

STATE OF MAINE

KNOX, ss.

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

STATE OF MAINE,

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vs.

**AFFIDAVIT OF THOMAS J.
CONNOLLY, ATTORNEY AT LAW**

DENNIS DECHAIINE,
Defendant.

I, Thomas J. Connolly, being first duly sworn on oath depose and say:

1. My name is Thomas J. Connolly, and I was trial counsel for Defendant Dennis Dechaine in the above-captioned case.
2. I have direct personal knowledge of the evidence presented at trial, and I can state unequivocally that the only issue at trial was the identity of the person who murdered Sarah Cherry.
3. I am aware of the items of evidence which Dennis Dechaine, through counsel, seeks to have subjected to DNA analysis by the Maine State Police Crime Laboratory, having reviewed the list prepared by Attorneys Murphy and Peterson, and having personal knowledge of the items on that list.
4. I can state without hesitation that all of the evidence to be tested is material to the issue of the person's identity as the perpetrator of the crime of murder against Sarah Cherry.
5. With respect to the mixed blood found under the thumbnails of the victim, Chemist Judith Brinkman testified at a hearing on a Motion to Continue I filed with the Court in 1989, that there was in fact a "possibility" that the blood under Sarah Cherry's fingernails came not only from Sarah Cherry, but from another person who was not the Defendant (see Defendant's Exhibit #1).
6. Chemist Brinkman testified, however, that the type of DNA testing which was available in the California lab (Forensic Science Associates) which I sought to employ to test the blood found under the victim's nails, namely the polymerase chain reaction (PCR) test, had not yet been accepted in any Court or lab with which she was familiar. (Transcript, page 15).
7. Assistant Attorney General Eric Wright argued (Transcript, page 54) that the PCR test which I sought to employ did not have the same reliability as the RFLP test (another DNA

test, the restriction fragment length polymorphism test), but as Chemist Brinkman testified, this test (RFLP) would not be effective given the small amount of blood under the victim's nails (Transcript, page 17).

8. Justice Bradford denied my Motion to Continue to enable Mr. Dechaine to have this DNA testing done, stating that the "short delay" requested was not worth "the gamble" of "theoretical" possibilities that the testing would benefit either the defense or the prosecution (Transcript, page 55-56).
9. At the time of Mr. Dechaine's conviction (1989), the Maine State Police Crime Laboratory was not equipped to perform the type of DNA testing that it now routinely employs, namely STR testing (so-called short tandem repeat testing).
10. With respect to the issue of the chain of custody of the victim's fingernails, I came into possession of them lawfully, pursuant to Court order, on May 5, 1992. For approximately 13 months, I kept the fingernails in their sealed envelope, unopened, until I sent them to a highly respected forensic laboratory run by Dr. David Bing, Ph.D. Throughout that entire time period, the fingernails remained in my file, in my office in Portland, Maine, and were never handled by anyone, including myself.
11. In 1993, I made arrangements, at the urging of Carol Waltman, a lifelong friend of Dennis Dechaine, to send the fingernail clippings to Dr. Bing for testing.
12. Dr. Bing's laboratory, CBR Laboratories, Inc., received the materials from my office by Federal Express on June 10, 1993. The results of the tests were sent to my office, as well as to the office of Professor Barry Scheck at the Benjamin N. Cardozo School of Law which sponsors the Innocence Project. Dr. Bing's report indicated that there was no evidence that the specimens had been tampered with.
13. Those results indicated conclusively, that contrary to the testimony of Chemist Brinkman and contrary to the position asserted by the State of Maine and accepted by the Court, that two or more persons contributed the DNA which was found under the victim's fingernails.
14. The fingernails were returned to my office by CBR Laboratories, Inc., on _____, and they remained in my custody until I was ordered by the Court to return them to the Court on December 20, 1993. Between the time I received them from CBR Laboratories, Inc., they remained in a file in my office in Portland, Maine, and were never handled by anyone, including myself. (See Defendant's Exhibit #2).

Dated at _____, Maine, this _____ day of April, 2003.

Thomas J. Connolly

State of Maine

Cumberland, ss.

Personally appeared the above named Thomas J. Connolly and made oath to the truth of the above statements by him subscribed.

Before me, _____
Notary Public