by a human force.

The dog evidence seems to indicate, *as I* tried to elude before, that another person was involved. As I say, I don't know how you read these, whether this *is in in or in out. In* either case it indicates that the defendant was not involved.

The alternative perpetrator, *perhaps somebody who* knew Sarah Cherry, went to her house. She sees them comes down leaves the door open a crack. She either voluntarily gets into the truck or to that other vehicle or she does not. She is forced in there. **She is** in the truck now. She is **brought down to the *Hallowell Road, I insist to you* again** that **this line across the *road is not accurate*** *because as the* ***officer*** **testified himself there was so much confusion on** that **road with police vehicles going back and** forth that the dog scent had to be picked up here. **I submit to you that a person could have parked either here at the black line or here at the blue line with Sarah Cherry in the truck or in the vehicle. That the person, for whatever reason, has taken Sarah Cherry. That at that time she is intimidated, she may**

be already stabbed at that point because *Dr. Roy has* testified that the scarf is not *placed upon her until after* the stab wounds are administered. That is very important evidence because if you recall he said if there are no holes through the scarf indicating she is scabbed then tied up which could very well indicate she was stabbed prior to access to the truck, *which means that the* defendant is not guilty. All cases, according to this arguments the defendant is not involved.

That whoever did the deed pulls to the opposite side of the Hallowell Road, sees the defendant's truck and realizes he needs something at that point in order to facilitate his crime or her crime. That they go to the passenger side. And note that there is only a trail from the passenger side. We don't know whether that is in and out or not. We know there is a direct line that did not go around the front of the truck, that did not go around the behind of the *truck, that* leads from the passenger side back to the roadway. I submit to you that instrumentalities from the truck were taken at that time, not earlier. That she was not bound earlier because of the location of the rope. If she is already bound when she is at the Henkel residence there is no need for a second rope because she is already under control. The only way there would be a second rope is if she wasn't under control. **So you** grab another rope. So its probable that

she is is not bound until the area down there in the woods. So a perpetrator, a second perpetrator or the perpetrator, the guy who did it or the woman who did it is somewhere on this side of the Hallowell Road, goes in and ransacks the truck, takes the scarf and rope and other instrumentalities. What does Sarah Cherry do when she was in the truck? We don't know. Did she run? s that the second line? I don't know. Was she carried into the wood? Doctor Roy said he made no *notations* on the bottom of her feet, Which would indicate that she was probably carried. That there were no *significant t bruises or lesions on* the bottom of her feet, so we d't know. For whatever reason, either because she voluntarily entered the truck and finds herself two miles away its the only way back to the Henkel house. She knows she shouldn't have left the child. She was terrified with a **smack to** her face because the evidence indicates she was hit *at that point.* We don't know, Whether she was stabbed at that point **or merely** terrorized at that point; we **don't know. She may have** been **in voluntary company** at that time; we don't know. In any **event,** the dog track evidence indicates a **second person was involy ;** that there is an in in or in and out, to tt extent its not **Dennis Dechaine** that **committed this offense.**

The truck is ransacked. The **notebook and receipt are in *the wrong* place, and the dog evidence is conformity. The**

doors are locked. It makes sense if there is a person involved in this that its not the defendant; that they would ransack the truck, that they would go and commit the deed; that they would return via the black line; that they would look around and realize there was nobody else there; that they would go to the the truck to find an item to set somebody else up. Because it is entirely possible that the police could go directly to another person who is associated with the stamp, who is associated somehow with the possibility of being *involved* in the case, and that there would be a motive at *that point to* cast blame on another person. That would be an explanation for grabbing the notebook and an explanation for grabbing the receipt, which has some other person's name in it. That they go back to the Henkel residence and they leave the notebook at that time. Why **would** they risk going back **to** the Henkel residence to **leave** the notebook? **One reason** is because Sarah could have told them that Mrs, Henkel is not due *back until three* **o'clock. We know she was told at three o'clock, A second reason** is that they could have **driven** by a couple of times.

the testimony indicated, there was a **lot** of red truck activity around there. That at that time that they could **have driven** by once and **looked** in the driveway and realized nobody was there, driven up the driveway quickly, thrown the notebook and the receipt and gotten out of there, That is

consistent with the theory that the defendant did not do this offense.

Reasonable doubt is the defendant after character the evidence. And why would the defendant be set-up like that? That is because if a **person** has a motive to do a deed like this, because they want *to sexually abuse Sarah,* because they wanted to speak to her, because they were there to burglarize the Henkel house. If she knew *the* person involved as the evidence indicates she does because of lack of struggler that person would be entirely motivating in casting blame on somebody else. Because if that person knew *Sarah* Cherry and if Dennis Dechaine did not, and he happens to be in the area, then there is a perfect and logical reason for setting hi up, To that extent the evidence fits.

Drugs. A very difficult aspect of the case. It cuts both ways. It is a two-edge sword for the the defense. On the one side we are desperately *concerned that you* the jury will say it drugs. That explains everything. Its drugs. It must have been drugs. Drugs made him do it. Drugs are **involved,** We *don't have* ***to*** think too deeply its drugs, If that is the case, you use a shorthand of drugs for explaining everything that happened then I submitted to you that the whole two weeks here has been a waste of time. And I don't think they have been, **The** drugs do allow you to conclude that this mild-mannered gentle and peaceful person went on a

wild homicidal spree because of drugs. Its inconsistent with his entire life to be on homicidal spree. its inconsistent with his nature and character, and its *inconsistent with common sense in* the sense that there are no pressures on *Dennis* Dechaine's life during this period of time.

If you recall his testimony, the testimony was how wonderful the weekend had been. How he was at a relaxed point in his life. How he wanted to extend his time, extend his vacation by using drugs. That is not consistent with a homicidal act which involves some kind of major trauma in a person's life leading up to some homicidal act. But if you use the shorthand of drugs there is *nothing else that c be* said. But it is inconsistent and not logical and consistent with the evidence.

Mr. Buttrick on the tape says he's was behaving normally; he was not in some *kind* of drug-induced rage at that time. He knew where he was. All witnesses have testified that he was oriented as to time, as to place, as to manner, as to location. He was a gentlemen. A person who is in a drug-induced murderous state does not come out of the woods and offer to help you with your groceries. A very kind person like Mr. Buttrick and his wife, Helen, do not let drug-induced crazed murderers come into our house and have a *drink of* water. Its inconsistent. His response to the

police officers, however * is consistent with a person who is high. Not crazy high but high from the use of drugs in which you would be more alert, you would be more frightened, and that sore ing at you would be more profound at that time.

I submit to you that the drugs are explanation for everything that happened to Dennis Deohaine on the day in question, That is another complete explanation for why he reacted as he did and why he went into the woods.

We know fr testimony that his wife Nancy would not tolerate him using needles in the house. We know from his background and experience that he°s a nature oriented person; that he likes the that he likes nature, that he likes raising so We know f r his background * we n *<< from his personality, we know fr., his prior history that it makes sense tt he wld not do drugs at his house. That if lee°s tending his vacation he would go the route he traveled, that he would go to look for water fowl. Since the tide is out he doesn°t see any. He had discussed previously, as you recall, with Mr. Dennison, the location in that area of fishing holes. He would go into the woods to walk around, submit that some of you have probably gone to the woods and walked around.

Now, none of you have probably gone to the woods and used amphetamines. Some of you have probably gone on nature walks. Some of you in college may have used marijuana in

the woods. Maybe others of you at other times have walked in the woods in order to experience what the environment is like. People do that. It not an uncommon phenomena, particularly a person like Dennis Dechaine who is associated deeply with the natural environment, It makes sense. Its logical why he's in that areas

submit to you that the drug evidence cuts both ways. All the evidence indicates that he was wide-eyed. All testified that he was nervous. None of the evidence *indicates he was* in a psychopathic or homicidal state. Defe **t' Exhibit Humber five** is a photograph of his arm. There is a blowup of it. You heard the testny of Dr. Roy saying those aren't nle rks. I ask you to l k at th yourself, Sir+ of you have experience with these kinds **of issues. Look at** that, Is that consist or inconsistent with a tract mark? If **it is inconsistent what is the explanation for** that? Is it a bruise take he **got walking around the w or** is that **from Sarah** Cherry **somehow? I** submit **those are tract rka? You look** at th°, u' 11 **know them when you see theme**

Dr. *toy hif* elf indicated and used the word ph et ne r peat ly how that could come out. His conclusion was *less than favorable, but he did say it could be consistent* * *Look at it. What else could it be?*

So the drug evidence hurt, of course. It's a char cter

flaw in Dennis Dech inemm it is one thing that the State has pounded and pounded and pounded and *pounded at again and* again. He does have a character flaw. He did use drugs. He did use drugs during the period in question, its over the **line. Intravenous use is over the line. Its not something** *that people normally have* experience with, But I would submit to you that if your first exposure to a substance such as coke in Madawaska, Caine *occurs* amongst friends with intravenous drug use, that is your first exposure that once you have crossed that line once you have gone *over and made* d *ision to us drugs cocaine, that the decision to* use a needle as **instrumentality** is the s e baggage: the e e There way no free-basing co aine beck at t time that Dennis Dechaine is doing intravenous drug use, The *nu r of times that has done this is very* al But if *you know anybody who has* **over** used intravenous drugs you will *know, based upon* **your own** experience **that** there is a certain **a lurk about it, There is a certain fascination with i** There is a **certain physical** ***reaction,*** *It has the hi h is* **very different than other kinds** *of highs, That if you kn* **anybody who has ever had experience with a needle just showing them a needle will make the hair** ***on their*** **neck** ***stand*** **up, It's ethi ng very different from anything else, So it** ***makes sense he would have a lure for it or itch for it,***

That does not mean he ***killed*** **and murdered and tortured a**

little girl. This fellow that you heard testimony about that has fainted at the night of blood, You heard testimony about his reaction to violence. You've heard testimony to his peacefulness. The conclusion you can draw from his reputation being a peaceful and gentle person is totally inconsistent with the crime charged here.

The evidence in this ce in regard to ***sex*** *is that he was having a good sexual relationship with his wife at the time of his incident. He and his wife had very tender relationships. That if Mr. Wright tells that you the motivation for this crime is sexual with sticks, it is extraordinary abhorent for this individual who at this time* his life has everything going well. Th is no logical tional explanation as to why he would go into *homicidal* rage ~.• abuse that little girl with sticks. There is no logical explanation for it. its absolutely inconsistent with his personality, and there does appear to be no reason for it. His experience with drugs was one of heightened awareness, not one of loss of consciousness. Recall when he was **interviewed** at the jail he said he has never experienced a memory loss. He has no exact recollection of the roads he was traveling on or the exact times he was traveling because nothing of consequence happened on his day. He has **no recollection** he says of **seeing** Sarah Cherry°s face. There is contradiction with those admission statements. I will get

to the admissions, But he has testified to you. and his wife has testified. that when the picture was flashed he had **no conscious memory of** it, Not because his memory was impaired. but **b ause** he **had no experience in doing the deed, You cannot rem uer something that you never experienced. Saying that** he does not remember implies that he did it. He's *presumed to be innocent. The* ***reason*** *he cannot have a recollection of it is because he had no experience of it not because he's blacking* it out. not because he's trying to hide *it but because he didn't do it. That is what the evidence* h s in **this case.**

The a iasions, You either believe him or you don The def nd t **says** those are not true, That is not h said things, Thts not how it *ca e out. How do you weigh* **it? How do you balance it? You look at** each one **individually. You've got a series of admissions from the time he walks out of the woods until the time** he testifies **in the Court. The first series of a admis ions or statements** he ***makes is to the*** **Buttricks. Some of those are not true, He** ***says he*** **s not from the right place.** ***He says that he was*** **fishing. That's not true, But does say his n a s asking to find his truck.**

The second set of admissions come from his experience ***being held in uestioning by police officers. That testimony*** **is contradictory. The testimony. particularly of** Deputy ***Re***

is important here& I submit to you it makes no sense that dark Westrum, a 1 ear experienced detective, who at 9:3 in the evening knows that there has *been* abduction at that point would leave the sole suspect at that time in a vehicle for questioning purposes with Daniel Reed, a one-year officer at that point for any other reason than to play Mutt and Jeff. There is no other logical explanation as to why he left the vehicle& He left him with Reed so Reed could go to work on him. Its con, Its not unusual whatso ever& Dennis Deehaine coming out of the *woods* is led like a 1 into the police vehicle where he is alone * where he is *isolated * where you have Reed, who is a big you saw him* turning around and saying where is the *girl,* Dennis? What did you do with her? Questioning him back and forth * doesn't make any sense that experienced police offic **like Westrum would leave** the vehicle for any other **reason *than to let* Reed go** to **work** & **That's exactly** what **happened** * ***The defendant is being racked with waves of accusations of* kidnapping and abduction of** a **girl for** which *he* has no idea **what is going** *on at that point&*

So after he gets terrorized by Deputy Reed he asks not ***to answer anymore questions*** * **He asks for a lawyer** * **And this should be s a~«ething that goes to the weight that you accord *to all of these statement. Re's not given one, They say he* would have been allowed to leave at any time& You heard his**

testimony, Do you find that believe that he would be allowed to walk out and go home? He's in the woods in a police car at 9:30 to 4 in the morning with a break to have his pictures taken, He asks for a lawyer once. He was requested after that. He doesn't admit that he did it that night. *He didn't* say, *yes,* I murdered and killed Sarah *Cherry.* He doesn't say what is inside of me that made me do that? He's questioned by a number of people, including the experienced h icid detective that finally comes down later in the evening. He's not out of his mind because they take him to look for his truck and they foil his directions, go here and there. And they c't find it.

Then he's k by Detective Hendsbe:' whether or not s to wer questio s. He says yes. You seem like a *nice guy, You aren't screaming at m,. I'm not worried ab* ***you. I°m not intimidated by you,*** *He answers the questions* ***to the best of his ility. That is not consist at any time with a person who is hiding the fact that they did abominable act.***

He's trying to cooperate. He gives *them permission to* ***go into his truck.*** *Re* ***gives them*** *permission to look at his body and asks him* ***questions and he answers the questions,***

They let him go home that night. When he goes home he is a wreck. *He's* ***in the police car from 9:30 until 4 or 4:10. He goes home and he's a wreck. They had at that point***

half convinced him what is up and what is down, You have saw the cross examination by experienced professional lawyers. We are not talking about those kind of questions. There is no judge in a police car saying Officer Reed, no, that is hearsay. **No,** that is **objectionable. That** is not what happened under police control. And you know better than that, He was terrified, They had him get to believe through *technical procedures that he was in the woods, that he wasn't* sure what road, that he didn't know where the notebook came from. It makes perfect sense that his reaction of discombobulation at the time.

He goes *home and talks to his to his wife.* He doesn't take a shower because he's not thinking like that. *thinking they are* thinking I did something terrible, which is a kidnapping. He's not thinking they think I did the murder. *He's* ***not saying*** **that.** There is *nothing of that at the time.* **He's thinking I did a kidnapping. They are telling me I did a kidnaping.**

Be goes next morning and he puts his clothes in a laundry **bag. And there** is nothing that he asked his wife about ***washing his clothes, w under police custody all night.*** **If there was anything on** there **they would** have observed it * ***They would have written it down, They had photographs, They would have talked to you about it. He had been in Madawaska and the laundry hadn't been done, He had been cooperative***

throughout. He was cooperative after the time of the search. He's not hiding anything whatsoever.

So the next day he goes and sees a lawyer. He feels better. But he's still upset by the whole thing because he knows he's a suspect, He knows that a search was underway. The girl h not been found. But he hopes that she is found and comes home and everything is okay. Then 1'11 be fine.

Then July 8th comes. On July 8th his roommate goes out and gets the paper. The girl is not kidnapped alone. She murdered. She is killed. It blows him away because he knows that the *h at is going to come down on him. He's the sole suspect is what he's told. But* he cooperates *with the search.* ℞i doesn't make *any statements that incriminating at that time, but the State would have you believe that he goes into the jail and gets booked and talks* ***to a doctor and then*** *gets questioned, Has* ***a discussion with Mark W t , a person that was*** *there the night before that* ***he knows is his accuser, that*** *he* ***knows only from the*** *night* ***before, that he doesn't even know his name, and makes statements and admissions alone with nobody else*** *present. The* ***State would have you believe*** *that that* ***evidence is sufficient to convict him of*** *the* ***crime,*** *for which* ***no*** *better* ***proof exists than one officer's statement?***

The fact that Mr. Carlton, the lawyer, shows up at the jail and wants access to his client is slough off, ***What***

does that tell you about the weight to be accorded that evidence? What type of system are we living under where you people allow that kind of evidence to be used. if you people **give that evidence weight, then we are all in trouble, people, because you** are the **ultimate defense** of our liberty. If you let the police do that kind of bidding and make those kinds of statements when there is no other proof, then you *are going to hear it* in every case.

MR. W G : I would object.

THE COURT: Sustained, You have five minutes,

MR. CO O Y:

The other admissions at the jail I would object tom The defend t testified to the problem with putting a defendant on the witness stand is this. If you believe h no probl -;!. ***If you don't believe him though*** *then he must be* ***lying*** * *If he must be* ***lying he*** *must* ***have done*** ***it.*** *Every* ***accused*** *in* ***every*** *c e at* ***every*** *time in this country has* ***lived*** **with that choice. He has c. e before you and he** has **looked** ***at you and he's talked to to you and you have the opportunity to ta the measure of the y ou've seen witnesses that*** c **for d and they are inarticulate. He's** a **good person** * **he's of strong character, He can't kill his chickens. I submit to you that the horrifying nature of this crime** ***explains to you that he could not have done it. The physical***

evidence in this case indicat that he could not have done it, explanation as to how it may have been *done,* although I cannot tell you by who, explains that there is reasonable doubt.

You are going to go back and deliberates And I have things I wish I told you that I forgot to, but it doesn't tter. You will doy ;.;r job and you will do your duty, then you will be done. At some point you will look back and sa don't rem er who those lawyers were, but it was an interesting case, I don't remember the case and I don't remember the details, That doesn't matter either. °'he duty t h t you do for the *n t hours or days or however it long it* t es y .,: to reach a decision iw what is importan

In thi country we have a series of laws that the judge will give you. He again will discuss the presumption of innocence, which still applies from the beginning of the case right through your **deliberations,** sir Willi: Blackstone in ***his cd. entaries the laws in his*** **fourth book had discussed *the importance of some of these issues that I've ungracefully* discussed with youi And he indicates that in balancing on *how we make decisions in* the criminal process and what is import t and what is not important he tries to put it in balance. He tries to reach a conclusion as to weighing things on *shifting evidence, of sifting through it and* deciding the value to be accorded and what presumption and

what weight to be given to it. Sir William Blackstone states it's better that ten guilty persons escape than one innocent shall suffer. The balances in this case are close, people. You ***see*** *that* ***the evidence could*** *be interpreted in favor of the State. You see that there are arguments against it. The balancing process that ultimately leads you to a conclusion, it is not insignificant to understand, that that weighing pros ss tilts strongly in favor of the defendant. That the inherent nature of our system requires that, Its not* ething like in baseball where a tie goes to the runner. **s far nor signifi ct than that. Its far more impor** that. **I think you understand** it, I'm not trying t- talk **down to y. It**s. just **my obligation to** do the *can with the evidence that is in front of you. I think you* ***know what is in front*** *of you. That* you *understand that* ***this h not been proven guilty beyond a reasonable doubt. During the course of your deliberations I ask you to hold to that thought. That two plus two makes four, And I thank you putting up with it all.***

E COURTS Thank you Mr. Connolly *.*

E = Mt Mr. Wright.

MR. WRIGHT: Ladies and Gentlemen of the Jury, do not think for a moment that I feel any less stronger than Mr. Connolly to the right of a fair trial. And because it's not y style to shout at you for an hour and a half does not me

that I believe that less fervently than Mr. Connolly does in representing his client, But recognize what he says to y, although he will not stay it directly. It is the State's job to prove that the defendant is guilty. It is not the State's job to disprove the possibility that somebody else could have done it.

Connolly begins by agreeing - these are his words that it's unbelievable and extraordinarily unlikely that there could be such a set of circumstances as these and lead are else but to guilt. And yet what he says to you is, in substance, the theory that mere speculation i3 magically turned into absolutes and so bomes reasonable doubt

Every picky little point that could be *found with. eight* the o study is transformed into a reasonable doubts as if *any one of* them makes any little bit *of sense this* defendant *could not have coil* tk itt the crime, He quotes Einstein as if this is a **world of** science **laboratories** rather than the real worlds **This** is not a **science laboratory,** This is not the **experimental, This** is **not** the theoretical, This is not the **speclativer** Mr. Connolly, While science may demand perfection the criminal law does not, because if it did we **d never get anywhere, The State is never required, and *the Court will instruct you, to prove its case to a mathematical certainty.***

X have a few minutes and I don't want to take too much

time because you have been very patient. Let me try to go *through some of what* Mr. Connolly has had to say*

First of all. it is odd to look to the defendant. **himself an acknowledged liar.** to try to find the truth of ***what happened, The short answer is that the*** **defendant could** not have committed this crime is that it *horrifies the minds* of all of us that this happened, But the fact is that ebody did it. and the evidence points tc only this defendant.

If he did drugs that afternoon, *and perhaps* he did - Mr. Connolly is quite right it is a two-edged sword - then all it did to him was not lose his s e of self but to lower his itions: still allowed him to act purposefully but in a *way in which otherwise he* does not portray himself as being *able to act,*

I didn°t ask you to disbelieve him simply because he was the defendant, **I asked you to look** *at the substance of his* ***testimony*** ***then*** *decide* ***whether*** it made any sense or not* Its **not** ***very*** **likely that he** would **give** a false n e to the sheriff* It was perfectly sile for the sheriff to have found out who he was ultimately. and he was obviously going to **give** his true n 1 but he lied about everything else.

His cooperation I would suggest **to** you was nothing more than was **necessary to avoid greater detection.** Mr. Connolly **said** it best. **although he didn't** mean to. **he cooperated** in

the hope that it would set him free.

for the lack of evidence on the defendant, this is precisely what one cannot rely on. **You** are to return a verdict based upon the **evidence** and not what the evidence is not. 8r. **Connolly** simply has ***no answer for*** *Dr. Roy's* testimony that he wld *not expect to find any blood on* the person who killed Sarah Cherry, I didn't suggest to you ever in this case that the clothes were washed to hide evidence. The }lothes were w hed; it's just that simple. But that explains why nothing later could be found on them to link this defendant up. 1'm not accusing anybody of hiding evil nc. That is th fact of the .otter $ ther fore you look at that *could have been that the defendant* did have some blood on bin. It could have been f gi *n the* streM that was right there, he washed it off, You *recall that his shoes* and cuffs were wet.

There are **no** fingerprints **on the** sticks. **Of** course **there** are not. No bird stick with that rough of surface **covered with blood** and **feces** would hold a print. You know that.

The lack of evidence in **the truck.** It is said that Sarah Cherry was never there **because one** would expect to find hair d **fibers** and fingerprints and **so on. Yet** Mr. **Connolly** h elf conceded that **the absence of them really** is **a neutral fact. That the hair was available for transfer does not me**

that there was a transfer. The evidence in the case is that, as sometimes happens, sometimes it doesn't, Mr . Connolly would have you believe that the absence of it always means that a defendant is not involved. There was no ruggle in the house, that is true. That is true, however, as to whoever committed this crime. You know she was abducted by somebody and you know it wasn't anybody she knew. And again the evidence point only to towards this man.

Mr. Connolly then gives you his scenario based solely upon speculation, not on evidence, as to what might have happened in that house, Were the doors opened by her or the d.T fend ant he c a into the house and surprised her? c 't tell you. I didn't promise you I would be able to wer every question. Nor is there any obligation that the State prove to a math ._tical certainty everything that occurred, But remember that the dogs did not reach to where the truck had been. for the snow tires, you will recall the evidence that other police cars had pulled up behind where the tire impression, which was located, was found, People were walking all over the driveway. It was only that one tire impression that Was blocked off by Mr. Henkel because he knew he labeled it. So of course there are no snow tire prints left because that area is, as Officer Reed said, was not preserved as well as it should have been. In hindsight he wishes he had done it better, but he didn't know

what he had or what he faced at the time,

If the argument is that eye-witness or a murder weapon is necessary for a conviction I can only tell you that h' . never been raised as a principle of law, Its an argument that is so new I hope it will become old. Of **course** *no knife has been recovered. It is a logical inference from* all of the testimony that the defendant did not want to b nd *with* his knife. And somewhere in those deep and dark *wood s tht knife is* buried or resting somewhere.

The panties I can only tell you the same thing. They are there somewhere. W o knows? But obviously this defendant did not want to be caught with th So *just as with his* knife he got rid of th

r. Connolly next mentioned hair, certain hairs on r: has body which were not hrs, And he talks of the **ease** *of transfer, All right. Accept him at his word, y ou know* ***all along those hairs could have been on*** *the clothing which* ***she was wearing, from whatever source, fr*** *whom ever she was* ***ever in contact with. To speculate is not to*** *perform your* ***function in connection with your*** *oath of office.*

It is then pointed out that there is a metal fragment. But ***the evidence also shows you that there was*** *plenty of junk* ***found in those woods, There is no telling how long that piece of metal had been there. The same is true of the pink fiber which there is no way of telling. It is certainly***

nothing to suggest another perpetrator.

There was a cigarette butt inconsistent with the the types of cigarettes that Mr. Dechaine smokes near the truck. So what? There **was also in one** of the pictures you will see a container of **wrapping of Corrs beer. So** w I doubt *very much that this defendant was the first person to have* ever pulled a truck in or walked in the area where his truck was found.

The dog evidence. The dog evidence is, I grant your a little iguous. But it is interesting to note that what Trooper Bureau did say vast I can state that the dog did ac fr the truck; whoever c a out of that truck came *over here. There is no question about it* ,

Next the knots. e are led to believe that half hitches ***are the only*** **knots** this defendant has ever learned to tie. You are led to believe by ***suggestion that one*** *is going* t0 tie **a nice neat half knot precisely** **he does when working** calmly as **he would** when he's ***abducting*** *a child. The* **likelihood is you are going to wind up with a much Coarser, less precise press professional knot; just as ter. Connolly points out was the case with the rope on her wrists.**

Next to the tampon box. All that evidence with respect to where things were in the truck rests upon your total acceptance of testimony from both the defendant and his wife. And I've already tried to suggest to you why you need to and

perhaps should not do that, Considering the mess in that truck, nobody can say for certain what movement of papers there might have been, both at the Henkel residence and in towing the truck to Agusta from **Ho** oin.

There is no evidence, Ladies and Gentlemen of the Jury, in this case of an alternative perpetrator. There is only e sheerest of speculation. Your duty is not to decide this case on speculation but on the evidence. r. Roy did not say anything about the feet except that they are a moot point. It is then pointed out that *by Mr. Connolly that there were* of r trucks, red trucks in the area; one of which, although *did not specifically m* **tion** *the n was that se by G y per who toatifi , The only thing 1 can say about Gary Jasper is that he s hopelessly confused What he told you was he saw a truck earlier in the afternoon on the Dead* ***River Road which was the same truck that was later stopped on the Meadow Road in Ho oin. You've got the radio log and what you will see is that the tag number of the red truck later stopped. James Boudin does not have the same tag number*** *as* ***the defendant's*** *truck. He's just hopelessly* ***confused.***

The *point in sum - . • substance is that* ***Dennis Dechaine is just a gentle Ho oink farmer with a character flaw of drugs* That's not it at all. His character flaw is that he's a far different person than he portrays himself to be.***

This business about aversion to blood I can only tell you as I sat and listened to it, as I listened to hr. Connolly that thou dust protest too much.

Wasn't it the most peculiar reaction if he wasn't involved with this to sit up when Sarah Cherry's face came on d say *I don't recognize her face. If you are not* involved in something you don't sit up *and say I don't* recognize her face. most peculiar reaction to have.

The defendant in his testimony sought to convince you that he had been *told that Sarah Cherry had* been abducted. Logic alone should tell you that no police officer is going *to tell somebody he's questioning all the* details of what *he's ivestigating. It is precisely the role of a polio officer to withhold that kind of information so as to learn* what he can without giving away the store$ The Mutt and Jeff routine that Fir. **Connolly refers to works** only when a suspect ***originally*** *with the hard* ***officer*** **does** not **make admissions. Then the softer officer comes** in and says gee, 2'11 be your **friend.**

In this case precisely the opposite happened.

issions were all de the **first time around.** I remind you ***again contrary to the argument that you've just*** **heard that the defendant hi elf testified that the police had not convinced him that he had committed these crimes. He said** ***that he was told that he was the sole suspect*** * ***Yet there is***

no evidence but his own word of that.

Yes, take the measure of this man, and in so doing I trust **you** *will* ***conclude*** *that he's guilty. Thank you.*

THE COURT* Thank you * Mr. Wright. Mr. **Foreman** and Ladies and Gentlemen of the Jury, we are going to take a ten minute recess at this point. When we return I'm going to instruct you on the law.

For the benefit of the people who *are in the courtroom,* I don't believe that I *can legally have the doors* locked once I begin my instructions. `here are varying conflicting laws on that All I would ask you is that once we return to the *courtroom and I begin the final phase of this trial, is that f you do b ve to* ***leave*** *I would ask that y think about it now nd only leave in case of an absolute rgency.*

We'll take a ten minute recess. Its not time to discuss the c==:e yet. Thank you.

fA **recess was** had at 11:37)

(The jury returned at 11:54)

T3E COURT: :tr. Foreman and Ladies and Gentlemen of the Jury, I ask you to remain standing at this time for a specific purpose. You've noticed each time you've walked into this courtroom everybody stands up for you. When you leave everybody stands up; just as when I walk into this court ro*f everybody stands up for me and they stand u p for me when I leave, It's a sign of respect for the office and for the position. And it is customary for a presiding justice to ask a jury to rise just before the *instructions, final* instructions on the law, because it is symbolic of the fact that we stand in this courtroom as equals. You are just as much of a judge as I . You are the judges of the facts. I'm the judge of the law. But **only you** will be the **judges o the facts in this case, Thank you, You** may be seated.

Now that you've heard the evidence and the arguments of *counsel, its my duty to instruct you on* *the law that you* ***are to apply to the facts of this case*** *as you find those facts to* **exist from the evidenceregardless of any** *opinion that* ***you*** **may now have or have had up to this point to what the law** is or ought to be. It **would** be a violation of your +<a th if you **were to base your verdict upon any other view of** the **law except that which I'm giving to you in these instructions. Counsel have quite properly referred to some of the governing**

rules of law in their final arguments, However, if there should appear to you to be any *difference on the law stated* by counsel and that what I'm giving you, you are naturally to be governed on the law as you receive it from ins, It would be a violation of ***your*** oath if you were to base your verdict upon anything but the evidence in this case.

By instructions to you will fall into sort of three ferent cat ories * st, will be some general *instructions. Then I will discuss and instruct you on* specific areas of law that involve the five counts in this **indictment,. I** will then give you some final general instructions dealing with your deliberation process.

Now, some of the ideas that are expressed in my instructions to you may be somewhat repetitious, and before I get into the substantive instructions themselves, let me **state some cautions to you® You are** not to single out any **one instruction alone stating** the law, **you** are to **accept my instructions** as **a whole,** ***I said, some*** *of* the ideas expressed in these **instructions may seem somewhat petitions, and the fact that I'm giving these instructions to you in a particular order does** not mean to suggest that any one **portion of my instructions is any more important than the rest. They are all to be taken as of equal importance in your deliberations,**

The next point I would like to make preliminarily is

that nothing that I say in these instructions and nothing that I have said or done up to this point in presiding at this trial should be taken by you as any indication that I have an opinion about the facts of this case, because I don't. But even if I did have an opinion about the facts of this case, it would be a violation of my oath to you and to the people of this state if I were to in *any* way express that *opinion to you But I don't. I think that during the course of a trial it's quite common for members of the jury to look* to the judge and look for a facial expression or a voice inflection to try to detect se leaning one way or the other on the part of the judge, Because of that I somewhat pride myself as having somewhat of a poker face, But *if during the* course of my responding to some *of the objections and rulings in response to counsel you have read into my voice any voice* inflections that you think is *leaning one* way or the other, please get that out of your mind, because that is *net* what it **is intended fora**

Now, there are specific rules that have been established to **govern** what is or is not to be **admitted in the course and conduct of every trial.** **All of** us have this book here, **Maine Rules of Court,** That governs everything in this Court and all the **courts of** this state. It includes also the **rules of evidence,** **And** there have been **occasions,** as **you've noticed during** the **course of** this trial, when it has been my

duty to decide what is or is not to be admitted under those rules* Because of this we've had a number of trips to side *bar®* And as I told you early on, we *weren't playing I've Got* A Secret over there* We were discussing points of law; what is or is not admissible under the rules of evidence* It is part of attorney's duty to make *objections when the* attorney feels that improper or inappropriate or inadmissible evidence is about to come into the course and conduct of a trial* It's my duty and w my duty to rule upon those obj tions* The fact that objection was made by an attorney should not be held against that attorney yet alone the party that the attorney represents. Rather, the duty of *a juror does not involve the reasons for why a judge rul one way or the others Therefore, it's part of tb attorney's duty to object, to make objects s, and your decision should* not be influenced by the fact that objection was made or by **the fact that objection was sustained or overruled,**

next, **preliminarily** in your deliberations today you must **focus solely upon** finding the facts from the evidence **in accordance with the instructions that 'm giving to you*** **Your** decision - and **you should not consider or** *be* ***concerned*** **about the possible** ***consequences of any*** **verdict that you reach today, Stated differently, your decision cannot be affected one way or the other by the possibility of punishment or the possibility of the lack of punishment that may flow from your**

verdict. because that is not within your province to consider,

she law presumes Dennis *Dechaine to be* innocent. I've told **you** before, **every person who is** accused of a crime begins a trial with a clean slate; with no evidence whatsoever against him, That presumption of innocence alone is sufficient to acquit a defendant, unless you are satisfied *beyond a reasonable doubt of the defendant's guilt after a careful consideration of all of the evidence in the case.*

Now. the State is not required to prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is just what the words imply, Its a doubt *based upon re on d on sense. It's not a doubt based* upon mere guess or surmise or br possibility, It's a d which a reasonable *person, without any bias. without any* **prejudice or interest, and after consciously** weighing **all o**f **the *evidence, would* entertain as to the guilt of the accused.**

So in order to convict *a person of a criminal offens* the evidence must be sufficient to give you a conscious belief that the charge is almost certainly true. And the burden is always upon the State **to prove each** element of the ***offense beyond a reasonable dbt, This burden never shi*** fts ***to a defendant. for the law never imposes upon a defendan*** t **the burden of calling any witnesses or producing any evid ence whatsoever.**

now, as to evidence, I will discuss that in a moment. But basically there are two types of evidence from which you may find the facts in a given case. There is direct evidence and circumstantial evidence. A reasonable inference is another term for circumstantial evidence. Direct evidence consists of observations that people make with their eyes, their ears and their other senses. Circu tantial evidence on the other hand consists of *reasonable conclusions that you* make after studying other facts. In other words, if facts have been proven beyond a reasonable doubt and from those proven facts you can reasonably conclude *that fact A has been proven as w11, then you are permitted to make teat* reaz enable inference. This is a process y- use everyday in your everyday affairs. A guilty verdict c be b ***entirely upon*** **circumst tial evidence,** entirely on direct **evidence or upon a c ination of** circumstantial and direct **evidence; that is because in the State of Maine our law does not differentiate between circutantial evidence and direct evidence. There is good circumstantial** evidence and there **is bad circumstantial evidence. There is good direct evidence** and there **is bad direct evidence.** The only **issue** is wheth ***there is sufficient evidence, be it circa tantial or direct,*** **to prove that each and every charge that the State is trying to prove beyond a reasonable doubt has been proven.**

All right. What is evidence? The evidence this case

consists of the sworn testimony of all of the witnesses who have been testified, regardless of who called those witnesses* It consists of all of the exhibits that have been received; regardless of who produced those exhibits. There have been a couple of stipulations made that I explained to you at the time what a stipulation was all about. That is evidence for your consideration today, Remember that the value of evidence is not who produced that evidence p but, what that evidence has to add to the matter that you *are* considering.

What is not evidence. Anything that you've seen or heard outside of this courtro+ is not evidence and must be entirely disregarded. . The opening statements of the attorneys and their closing arguments are not evidence& t of course you don't disregard that; its an important p rt of the ease. Its their alysis. But just keep in mind in your **deliberations that** their opening statements and closing arguments **never rise** to **the level** of evidence, Also the indictment that was read to you at the start of these proceedings is not evidence of guilt, as I told you at th outset. It is just the formal way in which the case is **brought before the Court. You are** reminded that **Mr. Dennis Dechaine has pled not guilty to *each count of that* indictment.**

Now, you can consider only the evidence in the case,

but in your consideration of the evidence you are not limited to the bald statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses have testified. You are permitted to draw from the facts that you find to have been proven such reasonable inferences as you feel are justified in the light of your experience, in your Cod given common sense. Remember that you *didn't leave that common sense on the Court house steps* when you reported for jury service. You brought it into this courtroom with you, and you are going to use it in your *deliberations today,*

jurors, you are the sole judges of the credibility of the witnesses and the weight to be given to their testimony, You should carefully a ine all of the testimony in this case, the circumstances under which each *witness has* testified, *and everything in* evidence which tends to show **whether** a witness is worthy of belief, Consider each witnesses **intelligence,** their motives, their manner and demeanor while on the witness stand® Consider the witnesses ability to **observe** the matters as to which they have testified and whether they impress you as having an accurate **recollection** of **those** matter. Consider also any interest that each witness may have in either **side** of the case; **the manner** in which **each** witness might be affected by your decisi ; and the extent to which, if at all, each witness is

either supported or contradicted by other evidence in the case.

Now, inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause a jury to discredit such testimony. As we all know, **two or more persons witnessing** the same incident or transaction may see and hear it differently. Therefore, *innocent mist oll* tion, like failure of recollection, is *not an. uncommon* occurrence. *Bo if you find any discrepancy in weighing the effect of any discrepancies see if it* pertains to any matter of importance or to an unimportant detail, and whether the discrepancy results in innocent error or from intentional falseh

Now, the rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. Conclusions are the function of the jury. There is an exception to this rule for people who testify as expert **witnesses. Witnesses *who have become expert in s* e area** by **education and/or experience may state *their opinion as to matters in which they profess* to be expert,** and they may **also *state their reasons for the opinion. In this case you've* heard the *testimony of Doctor Ronald Roy,* You've heard the testimony of the forensic chemist Judy Brinkman. And you've heard the testimony of the fingerprint analysis troopers John *Otis and* Ronald Richards, You should consider the expert

opinions that have been presented in this case and give them *the weight that you believe* that they deserve® If you find that an expert opinion is not based upon sufficient education and experience, or if you find that the fact or reasons given in support of the **opinion are not sound, or** if you *feel that the opinion is out* weighed by other **evidence,** then you may disregard the opinion® expert *witness's testimony should* be treated like any other testimony that you are evaluating. You are free to believe all of the expert's testimony, *or* part of it or none of it® Whether or not expert is believable is for you, the jury, to decide.

Before I get into the specific charges involved in this case, another preliminary matter is that you have heard evidence or testimony *in this case concerning character. And* **our law provides that in all cases in** which evidence of character or a trait of character of a person is admissible, proof may be **made by testimony as to reputation, Where a defendant has offered evidence of good general reputation, as in this case, testimony** as to reputation for peacefulness and **non-violence, the jury may consider such evidence along with all other evidence in the case, *Evidence of a* defendant's reputation inconsistent with those traits of character ordinarily involved in the commission of the crime charged may give rise to a reasonable doubt since the jury may think it improbable** that a **person of good character in respect to**

those traits would co it such a crimes

So that is the only purpose for which the character evidence reputation has been presented in this case.

The defendant in this case, Dennis Dechaine, is charged in a single indictment with two alternative forms of the single crime of murder and the lesser crime of manslaughter, *namely intentional* or knowing murder ainst the ned *victim, Sarah Cherry, or the lesser crime of reckless or* iminally negligent manslaughter against said victim in count one, and depraved indifference murder against the ned victim, Sarah Cherry, or the **lesser** crime of criminally *negligent m* slaughter against the victim in count twoe s he crime of kidnapping is also charged against the named victim, *Sarah Cherry, in* count three, And finally counts four and five are two separate and distinct counts of the crime of **gross sexual misconduct against** the ned victim, Sarah Cherry.

I will instruct you on *the following aspects* ***of Maine laws*** **First, I will instruct you relative** to count one on the **law y must apply to determine whether the State has established beyond** a **reasonable doubt** the facts necessary to **constitute the first alternative form of the single crime of** ***murder, namely*** **murder** ***against the named victim, Sarah Cherry,*** **was done** ***intentionally or*** **knowingly. Secondly, I will instruct you relative to count one on the law you must apply**

to determine whether the State has established beyond a reasonable doubt the facts necessary to constitute the lesser crime of reckless *or criminally negligent manslaughter* against the n victim, Sarah Cherry. Next, I will instruct you, relative to count two, on the law you must apply to determine whether the State has established beyond a reasonable doubt the facts necessary to constitute the second alternative form of the single crime of murder: namely murder *against the named victim, Sarah* Cherry, was done with depraved *indifference.*

N t, I will instruct you relative to *count two again on* the law you must apply to determine whether the State ha established beyond a reasonable doubt the facts n:. '$easar constitute the lesser crime of criminally negligent manslaughter against the n vict i . Sarah Cherry. ifth, I will instruct you relative to count three the law you must apply to determine **whether** the State has established beyond a reasonable doubt the facts necessary to constitute the crime of kidnapping against the ned individual victim, Sar' Cherry, Sixth and finally, I will instruct you relative to counts four and five as to the law **you** must apply **o determine whether the State has established beyond a reasonable doubt the facts necessary to constitute the separate and distinct counts of the crime of gross sexual *misconduct against the named victim, Sarah Cherry.***

Dennis John Dechaine is charged with five separate crimes, Each crime that has been charged must be considered independently, You may find the defendant not guilty of all charges, You may find the defendant guilty of the charges, of all of the charges; that I will elaborate one And you may find the defendant not guilty of some of the charges and guilty of sot7e of the charges. You must consider the evidence and the instructions separately as to each charge,

Now, I will discuss in more detail how intoxication may affect the crimes charged in *count one; that is as to* intentional and knowing murder *and as to* count three on kidnapping, But I want to make a preliminary statement regarding intoxication. Our criminal code provides that evidence intoxication may raise a reasonable doubt as **the existence of** a re it culpable state of mind, when ***recklessness*** *establishes an element of the* ***offense*** *if the* ***actor, due to self-induced intoxication, is unaware*** *of a risk* ***of which he would have been aware*** *had he not been* ***intoxicated, such unawareness is*** *i* ***ateria .*** *a* ***So,*** *therefore,* ***intoxication may raise a reasonable*** *doubt only as to the* ***existence of a required culpable state of mind,***

I will discuss *with you these* ***culpable states of mind in affi is But some of these ideas may seem somewhat repetitious on intoxication, But our code goes on to state that intoxication means a disturbance of mental facilities***

resulting from the introduction of alcohol, drugs or other substance into the body, And self-induced intoxication means intoxication caused when the actor *intentionally* or knowingly introduces into his body substances which the actor knows or ought to know tend to cause intoxication, *unless he introduces them pursuant to* medical advice or under such duration which would afford a defense to such a crime,

In determining whether intentional or knowing conduct *has been proven beyond a* reasonable doubt, you should consider evidence of intoxication to determine if the intoxication affected the *defendants capacity to engage in* intentional or kn• ing action, That applies only as to c•.:nt one, intentional and knowing murder and to count three, kidnapping.

Let me say preliminarily as to the crimes that are charged, motive, that is something a need or desire that **causes a person to act, is not element of a criminal** offense and is not something which the State is obligated to **prove Absence of motive does not necessarily** but **may raise *a reasonable doubt respecting the guilt of an accused. Nor*** does **the** mere fact that it exists establish guilt. Evidence **of the presence or lack of evidence is for you to consider *along with all the fats* and circumstances in determining whether the State has met its burden of proving beyond a *reasonable* doubt the guilt of the defendant.**

Turning first to intentional or knowing murder as charged in count one. The law of the State of ilaine provides that a person is guilty of murder if he *intentionally or* knowingly causes the death of another human being, In order for the State to **prove beyond** a **reasonable doubt** that the defend t, *Dennis* John Dechaine, **has committed** *intentional* ***or*** knowing murder the State must convince you beyond a reasonable daub t of the following three facts: first, that the named victim in count one of the *indictment, Sarah* Cherry, is dead. Secondly, that the defendant caused the death of Sarah Cherry. And, thirdly, *that the* defendant caused *Sarah Cherry's death intentionally or knowingly.*

Regarding the first fact, that is, that Sarah Cherry dead. It is not necessary for me to elaborate on what is meant by the death of Sarah Cherry. Either the State has established beyond a reasonable dbt that Sarah *Cherry is no* **longer alive or has not. Regarding** the **second** fact, that is, **that the defendant caused the death of** ***Sarah Cherry, the*** **State must prove beyond a reasonable doubt that** the death of ***Sarah Cherry would not have occurred but for the*** **conduct of the defendant. Regarding the third fact,** ***that the defendant*** **caused Sarah Cherry's death intentionally or knowingly, the State must prove beyond a reasonable doubt either of these two alternatives.**

I will now elaborate upon the meaning of each. Under

the first alternative a person causes death intentionally if it is his conscious object to cause death, Or put in somewhat different language, the State must prove that at the time the defendant caused the death of Sarah Cherry that the defendant had an actual intent, desire or purpose to kill Sarah Cherry, Under the second alternative, a person causes death knowingly if he is aware that it is practically certain that his conduct will cause death, Or put in somewhat different language, the State must prove that at the time of the death that the defendant caused the death of Sarah Cherry: that the defendant knew that Sarah Cherry's death with would almost certainly result from his conduct.

In determining the ultimate question as to whether the State has established the requisite intent, that is, the first alt rnative or has established the knowledge under the second alternative, if you find evidence that the defendant was intoxicated you may consider it. Or said in a slightly different manner, the existence of a reasonable doubt as to the r=• isite intent under the first alternative or knowledge under the s alternative may arise from evidence of intoxication, AS I said before, under Maine law, intoxication is defined as a disturbance of the mental capacities resulting from the introduction of alcohol, drugs or similar substances into the body, It is important that you keep in mind that while it is fully open to you to

consider evidence of intoxication in determining whether the State has established the request intent under the first alternative or knowledge under the second alternative, the ultimate question is not whether the defendant was intoxicated but whether the defendant caused death **intentionally or** knowingly.

To **su e** then to intentional or knowing murder, you conclude that the State has established *beyond a reasonable doubt, number one, that the n victim in count* e of the indictment, Sarah Cherry, is dead; number two, that the defend t caused her death, and, *three, that the defend* t caused her death either intentionally or knowingly, then the State has proven that the defendant , Dennis *John* ohaine, c•.~~~itted the crime of *intentional or knowing* r der against the n ed victim, Sarah Cherr, as charged in count one of the indictment, and you should find him guilty of that crime.

If you conclude that the State has failed to establish beyond a **re** enable doubt either of the first two, all of the first two facts which I described to you, namely that the **victim, rah** Cherry, is dead; and, two, that the **defendant caused her death, then you** must find **the defendant, Dennis Jo Dechaine, not guilty of count one of the *indictment.***

If, however, you conclude that the State has established

these first two facts beyond a reasonable doubt, but has failed to establish the third fact, namely, that the defendant caused her death either intentionally or knowingly, you must next consider whether the *defendant has committed the lesser crime* of reckless **or** criminally negligent manslaughter as charged in count one of the indictment® And I will now give you instructions as to that.

So turning to the lesser crime of reckless or criminally negligent *manslaughter as cb* rged in count one of the indictment. previously noted, you are of course to consider this lesser crime of reckless or criminally negligent m*'.slaughter as charged in *count one of the* indictment only if you find that the State has established beyond a reasonable doubt both that Sarah Cherry is dead and that the defendant caused her death, but you do not **find** *beyond* ***a re on le*** **doubt that** ***Dennis John*** Dechaine **caused Sarah Cherry's death intentionally or** ***knowingly.***

The law of the State of **Maine** defines the crime of **reckless or criminally negligent** manslaughter as a person is **guilty of manslaughter if he rklessly or** with criminal negligence causes the death of another human being. Thus the crime of reckless **or criminally negligent manslaughter** is the ***s e as the crime of intentional or knowing murder in that it*** **requires the State to prove beyond a reasonable doubt, number** ***one, that*** **Sarah Cherry is dead, the victim is dead;** **d.**

secondly, that the defendant in this case, Dennis John Dechaine, caused the death of Sarah Cherry, Unlike intentional or knowing murder **however,** the crime of reckless *or criminally negligent manslaughter does not require that* the State prove that the *defendant* caused Sarah Cherry's *death* intentionally or *knowing, Instead, in order for the* State to prove that the defendant committed manslaughter in count one of the indictment, the State must convince you beyond a reasonable doubt that the defendant's conduct which caused Sarah Cherry's death was done recklessly or with criminal negligence.

Looking at the first alternative, that is recklessly, a person acts recklessly when he consciously disregards a risk that his conduct will cause death, To be reckles *criminal sense however,* the law further requires that the nature and purpose of his conduct and is known to him must involve a gross deviation **from the** *standard* ***of*** *conduct that a* reasonable and prudent person would **observe** in the same situation. Cr stated a little bit differently, in order for the **State to** ***convince you beyond*** *a reasonable doubt that the defendant's* ***conduct*** caused Sarah Cherry's death was done recklessly, the State must **prove beyond** a reasonable dbt both that **the** defendant **consciously** disregarded a risk **so that** his conduct **would** cause **such** a result, and that his disregarding **of** such a risk, **when viewed** in light of the

nature and purpose of his conduct and the circumstances involved and the circumstances known to him, involved a gross deviation from the standard of conduct that a reasonable and prudent person would have observed in the same situation.

Looking now to the second alternative as to criminal negligence, A person acts with criminal negligence when he fails to be aware of a risk that his conduct will cause death, To be criminal negligence however, the law further requires that the person's failure to be aware of the risk when viewed in light of the nature and purpose of his conduct d circa t ces known to him must involve a gross deviation from the standard of conduct that a reasonable and prudent person w ld observe in the same situation. Stated a little differently, in order for the State to convince you beyond a reasonable d bt that the defendant's conduct which caused Sarah Cherry*s death was done with criminal negligence, the State must prove beyond a reasonable d bt both that the defendant failed to be aware of a risk that his conduct will cause such a result, and that his failure to be aware of such a risk, when viewed in light of the nature and purpose of his conduct #d the circus; z,t ces known to him, involved a gross deviation from the standard of conduct that a reasonable and prudent person would have observed in the same situations

To su xise then, If you conclude that the State has established beyond a reasonable doubt that the defendant

caused Sarah Cherry's death either recklessly or with criminal negligence, *then the State has proven that* the defendant, Dennis John Dechaine, committed the crime of reckless or criminally negligent manslaughter against the victim, Sarah Cherry, as charged in count one of the *indictment · and you should find him guilty of that crime. If, on the other hand · you conclude that the State has failed* to est blish beyond a reasonable doubt that the defend caused Sarah Cherry's death, either recklessly or with criminal negligence, then you must *find Dennis* John Dechaine *not guilty to count one of the indictment.*

Turning thirdly to depraved indifference murder. the law in the State of Maine provides, that a person is guilty of murder if he engages in conduct which i ests a d pravved indifference to the value of human life and which in fact causes the death of another human being. In order for. the State **to prove beyond** a reasonable dbt that the defendant, Dennis ine, has committed the crime of depraved indifference murder against the named victim in count two of the indictment, **Sarah** Cherry, the Stet= must convince you **beyond** a ***reasonable*** *doubt of the following three facts: first, again, that Sarah Cherry is* dead. Secondly, that the defendant (caused the death of rah Cherry. Third, that the **defendant** s **conduct** which ***caused*** *Sarah Cherry's* death **was of such** a **nature** that it **manifested a depraved** indifference **to**

the value of human life.

Regarding the first fact, that is, that Sarah Cherry is dead, It's not less necessary for me to elaborate on that any further, Either the State has established it beyond a reasonable doubt or it hasn't. Regarding the second fact, that the defendant caused the death of Sarah Cherry, the State must prove beyond a reasonable doubt that the death of Sarah Cherry would not have occurred but for *the conduct of the defendant.*

Regarding the third and final fact, that is, that the *defendant's* conduct which *caused Sarah Cherry's death was of* such a nature that it manifested a depraved indifference to the value of human life, this fact involves two separate considerations, *First,* the death *producing conduct of the* **defendant must** be conduct, which, by its very nature, **creates a very high degree of** risk that the conduct will result in ***serious bodily injury or result in death®*** *ily injury is* **defined under our code** as physical pain, physical illness or any **impairment of** physical condition causing **serious permanent disfigurement or loss or substantial impairment of** the function of any bodily member ***or organ or extended*** **convalescence** necessary for recovery of physical health.

3o under the two separate **considerations as to depraved indifference then, the death producing conduct of the** ***defendant must be*** **conduct, which, by its very nature, creates**

a very high degree of risk that the conduct will result in *serious bodily injury, as I've defined that term separately* for you in death, This very *high* degree of risk is something more than a mere **unreasonable risk or** even a high **degree of *risk, but sething less* than certainty or practical certainty. Instead, this very high degree of *risk* is *such*** to make it very likely that serious bodily injury or death will result from such conduct.

As part of this risk analysis it is *not necessary that* you find that the defend t hik:welf was actually aware of the *high* death *producing potential inherent in his conduct. Or* said a little differently, although it is up to you to decide *that the defendant was in fact aware, it is not n* $e sa y *that you find that the defendant himself actually new of the extreme danger to life which his* conduct by its very nature posed to **one or more other human beings** * **However,** *although* **the defendant himself need not have been so aware, you must *find that such risk would have* been apparent to a reasonable and prudent person in** the defendant's situation, and, thus, a **consequence, the *defendant should have* been** aware of the **serious death producing potential inherent** in his conduct *

Second, in addition to the death producing conduct when objectively viewed possessing a very high degree of risk of serious *bodily injury or death, such conduct,* when viewed in *light of the totality of the circumstances, must objective y*

reflect such an indifference to the value of human life by the defendant that it would be generally regarded by any reasonable and prudent person as depraved. Or stating this second critical consideration in slightly different terms or language, in order for the *defendant's death producing* conduct to mifest a depraved *indifference to the value of human life, such conduct* in addition to posing a reasonable and prudent person to an apparent very *high risk of serious* bodily injury or death, must *be, when considered in light of* the nature and purpose of such conduct, the circumstances actually known to the defendant and the circumstances which would have been apparent to a reasonable and prudent person in the defendant's situation, particularly outrageous, revolting, savage, brutal or shocking readily demonstrating almost total lack of concern or appreciation for the v;trlue *of human life on the part of the defendant.*

To summarize *rlative* **to** *the* **ab ove** *as to count* ***two*** then, if you conclude that the State has established beyond a reasonable dbt, number one, the death of Sarah Cherry; **second,** that **the** defendant caused her death; *third, that the* defendant caused her death by engaging *in conduct which* **ifested a depraved indifference to the value of human life, then the State has proven that the defendant, Dennis John haine, committed the crime of depraved indifference rd r, and you should find** him guilty of that crimes

If you conclude that the State has fail to establish beyond a reasonable doubt either, one, the death of Sarah Cherry; and, two, that the defendant caused her death, you must find the defend t, Dennis John Dechaine, not guilty as to count two ***of*** *the indictment.*

If, however, you conclude that the State has established these first two facts beyond a reasonable doubt, but has failed to establish the third fact, namely, that the defendant caused Sarah Cherry's death by engaging in conduct which manifested a depraved indifference to the value of hum *life, you must next consider whether the* defendant has *ted the lesser crime of criminally negligent* slaughter, as charged in count two of the indictment, purse t to the manslaughter instruction, which **I will now give to y**.

So turning to, fourthly, to the lesser crime of **criminally negligent manslaughter as charged in count t of the indictment, just previously noted, you are, of course, to consider this lesser crime of criminally negligent manslaughter only if you find that the State has** established **beyond a reasonable** doubt that the named victim, Sarah ***Cherry, is dead,*** **and that the** ***defendant caused her death, but*** **you do not find beyond a reasonable doubt that Dennis D ire's conduct, which caused that death, was of such a nature that it manif t a depraved indifference to the**

value of human life® The law of the State of Maine defines the crime of criminally negligent manslaughter as a person is guilty of manslaughter if he, with criminal negligence, causes the death of another human being. Thus the crime of *criminally negligent* manslaughter is the same as the crime of **depraved indifference murder** in that it requires the State to prove beyond a reasonable doubt that, one, the named victim, *Sarah Cherry, is dead* and, two, *that the defendant, Dennis* John Dechaine, caused *the death of Sarah Cherry,* Unlike murder, however, the crime of manslaughter does not require that the State prove that the defendant caused Sarah Cherry's death by engaging in conduct which manifest :; a depraved indifference to the value o hu life.

Instead, in order for the State to prove that the defendant is guilty of criminally negligent slaughter, the State ***must convince you*** *beyond a* **reasonable** doubt that the **defendant's conduct** which caused **Sarah** Cherry's death was **done with criminal negligence.**

A person acts with criminal negligence **when** he fails to ***be aware of a risk that his conduct will cause*** **death. To** be *criminal negligence, however, the law further re ires that* **the person's failure to be aware of** the **risk when** Vi=;;x ed in **light of the nature and purpose of his conduct and the circumstances known to him must involve a gross deviation from the standard of** ***conduct that a reasonable and prudent***

person would have observed in the same situation. Stated *slightly differently, in order for the State to convince you beyond a reasonable doubt that the defendant's conduct which caused Sarah Cherry's death was done with criminal negligence, the State must* ***prove beyond*** *a* ***reasonable doubt*** *both that the defendant failed to be aware of a risk that his conduct would cause such a result and that his failure to be aware of such a risk, when viewed in light of the nature and purposes and purpose of his conduct and the circumstances known to him involved a gross deviation from the standard of conduct that a reasonable and prudent person would have observed in the s e situation,*

So to su arize relative to the above then to count o. If you conclude .hat the State has estalish beyond a real enable doubt that the defendant caused Sarah *Cherry's* death with criminal negligence, then the State has proven that **the** defendant, Dennis John **Dechaine,** coea±itt ***the*** *crime* ***of criminally negligent manslaughter against the named victim, Sarah Cherry, as charged in count two*** *of the* ***indictment, and you should find him guilty of that crime.***

If, on the other hand, you conclude that *the State has* ***failed to establish beyond a reasonable dbt that the defendant caused Sarah Cherry°s death with criminal negligence, then you must find the defendant, Dennis Dechaine, not guilty to count two of the indictment*** ®

Turning fifthly to the crime of kidnapping as charged in count three of the indictment, The law of the *State of Maine* provides that a person is guilty of kidnapping if he knowingly restrains another person with the intent to inflict *bodily injury* upon that **other person or** to subject that other *person to conduct constituting the crime of gross sexual misconduct. In order for the State to prove beyond a re on 1e doubt that the defendant, Dennis D. haine, has* committed kidnapping, the State must convince *you beyond a* reasonable dbt of the following three facts: first, that *the defendant restrained the n= victim in count three of* the indictment, Sarah Cherry; second, that the defendant's restraint of Sarah Cherry was done knowingly by the defend t; thirdly°, *and finally, that such* knowing restraint of Sarah Cherry was done with the intent to inflict bodily injury ***upon Sarah*** *Cherry* ***or was done*** *with the* intent to **subject Sarah Cherry** to conduct constituting the crime of **gross sexual misconduct,**

arding *the first fact, that* is that the defendant **restrained the n victim, Sarah** Cherry, it is necessary **that I define what** is meant by the term **restrained, used** ***here restrained means*** *to have* **restricted substantially the mov-A=errs of another person without** that **person's consent or other lawful authority by (A)** *removing that person from that* **person's residence, place of business or from a school, or**

(B) moving that person a substantial distance from the vicinity where that person is found, or, (C) confining that person for a substantial p eriod of time in the place where the restriction commences, or, in a place to which that person h been removed® Use this definition in assessing whether or not the State has established beyond a reasonable doubt that the defendant restrained Sarah Cherry,

Regarding the second fact, namely , that such restraint used by the actor was done knowingly, A person kn ingly with respect to a result of his conduct when he is aware that it *is practically certain that his conduct will* cause such a result us, the defendant must have been *aware at the time of his restraint that it was practically certain that his conduct would cause such restraint* *

In determining the ultimate question as to whether the State has established the requisite knowledge, if you find **evidence** that the **defendant was *intoxicated you*** *may* ***consider*** **it, Or said in a slightly different manner,** the existence **of a reasonable doubt as to the requisite knowledge may arise from evidence of intoxication** *

Under *Maine law intoxication is defined - again I will* repeat - as a disturbance of mental capacity resulting from the introduction alcohol, drugs or similar substances into the body. It is important that you keep in mind that while it is fully up to you consider the evidence of *intoxication*

in determining whether the State has established the requisite knowledge, the ultimate question is not whether the *defendant was* intoxicated but whether the defendant restrained Sarah Cherry knowingly,

Regarding the third and final fact, that is, that such knowing restraint of Sarah Cherry was done with *the intent to inflict bodily injury upon Sarah* Cherry or was done with the int=:;t to subject Sarah Cherry to *conduct* constituting the crime of gross sexual misconduct, The State must prove beyond a reasonable doubt one or both of these two alternatives,

1'11 now e1 orate on *them. Under the first* alternative, the State nut prove beyond a reasonable doubt *that the kn>" ing restraint of Sarah Cherry was done with a* **conscious** **j** *t,* ***desire or purpose to inflict*** *bodily injury upon her, used here -* ***I've*** **defined bodily injury before,** ***but I will again*** * ***ily injury means physical pain,*** **physical illness, or any impairment of physical condition, Use this definition** in assessing whether *or* **not** *the State has* **established beyond** *a* ***reasonable*** *d bt that the* defendant **restrained Sarah Cherry with the** intent to inflict bodily injury upon Sarah Cherry *

Under this **second** alternative the **State must prove beyond a reasonable doubt that the knowing restraint of Sarah Cherry was done with a conscious object, desire, or purpose**

to subject Sarah Cherry to conduct constituting the crime of gross sexual misconduct. used here, the crime of gross sexual misconduct is defined as follows: A person is guilty of gross sexual misconduct if he engages in a sexual act with *another person. not his* spouse, and the other person has not *in fact attained his or her 14th birthday. used in the crime of gross sexual misconduct. the phrase or term sexual* act means any act between two pereons involving *ditec* physical contact between the genitals of one and the mouth or anus of the other or direct physical contact between the *genitals of one and* the genitals of the other, Or any act involving direct physical contact between the genitals or *anus of one and an* instrument or device manipulated by another person when that act is done for the purpose of arousing or gratifying sexual desire or for the purpose of **causing bodily injury or offensive physical contact A sexual act may be proven without allegation or proof of penetration.**

Use these definitions in assessing whether or not th State has established beyond a reasonable doubt *that the* defendant restrained Sarah Cherry with the intent to subject rah Cherry to conduct constituting the crime of gross sexual misconduct.

In determining the ultimate uestion as to whether the State has established the requisite intent to inflict bodily

injury upon Sarah Cherry, the first alternative, or the requisite *intent to subject Sarah Cherry to* conduct constituting the crime of gross sexual misconduct, Under this second alternative if you find that the *defendant was* intoxicated, you may consider it® Or said in a slightly different manner, the existence of *a reasonable doubt as to* the requisite intent may arise from evidence of intoxication * *Under Maine law, again, intoxication is* defin : As a disturbance of mental capacities resulting from the *introduction of alcohol, drugs or similar substances into the* b y« It is important that you keep in mind that while it is fully opened to you to consider evidenc ' of intoxication in determining whether the State has established the requisite intent as to inflict bodily injury upon Sarah Cherry under the first alternative, or the requisite to subject Sarah Cherry to conduct constituting crimes of sexual misconduct under the second **alternative,** the ultimate question is not whether the defendant was intoxicated but whether the knowing restraint of Sarah Cherry was **done** with the intent to inflict *bodily injury or with* the intent to subject Sarah Cherry to the conduct *constituting the crime of gross sexual* misconduct,

So **to** summerize **relative to** the **above** as **it** regards **kidnappings If you conclude *that the State has established* beyond a reasonable doubt, number one, that the defend t**

restrained Sarah *Cherry;* two, that such restraint was done knowingly by the defendant; and, three, that such restraint of Sarah Cherry was done with the intent to inflict bodily injury upon Sarah Cherry, or to subject Sarah Cherry to conduct constituting the crime of gross sexual misconduct, then the State has proven that the defendant, Dennis *Dechaine, co itted* the crime of kidnappin[g] against the n e defendant, Sarah Cherry, as charged in count three of the indictment, and you should find him guilty of that crime.

If, *on the other hand, you conclude that the State has* failed to establish beyond a reasonable doubt one or more of these facts, then the State has failed to prove that the defends.: t, Dennis Deciaineo co fitted the crime of kidnapinc against Sarah Cherry .ys charged *in count three of the* in ict _ and you must find him not guilty as tot that count.

rning to six and finally to the crime of gross sexual misconduct as charged in counts four and five of the **indictment, The law of the State of Maine provides that a person** is guilty of gross **sexual misconduct** if he engages in ***a sexual act with another person, not*** *his* ***spouse,*** *and the* ***person*** *has* ***not in fact attained his or her 14th*** *birthday.*

said at the outset of my instructions, some of **these ideas** ***are or definitions may snd repetitious to you I've*** **defined gross sexual misconduct as one alternative under**

count three alleging kidnapping. Now, I'm going to define it for you again as it applies to counts four and five of this indictment. That alleged the *individual* offenses of gross sexual misconduct and not as it relates to the crime of kidnapping, even though the two definitions are the same or somewhat the same. In order for the State to prove beyond a *reasonable* doubt that the defendant, Dennis Dechaine, has committed gross sexual misconduct as charged *in counts four* and five of the indictment, the State must *convince you* I beyond a reasonable doubt of the following three facts: first, that the defendant engaged in a sexual *act with the* named victim in counts four and five of the indictment, namely, Sarah Cherry; second f that Sarah Cherry at the time of the sexual act *was not in fact* the spouse of the defendant; third, and finally, that Sarah Cherry at the time of the sexual act had not in fact attained her 14th birthday.

Regarding the first fact, that is, that the defendant engaged in a sexual act with Sarah Cherry, the named victim. *As to* ***count four*** *of the indictment, the State must prove* beyond a reasonable doubt that the defendant engaged in an **act involving** direct physical contact between the genitals of Sarah Cherry and an instrument or device manipulated by the defendant for the purpose of arousing or gratifying sexual desire of the defendant or for the **purpose** of causing bodily injury, that **is, physical pain,** physical illness or any

impairment of physical condition or for the purpose of causing offensive physical contact to Sarah Cherry.

Now, as to count five of the indictment. The State must *prove beyond a reasonable doubt that* the defendant, Dennis Dechaine, engaged in *an act involving* direct physical contact. But here direct physical contact between the anus of Sarah Cherry whereas in count four it *was the genitals of* Sarah Cherry and a device or instrument. In count five the allegation that the State must prove is that the defendant engaged in an act involving direct physical contact between the anus of Sarah Cherry and an instrument or device manipulated by the defendant for the purpose of arousing or gratifying sexual desire of the defendant for the purpose of *causing bodily injury, that is physical pain, physical* illness or any impairment of physical condition or for the purpose of causing offensive physical contact to Sarah Cherry.

In determining whether the State has established the requisite purpose as to each count, that is, that the physical contact alleged as to each count was done for the purpose of arousing or gratifying the sexual desire of the defendant or for the purpose of causing bodily injury or offensive physical contact to Sarah Cherry, if you find evidence that the defendant was intoxicated, you may consider it. Or said in a slightly different manner, the existence of

a reasonable doubt as to the requisite purpose may arise from evidence of intoxication.

Under Maine law, again, intoxication is defined as a disturbance of mental capacity resulting from the introduction of alcohol, drugs or similar substances into the body. It is important that you keep in mind that while it is fully open to you to consider evidence of intoxication in determining whether the State has established the requisite purpose as to each count, the ultimate question is not whether the defendant was intoxicated but whether the defendant engaged in the physical contact alleged in each count for the purpose of arousing or gratifying the sexual desire of the defendant or for the purpose of causing bodily injury or offensive physical contact to Sarah Cherry.

Regarding the second fact, that is, that Sarah Cherry at the time of the sexual act was not in fact the spouse of the defendant. The State must **prove** beyond a reasonable doubt that At the point in time when the sexual act in fact took place, Sarah Cherry was not legally married to the defendant.

Regarding the third and final fact, that is that Sarah Cherry at the time of the sexual act had not in fact attained her 14th birthday. The State must **prove** beyond a reasonable doubt that at the point in time when the sexual act in fact took place, Sarah Cherry was less than 14 years of age.

To summarize as to count four of the indictment. If you

find and you conclude that the State has established beyond a reasonable doubt, one, that the defendant engaged in an act *involving direct physical contact* between the genitals of the named victim in count four of the indictment, Sarah Cherry, and instrument or device manipulated by the defendant for the purpose of arousing or gratifying sexual desire of the defendant or for purposes of causing bodily injury or offensive physical contact with Sarah Cherry; two, that Sarah Cherry at the time of the sexual act was not in fact the spouse of the defendant; third, that Sarah Cherry at the time of this sexual act had not in fact attained her 14th birthday, then the State has proven that the defendant, Dennis Dechaine, committed the crime of gross sexual *misconduct against the ned victim,* Sarah Cherry, as charged *in count four of the indictment,* and you should find him guilty of that crime, If, on the other hand, you conclude that the State has failed **to** establish beyond a reasonable doubt one or more of these facts, you must find the defendant, Dennis *Dechaine, not guilty as to count four of* this indictments

To summarize as to count five of the indictment. If you conclude that the state has established beyond a reasonable doubt, one, that the defendant engaged in an act *involving* direct physical contact between the anus **of** the named victim in count five **of the** indictment **and** an instrument or device

manipulated by the defendant for the purpose of arousing and gratifying the sexual desire of the defendant or for the *purpose of causing bodily injury or offensive physical* contact to Sarah Cherry; two, that Sarah Cherry at the time of this sexual act was not in fact the spouse of the defendant, three, that Sarah Cherry at the time of this sexual act had not in fact attained her 14th birthday, then the State has proven that the defend t, Dennis Dechaine, co“ftitt the crime of gross sexual misconduct *against the* named victim, Sarah Cherry, as charged in count five of the indictment, and you should find him guilty of that crime.

I , on the other hand, you conclude that the State has failed to establih beyond a *reasonable* doubt one or more of these three facts, you must find the defendant, Dennis Dechaine, not guilty as to count five of the indictment®

You **have** sat through two weeks of testimony and the presentation of evidence My count is that you have heard from 47 witnesses and there are **over** one *hundred* exhibits that have been admitted into evidence in this case for your consideration. During the course of your deliberations if you find that your collective m **ory** has failed you on what a particular witness has testified to on a particular point , then you do have the right *to have the testimony of* a witness read back **to** you. Again, in **the event** that **you were** unable to **collectively** agree to what that witness's testimony was

on a contested issue of fact the 12 minds of the jury and the collective memory of the jury is greater than the sum of its parts. Your memory is incredibly accurate. Some of you may remember certain things with a little more clarify than others, but the collective memory is incredibly accurate. Don't resort to a read back unless you are satisfied that your collective memory has failed you. By all means if you find that your collective memory has failed you on wha particular witness testified to on a contested issue then send me a note through your foremen and the court reporter will find that portion of the testimony. You will be called back into the courtroom and it will be read back to you. The same also applies to my instructions to you on the law.

ow, the verdict that you reach in this case must represent the considered judgment of each one of you. In order for you to return a verdict your verdict must be unanimous; all 12 of you must agree. It is your duty as jurors to consult with one another and to deliberate with a view towards reaching an agreement if you can do so without sacrificing your individual judgment. Each of you decides the case for yourself, but do so only after an impartial consideration of the evidence with your fellow juniors. In the course of your deliberations keep an open mind. Don't hesitate to re-examine your own views and change your opinion if you **you are** convinced that it's erroneous. But do not

surrender your honest belief as to the weight or effect of evidence solely because of the opinion of your fellow jurors or for the purpose of returning a verdict. Remember at all times you are not partisans. You are judges of the facts and your **sole** interest is to seek the truth from the evidence in this case.

Mr. Foreman, I'm about to give you some special instructions. You are kind of the *chairman of the board or* first among equals. Your vote has no more weight than that of your fellow jurors, but its your job to run the deliberations in the jury room. I want to instruct you and the other jurors that when you get in that jury room there is no obligation on the part of any juror to say *anything at all if he or she* doesn't want to. Each jurors' only obligation is **to vote on** the verdict. On the other hand, every juror who wants to speak has an absolute right to be completely and fully heard. **Its your** job, as foremen, to make sure that **they get that opportunity. Its also your job to** make sure **that the jurors speak** one at a time. Its also your job to **decide when to** vote. Hopefully, you will listen to the recommendation of your fellow jurors on that point; but it is your **decision.**

Now, from when go out and **commence your** deliberations **if it *becomes necessary to communicate with the Court you send a* note to me through your foremen and signed** by your foreman.

I don't care who writes out the note as long as it's signed by your foreman. No member of this jury should ever attempt to communicate with the Court by any means other than in a signed writing. And I will not attempt to communicate with you other than in writing myself or orally here in open court. Recognize also that the jury officers and court officers are forbidden to communicate in any way or manner *with any* member of the jury on any subject touching on the *merits of this case.*

Finally; bear in mind that you are never to reveal to any person; not even to me, how you stand individually or collectively on the question of the defendant guilt or innocence on the counts of this indictment until after you have reached your unanimous verdict.

Before I summarize as to the questions before you when you go out, I will see counsel.

(Side bar conference)

THE COURT: Any objection by the State?

MR. WRIGHT: We had previously discussed correcting the instruction you had given earlier as to the reach of *character evidence that* ***applies*** *to all five counts.*

THE COURT: Thank you.

MR. WRIGHT: You had said earlier in the

instruction, and I was originally misled by this too, that the offense of intoxication only applies to *count one* and three. It applies

THE COURT: I will have to tell them.

MR. WRIGHT: **So** the defense of intoxication applies to all counts.

THE COURT: Right. Anything from the defendant?

MR. CONNOLLY: No.

(Whereupon the sidebar ended)

THE COURT: Before I announce the alternates and before I summarize for you, as I said at the outset of my instructions that the character evidence of reputation for character, that applies to all five counts. So keep that in *mind when* you consider the reputation of character evidence. *That applies to all five counts.*

And I told you - and I'm going to correct myself. In my instructions I did tell you that the defense of **intoxication** applies to counts four and five, and it does. originally told you that it applies only to count one, knowing and intentional murder and three as to *kidnapping.* But it also applies to the purposes for which the gross sexual act takes place. So you will consider, and may consider I should say, you consider evidence of intoxication

as it applies to the mental process as to counts four and five. It applies to all counts except to count two. Intoxication you will not consider it as it applies to count two of the indictment.

So when you go out then you are to *going to decide the* following questions: Do you find the defendant guilty or not guilty as to count one, knowing or intentional murder? If your verdict is guilty you then go to count two. If your verdict is not guilty of knowing and intentional murder you will decide do you find the defendant guilty or not guilty as *to reckless or criminally negligent manslaughter, the lesser* included offense of knowing or *intentional murder.*

Next. lo matter what your verdict is on count one, do you find the defendant guilty or not guilty as to count two, depraved indifference murder? If your verdict is guilty you will then go to count three. If your verdict is not guilty, do you find the defendant guilty or not guilty as to **criminally** negligent manslaughter, the lesser included **offense of** depraved indifference murder? Third, next, you **consider** count, three, kidnapping: Do you find the defendant **guilty or** not guilty of kidnapping as alleged in count three **of the indictment?**

Finally, you are to consider separately the two **counts of gross sexual misconduct. Do you find** the defendant guilty **or not guilty of gross sexual** misconduct as to count four?

This involves the stick in Sarah Cherry's vagina. The next: do you find the defendant guilty or not guilty of gross sexual misconduct as alleged in count five of the indictment? This involves the stick in Sarah Cherry's anus.

With that Leatris Gammage and Kim Milton are the alternates in this case. I'm going to excuse you with my sincere thanks. I appreciate your undivided attention, time and effort you've rendered in this case. Other members of the panel did *not have* to be excused. Therefore, it will not be necessary - obviously there is no vacancy to take their place. But again my sincere thanks and I'm going to discharge you finally because you more than performed your duties as jurors this term. Thank you.

With that, Mr. Foreman„ Ladies and Gentlemen of *the* Jury, the attorneys are going to get together with the clerk to make sure that all of the evidence and exhibits are *together. That will be* brought in to you. And your lunch should be waiting for you.

As it relates to your deliberations, let me say this. told you yesterday that we have contingency plans. If you reach a point in **your** deliberations today when you would like to stop for the evening and get a good night sleep, come back. I want you to take all the time that you need. I don't want **anyone** of you to feel that you are under any type of **time constraints** or pressures in your deliberations,

because the work for you is just now commencing. Our work is done. The attorneys' work is completed. by work is now completed, except as it may relate to questions that you may have back to the Court during your deliberations.

I will make an inquiry generally in the vicinity of about six o'clock, unless I've heard from you before then as to your desires. If you wish to continue your deliberations into the evening, that is your absolute right. I will leave it entirely up to the members of the jury. If you are still in the midst of your deliberations and you feel you would like to work into the evening hours, that is your absolute right. In the event you do reach that point where you feel that you just have to call it off for the day, then we have these *contingency plans for you.*

Again, my sincere thanks. **You** may now rise and commence your deliberations.

(The jury commenced its deliberations at 1:17)

(Whereupon the jury officers were duly sworn at 5:35)

(The jury returned at 6:25)

THE COURT: **Members of** the Jury, I asked Evelyn,

I the jury officer, to inquire about 25 minutes, half hour or
2 so ago if you would like to order dinner and continue
3 deliberatiaons0 And I understood you would like to have
4 another hour to deliberate, and if you *had not* reached a
5 verdict by that time that you would like to retire for the
evening and resume tomorrow morning; is that correct?
7 FOREMAN: That's correct.
8 THE COURT: Okay. Then I discovered that there are
9 some problems with location of automobiles and *things that*
10 some of you had concerns, but has that been resolved?
11 FOREMAN: Yes.
12 THE COURT: Then would you still like to deliberate
13 for another hour?
14 FOREMAN: Around an hour. I think we do not expect
15 to reach a verdict tonight.
16 **THE** COURT: You do not?
17 FOREMAN: N00
18 **THE** COURT: Well, I will abide by your wishes and
19 you may rise and retire, And why don't I leave it on this
20 basis: if you will, send a note out to me advising me when
21 you believe that everybody has reached a point where they
22 would like to retire. But by all means I don't want anybody
23 here to feel that you are under any kind of pressure of any
24 kind as to how long you want to deliberate or that you should
25 be in any rush of any kind in your deliberations to reach a

verdict. So you may now retire again. We'll await your decision. Thank you.

(the jury assumed their deliberation at 6:25
and the jury returned at 7:40)

THE COURT: I have a note from the jury. It says that the jury requests to retire for the evening and resume deliberations in the morning; the hour to be determined by the Court. We'll now adjourn to return at 8:30 tomorrow *morning.*

A van is waiting for you outside. You will be escorted outside to be taken to the Tradewinds Motel to be checked into your roomsr and from there you will be transported for I believe, its the **Samoset** to a room that's been set aside for facilities to **accommodate you** there for your evening meal. **From this point forward your deliberations are on hold. Put the case out of your mind.** The *purpose for retiring for* ***the*** **evening is to rest. Sort of regenerate** yourselves. So it **would** not be appropriate for you to continue discussion **of this case until you return** here **tomorrow morning at 8:30. I'm informed** by **our** court security officer that the van **will be ready to transport you from the motel at 8:15 tomorrow morning to have you here for 8:30. So that, if you will, once you arrive you are to go directly to the jury room to**

commence your deliberations or continue your deliberations at that time without any necessity of coming into the courtroom.

Thank you, again. You have been at it for about 6-and-a half-hours now. **And we** all appreciate your attention and your deliberations. I know the attention you are giving to this case is appreciated by everybody. Have a good evening and a good meal. See you tomorrow morning at 8:30.

(The jury was in recess for the day at 7:43)

(March 18, 1988)

THE COURT: Before we bring in the jury, every one who is present here realizes that this trial has covered a period of 11 days. And of necessity emotions have run quite high because of the type of case that has been tried here. No one knows what the jury's verdict is or will be. i caution you at this time that you should all avoid at all costs any emotional outbursts or reactions or responses to the jury verdict. Thank you *very much.* May we have the jury.

(Whereupon the jury entered the courtroom at 11:50)

THE COURT: Mr. Foreman, l understand that the jury has reached a verdict?

THE FOREMANs We have, Your Honor.

THE COURT: The clerk may inquire,

THE CLERK: Mr. Foreman, is the defendant guilty or *not guilty as to count one of knowing or* intentional murder?

THE FOREMAN: We find the defendant guilty.

THE CLERK: Mr. Foreman, is the defendant guilty or not guilty as to count two of depraved indifference murder?

THE FOREMAN: Guilty,

THE =Mt Mr. Foreman, is the defendant guilty or

not guilty as to count three, kidnapping?

THE FOREMAN: Guilty.

THE CLERK: Mr. Foreman, is the defendant guilty or not guilty as to count four of gross sexual misconduct?

THE FOREMAN: Guilty.

THE CLERK: Mr. Foremano is the defendant guilty or not guilty as to count five of gross sexual misconduct.

THE FOREMAN: Guilty.

THE CLERK: Members of the jury, harken to your verdict which the Court has recorded. You, Upon your oaths f say that the defendant is guilty of count one, murder; count two, murder; count three, kidnapping; count four f gross sexual misconduct; and count five, gross sexual misconduct as charged. So say you Mr. Foreman, so say you all?

THE JURY: Yes,

THE CLERK: Thank you.

THE COURT: You may be seated. Mr. Wright, is there any further inquire of this jury panel on behalf of the State?

MR. WRIGHT: Not on behalf of the State, thank you.

THE COURT: Mr. Connolly, is there any further *inquiry of this panel?*

MR. CONNOLLY: I would request a pole; at the same time it may be done in a uniformity as to all the counts.

THE COURT: The clerk may inquire.

*THE CLERKS Members of the Jury, please st d * Bradly Hunter, do you find the defendant guilty or not guilty of counts one, two, three, four and five?*

JUROR: Guilty,

***THE CLE** L: Charles Crafford, do you find the defend t guilty or not guilty of counts one, two, three, four and five?*

*U R Guilty **

THE CLERK: Gail Ferris, do you find the def dant guilty or not guilty of counts one, two, three and four and five?

*JURORS Guilty **

THE CLERK: Joan Corbett, do you find the defend guilty or not guilty of counts, one, two, three, four and five?

JURORs Guilty,

THE CLE : Lisa Doherty, do you find the defendant **guilty** or not guilty of counts one, two, three, four and five?

JURORs Guilt

E CLE M George Rossbach, do you find the d **t guilty or not guilty of counts, one, two and three f r dfive?**

J. • **s Guilty**

THE CLERK: Joseph Keller, do you find the

defendant guilty or *not guilty of counts, one, two,* three and four and five?

JUROR: Guilty.

THE CLERK: Janyce Chase, do you find the defendant guilty or *not guilty of counts one, two,* three, four and five?

JUROR: Guilty,

THE C : Ruth Clayton, do you find the defendant guilty or not guilty of counts one, two, three, four and five?

JUROR: Guilty.

TBE C : Nancy Cloutier, do you find the defendant guilty or not guilty of counts, one, two three, four and five?

JUROR: Guilty.

THE CLE : Julia Schulz, do you find the defendant guilty or not guilty of counts one, two, three, *four d* ***five?***

JUROR: ***Guilty.***

THE CLERK* David Woodbury, do you find the **defendant guilty or not guilty of counts, one, two and three four and five?**

Guilty,

E C : Thank you. You may be seated.

E CO : The clerk is directed to enter

THE CLERK: Thank you. You may be seated.

THE COURT: The clerk is directed to enter judgments of guilty as recorded by this jury as to counts, one, two, three, four and five in this indictment.

Members of the Jury, I'm going to ask you to remain in the jury room after you have left the courtroom. I would like to come in and visit with you a few moments before you are finally discharged.

I want to say publicly how much I appreciate the sacrifices that you have made and the time and attention that you have given to this matter over the last 11 days. I want to also publicly compliment counsel for the extremely competent and professional *manner in* which they have conducted themselves from the very start through the end, up *through the verdict in this trial. Its a textbook example* of the way that an attorney should prepare a case and to try that **case** and to conduct himself in a courtroom. Both of you I publicly applaud.

The **Court will now stand in recess,** and the defendant is to be held without bail. The matter will stand continued for sentencing and I will discuss the tentative sentencing date *with counsel as to whether or not there is a necessity of a* **pre-sentence investigation report as a result of the evidence that has been received in this case. I will discuss that with counsel. The Court will *be in* recess at** this time.

(The jury was dismissed at 11s58)

(chambers conference)

THE COURT: The one thing I neglected to do, and 1'm going to take the heat for this, is we had discussed off the record before we went in for argument and charge that Tom was going to renew his motion for motion for acquittal as to all five counts, and he knew what my ruling was going to be having denied it. And we had discussed it in chambers off the record and I just want the record to reflect that it was Tom's intention to do it. And I was going to approach him on the record and its something is that 1 neglected to do. But it had been discussed on the record and so, for the record, Tom did renew his motion for a verdict of acquittal off the record as to counts one, two, three, four, and five, and I denied those motions for the reasons previously stated at the close of the State°s case in chief.

Now, as to the pre-sentence investigation report or the necessity of a pre-sentence report report I should say. The Law Court has stated on more than one occasion, but at least one occasion, where there was an appeal of a sentence that I imposed that in a case of any real significance, especially one involving extreme consequences as far as sentencing, that the Court should almost as a matter of routine order a pre-sentence investigation. In this case I have in the file the benefit of the State forensic report. I have as a part of

i the defense offer of proof in voir dire of Doctor Ginn, the psychologically valuation of Doctor Ginn. In addition, to the personal background, education, family history and marital history of Mr. Dechaine contained in those reports, I have had the benefit of the two days of testimony of Mr. Dechaine in this trial. I've had the benefit of the half a day's testimony of Hrs. Nancy Emmons Dechaine in this trial, as well as the benefit the testimony of the numerous character witnesses who testified as to the reputation of Mr. Dechaine.

My own inclination is I don't know what benefit would be realized from a pre-sentence investigation, but I consider this of such consequence and significance that it' decision that even though I don't think I need the benefit of the pre-sentence investigation report, if defense counsel wants me to order one and to furnish the probation officer with the psychologically valuations that are contained in the file in this case, as well as any input that Mr, Connollyy would like to give to the probation officer including any further interviews that may be made with Mr. Dechaine's wife as well as Mr, Dechaine's brothers and mother-in-law and father-in-law, besides any input from the survivors of the victim in this case, then far be it from me to deprive the State or the defense of the the opportunity to have this input for the benefit of the Court at the time of sentencing.

Mr. Connolly, what is your feeling?

MR. CONNOLLY: My feeling is that the Court has had ample opportunity to get a full and fair and complete indication of this defendant; more so than probably in most cases. If the Court would include in its sentencing decision the psychological reports that it has previously eluded to allow both Mr. Wright and myself to present argument and whatever *evidence* necessary at a sentencing hearing I don't see the need for a pre-sentence investigation. I understand we are entirely entitled to it. I think the Court has more than sufficient information to base it's *sentencing* decision.

MR. WRIGHT: Your Honor, apart from the right of Sarah Cherry's family to contribute by way of either *testimony at sentencing or letters or* such between now and the time of sentencing in the manner of victim impact statements, the State does not feel a particular need **for a pre-sentence investigation, but I really think it's a matter ultimately to** be decided by *Mr.* ***Connolly*** whether he wishes to **have one or not,**

Certainly I would want to have the Crossman family **contribute their feelings as I said either by way of live testimony or in** writing to you. But it matters little to me **whether that is done through a probation officer as a conduit or whether I ask** them to **direct their letters to** me and I **collect them over the next several weeks** and make them

available to counsel and to the Court prior to the time of sentencing. I would be glad to take on that responsibility.

THE COURT: Let me ask this question then. Would two weeks from Tuesday, April 4, be too soon?

MR. WRIGHT: The only thing I don't know about is whether my murder trial is, which is scheduled to begin on March 27 has been postponed until April 24, as I gathered it might have been because of the late desire of the defendant in that case to change his plea to not guilty by reason of insanity. That's the Oakland case down in Alfred. If that is scheduled for the 27th I think I would be hardpress to do it. I would be available on the 4th of April. If, however, that has been continued to any other date - the date that was being talked about yesterday was April 24, then April 4th would be fine.

THE COURT: Tentatively then.

MR. WRIGHT: I can make a call to Fern right now at my office.

MR. CONNOLLY: He'll know what the outcome of the issue I'm talking about because he was down in Alfred yesterday.

THE COURT: I will set this for 10 A.M. on Tuesday, April 4th, for sentencing in this Court.

* * * * * * * * * * * *

(Whereupon the trial concluded)

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CERTIFICATE

I hereby certify that the foregoing is a correct transcript of my stenographic notes testimony taken in the above entitled cause.

Dated this 20th day of July 1989

Philip Galucki
Court Reporter