

STATE OF MAINE  
KNOX 8 SS

SUPERIOR COURT  
CRIMINAL ACTION  
LAW DOCKET NO. XNO-89-126

Ce ea., sat. msa, aa. a.. cox:, av. =as, Tao tw.,

STATE OF MAINE, §  
§

*Plaintiff* §

§

*vs.*

*JURY TRIAL*

§

*(VOLUME II)*

§

§

DENNIS Js DECEAINE 8 §

§

Defendant §

ssaa \*ca. asaa oat, asala aaaa vsm as. ca. sga.

BEFORE THE HONORABLE CARL 00

TORDp JUSTICE

Rockland, Maine

*March 6-18 8 1989*

APPE ICES OF COUNSELS

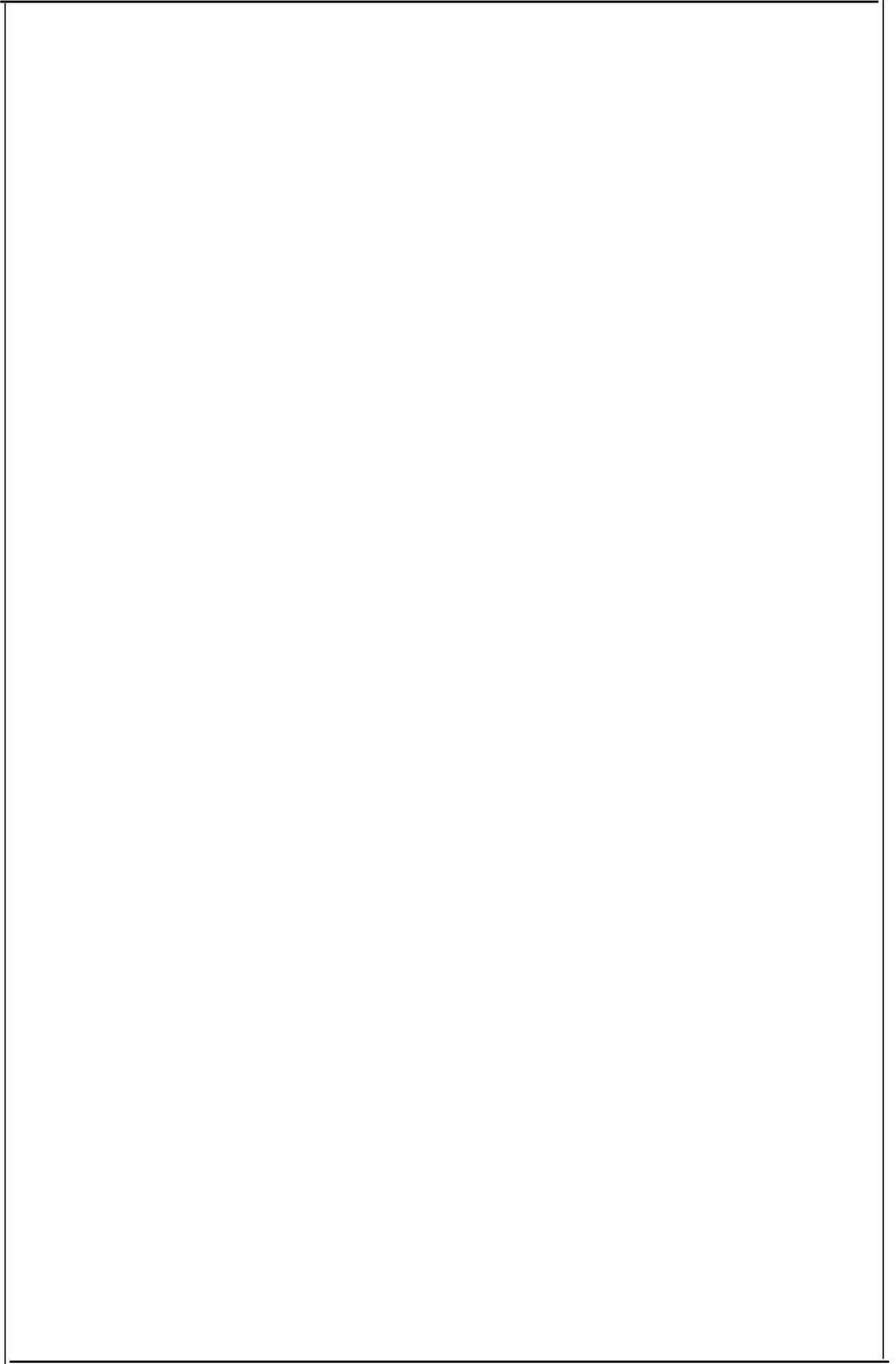
behalf of the States

Eric E® Wright, Esq.  
Asst. Attorney General

On behalf of the Defendants

Thomas J Connolly, Esq.  
George Ms Carlton, Jr., Esq.

Reported by Philip Ms Galucki, Official Court Reporter



(March 9, 1989)

(Chambers conference)

2  
3  
4  
5 MR. **WRIGHT:** There are a couple on things I wanted  
6 to talk about. We *were talking about* these matters in the  
7 room outside. He has filed *no motions to suppress any*  
8 statements or my physical evidence. You'll hear, or you may  
9 hear, that during the course of the *evening after the police*  
10 found Mr. Dechaine with Mr. Buttrick ° we've already had that  
11 testimony - that he was with, Mr. Dechaine was with the  
12 police for some hours; its no secret. The police  
13 interviewed him. He initially waived his rights to Miranda.  
14 They interviewed him. Somewhat later another police officer  
15 re-advised him, at which point he *said I don't want to talk*  
16 to you. The police thereafter did not interrogate him. He  
17 remained with them while they continued to look for his truck  
18 and had indeed, he said I think I can tell you where my truck  
19 is, and off they *went to find his truck*. There were a few  
20 other incidents along the way as well.

21 My concern is that since there has been *no motion to*  
22 *suppress* filed that the evidence that he invoked his rights  
23 should be disallowed. I don't know if Tom intends to do  
24 anything with it or not. I intend. All it does is try to  
25 create the impression of misconduct by the police when in

1 fact Mr. Connolly has filed no motions to suppress. It must  
2 be taken as believing that as a matter of law that there was  
3 no misconduct by the police.

4 THE COURT: Why *don't we try to* find out what Mr.  
5 Connolly's position is.

6 MR. CONNOLLY: Mr. Wright doesn't know what my  
7 position is, although he's making a pretty good guess. A  
8 motion to suppress was not filed. It has nothing *to do with*  
misconduct; it has to do with constitutional standards. It  
*has to do with* whether or not statements would be admissible  
*at any point in the* trial given the fact that the defendant  
may testify. I think that issue of *assertion of rights then*  
continued questioning we are incomplete disagreement on that,  
on that issue. It is a matter of fair inquiry going to the  
credibility of any admission so-called going to the weight  
to be accorded to them. The fact that the defense chose not  
to challenge them on the basis of constitutional  
admissibility doesn't mean I can't inquire as to their  
credibility.

As far as the assertion to the right to counsel, it  
would go directly towards the issue of what weight to be  
accorded them. My position is that the evidence is  
probative. I have a right to a vigorous cross examination  
and I have a right to confront witnesses who are going to be  
making statements as to admissions by the defendant.

1 MR. WRIGHT: The difficulty is it leaves the State  
2 *in an almost* hopeless position of not being able to bring out  
3 the fact that this man invoked his rights when in fact he  
4 did. Because a typical scenario to do that is improper of  
course because he's exercising his rights and therefore why  
6 should he be penalized for the exercise of his rights, and  
the State can't bring that fact out.

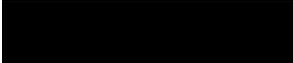
My approach in any trial <sub>f</sub> including this one, would be  
simply to leave that fact alone. Then Mr. Connolly gets to  
stand up and argue as if the State were trying to hide this  
fact and tell the jury isn't it true *he invoked his rights*  
then you went ahead and did this and that with him or to him.

THE COURT: Well, why don't we try to straighten  
this out from a chronological time frame as to what your  
position is \*

MR. CONNOLLY: *I have a time line* in the other  
room. I can grab it quickly. He was picked up at 9:30 by  
the police officers, John Ackley and Westrum. He was given  
Miranda at ten o'clock first by Officer Reed, He was  
questioned and he was held from 9:30 to 4:10 in the morning.

MR. WRIGHT: To say he was a held is a loaded word.  
Long before four o'clock when he was taken home he was told  
he was not under arrest. He would be taken home. He said I  
realize I'm not under arrest.

MR. CONNOLLY: That's absurd.



1 MR. WRIGHT: That's what the discovery tells you  
2 what happened.

3 MR. CONNOLLY: *It also says that he did it too. I*  
4 *don't believe it. He was searched and held, Your officers,*  
5 *you talk to them. I'm entitled to have a different opinion*  
6 *as to what they say is true.*

7 THE COURT: *Continue on, I'm trying to figure out*  
8 *what time frame.*

9 MR. CARLTON: A ball park figure is 9:30 until  
10 4:10; that is the period in which he's under the hospitality  
11 of the police.

12 MR. WRIGHT: You say with the police.

13 MR. CONNOLLY: He's given Miranda at twp o'clock  
14 and waives. He asserts Miranda when he's being questioned  
15 the first time; again when Hendsbee questions him. I'm not  
16 sure that is the first time.

17 MR. WRIGHT: That he invokes his rights?

18 MR. CONNOLLY: Yes.

19 MR. WRIGHT: No. Reed advised him; he waives.  
20 Reed got out of the car and Westrum *got in the* car, advised  
21 him and he said I don't want to talk to you. There after  
22 Westrum did not interrogate him because at the same time as  
23 he said I don't want to talk to you he said I think I can  
24 show you where my truck is. So they then took him at his  
25 *invitation to try to* find the truck and Mark Westrum and one,

1 other officer and Dennis Dechaine went off to try to find the  
2 truck without success.

3 MR. CONNOLLY: Correct.

4 MR. WRIGHT: *During that time, and it was actually*  
5 *before they set off to look for the truck, there was the*  
6 *incident about the finding of the keys in the police car at*  
7 *which point the sheriff Dave Haggett said to him, went to him*  
*and said what is going on here? You told us you didn't have*  
*your keys. Here are the keys. What is *going on* here?*  
*Dechaine just laughed and said you found them. Then they*  
*went off. It was at that point then - you can grin if you*  
*want; I can only take the discovery at face value. You can*  
*put whatever spin on it you want to. It was at that point he*  
*said I think I can help find the truck. They went off to*  
*look for the truck without success. Thereafter nothing more*  
*was done with him. He remained there with him without being*  
*questioned.*

Eventually Hendsbee came into contact with him after  
Hendsbee arrived by which time it was after two o'clock in  
20 the morning when Hendsbee met Dechaine and said to him it's  
21 unclear to me what has been *going on* here. I have the  
22 impression you may have invoked your rights. Do you want to  
23 talk to me or don't you? He said I don't want to say  
24 anything incriminating. At which point Hendsbee said let me  
25 advise, he re-advised him and Dechaine said I would be glad

1 to answer your questions. Hendsbee, all he asked is I want  
2 to talk to you about your whereabouts on July 6th. He said  
3 fine. He talked to Hendsbee for about 20 minutes, at the  
4 outset of which Hendsbee said you know you are not under  
5 arrest; you understand that, and he said he understood he  
6 wasn't under arrest. Hendsbee said we'll take you home.  
Call your wife, and he agreed to that. He asked him whether  
he would consent to the search of the truck, *and he said* he  
would, to photograph it. He said he would. They went down  
to the Bowdoin townhall. Did he consent, *took the*  
photograph and took him home at 4:10.

THE COURT: Are you saying that once he invoked his  
Miranda rights at four o'clock *in the* morning that anything  
that he said thereafter is not admissible?

MR. CONNOLLY: No. I'm not saying that. I'm only  
saying that I have the right to inquire as to what was going  
on with all the police officers. I have not filed a  
*suppression motion. I'm not claiming it's inadmissible. I'm*  
*claiming I have a right to inquire to the full* exchange of  
inquiring of him, and he said he didn't want to talk.

THE COURT: Is it your position that he's not  
entitled to inquire?

MR. WRIGHT: He's waived that by not filing a  
motion to suppress. It's a matter of a constitutional right.  
He's chosen not to exercise it. If he wanted to he could

1 have the opportunity to challenge the admissibility of the  
2 statements.

3 THE COURT: Let's go back to you, Tom. What is the  
4 relevance of the manner in which, because I think this brings  
5 us back to a 401 or 402?

6 MR. CONNOLLY: The relevance is the state of the  
7 defendant, the mental state of the defendant at the time of  
8 the interrogation in essence he's attempting to be  
9 cooperative but he's very concerned because he's getting  
10 leaned on pretty heavily at the time. He's nervous and that  
11 he is confused and that he is cooperative. And that he at  
12 one point asserts the right and then is willing to help out  
13 following that.

14 So the fact that the officers had *given him* Miranda  
15 would come in under normal course of testimony. Police  
16 officers are routinely asked what did you do, then I advised  
17 him of his Miranda rights. What was his response is a  
18 routine answer. I'm not trying to suppress anything he said.  
19 What I 'm trying to do is explain the circumstances under  
20 which any admissions were given.

21  
22 THE COURT: I don't question your right to bring  
23 out testimony that will explain the circumstances, but you  
24 *can't use* the tactic of cross examination to attack any  
25 statements that otherwise would have been subject to a motion  
to suppress under rule 41A.

1 MR. CONNOLLY: I disagree, Your Honor. I can use  
2 *it to attack its weight, not its admissibility. That is the*  
3 *privilege of the defense to argue as to weight not to*  
4 *admissibility to make that* choice not to challenge their  
5 admissibility but to go after the weight to be accorded to  
6 *them so the* fact finder has a full *set of information in*  
which to evaluate those statements on so they can give them  
the proper inferences and conclusions to be drawn from them  
by having a full-range of information.

THE COURT: You seem to be contending indirectly  
that the police officers here were guilty of misconduct of  
*same kind,*

MR. CONNOLLY: Not on this point. I'm not arguing  
that. I'm arguing that he was confused.

THE COURT: That's a <sup>P</sup>perfectly legitimate line of  
*inquiry of the police officers. It* depends upon how you go  
about bring that out,

MR, CONNOLLY: I agree. I don't see why I should  
be prevented from asking the police officers what happened.  
How it came about.

THE COURT: I don't have any problem with that,  
Tom. But my point is this. That you are on very solid  
*ground in attacking Scopino yesterday because that was almost*  
like the gang that couldn't shoot straight; the manner in  
which the left hand *didn't know* what the right hand was

1 doing. And even *Scopino* after some six or eight months  
2 passage of time still didn't know how long your client was in  
3 the custody of Ackley and the other deputy before Scopino  
4 gets over there to conduct a search of the person. Perfectly  
5 legitimate as far as police tactics are concerned.

6 We are now into an area where we are talking about  
7 statements made by Mr. Dechaine. I don't have any problem as  
far as your right, absolute *right to bring out the*  
circumstances such as mental condition, physical condition,  
emotional condition of Mr. Dechaine at the time these  
statements are made. But its one thing to bring that line  
of inquiry out from an arresting officer and quite another to  
attack the officer as somehow having done something wrong.

MR. CONNOLLY: I see.

THE COURT: This is the distinction I'm trying to  
make here.

MR. CONNOLLY: *I* think I understand it now. Let me  
here offer to the Court this. If I were to agree that I will  
not ask the officers about Miranda policy, for example, once  
he says he wants a lawyer and questioning must stop, would  
that obviate the Court's concern? I *won't say isn't it you*  
are supposed to stop questioning at that point, *which I was*  
not intending to go about it that way what so ever.

THE COURT: Let me here say this. As far as, I  
don't know how much clearer I can make it without having

1 heard the line of inquiry that you intend to make of the  
2 officers, but all I can say is that its one thing to bring  
3 *out in any way you see* fit the emotional, physical and  
4 otherwise apparent physical and/or emotional condition of Mr.  
5 Dechaine at the time any such statements were made. That is  
6 perfectly legitimate. When you start getting into an area of  
attacking the officers in the manner they brought this up, we  
may have to be taking a few trips to the side bar.

MR, CONNOLLY: I would proceed with utmost caution.  
I think I understand. I have no problem problem with that.  
That is a legitimate concern. I'll tread lightly on that  
inquiry.

THE COURT: I'm not out to try to limit in any  
way your legitimate right of cross examination of the State's  
witnesses. Anything else?

MR, WRIGHT: One other area that is sort of related  
that concerns me a great deal, I don't want this case  
mistrried from something I'm might bring out. The precise  
content and time in which this was said it's in the file of  
course. As I recall it was the following afternoon,  
Thursday afternoon, after Dechaine was released early  
Thursday morning, around 4 o'clock in the morning.

THE COURT: The 7th.

MR. **WRIGHT**: Yes. The event happened on the 6th he  
was released, Hendsbee took him home, and so on. Later that

1 day after Hendsbee went over to his house, Dechaine came  
2 running off the porch and started *talking* to him without any  
3 *questioning going on; at least* taking the discovery on its  
4 terms. Made some comments. Among those he said I've told my  
5 attorney what happened or something of that sort. That  
6 clearly is going to implicate Mr. Carlton. Mr. Dechaine at  
that time said I've hired a lawyer, George Carlton, and I've  
*told my attorney certain things*. I had not intended to bring  
that out because I guess I want some guidance.

E COURT: Let me here ask this. Did he  
thereafter say to Detective Hendsbee anything that he had  
told his lawyer?

MR. WRIGHT: Yes. It was either - again, I wish my  
memory was better about it as we sit here - it was either I  
told him I done something bad or I told him that I had been  
in the woods and had come out of the woods, something of that  
sort.

THE COURT: What I suggest, in an abundance of  
caution, to stay away from any statements that he may have  
alleged that he said to his attorney, because we are smack  
dab in the attorney/client privilege. In the abundance of  
caution let's stay away from that.

MR. WRIGHT: I will instruct Hendsbee very  
carefully he's to avoid that,

25

MR. WRIGHT: Cross examination should follow suit.

1 MR. CONNOLLY: Whatever statement he made there,  
2 the potential for prejudice is extremely significance.

3 THE COURT: With the attorney-client privilege at  
4 this point can be invoked, which even though it may have been  
5 relevant under 401, 402 we weren't even in a 403 problem if  
6 it's invoked.

7 MR. WRIGHT: He said a similar thing that I told my  
8 wife and she didn't believe me. That is a privilege problem,  
9 too.

10 MR, CONNOLLY: We are going to have some privilege  
11 problems. The State subpoenaed the wife in. That is  
12 legitimate because there is some *non-marital* information that  
13 they are attempting to a obtain from him. Mr. Wright and I  
14 discussed it. It's my understanding that you wouldn't be  
15 asking anything that will come near the privilege.

16 THE COURT: As to those two areas.

17 MR, WRIGHT: Both the wife and the attorney.

18 THE COURT: If you will caution Hendsbee on that.

19 THE COURT: Anything else?

20 MR. WRIGHT: I wanted to be very clear about that.  
21 The potential exists for a real problem.

22 THE COURT: Anything else?

23 MR, CONNOLLY: No, Your **Honor**,

24

25

*(Chambers conference concluded and*

1 the jury returned to the courtroom at 9:23)

2

3 (Whereupon a sidebar conference was held)

4

5 THE COURT: Gentlemen, we have a potential problem.  
6 Evelyn Ludwig, the jury officer, has just come to me and  
7 indicated that Mr. Rosback has indicated to her this morning  
8 that he heard virtually none of the videotape yesterday. She  
9 has instructed him from now on if he can't hear anything he  
10 is to immediately shoot his hand up in the air.

11 I don't want to declare a mistrial at this point.  
12 What I suggest is that - I'll leave this primarily up to  
13 *I defense counsel to determine whether or not you wish to*

14 declare Mr. Rosback as one of the two alternates and  
15 substitute alternate number one in place of Mr. Rosback.

16 MR. CONNOLLY: I would like the right to confer  
17 with my client. Do you wish a decision now?

18 **THE** COURT: I will **leave** it up to you. Do you wish  
19 to discuss it with your client?

20 MR. CONNOLLY: I would like to proceed now and talk  
21 to him when there is a little more time to speak to him in  
22 confidence.

23 MR. CARLTON: Can I be granted additional time to  
24 determine what the appropriate step is so its not a waiver?

25 I see no issue of prejudice.

2 THE COURT: You better take the time and talk to  
him right now.

3 MR. CONNOLLY: Very well.

4

5 (Whereupon Mr. Connolly conferred with his client)

6

7 MR. WRIGHT: Mr. Carlton is still present at side  
8 bar. Might I add that during the playing of the videotape  
9 testimony of Mr. Buttrick yesterday, from my vantage point,  
10 which is different from any of the other of you who were  
11 seated in front of the jury, allowed me to see Mr. Rosback,  
12 and I did notice that at several points during the playing of  
13 the videotape he appeared to be sleeping. Wholly inattentive  
14 and unable to perceive what was being shown and heard by the  
15 jury.

16 THE COURT: This has been almost a persistent  
17 problem with Mr. Rosback,

18 MR. CARLTON: Several times now.

19 THE COURT: From the start of this trial.

20 MR. CARLTON: I think there are some older  
21 decisions that it constitutes a waiver.

22 THE COURT: I think you are right.

23 THE COURT: Mr. Connolly.

24 MR. CONNOLLY: I don't like to make the choice. My  
25 client suggests first that if it's at all possible Mr.

1 Rosback be allowed to view the tape with the volume up as  
2 loud as possible as a corrective approach.

3 THE COURT: That's one alternative. I suppose we  
4 can work it out logistically.

5 MR. WRIGHT: Our present friends is to have him do  
6 that and we'll continue with the trial with him as the juror.

THE COURT: *Let* me here say this in addition, Tom;  
that I have noticed from the start of this trial Mr.  
Rosback's ability to stay awake has been a persistent  
problem. I understand that the atmospheric conditions in  
herep this *courtroom has gotten incredibly hot*; although  
we've had subzero temperatures outside. This gentlemen has  
13 had a severe problem staying awake.

14 MR. CONNOLLY: He's 79 years old.

15 THE COURT: I understand that. I'm not going to  
16 tell you how to proceed. But if you are looking for guidance  
17 or suggestions from the Court

18 MR. CONNOLLY: Most appreciated at this time.

19 THE COURT: All I'm saying is that in an abundance  
20 of caution if I see him nod off once more we are flirting  
21 with a mistrial.

22 MR. CONNOLLY: Yes. I understand that. We  
23 certainly don't want that.

24 THE COURT: At *this point* I don't know how much of  
25 this testimony he's digested and how much of it has gone by

1 him. Mr. Carlton.

2 MR. CARLTON: Of course there have been some recent  
3 decisions *indicating a* procedure for the, in effect,  
4 noncompliance with jury duty. The only way that can be done  
5 is by an inquiry of the juror himself by the Court asking  
6 *what have you heard what haven't you heard?* Do you have a  
7 serious problem with sleeping? That's what you have to do in  
order to protect the record. That's my recollection. There  
are some decisions.

THE COURT: It seems to be an appropriate area of  
inquiry. *With what* I suggest we do at this point and take a  
recess and to bring Mr. Rosback into *chambers with* counsel  
and the defendant and cover this on the record.

MR. CONNOLLY: In agreement. Insofar as there is  
any issue of taint by the juror being brought into chambers  
its waived by the defendant.

**THE COURT:** Thank you.

(Whereupon the sidebar ended).

*THE COURT:* Mr. Foreman and Ladies *and* Gentlemen of  
the Jury, a late good morning to you. I apologize for the  
lateness of the hour. There were several preliminary matters  
we had to take care of chambers.

I find now something has arisen that we are, we'll

1 *mumbled, I could not hear at all. I can hear the initial*  
2 *introduction, witnesses giving their name, the attorney*  
3 *always says step it up and repeat the name. I hear most of*  
4 *what they say. But I'm afraid sometimes they'll drop their*  
5 *voice at the punch line and I will go this way. But I'm not*  
6 *asleep.*

7 THE COURT: We are reassured by that. One  
8 alternative that we have considered here is you say you got  
9 the first half of what of what Mr. Buttrick testified to on  
10 the video?

11 JUROR: Pretty much.

12 THE COURT: Would you like to have the opportunity  
13 *to view that and listen to that alone at some point here in*  
14 *this trial?*

15 JUROR: If you think its wise I will, yes,

16 THE COURT: All right.

17 JUROR: I think I got the gist of what he said, but  
18 who knows?

19 THE COURT: If you would feel more confident in  
20 having the opportunity to view that video again I will see to  
21 it that we give you that opportunity. Would you like to have  
22 that opportunity?

23 JUROR: Yes.

24 THE COURT: All right. What I suggest is that at  
25 some point towards the end of the day here when we excuse the

1 jury panel for the day, I will give you the opportunity so  
2 *that we can* have the video set up in the jury room, if that  
3 is agreeable with counsel.

4 MR. CONNOLLY: That is perfectly acceptable to us.

5 THE COURT: Mr. Wright.

6 MR. WRIGHT: I think that is a sensible and helpful  
way to proceed and satisfactory with me.

TEE COURT: Why don't we do that and aim for  
somewhere around 4:30 to adjourn for the day and then give  
Mr. Rosback the opportunity to view that video of Mr.  
Buttrick's testimony starting at about 4:30. Will that be  
satisfactory to you?

JUROR: Yes. I don't *know how much I* missed, any.  
I<sup>s</sup> m willing to listen to listen to it again to play it safe.

THE COURT: Thank you for coming in. I guess that  
solved our problem. Now, shall we proceed?

MR. CONNOLLY: Yes.

(Chambers conference concluded *and* the  
**jury returned to the courtroom at 9:50)**

**THE COURT: Good morning. Mr. Wright, you may call  
*your next witness,***

1 DANIEL REED, being first duly sworn, was examined and  
2 testified as follows:

3

4

DIRECT **EXAMINATION**

5

6 BY MR. WRIGHT:

7

Q Would you state your name for the jury once again?

A Daniel Reed.

Q Your occupation?

A *Right now - I'm formerly <sup>I'm</sup> a Bath police officer in  
the city of Bath.*

Q How long have you been with the Bath Police Department?

A Since the 20th of September, 1988.

Q *Prior to that with whom were you employed?*

A The Sagadahoc Sheriff's Department.

Q Were you working with the Sagadahoc County Sheriff's  
Office in July of last year?

A Yes, sir.

Q *When in fact had you begun work with them?*

A *I would say I had been working for Sagadahoc County for  
approximately a year at that time, so it would have been a  
year July of 1987.*

Q *Before that had you been employed in law enforcement at  
all or was that your first work as a law enforcement?*

A I started off in Richmond for several months just as a

1 stepping stone.

2 • You were in Richmond for a couple of months then with  
3 *Sagadahoc for a couple of times and as* recently as Bath in  
4 the last few months?

5 A Correct.

6 Let me here direct your attention to after the sixth of  
July last year. I would ask you if you along with Deputy  
Scopino of the Sagadahoc County Sheriff's Office received a  
complaint which caused you to go to the Henkel residence in  
Bowdoin on the Lewis Hill Road?

A Yes, sir.

• Could you tell us what information or what the nature of  
*the complaint was that* caused you to go to the Henkel  
residence?

A The complaint that I received was that there had been a  
12-year old girl missing. She was baby-sitting at a  
residence on the Lewis Hill Road. The mother of the baby,  
Hrs. Henkel, she informed us that at 12:30 that afternoon she  
had called to check on the baby sitter. Everything was fine  
at that time. She then informed us at 3:30 she arrived home  
finding two items in the driveway.

□ I didn't mean to have you continue with what Mrs. *Henkel*  
23 told you, just the nature of the complaint was of a missing  
24 person?

25 A That's correct.

1 Q Could you tell us first of all, what time was it as you  
2 recall the complaint was received and then how long did it  
3 take you to get out to the Henkel residence?

4 A It was 4:02 that we received the call and it was 4:49  
5 when we arrived at the Henkel residence.

6 • *When you arrived what did you do at the Henkel residence*  
*when you first arrived?*

A We pulled into the driveway. We observed that there were two very large German shepards, so we stayed seated in the vehicle for a time. Mrs. Henkel came out of the residence and more or less encouraged us that the dogs would not bother us. We got out and spoke with Hrs. Henkel. She informed us at that time of the two articles that were found in the driveway *and* that upon entering her home finding both doors open, went into the residence finding her, I believe, her 11-month old child in her crib and a baby sitter nowhere to be found.

Q Did you receive the two items that Mrs. Henkel showed to you?

A Yes, sir. We did.

Q What did you do with them?

A I received we went into the residence. There was an autobody receipt and a spiral notebook sitting on the table. Mrs. Henkel informed us that these were the items found in the driveway. I picked up the autobody receipt and Deputy

Scopino picked up the notebook.

2 Q Let me here ask you'a question with respect to the  
3 handling of those items at that time. The question is what  
4 if any concerns you had with the handling, the contamination,  
5 call it what you will, of any possible evidence in a possible  
6 criminal case?

A This particular case - at the time we really had no idea of the magnitude of this case. It was evidence that we really were going to use more or less just to find out some answers, to more or less gain so-called respect to start our investigation. We wanted to know what these are doing in this driveway.

Q You didn't know what significance if any these papers might have at that point?

A Correct.

Q Or how it might later fit into the overall picture of things as it later developed?

A Yes.

Q Did there come a time when you and Officer Scopino left the Henkel residence for a period of time that afternoon?

A Yes, sir, we did.

Q For what purpose and where did you go?

A The way this all took place while we were in route to the Henkel residence on this initial call we had no idea what was on the autobody receipt. We had no idea we were going to

1 be *looking for a* certain vehicle or anything at all. While  
 2 going up the road, the Lewis Hill Road, we observed a small  
 3 red pickup truck driving down I believe its to the microwave  
 4 tower located on the Lewis Hill Road. *As we drove by I*  
 5 noticed in my rear view mirror the vehicle start to back up  
 6 over the drive.

Judge.  
 Pg 3  
 6  
 7  
 8  
 9

7 We got to the Henkel residence and we looked at the  
 8 autobody receipt which indicated a \$191' Toyota pickup truck,  
 not stating <sup>a</sup> color, but a 1981 Toyota pickup truck. At that  
 time Deputy Scopino spoke to Mrs. Henkel and told Mrs. Henkel  
 we would return; we saw a vehicle down the road we just  
 wanted to check it out, We drove back down the Lewis Hill  
 Road and drove to this microwave tower. *There I spoke with a*  
*man by the name of Mark Cenci. The vehicle was a red 1982*  
 Dodge Ram with white lettering. I spoke with the individual.  
 He was in the woods. What he was doing. He was doing a soil  
 test. I looked in the vehicle and I saw no girl in the  
 vehicle, so we assumed everything was fine.

We returned to the Henkel residence where Mr. Henkel  
 was home at that time. We gathered a little more information  
 about Sarah's height and weight, things of that nature.

Did you look for any other vehicles in the area, and if  
 so tell us where any other vehicles that might match up with  
 the *information you* had from the auto body receipt?

A While we were more or less searching the area we were

1 constantly looking for a red - at the time we didn't *know the*  
2 color. So we were constantly look going for any '31 Toyota  
3 pickup trucks. That was it. *ate* never located another one  
4 until later that evening.

5 Q Pine, Let me here jump ahead of you. When you refer to  
6 *one that was* located, which truck are you referring to?

A That would be the one that was located around midnight.  
It was Dennis Dechaine's vehicle.

Q That was the only red Toyota pickup truck that you had  
encountered?

A Yes.

Throughout several hours of searching?

A Yes.

You had the name of Dennis Dechaine from the receipt?

A Yes.

Q Did you do anything in relation to that?

A It was an RFD *box that was on the* receipt. So we went  
and we looked into a phone book. I believe the phone book is  
how we we were notified that it was the Old Post Road in  
Bowdoinham. At that time we went to the old Old Post Road in  
Bowdoinham and we went to Dennis's house.

Q And found what?

23 A At that time there were a couple of vehicles in the  
24 driveway. And we spoke to Dennis's wife and she informed us  
25 that she had not seen *Dennis* since the morning. And that she

1 stated she had not seen Dennis since that early *morning* and  
2 she was quite concerned why we wanted to speak to Dennis.

3 Q What did you tell her?

4 A We more or less informed her we had received a couple of  
5 articles that belonged to him and we just wanted to talk to  
6 him and if possible if he could call us at the sheriff's  
7 department when he got home. She stated he usually comes  
8 *home after dark*,

9 Q You didn't find Mr. Dechaine there?

10 A No.

11 Then having not found him there what did you do?

12 A At that time ®-

13 Q By the way, what time was that that you *went to the*  
14 Dechaine residence?

15 A That was 5:51.

16 Q All right.

17 A Then we left the Dechaine residence. We drove back to  
18 Bowdoinham Police Department. I called the sheriff to inform  
19 him what was going on and stated I think it would be helpful  
20 if we had more people to start to look around for what is  
21 going on here for the vehicle. And the sheriff informed me  
22 that he would send a few other units up and himself, which  
23 they did arrive later on in the evening.

24 Q Meanwhile, before the arrival of other members of your  
25 department, you continued to look for a truck?

1 A Yes.

2 Q Or what?

3 A Yes. We were looking mainly - to back up to speaking  
4 to Mrs, Dechaine, we had no idea what color Dennis's vehicle  
5 was or the vehicle we were looking form I asked Mrs.

6 Dechaine just what the color *of Dennis's vehicle was. She*  
informed me it was red. So we had an idea to look for a red  
1981 Toyota pickup truck,

Q I guess you've already said you never found one as you  
mentioned until the midnight hour when a truck was found?

A Correct,

Q Somewhat later did you come to have contact yourself  
with Dennis Dechaine?

A Yes,

Q When was that and where was that, the circumstances?

A That was at approximately 9:15, 9:13 that evening.

Q Where were you?

A I was parked at the corner of the Lewis Hill Road and  
the Dead River Road. We had somewhat of a command post set  
up at the time there. We were trying to re-group. I was  
informed by one of the other deputies that he had the  
individual that we wanted to talk to in his vehicle and he  
would bring him to me,

25 Q Tell us what happened then when one of the other  
deputies brought somebody to you?

1 A Dennis was, he was in the back seat of John Ackley's  
2 vehicle. He was the deputy driving. Westrum was with him at  
3 the time. I got in, Mark Westrum and I got into the vehicle.  
4 Dennis was in the back seat.

5 Q Where were you in the car?

6 A In the driver seat. Mark was in the passenger seat.

7 Q What happened to *Mr. Ackley*? I thought you said he had  
been driving that car?

A He got out on *out of the driver's seat and I got into*  
his seat. At that time I read Mr. Dechaine his rights and  
explained to him that the reason for this was that we were  
*investigating a 12-year old missing girl as* of this afternoon  
and we would like to ask him a few questions to see if he  
knew anything out this.

What rights specifically did you advise Mr. Dechaine of  
at the time you told him you were investigating the missing  
girl?

A It would be the Miranda warning.

Q *I'm sure you know what they are.* I'm not sure the jury  
does. Could you tell the jury what the Miranda consists of?

A I'm a law enforcement officer. I caution you that you  
have the absolute right to remain silent. *Anything that you*  
23 *say can and will be* used against you in a court of law. That  
24 *you have the right to* the advice of a lawyer here before and  
25 the presence of a lawyer during questioning. If you cannot

1 afford a lawyer one would be furnished to you free before any  
2 questioning, if you desire. At the end of it you ask the  
3 individual if he chooses to speak to us now, then you can  
4 *stop at any time.* Then you ask him if they understand each  
5 one of these rights as you explained, which Mr. Dechaine said  
6 he did.

7 And the last portion *of this is: Having* these rights  
in mind do you wish to speak to us now without having an  
attorney present, at which Mr. Dechaine also stated that he  
did.

So you gave him all these rights and he indicated a  
willingness to speak to you at that time?

A Yes.

Q Prior to your talking to him did you in any way by a  
show of force or display of a weapon, anything of that sort  
threaten in words Mr. Dechaine to compel him to speak to you?

A No, sir.

Q *Were you in uniform by the way?*

**A Yes.**

Q **How** about **Detective** Westrum, *how was he* dressed?

A He was in plain clothes.

Q I assume part of the regular dress of a sheriff is to  
23 carry a sidearm?

24 **A Yes.**

25 **Q** So you had a weapon with you?

1 A Yes.

2 Was that weapon every removed from his holster?

3 **A No.**

4 • Was Mr. Dechaine restrained in any fashion physically?

5 **A No.**

6 Q Handcuffed?

A No.

Q Seat belted in or anything of that nature?

A No.

Q On the other hand, did you extend to him any promises of any sort if so if he were to speak to you, it would in any fashion either then or *at any later time be to* his advantage?

A No, sir.

Q That there would be in any way some benefit that might flow to him from his speaking to you at that time?

A I don't believe so.

Q Can you tell us as you first saw him then and for the moments and minutes that you spoke to him thereafter, what his behavior and demeanor, his appearance, his attitude were all like, describe them for us?

A I really think Dennis seemed to be - he answered questions quickly. I asked him several questions, which he answered very quickly. He came back with an answer sharply.

Q He was responsive to you when you talked to him?

**A Yes.**

1 Did you have any difficulty understanding him?

2 A No, He at one point he got angry referring to a  
3 question that I did ask him, which, in response, was a normal  
4 reaction my voice raised I believe as his did.

5 Q Let's get to that in a few minutes. Anything else about  
6 his demeanor, excitable, calm. You tell us how far he was?

A He seemed to be I know *that his* eyes were very, I  
don't know if it was an expression of fear or what it was,  
but his eyes were very large. I don't know if this is common  
for him, but his eyes always appeared to be very large like,  
I don't know. His eyes were very wide-open. And all the  
time that I observed him in the vehicle he seldom turned  
around to see what was going on around him; he was always  
more or less straight ahead looking at me or Detective  
Westrum.

Q **His** eyes as you saw him that evening as compared to his  
appearance here today in court?

A No, sir. His eyes were very wide. You *could see a lot*  
of the white to his eyes, whereas now I see mainly darkness.

Q For how long did you speak with him?

A I would say 15 minutes.

Q Could you tell us how it was that you that you spoke  
with him that evening? That is the manner in which you  
proceeded to try to obtain any information from him. You  
asked him one question and he gave a response and you asked a

1 another question?

2 A It was a question and answer type of thing.

3 • How did you put the questions to him? If you can tell  
4 us what was your manner of doing that?

5 A (no response)

6 • He was seated in the back seat?

7 A Yes.

8 You were seated in the front seat?

9 A Yes<sup>®</sup> I was turned around looking at him all the time.

10 • How was it you went about putting the questions to him?

11 A I feel I was polite; up to a certain point where *we both*  
12 raised our voice. I understand I raised my voice as he did  
13 also. But up until that point it was a conversation. I was  
14 asking him the questions and he was giving me the answers.

15 Q Why don't you tell us then the questions you asked him  
16 and the answers he gave you to the best of your recollection,  
17 trying to go through it. And if need be I would ask the  
18 Court's permission to ask him to check his notes if he need  
19 be.

20 THE COURT: Very well.

21 MR. CONNOLLY: I have no problem with him checking  
22 notes as long as Via certain I have those notes. I assume I  
23 do. I have no problem with that.

24 MR. WRIGHT: Why don't I take them from the officer  
25 and show Mr. Connolly what he's on got.

2 THE WITNESS: That would be the only note I would  
3 *want to refer to, if any.*

4 THE COURT: At this point before we proceed any  
5 further will you inquire of the witness whether he's got  
6 anything in his possession which has not been given to the  
defense in discovery in this case.

MR. CONNOLLY: Thank you.

BY MR, WRIGHT:

Q I will. Everything you have you've given to the State,  
*to me, have you not?*

A Let me here make sure I look through my folder. I find  
in my folder, which I will give to you, its just notes that  
I went over myself the other evening going *through, down the*  
radio log. I just wanted to brief myself on times, actual  
times when some of this did take place.

These are notes taken from other materials, logs from  
the sheriff's department?

**A Yes. Something** I had written down the other night while  
looking briefly at my notes.

Q That you previously had been provided to me?

No. I had no intention of providing those.

Not the notes but you wrote the notes from logs?

Correct.

Regularly maintained by the department?

1 A Yes.

2 Which had *been* provided to me and in turn to Mr.  
3 Connolly?

4 A Yes.

5 Q. A listing of times of events that you have been  
6 testifying to?

A Yes.

R. CONNOLLY: Thank you very much.

THE COURT: Mr. Wright.

RE DIRECT LAMINATION

BY MR. WRIGHT:

Q Whys with all that as background so the jury can understand the settings tell us, if you will, what questions you put to Mr. Dechaine and what his answers were to your questions?

A After I informed him that the reasoning behind these questions was that we had discovered we have a missing girl and we just want to know if he knows *anything about it*. I asked him where his truck was. Mr. Dechaine informed me that he had parked his truck into the woods so as to go fishing. While fishing he had lost his truck. While he was in the woods he could not re-locate his truck. I then asked him did you catch anything. He stated no. I asked him where is your

1 fishing gear. He stated when I realized that I had lost my  
2 truck I ditched my pole.

3 Q You were at that point at the intersection of the Lewis  
4 Hill Road and the Dead River Road?

5 A Yes.

6 Q And did either of those roads then come up in your  
7 conversation with him?

A Yes. My next question there was I pointed towards the Lewis Hill Road because the way we were parked we were parked *facing the* Lewis Hill Road we had just turned on to the Lewis Hill Road from the Dead River Road. I asked Dennis by pointing to the Lewis Hill Road if he had been on this road today. **His** reply was no.

I then showed Mr, Dechaine the spiral notebook and the autobody receipt that we had received from the driveway. I asked him if these were his items. Eventually he stated that they were.

*What was his initial* response?

**A His initial response was no.** That I had never seen these before.

• Before you go on, let me here show you two items to make sure we are talking about the same thing. State's Exhibit Number 10<sub>1</sub> **first of all.**

A Yes, sir. That is the autobody receipt.

That's the one you had with you that night that you

1 showed to Mr. Dechaine?

2 A Yes.

3 Q And State's Exhibit Number 11?

4 A Yes, sir. This is the spiral notebook that was found by  
5 Mrs. Henkel in the driveway of her residence.

6 Q This is the spiral notebook that you had *with you with*  
Mr. Dechaine later that evening?

A Yes.

Q That you then asked him if he recognized these?

A Yes.

Q He initially said no?

A Yes. He stated that he had never seen these before.

Q Then what happened?

A Then I asked h.j.m to explain how his name could be on  
these items if they were not his. And he stated - that's  
when he stated yes, I guess they are mine.

Q All right. Any other conversation immediately there  
after about these two items?

A My next question to Dennis was do you carry these items  
*in your truck?* He stated, yes. I said where in your truck?  
He said I just keep them on the passenger seat.

- Go ahead.

A I asked him how far could these items have been found in  
the driveway on the Lewis Hill Road if he has never been on  
this road today? He stated that, at that time he stated he

1           Go ahead. If it was his wording givt  
2    A     He stated they must have fallen out when I  
3    take a piss. Then I informed him I said you just told me  
4    that you just turned around in the driveway. Then he -  
5    that's when we both raised our **voice**. He stated no. I have  
6    told you that I took a piss. Then I stated to him angrily,  
well, with a raise of the voice, I said do you recall taking  
a piss in somebody's driveway in the middle of the day? He  
informed me that it wasn't in the middle of the day. He  
worked on the farm until five. He came out to go fishing.  
And he didn't piss in the driveway, he pissed in the woods.  
He walked into the woods,

Q     How did the papers wind up *by the house, what* question  
did you put to him?

I asked him how did these papers, how did these items  
end up as far as the house.

- Tell us exactly what his response was to that question?

A     At that time he informed me, he stated whoever grabbed  
the girl saw these, placed them up at the head of the  
driveway *to set me up. That was* the last that we spoke.  
then exited my vehicle.

Q     The word or the phrase whoever grabbed the girl was his  
phrase?

A     Exact.

Q     Had you, Deputy Reed, to that point that evening or any

1 other officer to your knowledge ever told Dennis Dechaine  
2 *that Sarah Cherry had* been abducted, kidnapped, taken,  
3 whatever phrase might be?

4 A No, sir, I did not. I informed him hat we were  
5 *investigating a missing 12-year old girl.*

6 Q His response was that the girl had been grabbed?

A *Yes.*

M.R. WRIGHT: Thank you.

*THE COURT: Mr. Connolly.*

#### CROSS EXAMINATION

BY MR. CONNOLLY:

- Good morning, Officer Reed?

A Good morning.

Officer, at the time that this incident took place you had been on the force for about a year and your total experience was approximately 14 months; is that correct?

A That's correct.

- It's fair to say this is the largest case that you've worked on before or since?

A Yes, sir.

- And it's fair to say that the new position that you are in is a promotion?

A **Yes, sir.**

1           *And in part the promotion is due to the job that you did*  
2           *in this case?*

3           A     No, I don't believe so.

4           Q     You don't believe so?

5           **A     No.**

6           Q     So your *work in this case has no effect in your current*  
7           position; is that your testimony?

8           A     No\* I applied and I was hired.

9           Q     During the interview process did you discuss this case?

10          A     No, sir.

11          Q     Sir, turning your attention to July *6th, the original*  
12          part of the day when you were first summons to do the Henkel  
13          residence, its fair to say you were intimidated by the large  
14          dogs that were there?

15          A     Yes.

16          Q     Quite a bit?

17          A     Yes, I was,

18          Q     Together the two dogs were good size?

19          **A     Very good size.**

20          **Memorable?**

21          A     They were both German shepards, I believe.

22          Q     They were such to cause you to have a conscious memory  
23          of them and your present sense impression of them because  
24          they were big enough to cause you to remember?

25          A     Yes, sir.

1 Q When you discussed with Mrs. Henkel the articles found  
2 in the driveway your testimony, as I have it down, is that  
3 you received the two items in the house. Is that your  
4 recollection?

5 A Yes.

6 Q If I were to tell you yesterday Officer Scopino  
testified Mrs. Henkel came out of the house and gave you the  
notebook in front of your vehicle behind her *vehicle, would*  
that statement be inaccurate?

MR. WRIGHT: Objection. Counsel can ask this  
witness this question but can't comment upon the accuracy of  
another witness. Its a question for the jury to decide.

THE COURT: Sustained as to the form of the  
question.

BY MR. CONNOLLY:

Q Do you remember specifically receiving the items in the  
house, sir?

A To the best of my recollection that's the way that I  
remember it.

Q So if somebody had said that they received them outside  
the house that was mistaken?

23 MR. WRIGHT: Objection.

24 THE COURT: Sustained. He can either agree or  
25 disagree. The jury will decide the ultimate question.

1

2 BY MR. CONNOLLY:

3 Q Officer Reed, in your discussion with Mr. Wright on  
4 direct examination as to why the items were handled the way  
5 that they were you indicated that the reason that it was done  
6 is because you had no idea of the quote magnitude of the  
case; is that correct?

A That's correct.

Q Now, sir, is it not true that police procedures are put  
into effect so that the magnitude of a case so-called has no  
bearing on proper police procedure; isn't that correct?

A Yes. I would have to say you are correct.

Q So that the fact that you didn't know what was going on  
at the time doesn't mean that police procedure can be thrown  
out the window, for example?

A You are right.

Q Did you yourself handle the items?

A Yes, sir, I did.

Q As well as Mr. Scopino?

A Mr. Scopino handed me the notebook that he received. I  
then *maintained*, I feel that I maintained very good  
continuity of those items until I ha<sup>nded</sup> them over to the  
State Police.

24 Q So by the time you got it however, it had already been  
25 *written in; is that correct?*

1 A See, I was never aware that Deputy Scopino had used it  
2 to take a note.

So it's fair to say it was out of your custody for a period of time and you don't know what happened to it during that period of time?

3 A We were in the house, he was taking notes. I just never  
4 realized that he was taking the notes in the notebook that  
5 was received as evidence.

6 Q Yes, sir. You were one of the first two officers on the  
7 scene; is that correct?

8 A Yes.

9 Q What efforts did you take in order to preserve the  
10 integrity of the scene?

11 A Very little at that time I would have to say.

12 Q For example, it not true you did nothing insofar as  
13 people opening and closing the door or doors?

14 A No, sir.

15 Q And it's true that, is it not, that you did nothing  
16 insofar as making sure that there was no traffic on the  
17 driveway? You didn't block it off?

18 A No, I did not. The reason being for that --

19 Q I ask the question.

20 MR. WRIGHT: I wonder if the officer might be able  
21 to do it to explain himself?

22 THE COURT: He can do that on re-direct  
23  
24  
25

1 examination. He finished his answer.

2

3 BY MR. CONNOLLY:

4 Q In reference to your observations to the small pickup  
5 truck, Officer Reed, that is not contained in your report, is  
6 it?

A Please repeat the question.

Q The small red pickup truck that you found on the roadway  
not reported in your note, 'was it?

A **No.**

Q Now, you give us the name of Mark Cencchi with a 1982  
Ram. Where was that information contained prior to trial,  
sir?

A *Well, this was in my, in the log, the radio log. I went  
over my radio log, and the reasoning it was just, it was in  
the radio log. And I looked over my radio log the other day  
and that's -- why I didn't put it in my report is it did come  
up as an individual doing soil testing, so I felt it had no  
relevance in this case.*

Q But the fact that a small red pickup truck was on the  
Lewis Hill Road in the area of five o'clock on July 6th, 1988  
you considered of insignificance to inform the attorney for  
the State and defense counsel?

MR. WRIGHT: I would object. Could we come to bar?

1 (Whereupon a sidebar conference was held)

2

3 MR. **WRIGHT**: That information everybody should  
4 know, including the jury at this point, is in the discovery  
5 material. It's not in this his report; you know it's in the  
6 discovery material.

MR. CONNOLLY: Where?

MR. **WRIGHT**: I can't point to it. It's no surprise  
that he testified that way today or that Scopino did  
yesterday. The material about them going off to look for a  
truck is in the report from the State Police, and you know

R. CONNOLLY: That is nonsense. I have a copy of  
the radio log.

MR. **WRIGHT**: I'm not talking about the radio log.

MR. CONNOLLY: For the record, Your Honor, the  
radio log that I have been provided has no such information.  
The radio log stops at 1552 police time and it's blank after  
**that.**

MR. **WRIGHT**: July 6th.

MR. CONNOLLY: Show me the gap.

MR. **WRIGHT**: There is a 20 minute gap.

MR. **WRIGHT**: I wasn't referring to the radio log  
but the information that Scopino and Reed left the Henkels to  
go look for a red truck is in discovery. It's in one of the  
**State Police reports.**

1 MR. CONNOLLY: I was unfamiliar until Mrs. Henkel  
2 said it yesterday. If its there I may have missed it.

3 MR. WRIGHT: The impression has been left that  
4 everybody is trying to hide things from you. That's not  
5 right.

6 MR. CONNOLLY: Its not in his report. That was  
the question.

M. WRIGHT: You followed it up with another  
question. Can you tell me where in any of the material  
turned over to the State, and therefore to *me, anywhere* where  
this has appeared.

MR. CONNOLLY: *You call that witness* then.

THE COURT: The objection is sustained. I'm going  
to instruct is the jury to disregard the question.

(Whereupon the sidebar ended).

THE COURT: Mr. Foreman and Ladies and Gentlemen of  
the Jury, there has been a an objection as to the last  
question. The objection is sustained as to the form of the  
question. You are to disregard it. You may continue.

BY MR. CONNOLLY:

Q Officer Reed, during the period between 5:00 and 5:10  
25 *p.m. on the July 6th, 1989 on* the Lewis Hill Road did you see

2 a red Toyota pickup travel back and forth in front of the  
Henkel residence?

3 A Between **5:00** and **5:10, no, sir, I did not.**

4 Q What time did you observe the surveyor's pickup truck?

5 A I believe that was 4:57. I'm not one hundred percent  
6 sure of that.

7 Q Plus or minus you said 4:57.

8 Was it traveling at that time or was it stationary?

9 A Stationary at the time. The individual was out of the  
10 vehicle.

11 Sir, I'm turning your attention to what has been marked  
12 as State's Exhibit Number 1-B<sub>1</sub> which I submit to you is a map  
of the area of the Lewis Hill Road. I would ask you to turn  
your attention to this map to familiarize yourself with it so  
we may proceed with questioning. Take a moment so you can  
get your bearings.

A Okay.

Q Can you **identify** on State's Exhibit Number 1-B the  
location of the red pickup truck used by the surveyor?

A To the best of my knowledge I **do** not see the roadway  
that goes to the top of the hill. I believe *that the*  
microwave tower is on top of the Hornby Hill. I have see no  
roadway indicated on the map. I believe this is the spot  
where the hill is. He was parked at the bottom of the hill.  
I'm not sure if this would be indicating a road **or** is this

L

1 *indicating a mountain.*

2 Q That is indicating a river.

3 A In reference to this I do not see a roadway that goes to  
4 the top of this hill. Where it is in reference to this map I  
5 *cannot testify.*

6 Q To the best of your recollection it's in that general  
area?

A Yes, I believe Hornby Hill is where the tower was.

Q I would ask you to put a blue X where you believe you  
saw the red pickup truck which you've testified to as a  
Dodge?

A Guessing where the road may be that leads to the top of  
*this hill*, I don't recall the road going over a stream or  
*river.*

Q I don't want you making a guess. Is it fair so say you  
aren't certain where it was located?

A I'm saying I'm not certain where the roadway is. I know  
this is where the hill is. I know this is where the tower  
is. Where the road is in reference to this hill I cannot  
tell you.

Q If you draw a medium size X it would probably cover the  
area pretty accurately?

A I would say right here.

Q If you make it a little bit bigger so it's observable.  
To the best of your recollection it's in that area, a red

1 **I pickup truck on July 6th at five o'clock?**

2 A That's correct.

3 How was that individual dressed; **do** you recall?

4 **MR. WRIGHT: I would** object relevance.

5 **THE COURT:** Overruled.

6

BY MR, CONNOLLY:

How was he dressed?

A I believe he was wearing blue jeans. He was not formally dressed. He was dressed as a working dress, which I cannot *honestly say what he was wearing*. I know he was not in a suit and tie. Just everyday dress I would have to say. I know he had a tool in his hand which he was using to take a soil test.

Q You shortly thereafter went back to the Henkel residence?

A Yes,

Q Where did you park your vehicle once you returned to the Henkel residence?

A We pulled into the driveway and we didn't park right up towards the house because there was a vehicle in the driveway.

Q What kind of vehicle was that?

24 A It was - the type I know it was a sedan versus a pickup  
25 truck, The color and make I do not know.

1 Did it belong to the Henkels?

2 A Yes.

3 Q If I told you it may have been a red Omni does that  
4 refresh your memory?

5 A No.

6 Q *It was another* vehicle?

7 A I never took notice to the color or make of this  
vehicle.

Q And you were at the residence for how long?

A I would say we were there possibly 10, 15 minutes.

Q Then you proceeded to the Old Post Road to investigate  
the defendant's house?

A That's correct.

Q You arrived at the defendant's house at approximately  
5:51?

A Yes, sir

Q You noticed vehicles in the driveway at the time?

A Yes, sir.

Q And what were those vehicles, do you recall?

A The only vehicle that I recall was a tan, a small tan  
pickup truck.

Q At 5:51 do you have any recollection of seeing a red  
pickup truck in that driveway?

A No, sir, I do not.

Q Would you have noticed it?

1 A I believe I would have®  
2 That would have probably *been* memorable because you were  
3 looking for a red pickup truck of the defendant's?

A Yes,

5 Q You proceeded to call for additional police support at  
6 some timed Is it fair to say from the period of the first  
7 call until you were at the defendant's you were the only  
units investigating this?

A Yes.

Q Now, you indicate that the only way you found out about  
the color of the defendant's car is that his wife informed  
you that it was a red truck; is that correct?

A Yes

• And why didn't you do a motor vehicle check over the  
vehicle at radio at that time?

A What you are asking is why didn't I do a radio check?

Q A 1028?

A On Dennis Dechaine's vehicle?

Q Yes. You did one several hours later?

**A** Yes.

Q Why didn't you do one at the time?

A I do not know.

Q How tall are you officer?

A Six foot one.

25 Q What is your weight?

1 A 220.

2 Q Pretty good shape?

3 A I feel that I am.

4 Q You use nautilus, that kind of thing?

5 A Yes.

6 Q When you had contact with the defendant your recollection is that it was between 9:15 and 9:13?

A Yes.

Q How do you recall that time in particular?

A I believe it was through I believe by going through my radio logs, That's how I determined this time.

Q *And your first contact with the* defendant was at the time that he was at the corner of the Lewis Hill Road and the Dead River Road?

A Yes.

Q To that point he was transported to you by John Ackley and John Westrum?

A Yes.

Q How long had he been in their custody?

A I would say a matter of three minutes, tops. All I can *say is how long* it took from the time I received the call from Deputy Ackley that he was in route to our area with the *individual*. *Now* how long they spoke with Dennis or Mr. Mr. Buttrick is beyond my knowledge.

25 Q It may have been longer *than* three minutes; the

transportation time was out three minutes?

2 A That's correct,

3 Q The defendant was in a sheriff's vehicle at the time and  
4 transported to a second sheriff's vehicle; is that correct?

5 A No.

6 • What happened?

A I entered the vehicle that he had been originally  
transported in.

Q So he was from the time he first entered the sheriff's  
vehicle he was in the same vehicle?

A Correct.

• For the benefit of the jury who have not been *in police*  
vehicles, it's a four-door sedan?

14 A Yes.

15 Q What brand?

16 A Chevy.

17 Q It's a full-size Chevy?

18 A Yes,.

19 Q Does it have a partition between the front and the back  
**20** or not?

21 A No.

22 Q It has what for door handles in the back seat?

23 A It has the standard. You can open the door from the  
24 back seat.

25 Q And when the defendant was in the vehicle was the back

door open or closed?

2 A Closed.

3 • At the time if the defendant had tried to get out you  
4 would have prevented him from getting out?

5 A No.

6 If he just wanted to get out and walk away you would  
have allowed him to do that?

A Yes. I think during questioning I would ask him could  
we finish this *questioning*. *If he* wanted to get out of the  
vehicle there would have been no problems.

Is it fair to say that by the time you began your  
questioning it was dark?

A Yes, sir.

• Were any police lights on? There were no blue lights or  
red lights; were they on or off?

**A No.** There were no lights on.

Q Was the interior cab light on or the interior light on?

**A Yes, sir.** I believe it was.

Q **And** were both yourself and Detective Westrum in the  
vehicle?

**A Yes, sir.**

• Both in the front seat?

A Yes.

• *And you* were positioned in the driverer's seat?

**A Yes.**

J

You were turning around reading to him at some point?

2 Yes. The seats are bucket seats and I was looking  
3 straight through.

4 Q There was a direct line between yourselves?

5 Yes.

6 Q You were fully uniformed at the time?

Yes.

Q Badge and belt?

Yes,

Q Your belt contained a revolver?

A Yes.

Q Do you carry backup speed loaders?

A Yes. There were two.

• There were two of them?

A Yes.

Q You carry a flashlight?

A No. Not on my belt.

Q Was one in the vehicle?

A I believe there probably would be.

Q Did you have a nightstick?

A No.

Q You use a flashlight?

A We don't carry nightsticks.

Q So a flashlight carries the same function?

25 HR. WRIGHT: Objection.

1  
2  
3  
4  
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6  
7  
8

THE COURT: Sustained.

BY MR® CONNOLLY:

Q Based upon your knowledge Detective Westrum *was in the* passenger side of the seat, and was he stone silent the whole time or did he have a conversation also?

A He just sat there and more or less observed.

Q Is it unusual for a detective to allow a patrolman to do the interview?

MR. WRIGHT: Objection.

THE COURT: What is the *relevance?*

MR. CONNOLLY: 1'11 strike the clue tion.

BY MR. CONNOLLY:

Did you read from a Miranda card?

A The basic Miranda form.

Q *The sheriff's office here uses a* sheet as opposed to a little card for your wallet?

**A** Yes.

Q Did you read that line by line or did you do it from memory?

A Line by line.

Q Did you have the defendant sign it?

A **No,**

Q At any time?

1 A No, I did not.

2 He indicated he understood?

3 A Yes, sir, he did.

4 • *Was he willing to talk to you?*

5 A Yes.

6 Is it fair to say his attitude was cooperative?

A Very.

*Would it be fair to say that prior to the angry part of the transaction that he was reasonably in control?*

A *I would say so, yes.*

• And he was responsive to questions?

A Yes.

And responded with proper effect; in other words responded to the questions as you would feel are appropriate?

A I would have to say, yes, to a certain extent.

• Did there become a point, is it fair to say, when the harmony between yourself and the defendant broke down?

**A Yes.**

• And he lost his temper?

**A Yes.**

Q As did you?

A Yes, I did.

Q At some point your voice at least raised quite loudly; is that correct?

A No, sir, I would not say that it raised any louder than

1 the way I expressed it when I read it off my form here.

2 Q Would it be fair to say you were stern?

3 A I would say firm.

4 Q You used the form word angry in your report?

5 A That was the impression that I received from Dennis  
6 Dechaine.

Q You yourself weren't angry?

A *It wasn't that I was angry; I believe it was just a natural response. The individual was angry at me.*

Q Now, your report is not a verbatim transcript of your conversation, is it?

A Excuse me.

Q Its not a verbatim transcription of your conversation with Mr. Dechaine, is it?

A *Yes, sir, it is. I would have to say I don't understand the question.*

Q Are these exact quotes in the report or to the best of your recollection?

A They would be to the best of my recollection.

Q Its not like a tape recorder?

A No.

Q It's a synopsis, a summary?

A Yes.

Q And the statement that you have provided was done the next day, correct?

1 A Immediately the next morning, before any sleep.

2 Q So you were up all night when you did this?

3 A **Yes.**

4 **You** do your best when you are up all night?

5 A Well, at this point I would have to say the reasoning  
6 behind doing this report prior to going to sleep was to put  
7 down exactly what I recalled.

8 Q Would it be fair to say you were in an excited or  
9 agitated state during the questioning?

10 A I would not say excited.

11 Q Agitated?

12 A *No. I wouldn't say that.*

13 Q *Would it be fair to* say later on when you wrote out the  
14 report that you had additional information that you did not  
15 *have at the time of the* original questioning?

16 A *No, sir.*

17 Q You gained no additional knowledge from the time you  
18 wrote it up?

19 A I'm referring to this individual report --

20 Q That's not my question.

21 A -- that we are talking about as far as the question and  
22 answers.

23 Q That's not my question. Please answer my question,  
24 *which is the by the* time that you wrote out this report it  
25 was many hours later, was it not?

1 A Yes.

2 Q By the time you wrote out this report you had additional  
3 discussions with detectives, with other police officers and  
4 you had additional information about the case, for example,  
5 the discovery of the truck; isn't that true?

6 A True.

7 • In addition, there were many other things that you were  
8 aware of that were of consequence that you were not aware of  
9 at the time of the initial interview; isn't that correct?

10 A That's correct.

11 • Now, the conversation between yourself and Mr..Dechaine  
12 lasted at least 13 minutes?

13 A Yes.

14 • To the best of your recollection?

A Yes".7<sup>h</sup>

• And the questions and answers that are on this page do  
not reflect all the discussion that you had, does it?

A (no response)

42 These are the things that you felt were the most  
*significant; isn't* that right?

A I do not recall -- this is the conversation to my  
remembrance. Now, whatever was said I do not recall.

Q There are no non-fluencies in there, of qualifications,  
that sort kind of thing?

25' A No.

1 Q This is a written report based upon your recollection of  
2 what you recall was said?

3 A Correct.

4 Q In your report you are trained, are you *not, to be as*  
5 *precise and inclusive as possible?*

6 A Yes, sir, I am.

Q And to that effect is there anything not contained in  
your report that you have independent recollection of now  
that was not reduced to writing or is this a fair and  
accurate interpretation of what you remember?

A This is a fair and accurate interpretation of what you  
remember.

Q There is nothing additional that should have been  
*included in this report* that you observed that you now  
*recall?*

A No, sir. Is this referring to my supplemental report?

Q No, sir. I'm asking let's get to that point.

A Which was **involved** in this report also.

Q Let's go to - you filed a supplemental report on January  
20 10th, 1989; is that the supplemental report you are speaking  
21 of?

22 A Yes.

23 Q *That report adds in one item* in particular in reference  
24 to the question *and answers that you* wrote out that morning?

25 A Yes.

1 Q Other than that supplemental report you feel that this  
2 reveals everything you heard accurately?

3 A Yes.

4 Q You don't want to qualify that in any sense whatsoever.  
5 There is not something you didn't include which you wish to  
6 add?

7 MR. WRIGHT: Objection.

8 MR. CONNOLLY: I will withdraw it.

BY MR. CONNOLLY:

Q Let's talk about that supplemental report. You have  
decided that a piece of information that was contained in  
your memory had not been reduced to writing on 7-7-3?

A Yes.

Q You felt that was of consequence. You thought it was  
*important to add it in?*

A Only because of - the reasoning behind that was after I  
did my report Detective Westrum informed me of something that  
I misplaced, that I did not put in my report. As soon as he  
mentioned it to me it came right back to me.

Q You said I didn't include it and you wanted to go back  
22 and make sure the report was accurate?

23 A Yes.

24 Q That's why several months later, eight months, back in  
25 January as oppose to <sup>do</sup> July you added in the statement that

1 he originally said, Mr. Dechaine originally said no, I don't  
2 recognize the notebook?

3 A Yes, sir.

4 Q Whereas originally when you were writing down your  
5 report you said he identified it right away, correct?

6 A In my report, yes, that's correct.

Q In your original report done on the morning after you  
had done the interview you say he was shown the notebook and  
receipt and he said yes, that is mine?

MR. WRIGHT: I would object. We have been over it  
several times already. He's already made it perfectly clear  
*in making up the original* report and supplemental report --

COURT: That's what we are getting to.

Continue. Overruled.

BY MR. CONNOLLY::

- It is true is it not, Officer Reed, that during the  
*initial period* when you were having discussion with Mr.  
Dechaine prior to the questioning you informed him as to what  
purpose he was being invited into the police vehicle?

A Yes, sir.

Q So you explained to him in a general sense at first what  
was happening and that there was a missing girl?

A That's correct.

Q Do you recall, sir, at any point in your conversations or

1 discussions with Mr. Dechaine providing him any additional  
2 information out the purpose of your questioning?

3 A No, sir.

4 Q You are trained, are you *not, in interrogation at the*  
5 police academy?

6 A Yes.

7 Q There are techniques that you have?

8 A Yes, sir.

Trained in?

A Yes,

Q And you are schooled in techniques of interrogation; is  
*that correct?*

A *Yes, sir.*

Q And there are a variety of techniques of interrogation;  
is that correct?

A I believe so.

Q There are tricks in the business?

**A Yes.**

Q And the situation of a person sitting in a police  
vehicle is an advantage to an interrogator, isn't that right?

A I would have to say, yes.

Q Its much better than having his lawyer sit next to him?

A Yes.

Q Similarly, if the person is made to be confused during  
the course of the interrogation that sometimes is helpful; is

1 that correct?

2 A Yes. It is in this case.

3 Q In this -- just answer my questions. And raising ones'  
4 voice is a trick that lawyers and police officers use; is  
5 that correct?

6 A Yes, sir.

7 Q *And do you know what Mutt and Jeff is?*

8 A Mutt and Jeff?

9 Q Good cop, bad cop. Do you know what that phrase is?

10 A Yes.

11 Q That's a technique that is used?

12 A Yes.

13 Q The Russian technique is another way where you stone  
14 wall the person with silence; that is a technique that is  
15 used, isn't it?

16 A I know nothing of it. I'm sure there is.

17 Q You know a variety of different techniques of obtaining  
18 information?

19 A Yes,

20 Q ***Obtaining admissions; is that correct?***

21 A Yes, sir.

22 Q And it is a fair statement to say, is it not, that you  
23 were questioning the defendant at least in part to obtain  
24 such statements?

25 A Yes, sir.

1           It is also a fair statement at the time he was  
2 originally questioned that he was the sole focus of inquiry  
3 of your investigation as to Sarah Cherry?

4 A       He was a suspect at that time; I would have to say yes.

5 Q       Did you have have any other suspects at the time?

6 A       No, sir, we did not.

          So he was the sole suspect, was he not?

A       Yes.

Q       *And in part, primarily in part it was due to the finding*  
of the notebook and the receipt?

A       Yes.

          That, in your opinion, that based upon your experience  
on July 6th was very strong evidence as to complacency or  
involvement with the missing girl?

MR. WRIGHT:   Objection.

THE COURT:    Basis?

MR. WRIGHT:   The phrasing used by Mr. Connolly of  
*important evidence is a* subjective one. It's a fact to be  
drawn by the jury of what is important and what isn't  
important,

THE COURT:    He's inquiring into the mental  
processes of this officer at the time the investigation and  
interrogation is being conducted.   The objection is noted and  
overruled.   You may continue.

MR. CONNOLLY:   Thank you.

1

2 BY MR. CONNOLLY:

3 Q Do you recall the question?

4 A No.

5

6 (Whereupon the reporter read back the last question)

A The items that were found on the driveway, the main reasoning for *finding* Dennis Dechaine was more or less we needed an is explanation. We wanted to know why are these in the driveway and why is Sarah Cherry missing. That is our main objective at that time, to locate Dennis Dechaine. I explained to his wife, ma'am, please have him call us because we have articles we would like to discuss with him.

That was the *reasoning behind focusing our* attention on a 1981 red Toyota pickup truck. Whether Dennis Dechaine was the individual driving that vehicle that day we did not know, but we wanted to know why were these articles found in the driveway.

Q It's fair to say you didn't know who was driving the vehicle is that true?

A That's correct.

Q Do you recall that during the course of your discussion with Mr. Dechaine, particularly just prior to the point where you described that you were loud or more aggressive than at

1 any other point; is that a fair statement? Aggressive, that  
2 you would agree with me?

3 A I would agree.

4 Q Prior to you being more aggressive do you recall saying  
5 to him where is Sarah?

6 A No, sir, I do not.

7 Q You *at no point said that to him?*

8 A I never recall saying that to him.

Q You didn't ask him that a large number of times?

A No, sir.

Q During the course of your interrogation was there a  
point when it was broken off?

A Are you speaking of during the middle of my  
interrogation?

Q Towards the end.

A Yes. After my last question I exited my vehicle,

Q Why was that point of consequence? Why did you decide  
that was all to the questioning?

A I guess I could not think of anymore questions to ask.

Q While you were there any other police personnel that  
arrived at the scene during that time?

A After I exited the vehicle?

**Q Yes, sir.**

A At that time I know the sheriff had arrived while I was  
in the vehicle; I can't honestly say who else, but I know the

1 chief deputy had arrived, possibly a few other deputies to  
2 help search.

3       Would it be fair to say or would it not be fair to say  
4 that any point during your initial meeting with Mr. Dechaine  
5 in explaining the missing girl, so-called, did you ever use  
6 any other phrase other than that?

A     No, sir.

Q     What did you attempt to imply by the fact that his truck  
was in the driveway. You asked him that?

A     Yes.

Is it not true that the inevitable result and conclusion  
of your questions was to establish that he was in the  
driveway and he had involvement with the missing girl?

MR. WRIGHT:   Objection.

**THE COURT:   Overruled.**

**THE WITNESS:**   I would **have** to say yes.

**BY MR. CONNOLLY:**

Q     **So** it would not be illogical, in fact it would be  
perfectly logically consistent for him to say you think I  
grabbed the girl or something to that effect or whoever  
grabbed the girl, wouldn't it be consistent?

MR. WRIGHT:   **Objection.**

**THE COURT:**   As **to** the **form of** the question the  
objection is sustained.

Le\_

2 BY MR. CONNOLLY:

3 Q The inevitable point of your questioning was to try to  
4 *link him to the* disappearance of the girl yes, sir or no,  
5 *sir?*

6 A *Yes, sir.*

7 Q He was responsive and intelligent in following your line  
8 of questioning, yes or no?

9 Yes.

10 *Its not unusual for a suspect in a situation like this*  
11 *to see where the police officer is leading, is it?*

MR. WRIGHT: *Objection.*

THE COURT: Sustained.

BY MR. CONNOLLY:

Did it appear to you that Dennis Dechaine understood  
where you were heading with your question?

MR. WRIGHT: *Objection.*

THE COURT: Overruled.

THE WITNESS: *Its possible.*

MR. CONNOLLY: No further questions. Thank you.

RE-DIRECT EXAMINATION

BY MR. WRIGHT:

1 Q Officer Reed, did it appear to you *that night that this*  
2 matter was going to turn out to be I guess you said the  
3 biggest case you had ever been involved in?

4 A No, I did not. Did I understand the question correctly?

5 Q I don't know. You tell me.

6 A Is what you are asking me prior to what?

7 Let me here **ask** it again. The question was did you that  
8 night have any idea or did it appear to you that night that  
9 this case was going to develop into I think you said the  
10 biggest case in which you have been involved?

11 A No , sir.

12 Q Why not tell us why not that night you didn't have that  
13 kind of impression?

14 A Well, I believe while I had been on *the* sheriff's  
15 department I had had several calls dealing with missing  
16 individuals. And it always ended up turning out to be a  
17 girlfriend maybe running off with a boyfriend or maybe she  
18 wasn't home on time and the initial complaint was a missing  
19 child, a missing baby sitter. It --

20 Q Let me here interrupt you. You go ahead and finish.

21 A It started to look a little different than just a  
22 missing person's complaint when we realized that both doors  
23 were left open, the articles were in the driveway, her jacket  
24 and socks, her shoes are left in the residence, so she is  
25 walking around barefoot. There was something there that made

1 us believe that there was something else there. This is not  
2 a typical missing person's complaint. But we still were  
3 unsure of exactly what was going on here.

4 What you were trying to do with Mr. Dechaine was, I  
5 *guess, was trying to find out what was going on and if he was*  
6 related to it?

A Yes. Because of the receipt and the notebook.

• What was the reason you left the sheriff's department to go to Bath Police Department?

A The only reason for that was the Bath Police Department they have retirement. The sheriff's department has no retirement.

• In what sense, if at all, do you feel you threw police procedure out the window yourself that night?

A That evening?

Q Yes,

A I would say lack of securing the scene.

Q Let me here ask you a question with respect to that. Whether to what extent outside of the house did you think or believe or realize that you might have a scene to contend with outside of the Henkel residence?

A The only thing I would have probably wanted to have secured if it were to *happen all over again* would have been the driveway. I, at the time, I never realized printing the doorknobs or anything of that nature. We looked inside the

house. We looked in the house quite a bit through the doorways- for anything that may have fallen or anything of that nature. We walked around the house to see if anything unusual may be *found* outside **on** the lawn.

4

Q Did you find anything **in** the house that appeared out of the ordinary?

5

6

A No.

7

Q *In going inside I take it* you touched the doorknobs?

8

A Yes.

9

Q The door frames or parts of the door?

10

A Yes. The reason why we more or less disregarded the doorknobs was because Mrs. Henkel had already arrived and I guess we assumed Mrs. Henkel had already opened and shut the doors. Its going to disturb any evidence of fingerprints. And the reasoning behind the driveway was because Mrs. Henkel had already pulled in and that was my reasoning behind not securing the driveway because of the fact that I assumed she *had probably driven over any tire* track and destroyed any evidence.

11

12

Q *You don't know for a* fact, however, whether she had driven over or not driven over any certain tracks?

A No.

Left me ask you where did you park when you drove in?

A We parked behind Mrs. Henkel's car. We were behind Mrs. Henkel's car a short distance.

L

1 Q What is a short distance?

2 A Probably 10, 15 feet.

3 Q Were the dogs able to reach that point?

4 A Yes. I believe they were.

5 Q At that point were they leashed or unleashed?

6 A They were leashed, but they were on a run. They had two  
7 dog houses.

8 Q With respect to checking the red Dodge Ram by the  
9 microwave tower. Did you run a radio check on that at that  
time?

A Yes,

Q Is that reflected in the notes?

A <sup>is</sup> in the radio log. The only thing that is in the  
radio log is that we requested a 1028 on that.

Q When did you do that?

A That was at 4:57.

Q That would be listed as military time as 1627?

18 A That's correct.

19 Q Did you have a number assigned for communications  
20 purposes?

21 A Yes. Myunit number was eight.

22 Q Was there a 14?

23 A Yes, sir. That would be Deputy **Scopino**.

24 Q Being six foot one and 220 pounds and in good *shape do*  
25 you have any sensitivity to your size having any effect on

1 people that whom you interview?

2 A No.- I don't use my size to intimidate.

3 Q Are you aware of it to use it as a tool? Do you  
4 appreciate your own size, what effect it could or could not  
5 have on people?

6 A I'm aware of the fact that it could have, yes.

7 Being aware of it, what efforts do you make with respect  
to the use of your physical size on individuals with whom you  
come in contact?

A I don't believe I understand just what you are asking  
me.

- Whether or not you use your physical size to use as a  
tool to try to intimidate people?

A No, Not like something like this. If I go into a  
barroom brawl I'm going to use my size to my advantage. But  
to question an individual, I *Sit down along with that*  
individual.

Q I think Mr. Connolly asked you the question whether Mr.  
Dechaine was responsive, and I *thought your answer began by*  
saying to an extent he was. Can you explain yourself?

A To an extent I was °-

- I thought the question put to you was Mr. Dechaine  
responsive, some wording of that sort, and you said to an  
extent he was.

A What I was getting at was the fact that up to the point

where we both got a little angry and raised our voices my  
2 thought *behind him raising* his voice was the fact that he is  
3 *starting to get a little edgy.*

4  **So** you prepared the notes, the listing of the questions  
5 and answers the following morning?

6 A Yes. Probably around seven o'clock that morning.

Q You had been up all night?

Yes.

Q Doing what?

We had been searching most of the night. And we spent  
time with Mr. Dechaine in the vehicle and most of the rest of  
the evening was mainly just standing around as the State  
13 Police brought a dog in to check the vehicle and search.

14 • Any reason in your mind to believe that the notes that  
15 you made the following morning somehow were not accurate in  
16 their substance?

17 A No. I feel they are accurate.

18 Q **You** did leave out the initial response that when you  
19 showed him the papers?

20 A Yes, I **did skip over** that. It slipped my mind as I was  
21 doing my report.

22 • Why then do it the following morning after having been  
23 up all night?

24 A Why do my report?

25 **Yes.**

1 A I was asked by, I believe, Detective Hendsbee to do my  
2 report prior to going to bed or anything due to the fact that  
3 after sleeping I may forget a few items; so to do it as soon  
4 as possible and get it back up to him.

5 Q The additional information that you had come upon during  
6 the course of several hours before you wrote your report  
7 *about learning* that the truck had been found, what if any  
8 effect did that additional information have on preparing your  
9 report the following morning?

10 A Nothing. Because my report ended after my questioning.

11 Q Now, the Mutt and Jeff routine, the good cop bad cop  
12 routine, I guess you are familiar with how that can work?

13 A Yes.

14 Q Tell us how that works?

15 A Well, one individual - you would probably question an  
16 individual with two *officers*. *One individual would be very*  
17 *harsh and very demanding of the defendant.* The other  
18 individual would come in and be very soft spoken. I don't  
19 know if its to gain sympathy from the individual that he can  
**20** trust this cop or you can't trust the other because he was  
21 violent, screaming and shouting and being abusive.

22 Q Was that done in this case?

23 A No, sir.

24 **Q** This Russian or stonewalling technique. Are you  
25 familiar with that?

1 No.

2 Q You-can't tell me if you've done it then?

3 A No,

4 Q Did you in any way try to stonewall Mr. Dechaine?

5 A No, sir.

6 Q Sandbag him is maybe another word for it?

7 A I do not believe **so**.

8 Q What tricks did you use on him? Any?

A I would say the only trick I may have used that day in questioning would have been the fact that I informed Mr. Dechaine that an individual saw his vehicle on the Lewis Hill Road that day.

Q How was that a trick?

A Well, because the individual had stated he saw a red Toyota pickup truck on the road that day had no knowledge of Dennis Dechaine. That was just something that I threw in.

Q What **individual were** you referring to when you told him that?

A That would **have** been Mrs. Johnson.

Q **Holly Johnson?**

A Yes.

Q You had spoken to Mrs. Johnson?

A Yes.

Q When?

A I don't recall the exact time. It was after leaving the

1 Henkel residence. I believe it was after going over and  
2 speaking to Mrs. Dechaine.

3 Q With respect to the knowledge of who was driving the  
4 vehicle, he in fact told you that he was driving his truck,  
5 did he not?

6 A Yes, he did. I don't believe he ever came out and said  
7 I drove the truck here. But his statement was the fact that  
he was on the road; he recalls turning around in the  
driveway.

With papers that he identified as his?

A In the passenger seat of the vehicle.

Q Of that truck which he was driving?

A That's correct.

Q Did you at any time that night accuse him of any crime,  
*any wrong doing?*

A *No, sir.*

Q I hand you *what I've* marked marked as State's Exhibit  
Number 13 for identification. Do you recognize that?

A Yes.

Q What is it?

A That's the radio log for that evening.

Q Is that the radio log among many radio logs that the  
Sagadahoc County Sheriff's Office maintains that includes  
reference I think you said 1657 hours to running a check on  
25 the pickup truck at the microwave tower?

1 A Yes.

2 MR. WRIGHT: I would offer this.

3 MR. CONNOLLY: No objection.

4 THE COURT: State's Exhibit Number 13 is admitted  
5 without objection.

6 MR. WRIGHT: That's all.

FURTHER CROSS *EXAMINATION*

BY MR. CONNOLLY:

Q Detective Reed, with reference to the radio log, why is  
it you run a 1028 on that vehicle but not on the defendants'?

A Which vehicle are you talking of; the one at the radio  
tower?

Q The red truck you found on the Lewis Hill Road at five  
o'clock?

A Because of the fact we needed to know who that vehicle  
belonged to, We never at one time until we located Mr.  
Dechaine's vehicle did we know Mr, Dechaine's registration  
number, We cannot run a 1028 without a registration number.

Q You can run whatever number, another police number gives  
a person's --

A 27 indicates whether he has a driver's license, active,  
suspended, yes.

25 Q It can tell what vehicles are registered in his name;

1     *they are* cross-referenced?

,2     A     That's true.

3     Q     And the information contained on that dispatch log only  
4     contains 1028 on that log, but it doesn't say red pickup  
5     truck found on the Lewis Hill Road?

6     A     No.

7     Q     *That wasn't* included in your report?

8     A     No.

9     Q     The entire transaction is time 1657 from 14 to Sagadahoc  
10    one, message or other traffic 1028?

11    A     Then you look under there and it indicates info on 1028.

12    Q     Then clear?

13    A     Yes,

14    Q     *That is your full report on a red* pickup truck found on  
15    the Lewis Hill Road found at five o'clock?

16    A     **Yes.**

17    Q     Sir, you indicated on re-direct examination that you did  
18    not secure the driveway because you felt it was contaminated?

19    A     Yes.

20    Q     Secondly, sir, in reference to the testimony that you  
21    had as to the return to the Henkel residence following that  
22    investigation of the *Ram on the Lewis Hill* Road, you went to  
23    the Henkel residence and parked behind the Henkel vehicle; is  
24    that correct?

25    A     That's correct.

1           Turning your attention to what has been marked as  
2 State's Exhibit Number 9, which is a photograph, I would ask  
3 you if you could kindly with a ballpoint pen, which I'm  
4 *handing you now, mark the location* of where your vehicle was  
5 in reference to the Henkel vehicle. If you could just draw  
6 it **in** it would be of assistance to us.

7 A       Draw the vehicle?

8           A line where the vehicle was. You don't have to draw in  
a whole car. It was a squad car?

A       Yes, sir. To the best of my knowledge we were a little  
ways behind it.

•       Is it fair so say that the arrow which is drawn towards  
the middle of the bottom is where your vehicle was?

A       Yes, sir. I believe I would have to say that is the  
driver's side of the vehicle.

•       **Would** *that be* the furthest you went or did you go up  
*further?*

A       No. That was about as far up as we went.

Q       That is based upon memory. It could have been up  
further?

MR. **WRIGHT:** Objection.

THE COURT: Sustained.

**BY MR. CONNOLLY:**

25 Q       Turning your attention to the **doors** at the Henkel

residence, it's true, is it not, Mrs. Henkel reported to you that the doors had been open when she returned?

A Yes,

Q And hence were they open when you came into the house yourself?

A I know the bottom one was open, but the one on the second flight I cannot recall.

So it would be fair to say, would it not, that the front door was not contaminated?

MR. WRIGHT: Objection.

THE COURT Sustained,

BY MR. CONNOLLY:

Did you yourself touch the front door?

A I do not recall.

Did Officer Scopino, based upon what you saw?

A I don't recall,

Q At any time you were at the residence was the front door other than in an open position?

A I don't recall.

Q And asked by Mr. Wright on re-direct examination as to the things *that you felt were not properly* handled at the scene you indicated the driveway and the inside of the house, but you never mentioned the handling of the notebook.

24

25

It's true, **is it not, that if** fingerprints were found on the

1 notebook that were inconsistent with the defendant that would  
2 be enormously significant?

3 MR. WRIGHT: Objection.

4 THE COURT: Sustained.

5

6 BY MR. CONNOLLY:

- The fact that a piece of evidence has been partially contaminated, based upon your experience and training as a police officer at the *Criminal Justice Academy*, does not mean that other evidence on that item has also been destroyed; isn't that true?

A That is true.

- **So**, *therefore, the continuous* handling of an item of physical evidence can result in the destruction of evidence but for that handling would have been preserved?

I.R. WRIGHT: Objection.

THE COURT: Sustained as to the form of the question. It doesn't necessarily preclude the destruction of evidence that may have been on it by the mere handling of the object itself. Why don't you **ask** that question.

BY MR. CONNOLLY:

- What the judge said, answer that question.

A I'm trying to remember this myself.

- I'll **go** into another line **of inquiry**.

1 You remember, officer, that where you were parked on the  
2 driveway, as documented in State's Exhibit Number nine where  
3 the arrow indicates, that the dogs, although on their leash,  
4 were intimidating?

5 A Very. I fear dogs. I must let you know I fear dogs  
6 severely.

7 Q But for you they were intimidating despite the fact that  
8 they were on the leash?

9 A Yes.

10 Q Based upon where you were located?

11 A Yes,

12 Its fair to say, sir, that while the defendant was  
13 being questioned in inside the vehicle in which you were in  
14 he was getting edgy; you used that phrase ? I believe?

15 A He was edgy in the sense that I felt - my observation I  
16 felt he was getting edgy because of the fact that he was  
17 changing his story.

18 Q You were pushing him though, weren't you?

19 A I would have to say, yes, I was pushing because I was  
20 feeling a sense of an edge there.

21 Its true, is it not, that you were pushing him -- as a  
22 result of you pushing him he was getting edgy, yes or no?

23 A No.

24 Q You indicated, sir, that the Maine State Police brought  
25 a dog to the vehicle once it was located?

1 A That would be the pickup truck?

2 Q Yes-.

3 A Yes.

4 Q They had a dog at that pickup truck sniffing at  
5 *midnight?*

6 A *Yes.*

Q It's fair to say that one of the techniques that you used during interrogation was the use of misinformation. You told him a lie with reference or gave him misinformation with reference to what had been reported to you?

A The only misinformation was the fact that I informed him that his truck was seen.

That is a pretty big piece of misinformation, isn't it?

MR. WRIGHT: Objection. I object.

THE COURT: As to the form of the question?

MR. WRIGHT: Yes.

THE COURT: Sustained.

BY MR. CONNOLLY:

Q **It's true,** is it not, that you used the technique of misinformation with reference to Dennis Dechaine during the July 6th questioning of him?

A By using one word, yes.

Q By using one word?

25 A Yes.

1           Is it a fair statement that the use of one word alone --  
2 strike that. You indicated in response to the end part of  
3 Mr. Wright's re-direct examination that you never accused the  
4 defendant of any wrong doing; is that correct?

5 A       No, sir, I did not.

6 Q       However, you were questioning him in reference to wrong  
7 doing, isn't that correct?

MR. WRIGHT: Objection.

THE COURT: Sustained.

BY MR. CONNOLLY:

Q       You yourself at the time of your questioning and your  
*mental state felt that at this point at* nine o'clock or 9:30  
that something more than a missing girl was involved in the  
***case; isn't that true, sir?***

MR. WRIGHT: Objection.

THE COURT: Overruled.

THE WITNESS: **Well, we still** had no idea what was  
going on.

BY MR. CONNOLLY:

Q       You felt it was more than just a missing girl report  
where she had gone and gone to get a soda, and by nine  
24 o'clock that night you knew something was up?

25 A       We assumed something was wrong here. It was not a

missing girl. Now, yes, I would have to say yes.

2 Q At the time of questioning the defendant you yourself  
3 *had a conscious object* that there was something bigger than a  
4 *mere missing girl report* which you indicated at first you  
5 totally discount and didn't consider it a big deal; by 9:30  
6 *it's a big deal, isn't it?*

7 A Yes.

8 MR. WRIGHT: Objection.

THE COURT: The answer may stand.

MR. CONNOLLY: No further questions.

#### RE-DIRECT EXAMINATION

BY MR. WRIGHT:

Q Officer Reed, let me here show you State's Exhibit  
Number 13. I've now reattached it a second page which I  
*initially removed.*

THE COURT: Do counsel agree that this Exhibit  
*Number 13* now consists of two pages and maybe admitted with  
the second page?

MR. CONNOLLY: No objection.

THE COURT: *Thank you. It's so admitted.*

**BY MR. WRIGHT:**

Q Those are both pages of that portion of the running log?

1 A Yes;

2 The second page however, later in the evening shows a  
3 check being run with respect to the name Dennis Dechaine,  
4 does it not, about 2200 hours?

5 A Yes, **sir.**

6 What check can you tell was run at that point on Dennis  
7 Dechaine that same evening?

8 A That is a 1027 and 1029. A 1029 is to see, is a check  
9 to see if the individual is wanted in the State of Maine or  
10 some other state. A 1027 is his license check.

11 Q That all came out fine?

12 A Negative.

13 What hour **was** that check run?

14 A I believe that was 2225, which is 10:25.  
15 P.M.?

16 A Yes.

17 Q So checks were run with respect to Mr. Dechaine later  
18 that same evening?

19 A Yes,

20 (.) Before the finding of his truck?

21 A Yes. *That was run by* Detective Westrum.

22 MR. **WRIGHT:** That's all I have.

23 MR. **CONNOLLY:** Nothing further.

24 **THE COURT:** *Thank you. You* have may step down.

25 Mr. Foreman anad members of the jury, we'll take a brief mid-

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1 morning recess at this time. Again, please, don't discuss  
2 the case-. Thank you.

3

4

(The jury was in recess at 11:33

5

and the jury returned at 11:57)

6

7

HOLLY JOHNSON, being first duly sworn, was examined and  
testified as follows:

DIRECT AMINATION

BY MR. WRIGHT:

- Would you state your full name?

A Holly Johnson.

- Is it fair to say you have been feeling under the  
weather?

A Yes.

Q We hoped to have you yesterday but you were good enough  
to come today?

21 A Yes.

- 22 • Mrs, Johnson, are you employed?

23 A Yes.

24 4 Where?

25 A What is your occupation?

1 A I'm assistant teacher at Marshall School in Richmond.

2 I'm an assistant teacher at Marshall.

3 Q Where **do** you live?

4 A Bowdoin, Maine.

5 **Q** Specifically?

6 **A** Lewis Hill Road.

Q How long have you lived there?

A Three-and-a-half years.

Are you married or single?

A Married.

Q Children?

A Two.

Q What is your husband's name?

A Douglas.

Q Who are your closest neighbors?

A John and Jennifer Henkels.

Q The Henkels?

**A** Yes,

**Q** They, in relationship to you, live where?

A Across the street.

Q This is State's Exhibit Number 1, which is obviously a map?

A Yes.

**Q** Here is the Lewis Hill Road?

**A** **Yes.**

L

1 Q There is a green dot which has been labeled with your  
2 name? -

3 A Yes.

4 Q Does that appear as you look at the map to be the  
5 location of your house on the Lewis Hill Road?

6 A Yes.

Q Across from the Henkels?

A Yes.

Q Now, I would like to go back with you to July 6th of  
last year. I would ask you on that day if you were home?

A Yes, I was. Part of the morning I was not.

Q You said part of the day you were not?

A In the morning I was gone for a short period.

Q When did you return?

A Probably 11:30.

Q How old are your children?

A *Four and six.*

Q Did there come a time that afternoon when you were  
trying to get them to settle down for a little while?

A Yes.

Q *When was that?*

A About 12:30, after lunch.

Q During that time, 12:30 and subse<sup>q</sup>uent to that, I want  
you to fill in the times for us, do you recall some specific  
events, things that came to your attention?

A Are you talking about after I put them down?

Q Yesa You tried to put them down at 12:30 for a nap?

A Yes. After I had put them down and stayed inside for a little bit to make sure they were settling in I went outside and did some small gardening chores out in the garden. It was real hot, so I wasn't doing anything for any real long period of time because of the weather. Small chores.

8 Q What of the Henkel residence across the way on the other  
9 side of the Lewis Hill Road can you see from where you were  
10 working in the front of your house?

11 A Very little because of the coverage of trees in on their  
12 property and by the garden area there are a lot of trees on  
13 the corner of our house.

14 Q Speak up. I know its difficult. Did you remain  
15 outside the entire time after you got the children down?

16 A No. I was doing chores inside as well as outside.

17 Q At some point later after you tried to get the kids down  
18 did you go back outside and notice some things?

19 A On one of my trips out when I was outside and on the way  
20 coming in *I was in front of* the house, I heard a vehicle slow  
21 down at the driveway of the Henkels and

22 Q Let me here ask you, did you see that vehicle before you  
23 heard it **slow down?**

24 A No. Because it was heading up the road northbound.

25 Q It was on the Lewis **Hill** Road going up **or** would that be

L

[

1 north?

2 A *It was going north, yes. I would see it first.*

3 Q You would not have been able to see it because of the  
4 foliage?

5 A No.

6 Is there any part of the Lewis Hill Road that you can  
see from your house?

A Yes.

Where in relation to the Henkel driveway is that part of  
the Lewis Hill Road that you can see?

A I would say there is 75 feet between the edge of our  
property to where their driveway is that is not visible.  
Right at the edge of our property I can see the road because  
ours is open.

Q If their driveway -- say the Lewis Hill Road runs north  
and south and their driveway comes in *at a point, can you* see  
to the Lewis Hill Road south of their driveway at all?

A No.

Q And for some distance just north of their driveway, as I  
understand it, is **also** blocked?

A Yes,

Q How about further? Is it about a 75-foot stretch?

23 A Yes. Our property line, I think they are kitty corner.

24 Q More northly of this point 75 or so feet north of the  
25 Lewis Hill Road can you have see the Henkel residence?

A Yes \*

2 Q You- heard a vehicle slow down, and where did it then go?

3 A It did not continue onward. I did not see a vehicle  
4 keep going. And *the reason* I remember this at all is because  
5 basically the time of day and it was my first thought it was  
6 the newspaper being delivered, but after I thought about it  
7 for a minute I thought it can't be the paperboy because I  
8 realized that John and Jennifer didn't get a daily paper as  
9 we did.

10 Q You are aware that the Henkels have pets, dogs?

A Yes \*

Did they come to your attention in terms of hearing the vehicle?

A At the time the vehicle slowed down at the driveway the dogs did bark.

Q Had you heard them barking prior to that?

A Not that I **recall, no.**

Q Then what happened next?

A I think as **soon** as I kind of dismissed the notion that  
21 it was a newspaper person I just headed in and didn't think  
22 anything else of it. I did some more things inside and I had  
gone back out. And I did at one point during one **of** the in  
23 *and out sessions as I was in front of the house did* see a red  
24 truck heading northbound, but it was just a vehicle *going*  
25 down the road. It was nothing.

□ Vehicles

Closing argument  
Judge: [One stopped + left]

1 Q A red truck?

2 A Yes-.

3 (2 What kind of a red truck was it?

4 A I was asked later about it.

5 Q What is your best recollection?

6 A It was a red Toyota truck.

7 • What makes you say it was a red Toyota truck?

8 A The size of the truck and the shape. I had it as a  
9 Toyota truck.

10 Do you have any personal experience with Toyotas to have  
11 seen them?

12 A We've owned Toyota vehicles, and I've seen other Toyota  
trucks, yes.

• That is the impression you saw; that it was a Toyota?

A **Yes,**

• Could you describe the truck any further more than that?

A It wasn't **one** that had just driven off the dealer's  
floor, It wasn't brand new. It *wasn't -- it was an older*  
one. It was an open-bed with no cab on it.

(2 Was your attention drawn at all to who may have been  
driving the truck?

A No.

• **You** didn't make any particular observations about that  
fact?

A **No.**

*and was asked by  
Henchel to go help  
Toyota truck,  
. 13 2*

1           How fast would you say the truck was going as you saw  
2 it?

3       A     Most vehicles that *went down the road didn't go very*  
4 fast before they paved the road this late summer. There was  
5 a lot of dents in the **roads** and most people slowed down  
6 because it was in such bad shape and it did make a lot of  
7 noise.

8           I always looked up when a vehicle went by because you  
*heard them because of the rattling going across the road.*

10       Q     All of which is to say you would describe the truck's  
11 rate of speed not in miles per hour, but you think you can?

12       A     I don't think **so**. Relatively slow. Maybe 20 miles.

13       Q     Now, a few last questions in this area. Can you tell us  
14 the time period during which you were making these  
15 observations after you tried to put the kids down with the  
16 nap?

17       A     That would be a starting with one. I think it was  
18 closer to one o'clock when I first heard the vehicle because  
19 it was late enough in the day that I started to think it was  
20 the newspaper. The paper is usually delivered around two.  
21 That is quite regular. And I was back in the house and  
22 pretty much finished with outdoor chores by approximately  
23 1:15, and I received a phone call from my sister.

24       Q     The phone call from your sister was received when?

25       A     Shortly after 1:15, I think.

1 Q So between, I gather between one and 1:15 all the events  
2 you've described --

3 A Cr shortly before one.

4 Q Just within that time period is when you saw all that  
5 you've been telling us?

6 A Yes.

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

8

9

CROSS EXAMINATION

10

11 BY MR. CONNOLLY:

12 Q Good afternoon, Mrs. Johnson.

13 A Good afternoon.

14 Mrs. Johnson, do you recall the first time you were  
15 questioned by the police about this incident?

16 A Yes.

17 Q When was that?

18 A That would have *been the night of the sixth,*  
19 *approximately 5:30,*

20 Q After that questioning were you questioned again?

21 A Yes, but I don't think it was for some time after.

22 Q Would that appear to be in August, August 7th, 1988?

23 A Yes.

24 Q That was by a different person than had discussed things  
25 with you originally?

1 A Yes,

2 Q Then you yourself prepared a statement not until August  
3 26th; is that correct?

4 • Yes.

5 Q It would be a fair statement to say that *on the night of*  
6 July 6th when you were first questioned you were asked  
7 specifically about a red Toyota; is that a fair question?

8 A Could you repeat that?

9 Q Sure. When you were first questioned by Mr. Reed do you  
10 remember that was the name or was it just a sheriff?

11 A *I'm not sure.*

12 Q It was somebody in a brown uniform?

13 He walked up.

14 Q You discussed the incident with him; is that correct?

15 A Yes.

16 Q He did or did not mention to you the word Toyota?

17 A He did not.

Q At the first meeting you did not use that word either?

A The first meeting with him?

**Q Yes.**

A **Yes,** I did.

Q On August 7th and August 26th were you ever shown  
photographs?

**A No.**

25 Q **Now, you** were aware on August *7th and August 26th* many

1 things *about this case; is that correct?*

2 A I knew some things.

3 Q From publicity?

4 A Yes,

5 On the day of the **incident you received** a phone call  
6 from Mrs. Henkel?

7 A **No**, I did not,

8 Q You did not?

9 No.

10 Q When you first heard the vehicle that you've described,  
11 did it have any unusual sound other than rattling, for  
12 example, a sound such as a clacking sound or clanking sound  
13 or a bucking sound or a grinding sound?

14 A No. It was just a vehicle, a motor and the noise of the  
15 road that most cars and things make going down the road.

16 • You do you know what a valve noise is?

17 A I didn't hear any sounds that sounded like a vehicle  
18 that was not running any differently, no.

19 Q Did you hear the vehicle down shift, do you recall?

20 You know what that means?

21 A Yes, I heard the speed of the vehicle change as it came  
22 to a slowing down. That's *the only thing*.

23 • **You** didn't hear the sound of shifting?

24 A No.

25 Q Did you hear at that time the dogs bark loudly or would

*Mr. Henckle called to have Doug Johnson help them look for a Toyota truck  
~~Mrs Henckle said she called her truck~~  
75-132*

1 you say they were barking wildly?

2 A Just barking.

3 Q Were they barking in an unusual manner compared to how  
4 you've heard them bark before?

5 A **No.**

6 Q Did you hear any screaming or anything such as that?  
No, I did not.

8 Q *And to the* best of your recollection the first time you  
9 saw it was at 1 o'clock and the next time you saw it would  
10 have been when?

11 A Before 1:15.

12 Q So between 1:00 and 1:15 are the two spots?  
Yes. It could have been slightly *earlier* than one.  
And approximately 15 minutes a part?

A Yes.

Q I didn't understand your testimony when you look out  
from where you were working at one o'clock you see a vehicle  
coming towards *you down, going north on the* Lewis Hill Road?

A Yes, I was directly in front of the house. I wasn't  
working anymore. I was heading into the house.

Q Did *you* notice the front of the vehicle? Is that the  
part you noticed?

MR. WRIGHT: I would object. There has been no  
testimony that she saw it.

**THE WITNESS: No. At** that time I did **not** see the

1 *vehicle at the time I* heard it.

2

3 BY MR. CONNOLLY:

4 **Q** **So** you are not certain that it was the same vehicle?

5 A No. Because the vehicle that I heard did not continue  
6 on.

7 Q You are assuming it stopped?

9 A Yes.

9 Q Now, when you saw the vehicle for the first time you saw  
10 it proceeding northerly on the Lewis Bill Road?

11 A Yes.

12 Q Did you see the front o the vehicle at that time?

13 A I think I saw <sup>es</sup>. I would have seen the whole thing  
14 because I looked up and it was going so I would have not just  
15 seen one part of it but the vehicle.

16 Q *Did you have see the front?*

17 **A** **I** saw - **I looked at** it as a truck. I didn't look at it  
18 *as a front or back.* I **looked** at it as a total thing.

9 Q Did you notice any damage to the front?

20 **A** **No,**

21 Q Did **you** see the tailgate?

22 A I saw the truck. I just remembered it as a red truck  
23 and *it wasn't in* brand new condition. That's all I remember.

24 Q **You** didn't see the word **Toyota on** the back of the truck?

25 I don't recall seeing it.

J

1 Q Its fair to say you saw a red small-size pickup truck  
2 that's consistent with the Toyota?

3 A That's correct.

4 Q You don't know for sure that it was a Toyota?

5 A *Not that I* can recall.

6 Q Are you familiar with other types of small pickup  
7 trucks?

8 ( A Yes.

9 Q Neison or a Dodson?

10 A Yes\*

11 Q They have similar shapes?

12 A Yes.

13 Q Smaller American size Chevy Luvs have similar shapes; is  
14 that correct?

15 A They are all close, yes.

16 Q There are some Dodges and there are some Chevies and  
17 some Ford that are small trucks?

18 A Yes.

19 Q Can you state with certainty which kind you saw?

20 A No,

21 Q Would it be fair so say any small size red truck that  
22 was consistent with a body shape of a small red pickup truck  
23 is what you saw?

24 A It could be, but my first thing *when* I saw it and when I  
25 reported to the police that evening that it was a Toyota

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RE-DIRECT EXAMINATION

21

3 BY MR. WRIGHT:

4 Q As the truck went by you from south to north up the  
5 , **Lewis Hill Road, would** you have been able to see the right-  
6 hand fender on the far side of the truck?

7 A I think if I had a reason to be looking I could see it.

8 Let me here show you what has been marked as State's  
9 Exhibit Number 4. It's a picture of a red Toyota pickup  
10 truck with damage on the far right-hand side headlight.

11 Would you have been able to see that damage?

12 A No. That would have been on the other side of the road.

13 MR. WRIGHT: Thank you.

14

15

FURTHER CROSS EXAMINATION

16

17 BY MR. CONNOLLY:

18 Q It would be fair to say your opportunity to observe the  
19 red truck was very fleeting and you didn't pay much  
20 attention?

21 MR. WRIGHT: Objection.

22 THE COURT: Sustained, Beyond the scope of  
23 re-direct examination.

24

25

(Whereupon a sidebar conference was held).



(A luncheon recess was had)

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(The jury returned at 1:31)

MARK WESTRUM, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WRIGHT:

Q Would you state your name for the jury, please?

A Mark Westrum.

Q Your occupation?

A Detective with the Sagadahoc Sheriff's Department in Bath.

Q Could you describe for the jury what your law enforcement experience has been?

A I have been full-time law enforcement officer for eight years. I started as a police cadet at 14.

Q How long have you *been with Sagadahoc*?

A Eight months, approximately eight months.

Q Indeed just before the events of this case last July?

A That's correct. The day before.

Q The day before was your first day on the job with Sagadahoc?

A Yes. Formerly with a sergeant with the Toppsam Police Department before that.

1 Q All right. Beginning on your second day on the job, you  
2 became involved in the matter that has brought us to court  
3 here to do?

4 A Yes.

5 Q What how did you become involved?

6 A At the end of my workday that particular day, July 6<sup>1</sup>  
7 1988 I received a telephone call at home at 20 minutes. past  
8 eight that evening from the chief deputy asking me to make  
9 myself available on the Lewis Hill Road in Bowdoin as we were  
10 investigating a report of a missing 12-year-old girl.

You live in what area?

A Brunswick.

Q What route did you take to get to the Lewis Hill Road  
where you were going?

A I met Deputy Ackley in Tophsam on Main Street. I met  
with him in my own vehicle. Drove with him to a marked  
cruiser up the Meadow Road *which goes out to Bowdoinham on*  
the Meadow Road. ,

Q The information you had was concerning a missing person?

A That's correct.

Q Any other information?

A Also **we were looking** for a red Toyota pickup truck with  
*primer coloring on* the right front fender.

24 Q As you proceeded from the Brunswick/Tophsam area to the  
25 Bowdoin area did you do anything in conjunction with the

1 information you had relative to either a missing girl or a  
2 red pickup truck?

3 A We kept our eyes open to anything that might have been  
4 of help to us. We did run across a Toyota pickup truck  
5 pulling into a driveway on the Meadow Road in Bowdoin  
6 probably a mile before the center. We turned in and followed  
7 the vehicle, and Deputy Ackley talked to the subject and I  
walked around his pickup truck. It was a Toyota pickup.

Q There is a map behind you, State's Exhibit Number one.  
Can you point out to the jury where that was?

A Sure. The Meadow Road running from Tophsam - the  
Tophsam town like would be down here. We pulled the vehicle  
over in this area here.

I have a green pen. With an *X why don't you mark* the  
spot where you stopped that pickup truck?

A Right here. It was a mile before the Bowdoin center.

Now, in association with your making inquiry of that  
truck or driver did you use your radio at all too?

A I called into the dispatcher that we would be off the  
Meadow Road in Bowdoin with a red pickup truck and gave them  
the license number.

Q Let me here show you State's Exhibit Number 13. Is that  
inquire with respect to this red pickup truck that you've  
made inquiry of reflected on that log?

A That's correct. 9187-T.

1 Q 9187-T being what?

2 A The plate number on the red Toyota.

3 Q The time again was what?

4 A 8:54 p.m.

5 i Q Did it appear to be anything out of the ordinary with  
6 that vehicle?

A No. There was no primer color on the right front fender. I was walking around it and around it and there was nobody inside.

And the person who was driving?

A He had relatives, It was his vehicle. He had relatives on the Meadow Road and he was going there to see them.

Q You proceeded up the Lewis Hill Road area?

A Yes.

Q After getting up there you were still with Deputy Ackley?

A Yes. We got there around nine o'clock.

Q Where did you and he go?

A We went - its an area at the Lewis Hill/Dead River Road intersection where deputies Reed and Scopino were at the time. At that time I had them brief me as to what was happening, what they were investigating, and they eventually filled me in on what was going on.

Q Did you stay there at the intersection of the Dead River Road and the Lewis Hill Road?

L

1 A Yes, I stayed at the intersection for approximately 13  
2 minutes *discussing the situation* when Deputy Ackley received  
3 a call from a Mrs. Helen Buttrick stating that her husband  
4 had a gentlemen in his car with him that had stated he had  
5 lost his pickup truck.

6 Q In response to *that what* did you and Ackley do?

7 A I got into a marked cruiser with Ackley and proceeded  
down the Dead River Road, *down the Litchfield* Road to see if  
we could intercept Mr. Buttrick,

Q Who if anybody did you run into?

A We ran into a blue station wagon parked about a quarter  
*of a mile down the road from* the intersection of the Lewis  
Hill Road. A vehicle sounded its horn and we passed each  
other. We had to back up. He, Mr. Buttrick, backed up and  
we backed our cruiser up so we could speak,

Q What then happened?

A At that time Mr. Buttrick engaged in some brief  
conversation with Deputy Ackley, John how are you, haven't  
seen **you for** a while. At that time I noticed a passenger in  
Mr. Buttrick's vehicle wearing a blue T-shirt and brown hair.  
I noticed the passenger door to Mr. Buttrick's station wagon  
open up and a *man got up and* started to walk around. Mr.

23 Buttrick made the statement this man has lost his pickup  
24 truck; maybe you can help him. During this time the man  
25 known to me as Mr. Dechaine got **in** the back seat of the

1 | cruiser behind me, which would have been on the rear  
2 | right-hand side and sat down.

3 | Q Did you get out to open the door for him or anything of  
that sort?

A No. He opened the *door on his own and sat down.*

Q Was anything said between you and him at that time  
before he got in?

8 | A Not at that time, no.

9 | Q How out immediately upon getting in?

10 | A No. The radio people were talking on the radio. I was  
11 | trying to pay attention to the radio traffic and I didn't  
12 | speak with him at that time.

13 | Q Did Deputy Ackley speak with him in your presence?

14 | A Yes. He asked him his name, and he replied Dennis  
15 | Dechaine. He asked I understand you can't find your truck.  
16 | He *said yes, that was true.* They engaged in conversation, a  
17 | brief conversation, I at that time had picked up the radio  
18 | to talk to another deputy.

19 | Q *Where along the Dead River Road* was this that you  
20 | managed to come into contact with Mr. Buttrick?

21 | A Its an area between the Lewis Hill Road intersection  
22 | and the Hallowell Corner Road or the Mooring Road.

23 | Q So just with west of where the Lewis Hill Road  
24 | intersects with the Dead River Road?

25 | A That's correct.

1 Q After Mr, Dechaine got in your car did you stay there  
2 with him for any length of time?

3 A Deputy Ackley drove back to the intersection again of  
4 the Dead River *and Lewis Hill Road,*

5 Q My question is how soon after Mr. Dechaine got in your  
6 car did you turn around and go back to the intersection?

7 A Right after Mr. Buttrick was **done** talking to us. The  
8 whole process was two or three minutes <sub>t</sub> if that.

9 Q Once back at the intersection where Reed and Scopino had  
10 been then what happened?

11 A We were in Deputy Ackley's cruiser, I got out and  
12 Deputy Ackley got out. I conferred with Deputy Reed. At  
13 that time we had decided to see if Mr. Dechaine could answer  
some questions for us. Got back into the cruiser myself and  
Deputy Reed. Deputy Reed was seated behind the steering  
wheel and I was seated behind on the passenger side. Deputy  
Reed read Miranda to Mr. Dechaine and he agreed to answer  
questions. *He said we are* investigating a report of a  
missing 12-year-old girl and would like to know if you know  
anything about it or if you could help us out in this.

Q In response did Mr. Dechaine say *anything*?

22 A He at that time as I said agreed to answer questions and  
23 Deputy Reed started his questioning: where is your truck?  
24 *Dennis replied that I had parked it in* the woods to go  
25 *fishing, and once I realized I had gotten lost I came out - I*

7  
L 71  
1 got lost and I came out of the woods attempting to search for  
2 it.

3 Q After Deputy Reed told Mr. Dechaine about the nature of  
4 the inquiry that was being made, that is a missing  
5 12-year-old girl, at that point before any questioning began  
6 did Mr. Dechaine make any response to learning what the  
7 nature of the inquiry was?

8 A Mr. Dechaine put both of his hands up to his mouth and  
9 said: oh my God; you think I did this. That's when the  
10 *questioning started by Deputy Reed.*

Q Was that statement made by Mr. Dechaine, oh my God; you  
think I did this, after the reading of the Miranda right?

A After the reading of Miranda when Deputy Reed told him  
why we were questioning him, why we wanted to *ask him some*  
*questions.*

Q Then there occurred a series of questions and answers?

A Yes.

Were you present for any part of that?

A For half of the questioning by Deputy Reed.

Q Describe for us the manner in which Deputy Reed  
proceeded and how the defendant was responding to those  
questions, how it was done, the give and take?

A Deputy Reed was sitting behind the steering wheel of the  
*cruiser and he had to turn his* body. He turned around and  
25 said to Dennis where is your truck? As I said earlier he

1 replied that he had been fishing in the woods and P is  
2 it. A normal tone of voice. Nothing out of the ordi  
3 can you describe the defendant's demeanor as it  
4 *you during that part of the questioning that you*  
5 Present?

6 A The demeanor was okay. He appeared somewhat ne  
7 **his eyes** were open wide, I would see it as wide eye  
8 He was fine.  
9 He seemed responsive to the questions?

10 A yes.  
11 How about the manner in which Deputy Reed was  
12 toward Mr. Haine?

13 A was acting what I would consider as a pro  
14 *police officer asking a few questions at that time*  
15 *were present at any time when the tone*  
16 *of voice changed in any way?*

17 A He stepped out of the cruiser as other  
18 *motioned out of the car to ask about doing*  
19 **told no**; please just hold off for a moment  
20 *back towards the cruiser and I didn't get*  
21 could hear Deputy Reed, I could hear  
22 about - if you excuse my language - some  
23 sort of making a piss. I didn't catch the  
24 part of it was somewhat lively. I would  
a a scream or anything of that nature

1 replied that he had been fishing in the woods and misplaced  
2 it. A normal tone of voice. Nothing out of the ordinary.

3 Q Can you describe the defendant's demeanor as it appeared  
4 *to you during that part of the questioning* that you were  
5 present?

6 A The demeanor was okay. He appeared somewhat nervous.  
7 His eyes were open wide. I would see it as wide eyes. But  
8 he was fine.

9 Q He seemed responsive to the questions?

10 A Yes.

11 Q How about the manner in which Deputy Reed was acting  
12 toward Mr. Dechaine?

13 A He was acting what I would consider as a professional  
14 *police officer asking a few questions at that time.*

15 Q Were you present at any time when the tone or the volume  
of voices changed in any way?

A I had stepped out of the cruiser as other deputies were  
motioning me out of the car *to ask about doing a search. I*  
told them, no; please just hold off for a moment. I walked  
back over towards the cruiser *and I didn't get in.*

I could hear Deputy Reed, I could hear a conversation  
about piss - if you excuse my language - something about  
23 somebody taking a piss. I didn't catch the whole thing.  
24 That part of it was somewhat lively. I wouldn't consider it  
25 a yell or a scream or anything of that nature.

1 Q Whose voice was it that you heard speaking loudly?

2 A I heard Dennis say something loud then Deputy Reed said  
3 something loud right back, and that was it.

4 Q Tell us - perhaps I should have asked you before you got  
5 out of the car and coming back to the car I'll ask you what  
6 you recall of the conversation between Deputy Reed and the  
7 defendant? You've mentioned you began talking. What else do  
8 you recall being said?

A I asked him if he had been on the Lewis Hill Road that  
day. Asked him about a notebook and a receipt that Deputy  
Reed had in his possession. He turned and showed them to  
Dennis and said is this notebook and receipt, does this  
belong to you? Dennis's reply was no; I had never seen them  
before. Deputy Reed said how do you explain this receipt  
*with your name on it* and in *and this brown* notebook? Dennis  
said, well, I guess they are mine.

Another question was asked again, as I said, had you  
been on this road today. Dennis said no, I haven't. Then  
Reed *said how do you explain the fact that this* notebook and  
receipt ended up on a driveway on the Lewis Hill Road, and  
*Dennis's reply to that was I* don't know. It was at that  
*point I got out of the car.*

Q So you were instructing others not to do some searching  
I take it after you got out of the car?

A People had been searching the roads looking for people

1 to talk to who might have seen the girl around that day  
2 searching driveways because we knew we were looking for a  
3 missing pickup truck. They were searching areas off into the  
4 woods a little way, but some citizens were gathering and  
5 people wanted to start searching the woods. My immediate  
6 concern was to try to get a State Police dog who could help  
7 sniff its way through without contaminating the woods and  
trying to contaminate any path.

Q After you were dealing with those individuals who were  
eager to start looking or looking about, and after you had  
gone back to the car and heard the exchange between Deputy  
Reed and Mr. Dechaine in somewhat louder voices, did you have  
some further contact with Mr. Dechaine in the car?

A Where Deputy Reed was present?

Q Yes.

A No.

Q After Deputy Reed was finished talking to Mr. Dechaine?

A We ended up moving him out of the marked cruiser.

Q At that time when you moved him did you notice anything  
about his physical condition?

A Again he appeared to be nervous. His eyes were still  
open wide. He was obviously somewhat concerned.

Q At some point that evening did you notice anything about  
his physical appearance or condition?

A When Deputy Ackley needed his marked cruiser to go on

1 other calls - he was the only road deputy - we took him out  
2 of that marked cruiser. Haggett did a quick pad down. I  
also did a quick pad down. I noticed what appeared to be a  
circular type of wound on his bicep. I couldn't tell if it  
was a bite mark, but it was a circular red mark and a scratch  
behind his arm. I noticed a handprint on the back of his  
blue T-shirt.

Q Where was that located?

A Sort of down on the left-hand side, as I recall.

10 Q How was it you saw an impression of a hand mark?

11 A It showed up on his T-shirt. One of the police officers  
12 had a flashlight right there and it was visible.

13 Q What made it visible? How did you see a hand mark?

14 A It was hand or dirt or mud or something on the back.

Q Do you recall anything about the angle in which that  
would look to be a handprint was imparted to be on his shirt,  
fingers up or down?

A The fingers were in a downward position, as I recall.

Q Were you able to make any assessment as to the size of  
the impression that you saw?

A You know it wasn't a large hand. It wasn't a small  
hand. I have a fairly small hand. It was similar to my hand.

Q Were there portable radios involved among all of you  
that night?

A I normally don't wear a uniform. I don't carry a radio

on any part of my gun belt. I had a portable radio that I put in the back seat of Deputy Ackley's cruiser at the time when Deputy Ackley received the call. I had earlier shut all the radios in the cruiser off. When I got into the back seat of the cruiser to retrieve my portable it was on. It was seated beside Mr. Dechaine. I thought that was odd because all the radios were off. That was before we took him out of the car and did that quick pad down where I observed the marks on him.

Q After you then found a radio on next to Mr. Dechaine that you had previously left off, what did you do with Mr. Dechaine?

A That's when we took him out of the car so Deputy Ackley could have his cruiser. I wanted to get my flashlight and portable radio, and after Mr. Dechaine got out of the cruiser I was digging around for the stuff that I had left in the cruiser and I located a set of keys.

Q Had there been any discussion about keys with the defendant?

A Not to my knowledge at that point. Nothing that I had asked him about.

Q The keys that you found were where?

A They were tucked up under the passenger front seat on the right-hand side.

Q In relation to where Mr. Dechaine had been seated in

1 that car, the keys were found where?

2 A In the same place. They were right up under the front  
3 seat. He was seated again on the right-rear hand side.

4 Q Let me here show you on what I've marked as State's  
5 Exhibit Number 14 for identification.

6 A Those are the same set of keys that I found under the  
7 seat of the marked cruiser.

8 Q What did you do with them?

9 A At that time I held them in my pocket for a brief moment  
10 and I took them to Sheriff Haggett and I handed them to  
11 Sheriff Haggett and said I just located these keys in the  
12 cruiser. I told him where in the cruiser, and at that time  
13 he took them.

14 Q Did you all then remain at that same point or --

15 A Yes. For a brief period of time Dennis was sitting in  
16 an unmarked car at that time. Shortly thereafter Sheriff  
17 Haggett told Deputy Reed and myself that Dennis might  
18 remember where his truck was. So he handed me the keys back  
19 and we took him in the unmarked car back down the Dead River  
20 or west on the Dead River Road to help him see if we could  
21 find his truck.

22 Q Where did you stop? How long did it take? Where did  
23 you go? Tell us what happened?

24 A We turned off from the Lewis Hill Road heading west on  
25 the Dead River Road and we stopped at several different spots

along the road where there appeared to be small tote roads or small woods roads or anything to that nature. And we were asking Dennis does this look like the area where you might have parked or does this or does this? We just went along the road. It took quite awhile. If he said yes Deputy Reed would get out of the car and he went and walked into the woods and tried to with a flashlight to search the woods.

Q Deputy Reed got out?

A Yes.

Q Any reason why not have Mr. Dechaine whose truck it was you were looking for?

A He didn't ask and he just said here, let's try here. Deputy Reed got out and started looking.

Q That took how long?

A That took approximately 45 to 50 minutes.

Q All along the Dead River Road?

A All the way to the top of the Litchfield Road which is west, which is probably a good two miles from the area of the intersection of the Lewis Hill Road. At one particular spot a tote road comes out from the.. Litchfield Road that is called the Mooring Road which intercepts with the Old Hallowell Road or the Mooring Road as I knew it at the time going across into Litchfield. Deputy Reed stopped at that intersection, pointed down the Mooring Road or the Old Hallowell Road and asked Dennis might your truck be down this road. He said no.

I think it's this way. So we continued going in a westerly direction toward the Litchfield Road.

Q I take it you didn't find it?

A No

Q That brought you - 45 minutes of doing that brought you to what time?

A It brought us to approximately 20 minutes past 11 p.m..

Q Then what further if anything occurred with the defendant at that point?

A At that point I stopped and talked with Mr. and Mrs. Buttrick at their trailer and I went in and spoke with them *for about ten* minutes and we came back out and drove back to the Lewis Hill Dead River Road intersection and just asked him again you are sure you didn't go up any of these roads. He said no. We went back to the intersection.

Q During all of that time period, the 45 minutes or so you were looking for the truck, can you describe how the defendant was behaving?

A He seemed to be fairly normal to me. He sat in the back seat. He said maybe there. Try this. And we did. He still had the, he looked as though his wide eyes had settled down a little bit and he didn't appear to be as nervous as he had been earlier.

Q Later that evening -- you had earlier said that you wanted to call for a State Police canine?

A Yes. I had done that when he originally got in the cruiser from Mr. Buttrick with Deputy Ackley.

Q Did somebody from the State Police arrive with a canine?

A Yes. Trooper Bureau arrived at approximately ten o'clock.

Q Did you do anything with Trooper Bureau at that point?

A I informed him that the original call from the sheriff's department originated at 4:02 p.m. and went through the whole story of the call and what the deputies had done, what we had done, and pretty much filled him in on the situation up to that point.

Q At some later time-as the evening wore on did you go elsewhere with Mr. Dechaine?

A Later in the morning I went, I had Detective Hendsbee follow my cruiser to the Bowdoinham Police Department and where we could go inside and sit down and talk.

Q Along with the defendant?

A The defendant was with Mr. Hendsbee. I was alone in my cruiser. He followed me in because he didn't know where he was going.

Q Hendsbee didn't?

A Hendsbee followed me in.

Q Tell us what happened -- tell us what time it was you went over to the Bowdoinham Police Department?

A To the best of my recollection it was around 2:30,

quarter to three in the morning.

Q What happened when you went over there?

A Detective Hendsbee needed to use the telephone, Dennis needed to go to the bathroom and get a drink. I needed to go to bathroom and get a drink of water. It was quite warm that night. Myself and Mr. Dechaine stayed out and I don't know if you want to call it the lobby or the basement of the Bowdoinham townhall. He used the bathroom facilities and I did. We stood out there for ten or fifteen minutes and Detective Hendsbee came out and spoke to him, and that was pretty much it for me at that point.

Q Did Detective Hendsbee have any particular contact with the defendant at Bowdoinham townhall?

A I know Detective Hendsbee had taken a photograph or a series of photographs of him. I didn't stand there to watch.

Q Were any requests made of you by the defendant while you were at the townhall?

A I asked him if he was hungry, gave him a drink, but I didn't ask him anything else.

Q What were his responses?

A This was back out in the lobby. He told me he was all set. He was just thirsty and he had the drink of water.

Q How long were you at the Bowdoinham Police Department?

A Again, as I recall, about an hour because when we were finished there when Detective Hendsbee was finished I rode

with him to Mr. Dechaine's farm and dropped him off at home.

Q That was at what time?

A That was again at four o'clock in the morning, to the best of my recollection.

MR. WRIGHT: That's all I have.

THE COURT: Mr. Connolly.

CROSS EXAMINATION

BY MR. CONNOLLY:

Afternoon.

A Afternoon.

Q Detective, on your report there is no date on it, the first one?

A July 6, 1988.

Q When was the report written?

A July 7, 1988.

Q You wanted to be a police officer since you were a very young child?

A Yes. I started at 14.

Q Is this the kind of case you wanted to get involved in?

A I don't know if I ever wanted to get involved in a case like this.

Q As far as big-time criminal work, this is it?

MR. WRIGHT: Object.

MR. CONNOLLY® I will withdraw it.

BY MR. CONNOLLY:

Q Detective, when you are on the scene, the chain of command for police officers based upon your training and experience is what?

A Chain of command falls with the senior officer, the senior road officer at the time. Some departments are different.

Q Sagadahoc sheriff's office at the time?

A At the time Deputy John Ackley. The way our particular department works was the senior man on duty on that evening.

Q How does it flow from there?

A From the senior to the chief deputy since we don't have a patrol sergeant and then to the sheriff.

Q How does the the detective fit in with that?

A I pretty much answer to the sheriff. That's the way our system is set up.

Q Compared to a deputy with one year's experience who has more authority, a detective or a deputy with one-year experience?

A At that time I would say that the detective would. I'm not the one who makes policy for the sheriff's department.

Q Sir, you had received a report pretty much right away that you were looking for a red Toyota by the time you got

involved in the case at 8:30?

A Yes.

Q You also knew the name of Dennis Dechaine associated with things?

A Not at that time.

Q When you had your first meeting you had received that information?

A At nine o'clock.

So by the time you were involved in the case at nine o'clock you knew that a red Toyota was involved as well as the defendant?

A I knew that we were looking for Dennis Dechaine because of **his** name on a receipt found in a driveway.

Q You knew that was evidence?

A Yes.

Q And as far as you knew that was the only name associated with the investigation?

A At that particular time, yes.

Q Sir, in your report you were drafting that you did draft on July 7, 1988 that was as detailed of a report as was necessary included all the information that you needed to have in order to preserve your memory and the impression that you had seen on July 6 and 7?

A That's my report.

Q Is there anything not included in that report that you

have now remembered that you feel is appropriate to add into there?

A Add to my written report?

Q Yes.

A My three-page report?

Q Yes.

A **Everything is** there to the best of my recollection.

Q It would be fair to say that the report is complete and accurate to the best of your recollection?

A Correct. For that period of **time**.

It's fair to say once you stopped the Buttrick vehicle or it was stopped that **the defendant voluntarily got out of** Mr. Buttrick's car and voluntarily entered your vehicle without hesitation?

A Correct.

Q He **indicated** that he had a missing vehicle at that time, which was a red Toyota truck?

A **Did Dennis indicate** that?

Q Yes.

A Yes. He said he misplaced his truck while fishing.

Q On direct testimony you indicated that a decision was made with Officer Reed to **question the** defendant; is that correct?

A Correct.

Q How did that decision come about and for what purpose

were you going to question him?

A The only decision being that he had the paper work; he had been involved in the case from four o'clock that afternoon. He had done most of the background investigation at that point and I just said go ahead.

Q Did you witness the Mirandization?

A Yes. I was sitting in the cruiser with him.

Q What is the first line of that Mirandization?

A I'm a law enforcement officer.

Q Then?

A I caution you that you have an absolute right to remain silent.

Q And then?

That anything you say can and will be used against you in a court of law.

Q Then?

A That you have the right to a speak to an attorney and have an attorney present with you during questioning and to the presence of an attorney with you after any part of the questioning, if you desire. If you can no not afford an attorney one would be furnished to you free before any questioning. Having these rights in mind do you wish to speak to us now without having an attorney present?

24 Q Is that your recollection as to the complete statement  
25 that was provided to Mr. Dechaine?

A That and do you wish to speak to us now without having an attorney present. He said he did.

Q And at that time it was indicated to him that he was being questioned and Mirandized with reference to the disappearance of a 12-year-old girl?

A We asked him, we told him we were looking for a missing 12 year-old girl and asked him if he knew anything about it.

Q At that point is when he said, oh my God; you think I did this?

A Yes.

Q It is a reasonable assumption based upon your experience as a police officer for a person who is in a police vehicle being read Miranda to react to the Mirandization; is it not true?

MR. WRIGHT: Object. Objection. Can we confine ourselves to this case rather than millions of possible possibilities of the world.

THE COURT: The objection is sustained. We are talking about the mental processes here.

BY MR. CONNOLLY:

Q Why did you read him Miranda?

Because we wanted to ask him some questions.

Q And why did you read him Miranda if you just asked him general questions? You didn't read Mr. Buttrick general

Miranda?

No.

Q Why was Dennis Dechaine Mirandized?

Because of the receipt and the notebook at that time.

Q So because there was some physical evidence linking him to the missing girl you felt cautious as to use Miranda?

A Yes.

4 Which in your subjective mind at the time - and Detective Reed was doing the questioning - I'm asking you about your subjective mind, was that he was a suspect?

A With the information that we had I didn't think he was - he may have been the only suspect. He was the person at that time we were looking for to answer your question.

Q Was he a suspect, yes or no?

Yes.

Q You read suspects Miranda primarily?

A Correct.

Q You don't read civilian witnesses Miranda?

A No

4 It's fair to say that you felt he was a suspect; is that correct.

MR. WRIGHT: I would object.

THE COURT: Sustained.

1 BY MR. CONNOLLY:

2 Q The answer that he gave, oh my God; you think I did  
3 this, is an indication that he felt, perhaps he felt he was a  
4 suspect, correct?

5 MR. WRIGHT: Objection.

6 THE COURT: Sustained.

7

8 BY MR. CONNOLLY:

9 Q During this period of time he had a normal tone of  
10 voice?

11 A Correct, while I was in the car.

12 He appeared oriented to time, place and distances?

13 A Say again?

14 Q He appeared oriented to time, place distances, other  
15 physical reactions, he appeared to be?

16 A I said earlier he appeared to be nervous and --

17 4 My question is was he oriented as to time, place and  
18 distance?

19 A Yes.

20 Q He was somewhat nervous?

21 A Correct.

22 Q He had just been Miranded?

23 A Yes.

24 You asked him about a missing girl?

25 A After Miranda, correct.

1 Q Its not unusual for a suspect to have wide eyes when  
2 he's been being questioned about a question of a  
3 disappearance?

4 MR. WRIGHT: Objection.

5 THE COURT: Sustained.

6

7 BY MR. CONNOLLY:

8 Q Your conclusion was that he was fine?

9 MR. WRIGHT: Objection.

10 MR. CONNOLLY: I have a right to cross-examine.

11 MR. WRIGHT: Your Honor, he's --

12 THE COURT: Counsel, counsel, counsel. The  
13 **objection is** overruled. Its cross examination. You may  
14 proceed, Mr. Connolly. Gentlemen, calm down.

15

16 BY MR. CONNOLLY:

17 Q He was fine, was he not?

18 A Correct.

19 Q During examination people **get excited** sometimes?

20 A Some people do, some people don't.

21 Q Detective Reed was professional?

22 A Deputy Reed.

23 Q Excuse me. Deputy Reed.

24 A Yes.

25 Q Is shouting at a suspect or witness professional?

MR. WRIGHT: Objection.

THE COURT: Sustained.

MR. CONNOLLY: May we approach side bar.

(Whereupon a sidebar conference was held)

MR. CONNOLLY: Your Honor, he has given a conclusion as to professionalism, which requires an opinion based upon his experience which is that he thought Officer Reed was acting professional. I have a right to inquire whether yelling at or raising his voice as to a suspect is professional behavior.

THE COURT: Assuming what you say is true, how is this relevant?

MR. CONNOLLY: To establish that he was inconsistent with professional behavior.

THE COURT:.. You've established that adnauseam not only through Deputy Reed but up to this point with this witness. So under 403 I'm going to exclude it.

MR. CONNOLLY: I will withdraw the question.

(Whereupon the sidebar ended)

BY 'MR. CONNOLLY:

Q Detective Westrum, is it unusual for a detective to

1 leave the scene of an interrogation and leave it to the  
2 deputy so as to there would be no other witnesses?

3 MR. WRIGHT: Objection.

4 THE COURT: Overruled.

5 THE WITNESS: The deputy was a competent police  
6 officer. He knew what he was doing. I was confident with  
7 his abilities. Every detective probably handles a particular  
8 situation different. At that point I had been a detective  
9 for two days.

10

11 BY MR. CONNOLLY:

12 Q The next thing you heard was loud voices coming from  
13 both the defendant and from Deputy Reed?

14 A I heard -- that's correct.

15 And at that time the doors to the vehicle were closed?

16 A Correct.

17 Q And were the windows up or down?

18 A The window that I had been seated beside in the front  
19 seat was down a crack.

20 Q What about the other windows?

21 A They were all up.

22 Q It is over **90** degrees at the time; is that correct?

23 A I don't recall it was that warm. But it was warm.

24 Q It was dark?

25 A Yes.

Was there a light on in the vehicle?

A Yes.

Q Did you yourself witness the statement by the defendant when he said he had never seen the notebook before?

A Correct.

Q When that happened how was the notebook flashed to him, shown to him or given to him?

A Deputy Reed was sitting behind - say this is the steering wheel. He reached around and handed it to him and said are these your items?

Q How quick was the response?

A No, I've never seen them before.

After Reed said how do you explain your name on this receipt he handed them to him, and Dennis looked at them and said yes, I guess they are mine.

Q Once he had them in his possession and looked at them he said they were his?

A Yes.

Q When the first question was asked are these yours they were not in his possession, were they?

A No.

Q So they were items that were flashed at him from the front seat?

A Dennis was seated from me to the judge and he had the items right there to look at.

Why was the change made from marked cruiser to unmarked?

2 A Deputy Ackley needed the cruiser. He had to answer  
3 calls.

4 Q He was moved from one vehicle to another vehicle?  
Yes.

6 Q Was he told at this time he didn't have to go from one  
7 vehicle to another?

8 I'm not the one who moved him to the other vehicle, so I  
9 can't answer that.

10 Q He appeared at this point that he was nervous and  
11 concerned you say?

12 A Correct.

13 Q That was after loud voices were heard coming from the  
14 other vehicle?

15 A He was nervous and concerned about that.

16 Q Answer my question. This was after?

17 A He continued to be nervous and concerned.

18 Q No degree of difference between before the loud voices  
19 and after?

20 A No.

21 Q So the loud voices in your opinion had no effect on him  
22 whatsoever?

23 A I wasn't sitting in the car, but to my observation, no,  
24 it didn't.

25 Q I'm showing you what has been marked as Exhibit Number

Q On his clothing did he have blood on his clothing?

2 A No.

3 Q Did he have dirt all over him?

4 A He was dirty, yes.

5 Q Why do you not include that in your report if your  
6 report is fair and accurate and you've had an opportunity to  
7 re-think it and look at it?

8 A At that time that's not what I was concerned with.  
9 Other officers were looking at him. I was off at an angle  
10 talking to other people and just turning to **glance**.

11 I asked you 15 minutes ago whether or not your report  
12 was complete and accurate and you said it was complete.

13 MR. WRIGHT: Object. Argumentative. Its now  
14 argumentative.

15 THE COURT: **The question as presented is**  
16 argumentative. You may rephrase your question as if there is  
17 anything that he has any present memory that is not included  
18 in his report made out the morning after this incident.

19

20 BY MR. CONNOLLY:

21 Q Do you have now **have** a present recollection of anything  
22 that is in your report or not in your report that is  
23 inconsistent with your present recollection as to what you  
24 wrote in on July 7th, 1988?

25 A That I left out the part that he appeared to be dirty

and he also had wet pant legs.

Q What else have you left out?

A That's it.

Q Are you sure?

A To the best of my recollection.

Q If I ask you in ten more minute are you going to add something in?

MR. WRIGHT: Objection.

THE COURT: Sustained.

BY MR. CONNOLLY:

Q What pant leg was wet?

A It appeared that his, that the bottom part of his legs or dickies were wet.

Q Up to to what point?

A Can I stand and show you?

Q Sure.

A Right to here.

MR. WRIGHT: Could we have a description for the record?

THE WITNESS: Four inches up the leg from the bottom part of his cuffs, the bottom part of his cuffs.

BY MR. CONNOLLY: \_

Q Was there mud on his clothing?

1 A Well

2 Q Answer.

3 A The handprint.

4 Q Other than that?

5 A None that I recall.

Q Was there mud under his fingernails?

A I didn't look.

Q What were his sneakers like?

A I don't recall.

Q When you found the keys did they *have blood on* them?

A No, they didn't.

Q You followed the defendant's direction when he gave them  
*to you when you went look going for his vehicles vehicle; is*  
14 that correct?

15 A Yes.

16 Q It is fair to say you followed his directions because  
17 they seemed to be accurate?

18 A **Yes.**

19 Q And he seemed to be trying to find the truck?

20 A That was the *intent of it, yes.*

21 Q He *seemed to* have some recollection of various  
22 **locations?**

23 A All he said was maybe this road, maybe that road and  
24 maybe this road.

25 Q Is it fair so to say that he was uncertain?

2 I would say so when he kept saying maybe this road and  
maybe that road, yes.

3 Q The trooper, Tom Bureau, arrived with the dog came at  
4 ten o'clock?

5 A Correct.

6 Q Be stayed for how long?

7 A Be was there at the Bowdoinham Police Department all  
8 that evening.

9 Q How big was that handprint? out the size of your  
10 hand?

11 A As I recall to the best of my recollection. They tell  
12 me I have a small hand. I would say it was similar in size.  
13 Again, it was dark. There was a flashlight on it.

14 Q I'm handing you a piece of paper and a pen. I would ask  
15 you to sketch out the size of your hand. Do you recall  
16 whether it was a left handprint or right handprint?

17 A I don't know.

18 Q Is that a fair and accurate drawing of your hand?

19 A Yes.

20 Q To the best of your recollection the fingers were  
21 pointed downward?

22 A To the best of my recollection.

23 Q To the best of your **recollection** is that the approximate  
24 size of the handprint on the defendant's back?

25 A It doesn't appear like that after **looking**, but I said my

1 hand.

2 MR. CONNOLLY: I would offer Defendant's Exhibit  
3 Number six into evidence.

4 MR, WRIGHT: No objection.

5 THE COURT: Defendant's Exhibit Number six is  
6 admitted.

7

BY MR. CONNOLLY:

Was there discussion out taking the defendant home at  
four o'clock in the morning?

A Discussion between Detective Hendsbee and Mr. Dechaine,  
yes.

Q Between yourself and the detective?

I told him I would go with him to show him his way back;  
he's not familiar with the Bowdoinham area.

Q Detective Hendsbee is not *familiar. with the Bowdoinham*  
area?

A **Correct.**

Did you object whatsoever to the defendant being allowed  
**to go home?**

A **No.**

MR. CONNOLLY: No further questions.

24

25

RE-DIRECT EXAMINATION

2

3

**BY MR, WRIGHT:**

4

Q You said that the handprint looked to be the **size** of  
5 *yours but did not appear to be* the sizes that you've drawn?

6

A No. Not from what I've drawn.

Q The handprint that you saw in comparison to what is now  
six, was what bigger, smaller, skinnier, fatter?

A That was not the size of the handprint on the back of  
that shirt. Maybe my fingers are fat. It wasn't that large.  
It wasn't that big of a handprint now if *I look at my own*  
hand. I would say maybe, but not the size of that one.

In what way was the one that you saw appeared to see on  
his shirt different from that one?

A It appeared to be smaller and skinnier fingers.

MR, WRIGHT: That's all.

**FURTHER CROSS EXAMINATION**

BY MR. CONNOLLY:

22 The handprint was of a smaller and skinnier hand, you  
can't recall if it was right or left?

23

MR. WRIGHT: Objection. I didn't ask -7

24

THE COURT: Overruled,

25

THE WITNESS: There was a handprint on the

L<sup>1</sup>

1 left-hand side of his back, as I recall. Whether it was a  
2 left hand or right hand I don't know. I didn't study it.

3 MR. CONNOLLY: No further questions.

4 MR. WRIGHT: Nothing further.

5 THE COURT: Thank you. You may step down.  
6

DAVID HAGGETT, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WRIGHT::

- Would you state your name for the jury?

A David Haggett.

- Your occupation?

A I'm the sheriff of Sagadahoc County.

Q How long have you been the sheriff?,

A Since May first, 1988.

- Were you previously associated with the department?

A Yes.

- For how long?

A Approximately four years with the department.

25 **Q Your position with** the department during those four years was what?

2 Patrol deputy and two and half years assigned as  
3 criminal investigator.

4 Q Do you recall certain events -- I would like to talk to  
5 you out the evening of July 6 of last year?

6 A Yes.

7 Q How was it you became involved in the matter which  
8 brings us here today?

9 A I had been out working another criminal case earlier  
10 *that evening.* I was aware of a call from the town of  
11 Bowdoinham that had come to our department regarding a  
12 missing juvenile female. I ahd stopped after working until 6  
13 o'clock and gone to dinner. *When I* came back out on the air  
14 I found that the search was still going on and I decided to  
15 go to the area myself and get involved.

16 Q Tell us what your involvement was when you got there,  
17 particularly as it regards the defendant, Dennis Dechaine?

18 A **I** arrived at the intersection of the Lewis Hill Road and  
19 the Dead River Road at about 9:45 p.m. and spoke with  
20 Detective Mark Westrum who was at the scene. I met with him.  
21 He pointed out an **individual** who was seated *in one of the*  
22 police cruisers and told me the individual's name was Dennis  
23 Dechaine. I went to the cruiser and spoke to Dennis  
24 Dechaine. I introduced myself as a police officer to him and  
25 had a conversation with him.

Q What conversation did you have with him?

1 A Well, my conversation pertained to his vehicle  
2 primarily. He had indicated that he had misplaced his  
3 vehicle, couldn't find it. And I told him that we were very  
4 concerned out a missing girl; that we were in the area  
5 previous to his complaint about his vehicle that - he had  
6 reported this vehicle missing. I stated to him that we  
wanted to make every effort to locate the girl but also to  
locate his vehicle.

We spoke about that. I asked him out his vehicle. He  
stated he had been out fishing or exploring for fishing  
spots. He said he had been out in the woods exploring  
looking for fishing holes. He became confused and couldn't  
remember where he left his vehicle. I asked him specifically  
if his keys were in the vehicle. He said my keys are always  
left in my vehicle.

Basically at that time I finished my conversation with  
him. I just said we **would** make every effort that we could to  
locate his vehicle for him.

After he told *you that his* keys were always left in *the*  
**vehicle did** you have any further contact with him after you  
had gotten out of the car?

A Yes.

Q Tell us what further contact you had with him?

24 A Well, he was sitting in a cruiser that was being  
25 operated by that evening by Deputy John Ackley. Deputy

Ackley had received another call to go to another part of the county on a complaint. So Mr. Dechaine had gotten out of that cruiser and gone over and sat in Detective Westrum's cruiser. Detective Westrum came to me and said before Deputy Ackley had left, he checked the back seat of that cruiser and found a key chain with keys underneath the passenger side front seat of that cruiser. And he handed me the keys.

Q Obviously its a key chain with keys marked as State's Exhibit Number 14?

A That's correct.

Q Do you recognize that?

A This is the key chain that was given to me.

Q After Detective Westrum gave you the key ring what did you do with it?

A I took it and went to the vehicle that Dennis Dechaine was seated in. *I got in the front seat;* he was seated in the back seat. I **took** the key chain in this manner, held it up *in front of him as* I turned around and looked at him. Just in that manner,

Q Ultimately what did you do with the keys?

A I returned them to Detective Westrum.

Q **Do** you **know** if finally they reached Detective Hendsbee's keeping for possession?

A **Yes.**

Q **So** they appear **to** be in the same condition that they

1 were that night?

2 A Other than the tag, yes.

3 MR. **WRIGHT**: I would offer State's Exhibit Number  
4 **14.**

5 MR, CONNOLLY: **No objection.**

6 THE COURT: They are admitted.

BY MR. WRIGHT:

Let's go back to you holding them. You went over to the defendant and held them up?

A Yes. I held them up and he smiled and then he laughed. Then he stated well, you found them.

Q Did you say anything to him or just hold the keys?

A I just held them up in front of me.

Q Did he offer any further explanation for why it was that after saying the keys were always in his truck acknowledging you had found them in the police car?

**A Yes.**

Q that explanation did he **give?**

A He stated he was nervous. That he was confused. That he realized that they were then in his pocket after he told me that he had left them in the truck and he decided to hide them. Then he said that he thought he could take me to where his truck was **if we took** him up the road.

Q Did he say why he decided to hide them?

Just that he was nervous.

2 Q That pretty much ended your contact with him?

3 A I then got out and that ended my contact with him for  
4 that evening.

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

6 THE COURT: Mr. Connolly.

7 MR. CONNOLLY: I have no questions of this witness  
8 but reserve the right to recall him later.

9 THE COURT: Very well. You have may step down.

JAMES CLANCY, being first duly sworn, was examined and  
testified as follows:

DIRECT AMINATION

BY MR. WRIGHT:

Q Would you state your name once *again for the record?*

A James Clancy.

4 Your occupation?

A I'm a deputy sheriff for Sagadahoc County.

Q You among others became involved in the matter that has  
brought us here to court?

**A Yes.**

4 **On the evening of the 6th of** July last summer?

1 A Yes.

2 Q Letme here get right to it with you. Did there come a  
3 *time when you had association* with other officers on the  
4 roads in the vicinity of the Lewis Hill Road/Dead River Road  
5 and Hallowell Road, some other roads, looking for a pickup  
6 truck?

A I arrived on the scene at approximately **2130 or 9:30 in**  
the evening. I spent out three hours there on the scene.

• Doing what during those three hours?

A For a while I was standing by, and then I went searching  
for a vehicle.

Q Tell us out your efforts to find a vehicle?

A I was invited into a cruiser that I wasn't familiar with  
but I got in with these other officers and started searching  
the roads. We went up the Lewis Hill Road, took a left and  
we went westerly and crossed a small bridge over the Dead  
River. We then took a right on to what is known as the Old  
**Hallowell** Road, We traveled that road with *alley lights on*  
used to eliminate both sides of the roads.

Q What are alley lights?

A They are lights that are located on the top of the  
vehicle and they will illuminate both sides of the car. We  
traveled approximately four tenths of a mile and I spotted  
**something** on my right. I didn't know what it was it was; a  
flash of chrome or a window or whatever, but it was an

unusual sighting. I yelled to stop. I dismounted from the  
2 vehicle,- put my light on the rear end of a red Toyota pickup  
3 that was parked with the tailgate *showing* nearest the road.

4 **Q** That angle in which you saw that flash was what as  
5 compared to - where were you **on** the road when you saw that  
6 flash with the alley light?

7 **A** The vehicle we identified was at a 45 degree angle off  
to my right. By the time we stopped we were past it a little  
9 bit and we backed up. Then I got out of the vehicle and I  
10 put my light on the rear of the truck.

11 **Q** So to what extent was *the truck* visible from the roadway  
12 where you parked and looked in towards it?

13 **A** It was very difficult to see because the vehicle *had*  
14 been driven in. There was foliage behind itp being in July,  
15 *and then* the foliage just stood up again. It was quite  
16 difficult to make it out.

17 **Q** *Was the topography of* the land such that the truck was  
18 on at the same or different level of the roadway as you  
19 looked in from the road to where you saw the truck was  
20 parked?

21 **A** It may have been elevated slightly but it was more or  
22 less level with the road *and driven in*.

23 **Q** How far would you estimate into or off of the road was  
24 the truck parked?

25 **A** From the edge of the road perhaps 75 feet. I'm

1 estimating.

2 Q As you looked from the place where you then parked your  
3 car in towards the truck could you have see the whole part  
4 of-- it was the back of the truck?

5 A Yes.

6 Q Could you see the whole back of the truck or was it  
7 obscured?

8 A You could see the whole back of the truck.

9 Q Once you knew it was there you could see it?

10 A Yes.

11 Q *Let me here show you two* photographs which I've marked  
12 as State's Exhibit Number 15 and 16. I've handed you what  
13 has been marked for identification as State's Exhibit Number  
14 15 and 16. And I would ask if you recognize what is depicted  
15 in those two photographs?

16 A **Yes.**

17 Q **Tell** us what it **is, please?**

18 A I'm showing the rear end **of** the pickup as I saw it with  
19 a flashlight. Of course closer to the road there was still  
20 foliage. **It** was difficult, but you could make out that  
21 truck. This photograph being the left-front quarter I did  
22 **see** that later on during the night after the scene had been  
23 secured.

24 Q Those are two different **views of** the truck?

25 A **Yes,**

1 Q Do they appear to fairly and accurately depict where the  
2 truck was in the area in which you found it off the Hallowell  
3 Road that evening?

4 A That's correct, That's exactly the way this truck was  
5 located when we found it.

6 MR, WRIGHT: I would offer State's Exhibit Number  
15 and 16,

MR. CONNOLLY: No objection.

THE COURT: 15 and 16 are admitted.

BY MR. WRIGHT:

Q What time was it when you and the other officers finally  
found the truck?

A It was approximately 000 five. Maybe five minutes past  
midnight.

Q The 7th of July?

A Yes,

Q In the back of State's Exhibit Number 15, which is one  
view of the truck taken from the front of the truck looking  
alongside of it, there is an illuminated emblem in the  
background. Do you see that?

A Yes.

Q Do you recognize what is illuminated in the background?

A Yes,

Q What is it?

1 A A Maine State Trooper's emblem from a shoulder patch,  
2 That's what I see on a car door. There is an emblem on it.  
3 That's all I can make out.

4 Q It's a State Police emblem?

5 A Yes. It could be on a car door. Its the same thing  
6 you find on a car door.

7 I MR, WRIGHT: I have no other questions. I would  
8 like to circulate these to the jury.

9 THE COURT: Yes,

10

11 (Whereupon the State's Exhibit Number 15  
12 and 16 were circulated to the jury)

13

14 THE COURT: Mr. Connolly.

15

16 CROSS EXAMINATION

17

18

19 BY MR. CONNOLLY:

20 Q Good afternoon, Sir, the truck was visible from the  
21 road?

22 A Yes, sir.

23 MR. CONNOLLY: No further questions.

24 THE COURT: Mr. Wright.

25

1 BY MR. WRIGHT:

2 How visible from the road was it?

3 A Well, you had to look through the foliage, but it was  
4 visible?

5 MR. WRIGHT: That is all.

6 *THE COURT:* Thank you. You may step down.

7 Mr. Wright, you may call your next witness.

8

9

10

1 THOMAS BUREAU, being first duly sworn, was examined and  
2 testified as follows:

3

4

**DIRECT EXAMINATION**

5

6 **BY MR. WRIGHT:**

7 **Q Give us your name again?**

8 **A** Thomas Bureau.

9 **Q** Your occupation?

10 **A** *Maine State Police Trooper.*

11 **Q** *Where are you assigned with the State Police?*

12 **A** *Troop D, which is mainly southern Kennebec and part of*  
13 *Sagadahoc Androscoggin,*

14 **Q** *Do you have a particular assignment or role?*

15 **A** *I'm a rural police officer,*

16 **Q** *Do you work with the canine dog?*

17 **A** **Yes, I do,**

18 **Q** **Did you become involved in the investigation in this**  
19 **matter concerning Sarah Cherry on the evening of the July 6**  
20 **last year?**

21 **A** **Yes.**

22 **Q** **Tell us what began your involvement?**

23 **A** **I was called to the scene through a request from the**  
24 **Sagadahoc Sheriff's Department. When I arrived at the**  
25 **location on the Dead River Road I met with Sheriff Daggett,**

*x-9 officer who found Poppe  
- article tracking dog.*

2 Deputy Westrum and Deputy Reed at that location. At that  
point they briefed me on the *information that they had as to*  
4 what had happened **so** far, And the units that were there *were*  
told to search the area for a particular vehicle.

5 Q Did you have occasion to participate in the search for a  
6 vehicle?

7 A Yes, I did,  
What efforts did you yourself make?

A I instructed some of the officers which roads to check  
also checked a few roads myself.

Did you find the vehicle yourself?

A No.

Q Did you later come become aware that one had been found?

A Yes.

Did **you go to** it?

A Yes,

Q What **did you do in** association with that vehicle?

A *I instructed all the officers if they found the vehicle  
not to attempt to approach it, to contaminate the area \* when  
I was notified that the vehicle had been found I went to that  
location. I solely approached the vehicle and checked the  
vehicle for any occupants. When I checked it the vehicle was  
empty, I then returned back to what they call the  
**Hollowell/Litchfield Road** and I waited for Detective Hendsbee  
to arrive.*

1 Q Did you touch the car at all?

2 A Not at that point, no,

3 Q At some later time?

4 A **Yes**\*

5 Q In what manner?

6 A After we had worked the dog,

Q through that part with us first.

A I waited for Detective Hendsbee to arrive at the scene

where he was going to be the primary investigator. I was

concerned with maybe destroying evidence with the dog

tramping around the vehicle, So I waited for him to arrive

so he could take a look around the scene, Once that was done

took the canine out, harnessed him in a **tracking harness**

and took him to the vehicle to the area of the driver's door,

at which time he picked up the track which headed in a

**northeasterly direction for approximately 150 feet to the**

**edge of a bog, made a loop, and came right back to the**

**vehicle to the driver's door.**

Q Still in sight of the car?

2e No\* We were out of sight of the truck\* I casted him

21 around the truck and when he got to the passenger door of the

22 truck he picked up a track which looped back in a westerly

23 direction towards the Hollowell/Litchfield Road, crossed the

24 Hollowell/Litchfield Road and continued pretty much in a

25 westerly direction to a stream, crossed the stream and began

I to head in a southerly direction, at which point the dog gave  
2 me an indication at that location that he would not continue  
3 the track.

4           Something disrupted the tracking?

5 A       The dog was indicating on something. He gave me a  
6 *strong indication* of a presence of something. We heard some  
noise in the wds and there was a lot of deer in that area.  
Some had been seen there earlier that night. The dog *when I*  
gave him a command to track would put his nose *down and would*  
turn around and look back to me. That told me that he didn't  
want to <sub>go</sub> any further,

          Now, at that particular time I thought he might have  
*been smelling* a deer because he knows not to track the deer,  
But I found out the reason why later, afterwards.

*(Whereupon a sidebar conference was held)*

**HR. CONNOLLY:** *Your Honor, I move to have all of  
this evidence stricken, I filed a request for discovery a  
long time ago including including any expert opinions to be  
offered. No report has offered on this, This information  
that is coming out absolute surprise to the defendant. I  
I have not received any reports from this expert witness and  
this evidence is highly prejudicial.*

**HR. WRIGHT:** *I hadn't thought of it as expert*

2 testimony. *It's true that Bureau never prepared a report. I*  
3 *never thought of it **as expert testimony.***

4 *MR. CONNOLLY: I had no indication that the dog*  
5 *sensed anything from the truck. I had been relying on the*  
6 *fact that there was **no scenting** from the truck at all. I had*  
7 *no indication until he just testified that the dog picked up*  
*any scents from the truck. That has profound significance.*  
*I have no idea what he's going to say.*

*MR. WRIGHT: I don't either.*

*E COURTS: I suggest we take a recess and have to*  
*the the two of you sit down with this gentlemen and find out*  
*what he's going to say.*

*MR. CONNOLLY: That's a **fine.***

( hereupon the sidebar ended)

*E COURTS: Mr. Foreman and Ladies and Gentlemen of*  
**the Jury, a procedural point has come up and we are going to**  
**take a recess. a matter of fact, it is just about time**  
**for our midafternoon recess. Please don't** talk about the  
*case. Thank you,*

**(The jury was in recess at 2:56**  
**and returned to the courtroom at 2s27)**

1  
2  
3  
4  
5  
6  
7

(Whereupon a sidebar conference was held),

PAR. WRIGHT: Well, to begin with, we've had an opportunity to speak with Trooper Bureau, we being Mr. Connolly and Mr. Carlton and I. It with was pointed out to Mr. Connolly that there are passages, one substantial paragraph in Detective *Hendsbee's* continuation of a report relating to the tracking of the dog by Trooper Bureau. Trooper Bureau tells me he did file a canine incident report which I never received and Detective Hendsbee I would say never received, and it was upon Detective Hendsbee, the primary investigating officer and you through the normal channels we receive reports. I never received Trooper Bureau's report. Detective Hendsbee's *reports* do contain information relating to the tracking by the dog *that night*.

to any issue *concerning being* in the nature of expert testimony, I understand the point. I think it's a *point well* taken, As I think about it it's a point that makes sense. **I've** just never thought of it that way. I hadn't been proceeding in the past few weeks with that mind in mind. I apologize,

**H COURT: I understand at this point *that both* counsel have had the opportunity to chat with Trooper Bureau and *both sides* understand that he's going to testify to; is that correct?**

1 MR. CONNOLLY: I assume I know what he's going to  
2 testify to. To that extent, yes, it is correct, sir.

3 THE COURT: All right. Then what is the defense's  
4 position with respect to a **discovery violation** at this point?

5 MR. CONNOLLY: At this point my feeling is that the  
6 eat is out of the bag, to mix metaphores, and that it would  
leave the jury unduly confused, So as a strategic decision  
I'm deciding not to raise a discovery objection and therefore  
we are ready to proceed,

(Whereupon the sidebar ended),

THE COURT: Mr. Wright. You may proceed.

**BY MR. MIGHT;**

**The dog had made a couple of tracks, one from the  
driver's side out a loop of 150 feet back; is that correct?**

A That's correct.

Q **Another one from the passenger side across the Hollowell  
Road road into the woods for some distance?**

A Yes.

Q **Then stopped or got distracted or something. I guess  
that's where we left off?**

A **He gave me an indication of something ahead of us. A  
strong indication. But he would not continue his track.**

1 then casted him to within several areas within that wooded  
2 area, 5e stepped off the track a little ways *and he still*  
3 gave me indications in that direction but he refused to go  
4 any further.

5 At that particular time - we do extensive amount of  
6 *training with the dogs, They* are trained not to track animal  
7 *scents. Detective fendsbee* and I did hear *what we felt were*  
8 dear going through the wo <sup>as</sup>. At that particular time I  
*felt, thought he might have been scenting* the dear and he  
knos not to <sup>so</sup> after the deem and that's why he stopped  
I then found out later that it was another reason.

'hat's the point we left off?

A Yes.

Before you describe you concluded to be other reason,  
we should go through a little bit about how these d s re  
trained, for how long, what they are trained to scent not  
sc t, approach, not approach. Can you tell us some of that  
in **your** own experience with regard to *the handling of the*  
canine?

A Yes, My canine is a male German Shepard, He's owned by  
the State Police, Every State Police canine to has to go  
through a basic canine academy which entails four months of  
training. The first two months of that training **period** we  
train two days a week with two full-time training officers  
that are troopers **with the State** Police, That's their

1 primary function; they are dog trainers.

2           P ing the two months we go those two days a week they  
3 understand     we are given homework *assignments to do with*  
4 the dog. *At that point they mainly* train the dog obedience  
5 and voice and hand commands so the dogs will come to just a  
6 hand or voice command and they are strictly obedient.

7           After those two months we go for another two months down  
8 to Alfred in York County where we stay.     e live with the  
9 dogs for two months. They sleep with us. They eat with us \*  
10 Two months of solid training which we do tracking article  
11 search work, building search and also officer protection type  
training.

*Once those two* months are over the Maine State Police  
have two trainers from either New     p: hire; Vermont or  
Connecticut, those canine teams, so we get     unbias person  
in®. So the dogs are certified but *they have to be tested by*  
these other testers from out of state and they have to go  
**through** *certain phases. They have to do a* track and **do**  
recall work. If the dog does a track. on somebody and c     a t  
do all these things they won't be certified. To be certified  
they have to do all these things before we leave that school,  
before we graduate. They have to do all these things  
successfully. In the course of their *tracking* they are not  
to stray     on a deer trail. These things would cause a dog  
**not to** be certified.

1           Once we complete the Academy we are required to train  
2 two *days*, a minimum of two days a week. 'hat's what I had  
3 been doing to keep up our certification, Plus we do a  
4 re-certification once a year similar to the one we went  
5 *through when we* certified, This is to keep the dogs to their  
6 highest peak of training. I had been in the canine program -  
7 we graduated in May of 1936,

8           Q I guess we've reached the point where you were about to  
9 say that you later concluded there was some other reason why  
10 the dog didn't go any further. Before we get to that, did  
11 you do any further *tracking* with the dog *not that night but*  
12 *at a later time?*

13          A Yes, The following morning I went back to where the  
14 truck was, Again the dog picked up the track *and went down*  
15 *to that bog* and looped around. Again I *didn't go across the*  
16 *road at that point* because they had called for body dogs to  
17 come to that area, **So** I didn't want to contaminate,

18           Q A body dog is what?

19          A A dog that has been trained to scent the odor of dead  
20 *bodies or by parts,*

21           Q Is your dog trained **to do** that?

22          A **No.**

23           Q Did **you go** back then a third time **to** the area and **do**  
24 *further tracking* **not on the** side **of** the road where the **truck**  
25 **had** been but on the other **side** of the road?

1 A Yes, I returned to that location after the body had  
2 been found,

3 Q What track did **you follow** and the manner you did it that  
4 day?

5 A I did not perform a track with the dog at that point, I  
6 had him off **lead because I wanted to confirm my suspicions**  
7 about the dog and why he wouldn't continue tracking that  
night. So I walked in the area where we had tracked and the  
dog was lose at that point,

we were walking in he **was** off to my left and I saw  
the dog stop, so I went over to that location and he had  
located a piece of yellow rope, He was indicating that he  
had found something, We then called the lab to come in and  
they photographed it and they did their procedures for  
gathering evidence of the item\*

Q Let me **here show you what has** been marked for  
identification as State's 1xhibit Number 17,

A Yes\* This is what he located,

Q That was after the **discovery** of Sarah Cherry body?

A **Yes,** The body had been removed at this point® I had  
made a request that I wanted to go to that location with my  
dog to confirm my thoughts of what had happened the two  
**nights previous,**

Q **Does that picture fairly and accurately depict the rope**  
**upon your dog's finding after the discovery of Sarah's body?**

1 A Yes \*

2 MR. WRIGHT: I would offer State's Exhibit Number  
3 17.

4 **MR. CONNOLLY No objection,**

5 **E COURT: State's Exhibit Number 17 is admitted.**

6 **MRo WRIGHT: May it be passed around to the jury?**

7 **THE COURT: Yes.**

8

(Whereupon State's Exhibit Number 17  
10 was circulated among the jury)

11

12 BY MR. WRIGHT:

13 Q In a couple of ways you've indicated you thought there  
14 was a reason why you didn't think the dog went any further.  
15 Why don't we get into that?

16 A After I had been told where the body had been found I  
17 began putting things together. I've worked with my dog for  
18 quite a length of time. We've done a lot of training  
19 together, but my dog has never scented a dead body. And it  
20 was my suspicion at that time that he didn't like the smell.  
21 That's why he didn't want to go any further. That's why I  
22 requested to go back to that location with my dog.

23 The day that they had found her, after she had been  
24 removed, as we were walking in the path that we tracked and  
25 found the rope we continued to where she had been found and

2 he kept shying off to the left. *He didn't want to go to that*  
2 *location,* Verbally I called *him to that location.* *Be* kept  
3 shying off. I had to physically **hook** him on the lead and  
4 bring him to that location, at which point I put his nose  
5 where she was laying and gave him a good boy to assure the  
6 dog that it was okay, It's not something that is going to  
7 hurt you. *It's the type of training we do with* the dog, We  
8 *have praise for him when he finds something,* After that he  
9 was fine. But that just confirmed to *me that night he didn't*  
10 want to continue going there because he didn't like what he  
11 was smelling. *Be* wasn't familiar with the odor and he didn't  
12 **like** it. As we walked *in that second time I again watched*  
13 him a second time and he kept shying off to the side; he  
14 *didn't want to go there,*

15 As it developed once you learned where Sarah Cherry's  
16 body had been found and putting that in relation to where the  
17 your dog had stopped and not walked any further the first  
18 night **you** were there, how *far* and **how** close to the *body* \*  
19 where body had been found did you get that night?

20 A We were within 75 feet *to one hundred* feet of where she  
21 was lying where he stopped

22 Q Let me here hand you a marking pen *which you can use to*  
23 mark on the acetate covering. I've now put up behind you  
24 State's Exhibit Number 2, Do **you** recognize what is shown on  
25 there?

1 A Yes, I do.

2 If you would, could you tell us the area - I don't *know*  
3 if this would be on the map on or not, the area in which the  
4 dog first tracked from the driver's side of the truck some  
5 *distance, I think you are said* a 150 **foot loop?**

6 A Yes. *The original track* started at the driver's door  
7 here and headed down in this direction for approximately 350  
feet or so, made a loop, and then came right back to that  
location \*. At that point I circled around the truck with the  
*dog and he indicated here, but I brought him around the truck*  
*again and there was no indication across* the front so I  
brought him back to that passenger's door where he *indicated*  
*and he* picked up a tr.w,ck at that location which came *in this*  
direction right herd of course that night there were  
cruisers lined up **across** the road and people walking all over  
the **place, Be came in this location** right here and tracked  
up this way. We **crossed the street and he looped this way**  
**and it was right about in this location here where he was**  
**headed in this direction and** he put *his nose right up in the*  
**air and he was sniffing. So I then gave him the command to**  
**track. We heard some commotion in the woods up in here,**  
**Detective Hendsbee and I. We assumed they were deer running**  
**through there. I weaved him back and forths this way for a**  
**little ways and he kept putting his nose up in the air but he**  
**wouldn't put his nose down and track any further He kept**

1 turning around and *looking back at me and* walked back towards  
2 me. This was unusual *for* the dog to do that, *My* first  
3 instinct was he was smelling those deers and he knows better  
4 than **to** track deer. When **I** found **out where** the **body** was  
5 found then it occurred to me that he was smelling her and he  
6 didn't like the smell. 20 confirm that I brought him back in  
7 this was ribboned where we had been in and we walked in  
here and the d was off lead. loose. walking on his own. and  
9 he was off to my left. and I was walking. I turned back and  
10 I saw him clawing at something over here.

11 I will give you a different color pen for the track on  
12 the other day. This is a black pen, Blue represented the  
13 st night you were there on July 6th?

14 A Yes,

Q *Into the 7th?*

A *Yes. It was after midnight. The day she had been found  
after she had been removed from the scene I walked in here  
with the dog off lead and I noticed him scratching at the  
ground and he had located the rope. After he located the  
rope the lab came in and photographed it and did what they  
had to do.*

*We continued on the track. The dog was off lead and we  
crossed, we came up from this direction the dog kept  
veering off to this side **over** here. **And** as we kept walking  
he kept coming down here by the stream. I kept calling him*

overt I wanted him to walk with me, And he looked up here  
 2 *and* went back down here# we were within maybe 20 feet of  
 3 the body he came *down here and was standing in the* stream and  
 4 was hesitating to come back to me\*. I called him and he  
 S stopped here and I **hooked** him up *on my lead and brought him*  
 6 *to this location which he did* not want to go there \*

7 To where where its marked victim?

A Yes, It was obvious to me the dog was upsett. So I put  
*his nose in* there and gave him a good boy and patted him for  
*a little while until he got used to* ito He calmed down and I  
 took him off lead and he sniffed around that area for a  
 little while \*

0 Put the date of 7-8 in black next to that. lines That  
 would be the day you were there after discovery of the body?

A Yeso

Q Again · let me here give you the blue pen and write the,  
 designate the day 7th?

**A** *Early morning of 7-7,*

4 That **covers** the **work of** the dog?

A Yes.

Q Now, you also were involved in the securing of the truck  
*and the removal of the truck that night, were you not?*

**A** Yes

**Q** ***By that night I mean early morning hours of July 7th?***

25

**A** **Yes.**

1 Q That was done, after you had been out the first time with  
2 the dog?

3 A Yes \*

4 Q As you described now *at some length?*

5 A Yes,

6 Q Would you tell the jury what you did, you did yourself  
in securing *the vehicle* in preparation for its removal?

A *The vehicle was locked and the wrecker operator, the State Police wrecker operator that hooked on the vehicle had to secure the stirring wheel, So what I did, there was a sliding glass window on the back, in the back of the truck and it wasn't secured \* So I got in the hack of the truck and and I slid the window open and the wrecker driver instructed me to take the seat belt and wrap it through the stirring wheel and just snap it in and hold it snug, That with would hold the wheel from turning \* I reached in and put the seat belt around the stirring wheel and locked it in \* That's what I did as far as securing the vehicle.*

Q Did you make any particular observations of the interior of the truck when **you** slid open the back window and hooked up the stirring wheel?

A I<sub>t</sub> at that time plus earlier when I looked in the windows, I noticed there was a lot of *papers and things all over the seat and on the floor of the truck.* And the driver's side pretty clean as far as debris but on the

2 passenger side it was cluttered with papers, It appeared  
3 that somebody had been sitting there on those papers. They  
4 were crumpled up and so forth; flattened out and in that  
5 area, I also observed there was some grass or something that  
6 was shut on one of the doors.

6 **You** then secured the truck until the tow truck operator  
came and took it away?

A Yes.

Q You mentioned the doors were locked, How do you know  
that?

A I believe one of us tried the door to hook the seat belt  
up,

Q And found you had to go in through the rear window?

A Yes, That's the reason we had to go through the rear  
window.

MR. WRIGHT: That's all I have. Thank you,

### CROSS EXAMINATION

**BY MR. CONNOLLY:**

**Trooper Bureau, the confusion earlier was with reference  
to you having filed a report; is that correct?**

**A I believe so, yes.**

**Q And you wrote a report at the time of the incident?**

**A That evenings yes, I did,**

1 Q *That was not* turned over; is that basically the long and  
2 *short?*

3 A Any time we get a call for the use of the canine we make  
4 out a canine incident report which is forwarded to our canine  
5 office. That report was made.

6 That was not turned over; is that correct?

7 A To my knowledge I thought a copy was given, but  
apparently not. It's a brief, very brief *synopsis of what we*  
do,

Q *Now, turning your* attention to the diagram up there; I  
want to get in a little closer. The lines in blue that are  
marked 7-7 circling the truck *I want to talk about first.*  
It's fair to say that the dog scented from the driver's side  
of the truck down to the bog and back?

A Yes.

Q Prom there where did the dog go?

A Prom there I casted him. By that I mean he's looking  
for a track.

Q *Is it fair to say that that* track ended?

A Yes.

**So** *when you casted him it's true, is it* not, that he  
picked up on the passenger side?

A Yes.

Q *And you cannot state whether* **or not** *the track from the*  
**driver's** side was **the** same as the one the **dog** tracked from

1 the passenger side?

2 A All I c say

3 Q **Yes or no?**

4 A No, I can't.

5 **You** can't say whose track that was, can you, sir?

6 A No, I **cannot**.

Q You did not have a track, did you, from the body once the body was discovered and you brought the dog back on the third attempt, there was no tracking from the *body* elsewhere?

A No, No tracks were *attempted then*.

*The sounds that you heard near midnight you assumed* were deer?

A Yes,

Q *It could have been a person?*

A I would say it was a deem

How do you know that?

A I *have been hunting all my life and it s ounded* like a deer to me not a person,

Q **You've** never heard anybody in the woods, that you heard sounds in the *distance* and not know what they were?

A I can usually tell if its a deer or human. I have done *a .lot of hunting, I can usually tell if it's a deer or* human.

**Your** dogs are trained **not to track** deer?

A Yes,

1 Q Your dog is not likely, based upon his training *and*  
2 experience, to focus on the sound of a deer, is it?

3 A *He'll focus on any* sound. *is* scents that he's trained  
4 *not to follow,*

5 Q He did not indicate to you that he was scenting on a  
6 *deer, did he?*

7 A Well, he stopped, *which* indicated to me that at first I  
8 took it as indication that he was *scenting the deer and he*  
9 knows not to go after the deer

10 Q Later on you decided that theory wasn't correct?

11 A After I found where the body was discovered I decided  
12 that theory *was not correct* *d* *I confirmed that \**

So based upon what your dog's senses told and how you  
interpreted them it's not likely that he was listening for  
deer, is it?

A That evening probably not,

Q Based upon the black *mark on 7A, it's true, is it not,*  
*that the* line of scent on 7A in black commences on this side  
*of the road?*

A Yes \*

**MR, CO NOLLY: Nothing further \***

-DIRECT H :INATI I3

2

3 BY MR. %IRIGHTs

4 If you picked up a scent at the truck and followed it in  
5 for some distance, the dog stopped, sounded like a deer to  
6 you, you then went back after you realized where Sarah  
7 Cherry's body was found, can you have in any way associate  
8 the truck with the tracking eventually to where you found  
9 where Sarah Cherry's body was?

10 A Yes. Because the *night* he was tracking he picked up the  
11 track from the passenger door of that truck, So who ever  
came out that door left the scent which the dog followed to  
*this location*. On the eighth we <sup>c</sup> a in <sup>r</sup> these marks are  
side by side. They were probably right *on top of each other*  
*where we went in because we went in right where the dog had*  
*tracked.*

*Just for clarification. we went in again he located*  
**the rope** and **followed** the same path that we had followed that  
night or early morning of the 7th except this time we  
weren't, he wasn't tracking we were just walking. The dog  
wasn't being commanded to track. He wasn't harnessed to  
track, He was free to smell around and *see what* he could  
find. That's why he found the rope.

My intentions **on the** 7th **or on the** 9th was **to** watch the  
dog **to** find out **what his reaction** was going **to be** when he

1 found close to where the body was because I wanted to see if  
2 his reaction was going to be the same as it was that night  
3 when we were tracking, and it was, He *did not want to*  
4 continue. He kept shying off to the side.

5 When I experienced it that night the only explanation I  
6 could theorize was that he was smelling the deer. At that  
7 point I didn't know *where the body was. I couldn't make any*  
*other explanation for it. We did hear* something up in this  
area, But to confirm my theory that he had smelled the *body*  
and didn't like it that's why I went back on the 8th. As he  
approached where the body was he kept shying away from that  
area. He just didn't know want to go there. That's what he  
was telling me that night on the 7th.

All *of which means what in terms of associating the*  
truck with the location of Sarah Cherry's body?

A It associates where I left off with the track that track  
led to that location from the truck.

Q Would that then have been an indication or not to you as  
to whether Sarah *Cherry* had been in the truck or at or near  
*the truck where the dog first* picked up the track?

A That would be an indication that at that time the dog  
*had a scent on Sarah Cheery.* Now, he may have been scenting  
*Sarah Cherry's scent or he may have **been** scenting* anybody  
with Sarah Cherry that was walking. All I can say is my dog  
picked up the scent of whatever came out of that truck and

2 *tracked it to this location. Unfortunately he* didn't  
3 complete the track that night. There was something the dog  
4 wasn't familiar with. When we train them we try to  
5 familiarize them to these things. He had no experience with  
6 the dead or. I can state that the dog did track from the  
7 truck who ever came out *of that truck came* over here. There  
8 *is no question about it,*

MR. WRIGHT: *Thank y*

FURTHER CROSS =AMINATION

MR. CONNOLLY s

You cannot state that Sarah Cheery was that person or  
that person was with Sarah *Cherry* when he came out of the  
truck ; yes or no?

A No,

THE **COURTS** Thank you. You may step *down.*

(Testimony of Thomas Bureau concluded)

1 THE COURT: The next witness is going to take a  
2 little while I hope you bear with us and we'll work late  
3 tonight, Before we get to the next witness, whom I  
4 understand will be Trooper Bendsbee, who has been at counsel  
5 *table with Mr. Wright, its way understanding that* the parties  
are willing *to enter into* another stipulation at this time.  
*That is that the State Trooper's name is what, Dwayne 'obey?*

MR\* GH : *A tow truck operator.*

THE COURT: The parties stipulated that Dwayne  
Tobey hooked *on to the Toyota, the red Toyota pickup truck*  
*that has* just been testified to by Trooper Bureau that he  
towed that vehicle to the State Police crime lab in Augusta.  
And so you may accept that *as an agreement by the parties.*

*And I believe that the parties further stipulated*  
*that there was no alteration of the truck or its contents*  
from the time that it was taken by by Mr. Tobey from the  
scene as testified to by Trooper Bureau until it was received  
at the State crime lab in Augusta, Is that a fair statement?

MR. CONNOLLY: Yes,

MR. WRIGHT: Yes,

THE COURT: **You** have may proceed

1 *ALFRED EENDSBEE, being first duly sworn, was examined and*  
2 *testified as follows:*

3

4

**DIRECT EXAMINATION**

5

6 **BY MR, WRIGHT:**

7

***Give us your name once again?***

8

A *Alfred Bendsbee,*  
*Your occupation?*

10

A *Detective with the Maine State Police,*

11

Q *How long have you been with the State Police?*

12

A *18- da-half years,*

13

Q *Your present duty assignment with the State Police is*  
14 *what?*

15

A *Major crime investigation,*

16

Q *Where do you work out of?*

17

A *Augusta, Maine*

18

Q *Do you have a role essentially that of a detective?*

19

A *Yes, I do,*

20

**Q** ***How*** *does the role of a detective differ from that of an*  
21 *officer whom we see from time to time in a marked cruiser on*  
22 *the roads?*

23

A *I investigate criminal activity.*

24

Q *Mere you called to assist in the investigation of the*  
25 *whereabouts of Sarah Cherry on the evening of July 6th of*

1 last year?

2 **A** Yea.

3 **Q** When were you called in?

**A** Approximately 11130 the night of the 6th.

5 **Q** By whom?

6 **A** Trooper Trooper Bureau.

**Q** Where were you at the time you received the call?

**A** Home,

**Q** *What did you do in response?*

**A** *I went to the directions given to me by Trooper Bureau.*

*Which was where?*

**A** *The Lewis Hill Road in Bowdoin.*

*Whom did you meet if anyone, at that location?*

*met with Sheriff Haggett and Deputy Mark Westrum. At that time they advised that a red Toyota pickup truck was found off on a side road later known to me as the Hallowell Road in Bowdoin.*

**Q** *You arrived in this area the Dead River Road/Lewis Hill Road approximately when?*

**A** *Approximately 1010 in the morning \**

**Q** *Tell us what initial steps you then took yourself or with other officers after you had learned of the locating of a truck?*

**A** *Sheriff Haggett assigned Detective Westrum to show me where the truck was found on the Hallowell Road. I then*

proceeded to the fallowell Road and met with Trooper Bureau.

2 Once there Trooper Bureau showed me where the truck was  
3 located off on a discontinued logging road. Before going in,  
4 Trooper Bureau briefed me on how the truck was found.

5 What observations did you make of the truck yourself at  
6 that point?

7 A It was a red Toyota pickup truck. I went into the area  
with a flashlight and observed some damage to the right-hand  
fender. There was some bondo work on it. Also there was a  
bag of Blue Seal grain in the body, The truck was locked.  
It had locks that push down. I didn't try the doors.

I just made an observation with my flashlight through  
the glass itself and noted on the passenger side there was a  
lot of paper work. Some was on the floor but a lot was piled  
on the seat. I **also** noted on the seat where the paper work  
was it was wrinkled up and indented like somebody sat on that  
**particular seat.**

**The driver's door was, looking down, directly do  
noted some plant growth that I didn't believe to be**  
consistent with where the truck was parked due to the fact  
that the truck was parked in a cleared out area with pine  
needles and **no tall growth.** Upon noticing that Trooper  
Bureau and I then ran a track with the dogs,

Q As he just described?

25 A **Yes.**

1           *Apart from your seeing the crinkled up papers on the*  
2 *passenger side on the seat, could you describe the interior*  
3 *of the cab you saw it that morning?*

4    A     *It was messy, extremely messy, dirty. I saw no keys in*  
5 *the ignition as well,*

6           *In what way was it messy or dirty?*

A     *Cluttered up with a lot of items,*

Q     *With what?*

A     *Paper work, basically; I believe some empty cans; a*  
*whole bunch of stuff,*

*How about the exterior of the truck? What was its*  
*condition aside from the body damage?*

A     *It showed its wear, It wasn't a shiny painted job, It*  
*showed wear.*

Q     *Did you make observations of the tires on the truck?*

A     *The tires on the truck, my observations on the rear*  
*appeared to be snow treads, On the front they appeared to be*  
*regular summer tread tires,*

Q     *Perhaps its redundant, but State's Exhibit Number 15*  
*shows the truck that we have been talking about?*

A     Yes,

*And State's exhibit Number 16 the rear of the truck?*

A     Yes,

Q     *Did you receive anything from Trooper Bureau in addition*  
*to going with him on the tracking into the woods?*

1 A Yes, Later on in that *morning around six o'clock I*  
2 eived a notebook and paper work from Trooper Bureau, I  
3 received a receipt that appeared to have Dennis Deehiane's  
4 **name on it.**

5 **State's Exhibit Number 10?**

6 **A Yes, That was it.**

7 And State's Exhibit Number 11?

A Yes.

You had these since the time you received them?

A Yes,

we've just learned of Mr. Tobey's towing the truck to  
Augusta, What role did you have seeing that that be *done?*

A I had Trooper Bureau call the State Police in Augu 'Lao  
They had a State <sup>P</sup>olice wrecker driver *come to the scene to*  
remove the pickup truck

**Do you recall having any contact with Detective West rum  
of Sagadahoc County Sheriff's Department?**

A Yes,

**0 What was the nature of that contact with him?**

A **Other than him showing me where the truck was parked  
upon leaving to go back to the Lewis Bill Road and Dead River  
Road intersection I received a set of truck keys that he  
stated were found in one of the sheriff's deputies cruisers  
that belonged to Dennis Dechaine.**

**Q I have in my hand State's Exhibit Number 14?**

Those are the keys.

2 Q After you received these have these been with you since  
3 last July?

4 A I turned them over to the lab the *next day so they could*  
5 *gain access into the truck.* And several days later I  
6 received them back from the lab when they were through  
7 processing the truck.

8 Q Did you do anything with respect to the keys in the  
9 truck after you received them back?

10 A Yes, I unlocked the doors of the truck to make sure  
11 *they unlocked and locked* the doors, and they did,

12 Q Did you try them in the ignition?

13 A Yes,

14 Q Did it fit the ignition?

15 A Yes

16 Q *Were you able to turn the ignition on and off?*

17 A we turned the ignition on and off, but the car wouldn't  
18 stop. Everything was dead.

19 Q When was this done?

20 A Several weeks ago.

21 Q By the way, the truck since the time it was towed has  
22 been where?

23 A At the Maine State Police headquarters in Augusta where  
24 they have it parked in the parking lot.

25 Q Outside in a parking lot?

1 **A Yes.**

2 Q In Addition to the *law enforcement officers that were*  
3 *there that evening did you meet anybody else early that*  
4 **morning?**

5 A Yes.

6 Q Who else?

7 A I met Dennis Dechaine.

8 Q *Where was that?*

9 A *In the back of one of the deputy sheriffs' vehicle, in*  
10 *unmarked police car at the intersection of the Lewis dill*  
11 *Road and Dead River Road.*

12 You may have said what time it was that you came in to  
13 contact with Mr. Dennis Dechaine.

14 A It was approximately 2:40 in the morning

15 Can you describe Mr. Dechaine as you then saw him?

16 A He was sitting in the back of the passenger side *rear*  
17 *seat staring straight ahead. I got in the car and he*  
18 *appeared to be a little tired. Then I asked if I could talk*  
19 *to him. I asked if I could talk to him.*

20 Q Did he indicate whether or not he was willing to talk to  
21 you?

22 **A Yes.**

23 Q Did you, before talking with him at any great length,  
24 advise him *of any rights?*

25 A **Yes, I did. I advised him of his** Miranda warning.

How did you go about doing that?

2 A I read it off my Miranda card. I have that card.

3 Q I was going to ask you if you could demonstrate the  
4 manner in which you did that with him.

5 A This is the exact card I read to Dennis Dechaine. It  
6 states: I'm a law enforcement officer. I want to ask you  
some questions, Before I do that I *Auld like to explain*  
your rights. Number one, you have the absolute right to  
*remain silent*, Do you under that? Dennis responded yes, he  
did. I asked if he understood *what that me<sup>p</sup> t. He explained*  
*to me that he did have the right* not to talk to me. Number  
*two, anything that* you say can and will be used against you  
in a court of law. I asked him if he understood that?  
stated he did, I asked him to explain that back to me, He  
*stated that anything he said could be used against hi*  
court, Number three, you have the *absolute right to the*  
advice of a lawyer before any questioning and to the presence  
of a lawyer with you hear during questioning, I asked him if  
he understood this. He stated he did. I asked him to  
explain it back to me. He stated that he could have a lawyer  
and anything he does say could be used against him as well as  
the presence of a lawyer with him here during questioning.  
Number four, if **you** could not afford a lawyer **one** would be  
furnished to you before any questioning, if **you** desire,  
before any **questioning**. **Do you** understand that?

1 He said that he did. I asked him to explain it back to me.

2 He said if he could not afford a lawyer one would be

3 furnished free,

4 On the reverse side of the card, number five, I asked

5 if you decide to answer questions now with or without a

6 a er present you have the right to stop answering at any  
time or stop answering questions at any time until you could

talk to a lawyer, I asked if he understood that. He stated

*he did. I asked if he could explain it back to me. e said*

he could stop talking any time he wanted or he could stop

talking and consult with an attorney first. The. there is a

waiver. asked having all these rights in mind, which I've

just explained to you, do you *wish to talk and answer*

questions at this time? He stated he did.

Q Did you speak to him?

**Yes,**

**Por how long?**

A Approximately an hour.

Q Prior to talking to him did you in any way use any  
physical force against him?

A No, As a matter of fact, I was quite concerned prior to  
talking to Dennis that he had been sitting in the car for a  
great amount of time. I told him I had great concern. I  
asked him how long has he been in this vehicle? He stated  
that, **he told me that he** he been in the sheriff °s deputy car

2 since 9:33 that evening or ten. This was now 2r40. I asked  
3 if he was under arrest. *He stated no. He was not under*  
4 *arrest® He had no handcuffs on him but he did have a seat*  
5 *belt on. But he knew he wasn't under arrest.*

6 *Did you have a weapon with you?*

7 *No. I did not,*

*Did you promise him in any way if he spoke to you it*  
*would be a benefit to his. things would go better for him*  
*somewhere through the offices of somebody?*

*No. I did not.*

*Mat was the general subject area with which you were*  
*speaking to him about over the next hour or so?*

*I think it was less than hour, I was interested from*  
*Dennis his whereabouts on July six. 1988 until the time*  
*got picked up by. w turned over to the sheriff's deputy.*  
*We went over that. He got up in the morning around eight*  
*o'clock in the morning. Be got up early in the morning and*  
*he went to the WWest Gardiner Beef Company to pick up some*  
*slaughtered birds that he had slaughtered earlier. From*  
*there he went home.*

Q *Did he tell you what time he had gone to the West*  
**Gardiner Beef** *Company?*

A **He stated he picked up his birds around eight o'clock in**  
**the morning.**

**From there where?**

1 A He went to some Wild Point Preserve or reserve, which is  
2 on title waters, to go fishing@ Wh he arrived there the  
3 tide was low so he couldn't fish. So what he did was just  
4 laid around for a short time taking in the area.

5 From there he stated he went back home and decided  
6 later on to go take *some* back roads and look for some fishing  
*holes, which he did.* He drove some back roads, drove off the  
*roadway and parked his* vehicle in several different *locations*  
and he got out of the vehicle and went into the wooded areas  
looking for some fishing holes.

He stated he had with him a three-foot long fishing  
*pole, that he later discarded when he got lost in the woods.*  
*He stated that at the last times*

Q *Did he say where he had placed the fishing pole?*

A *Yes. At the last location where he went in the woods  
locking for a place for fishing holes he got lost and  
disoriented. When **he** came out he didn't know where he had  
left the truck. **So**, therefore, to save embarrassment he  
left the fishing **pole** in the wooded area next to the road  
**where he** was picked **up by** **older** lady and gentlemen who  
assisted him in trying to locate his truck.*

Q *Did you later come to learn where Arthur Spaulding  
lives?*

A *Yes.*

Q ***Did you look in that area keeping in mind what Mrs***

2 Dechaine had told you that he left the fishing pole that he  
3 *said he -had with him near the Spaulding residence for a  
fishing pole?*

4 A Yes, In that area as well as a house trailer at the  
5 *foot of Spaulding's driveway. I did search that area for the*  
6 *fishing pole and other items.*

7 Did you find any?

8 A We, I did not.

9 What else did Mr. Dechaine tell you about his activities  
10 of the day before?

11 A He told me that, he told me that this couple picked him  
12 up, that he was embarrassed because he got lost in the woods  
13 being from the area so when they picked them up he told  
these people that he was from Yarmouth and he was up here to  
do fishing because he was from *Brook* and getting lost  
the area was a *arrassedi* to him.

Be also talked about we, talked about greenhouses and  
flowers, It's a common interest we have. We talked about  
the truck keys, I asked him why he lied to the sheriff's  
deputy about his **truck keys that were** found underneath the  
seat of the patrol car. Be told me that he was confused  
when the deputies were asking him questions. That he told  
*them that he had left his truck keys in the vehicle,* After  
saying that he felt his pocket and he felt the truck keys in  
**his pockets So** rather than cause any problem **to** himself and

2 *getting caught up in* untruth he decided to hide the truck  
keys under the seat.

4 He **also** stated in many locations that he **recalls that he**  
5 **parked the truck off the side of the roadway when he went**  
6 *looking for fishing holes, and several times* he recalled that  
7 he believed he left his truck keys in the truck while he left  
8 the truck abandoned in the area and that maybe somebody could  
10 *have taken the truck; however, when he returned to the truck*  
it was always parked in the same spot so it would be unusual  
that the truck was taken by *anybody else*.

11 With reference to - *I made reference to the notebook*  
12 *that was found* at the Henkel residence as well as the  
13 receipts Dennis *explained that* they were his notebook and  
4 receipt but he didn't believe they were in his trucks  
They might have been, but he *didn't* believe it. He explained  
how cluttered his truck was. But where he thought they were  
they were **his business in Brunswick there, It's a flower**  
business, **a greenhouse like, and he believed** this notebook  
and receipt were most likely in Brunswick and at his  
business. That someone may have *taken this notebook* par,  
receipt and placed them **in** the Henkel dooryard.

When?

A *That day.*

Did he indicate whether he had **ever been in Brunswick**  
**that day?**

1 A No, he did not.

2 Q Continue with what he told you.

3 A *One of the things I was interested was his fishing. I asked him if he checked the fishing hole located on the Lewis Hill Road the Dead River Road. Its approximately half*  
6 *a mile from where I was parked at the intersection of Dead River Road and Lewis Hill Road. It's a small bridge and there is a body of water there. Dennis didn't recall going over that bridge that day.*

Q *I would ask you if you can point out the location of the bridge over the Dead River Road?*

A *Its marked on the map as iron bridge, This is the intersection of the Lewis Hill Road and this is the Dead River Road\$ this is the location of the ron bridge. is a body of water underneath.*

Q *Be had no recollection of that bridge or water under the bridge there?*

A *Be had no recollection of going across the bridge.*

Q *We were talking about, you had been talking about the papers in the truck, He was talking about somebody perhaps in Brunswick that day could have taken them?*

A **Not** that day.

When did he say?

**Somebody may have taken them while they were at the greenhouse, which is located in Brunswick, previous to that**

1 *day or that day. He didn't state when.*

2  *Who, if anyone, did he indicate had been in his truck*  
3 *that day?*

4 *A I asked if anybody had particularly sat in the passenger*  
5 ***side of that vehicle where the papers were. He stated no.***  
6 *nobody else has been in that vehicle that day. Nobody has*  
7 *sat in the passenger seat \**

8  *How out the use of the truck that day as far as he*  
9 *knew; which by that day I'm going back to the sixth?*

*A Nobody else used that truck. However. as I mentioned*  
*before. he did park his truck off the roadway looking for*  
*fishing holes and several times he may have left his keys in*  
*his truck unlocked.. However, he never noticed the truck*  
*moved from the location that it was at upon returning.*

*Q Did you discuss with him doing anything with the truck*  
*that night?*

***A Yes.***

***Q What?***

*A I told Dennis that there was a big concern by everybody*  
*about a missing girls a Sarah Cherry, a baby-sitter. and that*  
*there was a possibility that he may may be involved with this*  
*this disappearance of this girl. And that I would either*  
***like. I would like his cooperation to either tie him in or***  
***eliminate him fully from any respect of being involved in***  
***this particular incident of a missing girl. I asked him if***

1 he would give me consent to take the pickup truck to Augusta  
2 and have it examined by a laboratory technician for any  
3 evidence that may either tie Dennis Dechaine or eliminate him  
4 in the abduction of the missing girl. I told him he wasn't  
5 under arrest. And that he could refuse if he would like and  
6 just bring the truck to his residence. It's totally up to  
7 him.

4 You mentioned the word abduction. Did you put it to him  
9 that way?

10 A No,

11 O Go ahead,

A Dennis stated that we could take the truck, I asked him  
if he would sign a voluntary consent form, He stated he  
would, So we took the truck.

O Do you have that form with you?

A Yes. I'll show you State's Exhibit Number number 18 for  
identification, Do you recognise that?

A Yes,

O What is that?

A That is the **voluntary** consent form that I hire make  
out for a consent search of Dennis Dechaine's truck.

That was done when and where?

A At the Bowdoinham Police Department on July 7s 1988.

O Somewhat later in the morning?

A Yes,

1 Q Signed by Mr. Dennis Dechaine?

2 A *Yes.*

3 *And by*

4 A *Myself.*

5 **MR. WRIGHT: I would offer State's exhibit Number**  
6 **18,**

7 **MMP®, CONNOLLY No objection.**

*TUB COURT: .8 is admitted.*

BY MR. WRI \_ t

Q Its very brief, Rather than leave *the jury* wondering why don't you read it.

A It states: I, Dennis Dechaine, give the Maine State Police permission and consent to search my r 198 Toyota pickup truck for any evidence *which involves a missing girl* whose name is Sarah *Cherry*. Signed, Dennis Dochaine, witnessed by Detective Alfred fendsbee. I also told him at any time he didn't want the truck searched he *could have it back if he* changed his mind.

Q Any further discussion with him relative to his activities and Sarah *Cherry* as you spoke to him out on the road before going down to the **Bo** oink Police Department?

A Yes. *My concern was to find Sarah Cherry that night. She was missing. Nobody new* whether she was dead or alive.

25 I asked Dennis if in fact he **took** Sarah. I asked him if he

1 would tell us. Two wrongs don't make a right. Something  
2 might come over him, He might have done something wrong but  
3 don't complicate the matter by letting things go the way they  
4 are, If she is in the woods tied up tell us® If she is  
5 alive tell us, so she may not die, I said if you don't get  
6 this off your mind every time you hear the name Sarah goose  
pimples are going to come to the back of your neck. At that  
time I looked at Dennis *and he was looking straight* ahead and  
I could see his left arm and he had goose pimples \* but he  
didn't volunteer, there was no volunteering to tell us that  
he was involved with it at all.

Q *Anything further said* along the s e lines with respect  
to efforts by you to persuade him to tell what he knew, if  
anything?

A I had given him opportunity later on if he wanted to  
talk to me to give me a call. I would be glad to talk to him  
about it.

Q What was his response?

A He *said he would,*

Q *Did he at any time that night indicate to you* whether he  
had or had not done anything with Sarah Cherry?

A No, ether way.

Q **You** don't recall?

A No, I don't.

Q **You** wrote a report out, **did you** not?

1 A Yes.

2 • I show you you a piece of paper. Do you recognize that?

3 A Yes.

4 • That **is a on page of your report of your conversation**  
5 **with Dennis D haine?**

6 A **Yes.**

7 • Let me here direct your attention to the very last line  
8 and read it to yourself whether that refreshes your  
recollection at all with respect to the question I just asked  
you whether he said one way one way or the other about his  
involvement or *anything* concerning his involvement with Sar  
Cherry?

Yes

Q Does that help you recall?

A **Yes.**

Q **What is your r ollection, having been refreshed, what**  
**did *Mrd Dechaine* tell you out his, any involvement in this**  
**matter?**

A **He said he did not do it and he never would do such a**  
**thing.**

• **He indicated to *you* he had not *taken her?***

A **'hat's correct \***

Q **I meant to cover this with you before, State's *Exhibit***  
**timber 20. I'll show you a photograph. Do you recognize**  
**that?**

1 A Yes, I do,

2 Q What is that?

3 A It shows the passenger seat of Dennis Dechaine's pickup  
4 truck and paper **work on** it.

5 Q Does that photograph fairly and accurately depict the  
6 paper work on the passenger side of the truck as you saw it  
7 when you looked into it early in the morning on July 7th?

8 a It does although there is one piece of paper there  
9 that I recall that everything was wrinkled as if it was sat  
10 on. There is one piece of paper on the top that appears  
11 doesn't appear as I recall its It appears that it doesn't  
12 belong there.

13 Apart from that, the other papers underneath the  
14 top paper is as saw that part of the truck that night?

15 A That's correct.

16 MR, WRIGETt I would offer State's exhibit Number  
17 20,

18 MR. CONNOLLY: **No objection.**

19 THE COURT: 20 is admitted

20

21 BY MR. T: T:

22 Q The paper that did not appear as you saw it that evening  
23 top is the one on top of the other papers?

24 A Yes,

25 Q Did you during the time that you were with Mr. Dechaine

2 *either in your car* where you were speaking to him or later at  
 3 the Bo oink - Police Department make any particular  
 4 observations of the condition of his clothing and of his  
 5 physical condition?

6 A In the sheriff's police car the observation of his  
 7 clothing he was wearing a *blue T-shirt with dark blue*  
 8 *boarders around the collar* and sleeve part of it® Green  
 9 *kackie pants, sneakers. I believe they were Nike. They were*  
 10 *gray in color, It appeared that his pants were wet, damp,*  
 11 *drying out damp, and the sneakers appeared to be wet as well.*

12 As for the observations there was a bruise on his arm  
*which I noted and later photographed . There was in the back*  
*of his tesh .rti I noticed a handprint in a downward motion.*  
 It was a muddy handprint, as well as later on he let me here  
 ez.Nine under *this shirt and I noticed some scratch mark:*  
*in the kidney area in the right-hand side, They were not*  
*deep, but they were faint but they were scratch marks \**

Q They were located where?

A *On the right-hand side of. the back in his kidney area \**  
 Lower right back?

A Yes,, *They were going sideways across the back area.*  
*Did you attempt to take a photograph of those?*

A **Yes,**

(2 **Did the photograph come out?**

25 A **Yes,**

Are the scratch marks visible in the photograph?

2 'toucan faintly see there in the photograph.

I misplaced that one for the moment.

4 A I have it.

5 Let me here mark this **photograph** as State's Exhibit

6 Number 21 for identification. Do you **recognize** that?

7 A Yes, I did,

Q That is what?

A A photograph that had taken of the Dennis E haine.

Q That you just described?

A Yes.

The lower right back area?

Yes. Around the kidney area.

Does that picture fairly and accurately depict that portion of the body that you photographed at the Bowdoinham **Police Department later in the morning?**

A **Yes. It was darker what I actually observed.**

Q **They appeared darker to the naked vision** than *they* do the photograph?

A **yes,**

**MR. WRIGHT: T would offer States Exhibit Number 21.**

**MR. CONNOLLYs No objection,**

**THE COURTS itted.**

BY MR. WRIGHT:

2 Q Could you hold it up for the jury and indicate where on  
3 the photograph those scratch marks that you saw were located?

4 A Right *by his* kidney area going across like this,

5 Q *How many* were there?

6 A *Several.*

Had he drawn blood?

A No.

How long were they?

Almost to the middle of his back from the side.

? Length then?

Four or six inches.

Did you talk to Mr. Dechaine about his SIR tall  
*status, educational background?*

A Yes,

Q *What did he tell you about that?*

A **His** wife was named Nancy they had been married for five  
years. And that he **has** associate degree in ago. And that  
he has a H's degree in Tench when which he received out of a  
college in Washington state.

Q *With respect to his wife Nancy\* Did he indicate in any  
way to you what anything she new about where he had been the  
day you were talking to him about?*

A **No, She didn't know where he** was at that time.

*That was according to what he said?*

1 A Yes,

2 Q She didn't know where he was at that time when you were  
3 talking to him or during the day?

4 A **I understood all day even** when I was talking to him in  
5 *the wee hours in* the morning.

6 Q Did you make any efforts with him to try to contact his  
wife?

A Yes. I told him if he didn't mind I would like to go to  
the Bowdoinham Police Department where he could wash up a  
little bit and call his wife and tell her where he was and I  
call the Attorney General's office *and tell* them what took  
*place in this case \* He consented he would.*

Q *Throughout the time that you were* with Mr. Dechaine,  
could you tell us how he was behaving?

A He was a little nervous. When he talked to me he was  
easy to understand, He was real selective with his words. I  
could understand him **real well.** Other than that that's my  
biggest observation of him \*

Q **Did you talk out one incident involving goose** bumps?

A **Yes \***

Q *Apart from that did his behavior or* demeanor change at  
*all?*

A No,

**Was that the only time it did, would you say?**

**His demeanor didn't change \* Re didn't say anything. He**

1 was very good to talk to.

2 Next let me here show to you for identification as  
3 States's Exhibit Number 19. Do you recognize that?

4 A Yes, *That is* the picture I **took** of Dennis Dechaine at  
5 *the Eowdoinh Police* Department.

6 Q *Apart from what appears to be some difficulty with the*  
*shutter in the camera in one part of the photograph which*  
*cuts off part of what you are trying to take, does it fairly*  
*and accurately depict his appearance as you saw him early on*  
*the morning of the 7th?*

A Yes.

MR. WRIGHT: I would offer State's Exhibit Number  
19.

MR. TOLLEY: No objection,

COURT: State's Exhibit 19 is admitted.

**(whereupon whereupon State's Exhibit Number 19  
was circulated to the jury)**

**BY MR. WRIGHT:**

Q ***Mr. Connolly has had marked as Defendant's Exhibit  
Number five a photograph. Just so we know who took that and  
when it was taken. Do you recognize that?***

A ***Yes. It's a bruise on Dennis Dechaine's left bicep. I***

1 took it.

2 At the Dowdoinh Police Department?

3 A Yes.

Q You were at the Bowdoinham Police Department  
5 approximately when?

6 A A little before four o'clock in the *morning*.

Q How did your involvement with Mr. Dechaine come to a  
conclusion that morning?

*I gave him a **ride home**.*

Q ***And let him off at what time?***

A ***I can check and tell you.***

Q *Please do.*

A *4:20 in the morning.*

MR. W CH % Thank you. Subject as to re *all later*  
in the case.

R COURT: **Mr. Connolly.**

### **CROSS M IINATION**

**BY MR. CONNOLLY:**

Q **Detective Hendsbee ® how are you?**

A **Fine.**

Q **Would it be fair to say on the evening in question when  
you saw Mr. Dechaine he was extremely cooperative?**

25 A **Cooperative.**

1 Q That he consented at first, based upon your knowledge,  
2 to get into the police vehicle *which he did not have to do?*

3 A I'm not aware of that, of him getting into a police  
4 vehicle. I got into a police vehicle to talk to him.

5 Q You told him he wasn't under arrest so he must have  
6 *gotten into* there voluntarily?

A Yes.

Q So he voluntarily stepped into the <sup>P</sup>olice vehicle?

A Yes.

Q He consented to be interrogated by police experts,  
including yourself, and if my math is correct, the combined  
experience of all these people including one of the  
detectives who wanted to be a detective since he was I  
over 35 years?

A I suppose

**He consented to six<sup>es</sup> d-a-half hours of rigorous cross  
examination?**

**MR. WRIGHT I would object.**

**THE COURT: Can we break this down so we don't have  
multiple questions here. So we don't get a yes or no answer  
o any one.**

BY MR. CCNNC. 8

**Q He was questioned for six-and-4a-and-half hours and that  
was voluntary?**

J

1           MR, WRIGHT: *Objection, There has been no --*  
2 *that's a misleading question entirely \**

3           Mn, CONNO Y: **Your Honor --**

4           **MR, WRIGHT: He *wasn't with* him for six-and** -a®-half  
5 *hours,*

6           MRm CCNNO **Y: You asked him** about it, Mr. Wright,

7           THE COURT: If you gentlemen are through. My

ling is that the *objection is* sustained based upon the limited knowledge of this police officer testifying or answering that question based upon his own knowledge. The objection is sustained.

BY MR\* CC 3®LLY:

Q       *Based upon your knowledge, what time did the defendant first appear in the gracious custody of the police?*

A       ***Between 9:30 and ten o'clock,***

Q       ***He was finally released at what time?***

A       ***4:10 in the morning,***

Q       ***How many hours is that?***

A       ***Six hours***

Q       ***W that voluntary or not?***

A       ***Yes***

Q       ***He voluntarily consented, did he not, to a search of his truck?***

A       ***Yes***

1 He voluntarily consented to a search of his pockets?

2 A I don't know that.\*

3 • *He voluntarily consented to having his picture taken?*

4 A Yes

5 • And his body parts exposed?

6 A Yes,

7 0 He was very good to talk to?

8 A Yes,

9 The only odd behavior you saw was goose bumps; is that  
10 correct?

11 A Yes, It was strange,

You saw no blood on his clothing?

A That's correct.\*

You saw no unexplained hairs or fibers on his clothing?

**A I didn't examine him for that**

**He was in your gracious custody for how long?**

**A Two hours \***

**You are 18 and a-half year detective or trained officer; is that correct?**

**A Yes,**

**You have been through multiple training courses on examining physical evidence; is that correct?**

**A Yes,**

**And it's true that you understand the importance of fiber evidence in the prosecution of a serious crime?**

A Yes.

2 The same with hair evidence, you've used it yourself in  
3 many cases?

4 A Yes.

5 Q You understand that you can observe physically on a  
6 person's clothing *pieces of physical evidence that later turn*  
7 out to be significant?

A Yes.

You did not disregard *your* knowledge of that training as  
a police officer as you and Mr. Dechaine engaged in  
*conversation* for that two hour period · did you?

A No, a matter of fact I wanted his shirt and pants.  
Did you ask him?

A didn't push the issue.

At the s e time you didn't notice anything, did you?

A No, I didn't look.

**You didn't look?**

**A Not for hairs or fibers, no.**

**Q** **You indicate · sir,** that he had a handprint **on** the back  
*of his shirt?*

A Yes®

Q Did you take a photograph of that?

A Yes. It's *over* there. But the top part of my lens - my  
shutter speed somewhere **on my camera got** it from one hundred  
to 250 and the very top of his shoulder you can't see the

1 line& If you look hard you can see the bottom part&

2 Q Without looking at the photograph what hand was it?

3 A I believe it was the left hand over the right shoulder&

4 Q Like that?

5 A Yes, He explained **to me** --

6  I'm asking the estions & He did **deny** compliancy **of any**  
7 kind in the involvement of the disappearance of Sarah Cherry &  
8 did he not?

9 A That's correc

1  Had the defendant asked for his truck back its your  
testimony you would have given it to him?

A Yes,

Q Turning your attention to the beginning part of your  
testimony when you indicated that based upon what you saw on  
the side of the vehicle, *the paper* work on the passenger  
side, that it appeared that somebody had been *sitting on*  
**that; is that correct?**

A **That's correct,**

Q **Turning your attention to what has been marked as**  
**state's Exhibit umber eight. That is** the same photograph  
but a smaller **version?**

A **Yes,**

Q **Does that photograph show what you were talking about as**  
**the impression you were talking about?**

A **Other than I -- I'm having problems with this top of**

1 piece of paper. The vehicle was towed. It was - there was  
2 an inprint in the paper that was real noticeable, I noticed  
it from the driver's side *window*. *That doesn't show the same  
with the paper on top. It is a different angle.*

Q That piece of paper, it's true is it not; that the  
imprint was not of symmetrical design, isn't that true? It  
was an imprint on the paper?

A It was concaved into the seat.

Q But it didn't have two sections of concave, did it?  
As if somebody's *rear end was* sitting on it?

A I couldn't determine that.

Q So as far as you know, sir, it would be as consistent  
with what you saw that somebody kneeled on the piece of  
papery isn't that true?

Somebody kneeled on it?

That's right.

A No, I wouldn't say that.

Q Why is that?

A Because one's knee is smaller than one's buttock, If  
one put his knee *in the* middle of that paper it would leave a  
more concave impression with one's buttock; it would give us  
the complete concaveness of it.

Q Did you take a measurement?

A I didn't get in the vehicle.

Q ***You are making observations as to size only looking from***

1 the outside; is that correct?

2 A I'm-making observation of what I observed when I  
3 looked into the vehicle, that's correct,

4 Q So you are saying it would not be consistent with  
5 somebody *kneeling on it. What if somebody* kneeled then on  
6 both kness to reach across the truck; that would be  
7 *consistent?*

8 A You would have both imprints f wouldn't you?

9 I'm asking the questions 0

10 A *I would think you would have both imprints. I don't*  
11 *know*

12 Q *Turning your attention to what has been marked as*  
*Defendant's Exhibit Number 7, I would ask if you could*  
*identify that\**

A Yes \*

Q *What is that?*

A ***It appears to be the front comparement of Dennis***  
***Aechaine's vehicle with the seat belt through it***

***You would call that the driver's side?***

A ***Yes,***

***Is that a fair. and accurate representation of what the***  
***vehicle looked like after it was towed to the State Police***  
***crime lab?***

A ***I don't know, I didn't receive it.***

Q ***Are those fair and accurate depictions of what the***

1 vehicle looked like when the vehicle was on the Dead River  
2 Road when you saw it?

3 A No,

4 Q *What is the difference?*

5 A Number one, the seat belt is running through the  
6 steering wheel®

7 Q Would that be done for purposes of towing the vehicle  
8 and if there is a stipulation in any event?

9 A Yes, But the paper work looks different here as well.  
10 I don't recall seeing any paper work on the driver's seat®

11 Q You are saying that there has been some change between  
12 the time you first saw the vehicle until the time those  
13 photographs were taken by Maine State police photographers?

14 A Definitely on the paper work aspects yes,

15 Q You are saying those are not fair and accurate  
16 descriptions?

17 A **Yes,**

18 Any photographs that are obtained *from the Maine State*  
19 **Police** with reference to the **interior of** the cab of the truck  
20 **are not accurate?**

21 MR. WRIGHT: Objection.

22 **THE COURT: Sustained. Argumentative,**

23

24 **BY MR. CONNOLLYs**

25 Q **The rear tires of the vehicle are snow treads?**

1 Yes.

2 Q The left rear one did you make any observations as to?

3 A I think I put it in my report that they are snow treads.

4 Q Did you make any indication as to distinct marks on the

5 **left rear tires?**

6 **A No.**

7 Q *Did you examine it at **all?***

8 A *I just examined with a flashlight the tires.*

9 Q *You received the notebook from Trooper Bureau?*

1 A Yes.

11 Q *Was how did he hand it to you?*

12 A *In person, the notebook and the piece of paper.*

13 Q *He did not do anything to preserve the notebook other  
14 than handing it to you?*

15 **A No.**

16 *You are absolutely certain the truck was locked when you  
17 found it?*

18 **A Yes**

19 Q *Did you test the key to the Toyota in the lock?*

20 **A then?**

21 Q *At any time?*

22 **A Yes.**

23 *So you **have personal experience on how** that Toyota  
24 works?*

25 **A Yes.**

The key unlocked the door?

2 A Yes.

3 Q Or locks it?

4 A Yes.

5 And how else would you lock that door?

6 A You would grab a hold of the handle - it's not a push  
7 *button it* is a handle that goes underneath. If you hold the  
8 handle up and push the lock down and shut the door it remains  
9 lock,

10 Q You can't just push the door and lock the door?

11 A No, it didn't lock.

12 Q It has to be a conscious decision to lock the door?

13 A Yes.

14 Q When you talked to Mr. *Dechaine at two o'clock in the*  
15 morning and you asked if you could converse with him and read  
16 h Miranda, that you went through in detail. You had been  
17 aware, had you not, that he had previously requested not

18 MR. WRIGHT: I would object &

19

20 (*Whereupon a sidebar conference was held*)

21

22 MR. CONNOLLY: The question, if finished, would  
23 have been that you were aware, were **you**, not that he had  
24 requested not to answer any questions earlier and requested  
25 an attorney.

1 MR. WRIGHT: That is the area we talked about  
2 earlier this morning in chambers. If I understood the  
3 Court's ruling, it would not be inquired into.

4 MR. CONNOLLY: My understanding of the Court's  
5 ruling was I was not to ask him if that was bad police  
6 practice; not if I could inquire into it at all.

THE COURT: No, The basis of my ruling was that  
you would only go into *this insofar as it* related to his  
*apparent physical and mental and/or emotional condition at*  
the time, but it would be excluded if phrased *in such a way*  
that it would in any way imply improper police procedure \*

MR. CONNOLLY: Your Honor, if I may, the State went  
through adnause *the fact that he was given* Miranda; the  
clear implication is they were following police procedure.  
*Mr. Wright asked him to go down detail by detail of what was*  
read to the defendant.

**THE COURT: I understand** that. But let's assume  
that this **question is pursued in** the form that you've just  
stated to the Court. What **is the relevance of this line of**  
**questioning?**

MR. CONNOLLY: The relevance would be that it would  
show that the detective was aggressive, persuasive and that  
**would bear directly upon the validity of the information**  
**obtained from the defendant.**

**THE COURT: If that is the basis upon which you are**

1 offering this and its relevancy that is a left-handed way of  
2 saying that you are asking the jury to somehow suppress this  
3 evidence,

MR. CONNOLLY: No, sir, I want the jury to  
5 understand that they've heard a number of witnesses  
6 discussing Miranda issues, and for the jury to understand  
its not just the way that the State has laid it out. That  
there is more to it *than what is going on that* meets the eye.  
Its relevant for them to understand what any so-called  
admissions are, what weight is to be given to that, not to be  
suppressed by them,

THE COURT: If I understand correctly the rules of  
criminal procedure, let me here get the book. It's rule  
41A. *It provides that a defendant may move to suppress as*  
evidence any of the following on ~~the~~ grounds that it was  
illegally obtained, one, physical *objects*; two, *statements of*  
the defendant; three, test results; four, out-of-court or in  
court eye-witness identification of the defendant.\*  
Subsection B provides that the motion is to be made before  
trial or hearing, unless opportunity there for did not exist  
before then.

Now, it seems to me that if you have improper police  
procedure, that the appropriate way to address this, because  
*the basis for attacking improper **police** procedure* is to say  
that the actions of the defendant, any statements made by

1 him, were not free and voluntarily made, knowingly made on  
2 his part-, but were the result of coercion, expressed or  
implied, on the part of the police officers. And if that in  
fact takes place, the way to appropriately address that is by  
way of a motion to suppress.

Now, perhaps I'm extremely thickheaded here. I still  
fail to see a distinction in the basis upon which you are  
proceeding with this line of questioning.

MR. CONOLLY With all due respect, one way to  
proceed is by way of motion to suppress which has limited  
utility given recent Law Court and United State's Supreme  
Court decisions. I have a right to a vigorous cross  
examination. I would, at this time, make offer of proof  
offer in Defendant's Exhibit Number 9, which is a Miranda  
card scalled signed by *the defendant on the* night in  
question indicating at approximately 9:57 that he wished to  
have attorney and wished not to answer questions. I  
merely wish to ask the officer whether or not he was aware of  
that and whether or not he proceeded despite that  
information, not to try to suppress what the officers says  
but to inquire of the officer as to the assertion of the  
*defendant's right.*

25 MR. WRIGHT: **A few things occur to me. First of**  
all, the question is asked of this witness, who was not a  
party to the administering of any rights by the **Sagadahoc**

1 County Sheriff's Department earlier, calls for knowledge  
2 which is- clearly hearsay.

3 THE COURT: I understand, But the way the question  
4 was prefaced are you aware or were you aware at the time.

5 MR. WRIGHT: I understand that. Nevertheless, it  
6 calls for hearsay in as much as it calls for an answer by  
Hendsbee only told of things to him.

THE COURT: We have in this record adnauseam the  
fact that F-iendsbee and everybody else who came on the scene  
had been briefed by people who got there to begin with,

MR, WRIGH : True.

THE COURT: Next ground.

MR\* WRIGHT: Secondly, as I understood the Court'  
ruling this morning and what the Court has been *saying now*  
late this afternoon with respect to this issue, is that the  
Court would not preclude in any fashion Mr. Connolly from  
going into issues concerning what would amount to the  
liability of the statements due to the manner in which the  
interrogation was done and *how the hour of the day, the*  
behavior **of the** defendant, his **nervousness or** being scared,  
issues **of that sort.**

*I have not* objected along those lines, and that is, as  
I understood the Court's ruling, the appropriate way to go at  
this issue. **Now in** a back **door** fashion accusing the **police**  
**of** misbehavior when Fir. **Connolly** made **the obvious** tactical

1 decision not to bring a motion to suppress. A motion to  
2 *suppress can't be brought* during trial. I understand he's  
3 not seeking to suppress evidence, but it has the same effect  
4 of putting before the jury the behavior of the police, which  
5 is not the issues in this case. The issue in this case is  
6 was Sarah Cherry murdered, kidnapped, sexually assaulted, and  
7 *who did it. That is not* those questions are not to be  
8 answered by the behavior of the police with respect to the  
9 *Miranda rights.*

10 *THE COURT: Response.*

11 MR. CONNOLLY: He may think what the issues of the  
12 ease are. I'm a defense lawyer. I have a right to generate  
13 arguments to the jury. The issue of whether or not the  
14 defendant h asserted his rights and whether that issue goes  
15 to the jury deals with the weight not the admissibility of  
16 the so-called admissions. I'm not attempting to suppress  
17 their admissibility. I'm attempting to argue their  
18 weight.

19 MR. WRIGHT: Al]. of this **assumes** that the  
20 defendant was in custody and that requires a pre-trial  
21 hearing, Miranda is not required without two things:  
22 interrogation and custody. There has been no finding as a  
23 matter of law, which is why I objected to its **use** in one  
24 occasion, to Mr. Connolly's use of the **word** custody. That is  
25 a legal concept which is in and of itself loaded with

1 baggage.

2 The Court would have had to make a finding of custody  
3 even to get to the issue of the propriety of the Miranda  
4 rights

5 THE COURT: Let me here give you a shorthand ruling  
6 here. In an *abundance of* caution and not wishing to have  
to try this case again as a result of post conviction habeas  
in the event there is a conviction in this case, I'm going to  
reverse ray ruling and allow you to get into it if you want to  
kick that door open.

*(Whereupon the sidebar ended)*

BY MR, CON OLLY:

Q Detective Flendsbee, were you aware, sir, that earlier in  
the evening the defendant in response to questions about  
whether he wanted to answer questions answered that he did  
*not wish* to answer questions *and* asserted his rights pursuant  
*to Miranda?*

A *Yes, I was.*

*Do you know what time that occurred at?*

A *No.*

Q *Was it earlier than when you arrived?*

A *Yes.*

Q *Do you know to whom that was made?*

1 A 'm not sure, I think Detective Westrum,

2 Q When you were talking *with Dennis about* the finding of  
3 the keys do you recall him telling you that he was terrorized  
4 by Reed?

5 A No. I don't recall that,

6 Q Merely confused is your expression?

A Yes.

A He became confused, yes.

Q At all times was the *defendant rational?*

A I would say, yes,

Q Was he aware of the time, place and space at all times  
in your presence?

A Yes, I would say so,

Q He was, however, confused as to the location of where  
his truck had been?

A Yes,

Q He was also confused as to exactly where he had been in  
the woods?

A Yes,

**Q** **You** would say, would you not, that he answered questions  
appropriately and *with the right effect?*

A He *answered questions appropriately* with the right what?

Q Effect, He wasn't laughing when he should be sad; he  
wasn't crying when he should be *laughing?*

A No, He was serious when he was answering questions.

1 Q *This was serious business that night, wasn't it?*

2 A *Yea,*

3 • *You are a trained interrogator; is that correct?*

A *I don't know if I'm a trained interrogator \* I interview  
5 a lot of people \**

6 Q *You have been doing it for a lot of years?*

7 A *Yes \**

8 *You have fairly descent results is that; is that a fair  
statement?*

MR, WRIGHT: *Objection \**

THE COURT: **Sustained.**

BY MR \* COT<sup>00</sup>N Y:

Q *You have procedures whereby you attempt to solicit  
information and as to style and approach?*

A *That's correct \**

Q **Based upon your questioning at the end** of that evening  
***you brought*** him home?

A *That's **correct** \**

MR. CONNOLLY: **No further questions \***

#### RE-DIRECT EXAMINATION

BY MR \* WRIGHT:

Q **Is it unusual to find somebody who is cooperative when**

1 you are talking to them for a shorter or longer time?

2 A Most people I talk to are cooperative.

3 Q Do you find who people who have any involvement in what  
4 you are talking to about \*

5 Q Do you find that people, the fact that people are  
6 cooperative has anything to do with whether in fact they are  
7 involved with what you are talking to them about?

8 A No \*

Q You always find hair and fiber evidence in cases?

A No

Q Do you often find it?

A *I cant say its often \* It has been found in some  
cases, in other cases we haven't found any.*

• In s e cases *its found and some cases it<sup>s</sup> not found?*

A Yes®

Q You were about to say I think that Mre Dechaine offered  
*an explanation for the print on the back of the shirt?*

A That's correct,

Q Tell us about that?

A Be said he believed he got it swatting flies reaching  
over his back and indicating this manner \*

Q *How about the scratches on his back; did he offer an  
explanation for that?*

A Yes. He thought he got them by walking through the  
woods.

1 Q When you took his photograph his shirt was tucked in?

2 A Yes.

3 • You did not have the notebook or the autobody receipt  
4 done for testing for latent fingerprint evidence?

5 A That's correct.

6 Why not?

A Two reasons. One, by the time I had gotten it a lot of people had touched it, And, second, I knew who it belonged to,

Q You knew who these items belonged to?

A Yes,

• Did you yourself discuss with him what you understood may have been an invocation of his Miranda rights earlier in the evening?

A Did I discuss that with him?

Yes.

A Yes.

• His having talked to the police or about him not wanting to talk to them?

A Yes.

Q When was that that you talked to him about that? What was said and when?

A When I first got in the car I asked him if he would like to talk to me. I understood that he invoked his Miranda privilege with the sheriff's department. He stated he would

1 talk to me as long as he didn't say anything that  
2 incriminated himself, And before I did talk to him I wanted  
3 to reread his Miranda warnings; I didn't want to violate his  
4 rights.

5 Q Did you at that time *have any* idea whether after he had  
6 said apparently to the Sagadahoc County Sheriff's that he  
7 didn't *want to talk* or answer questions that they subjected  
him to any further interrogation?

A I don't believe that they did.

Q If he had said that he felt terrorized by Deputy Reed  
would you have remembered that?

A Yes.

*How can you be sure you would* have rem :~; ered such a  
thing?

A That would have been a concern of mine that technically  
*the lateness of the hours - he's been in that patrol car* for  
a long time. If he had problems with **somebody** that would  
have been a concern **to** me. **I would have** made note of that.

Q The fact that he had *been* there with the police for  
several hours, many hours, was of concern to you?

**A** Yes.

Q Did you do anything in your own mind to lay those  
*concerns in your dealings with* Mr. Dechaine?

**A** Yes,

Q *What did you do?*

1 A I carried on with a conversation and told him as soon as  
2 he answered some questions I would bring him home.

3 Q Did your rereading to him of his Miranda rights also  
4 fall in that area that showed your concern for your treatment  
5 for him?

6 A Yes,

By the way, when you began to reread him his Miranda  
*rights did he not, after you* were done, before you began  
reading them to him, did Mr. Dechaine say anything about his  
understanding or awareness of his rights?

A Yes. He didn't want me to read them due to the fact  
that he had heard them enough that night.

MR. WRIGHT: Thank you.

(Whereupon a sidebar conference was held)

**MR. CO OILY: I want to make sure the Court, I'm  
understanding where the Court is coming from on this Miranda  
issue. Mr. Wright on re--direct examination elicited the fact  
from Detective Hendsbee; that I wanted to make sure not to  
violate his rights, I would like to inquire of Detective  
Hendsbee as to the propriety of subjecting a person of  
additional question when they've asserted their right to  
counsel and whether he feels that is appropriate. He opened  
the door wide--open,**

THE COURT: Co ahead.

2

(Whereupon the sidebar ended)

4

5 *BY MR. CONNOLLY:*

6 Detective Hendsbee, you wanted to make sure you *didn't*  
7 violate the defendant's rights; is what you just testified  
8 to?

9 A Yes \*

10 Q You know once a person asserts their right to counsel  
11 under Miranda they are not supposed to be questioned any  
12 longer?

J. &a

13 A Right. No, he was not under arrest. I wasn't there to  
14 arrest him® He was free to go. He could get out of the car  
15 at any time he wanted to get out \* The only concern I had  
16 because of that fact that he was going to go home, he wanted  
17 to, was he told the deputy sheriff after some time that he  
18 wanted to invoke his Miranda warning.

19 Q I thought you said what time?

20 A Earlier.

21 Q 2157?

22 A I don't know.

23 Q Ghat time is 2157 in regular language?

24 A 9:57.

25 Q Just before ten **o'clock?**

1 MR, WRIGHT: **Objection, I would object if the**  
2 **questioning is to suggest the time that Detective Hendsbee**  
3 **didn't know,**

4 **THE COURT: Sustained.**

5  
6 **BY MR. CONNOLLY:**

7 **You were basing your questioning on assumption that**  
8 *he did* not assert his right until much later. until late in  
9 the game. isn't that true?

10 A *I have no idea what time* he asserted his rights.

11 If he asserted his right at the very beginning of the  
12 procedure and then remained in the gracious custody of the  
police officers for another five or six hours that wouldn't  
make any difference to you?

MR. WRIGHT I would object, The basis is that.  
*given all of the discussion at the bench, it's well-known to*  
all of us that the **invocation** of his rights was not at the  
outset of any of the activities that evening as suggested by  
that question.

**THE COURT: Sustained,**

**BY MR, CONNOLLY:**

**Is it uncommon to have a person sit in a police car,**  
**based upon your experience. for six hours, when they are not**  
**a member of the police department. when they are not a**

1 technician · when they are not associated with the police  
2 department unless their liberty is restrained?

3 MR. WRIGHT: Objection.

4 THE COURT: Sustained. That is a legal conclusion.  
5 Its to be addressed in the appropriate manner. We are  
6 talking here about whether or not there was or was not  
7 appropriate police procedure in the interrogation of somebody  
*after Miranda had* been given.

9 The limited purpose for that is for the jury to  
10 determine the weight to be *given to* the answers given by the  
11 defendant as a result of that interrogation. Tha 's the  
12 limited purpose for this line of inquiry.

13

14 BY MR. CONNOLLY:

1 Given the fact that you were aware that a previous  
16 assertion of his Miranda rights did no good why should he  
17 have to believe you?

18 MR. WRIGHT: *Objection.*

19 THE COURT: Sustained. That is *not an appropriate*  
20 way to get to the issue of whether or not it was appropriate  
21 police questioning in this case as it relates to the  
22 voluntariness of the statements and weight to be given to  
23 those statements made by the defendant.

24 MR. CONNOLLY: No further **questions.**

25 MR. WRIGHT: *Nothing else.*

1                   THE COURT: Thank you, you may step d4owno

2                   Mr. Foreman and Ladies and Gentlemen *of the Jury*, thank  
3 you for staying with us until 25 minutes past five, I think  
4 you are entitled to know that **Mr. Ross** had a bit of a problem  
5 hearing part of the video of *Mr. Buttrick* yesterday, So for  
6 *that reason I'm going to, and counsel have agreed, that* Mro  
7 Ross may review that video of Mr. Buttrick's testimony, **So**  
8 for that reason would it be too much of imposition, Mr.  
9 Rosso if you were to come at 8:30 in the morning?

10                   THE JUROR: *I will do it.*

11                   THE COURTS 1 $\frac{1}{2}$  appreciate that, If the other  
12 jurors would report :30 tomorrow morning and Mr, Ross  
*we'll have this video equipment set up tonight so it will be*  
14 in the jury room you can go in there as soon as you  
arrive. And I greatly appreciate your helping us out in that  
16 regard.

17                   Please **avoid** any contact with any newspapers or media  
18 **coverage in** *this case because, again, you decide the case*  
19 **based upon what you see and hear in this courtroom, Not what**  
20 **somebody's version** of what *was* said or done in this  
21 courtroom. Thank you very much, Have a good evening, We'll  
22 **see yo morrow** morning at **930**

23

24

25

**(Whereupon** the proceedings **of** the day concluded at **5:28)**