STATE OF MAINE
Knox, SS.

SUPERIOR COURT
Docket No. ROCSC-CR-1989-00071
KNOCD-CR-2024-00414

State of Maine )
)
v. )
)
Dennis J. Dechaine, )
)
Defendant. )

**Orders on Defendant's Motion for New Trial and State's Motion to Dismiss Petition for Post-Conviction Review**

Dennis J. Dechaine, )
Petitioner, )
)
v. )
)
State of Maine, )
Respondent. )

## Introduction

By motion dated September 13, 2021, Defendant Dennis J. Dechaine sought renewed DNA analysis of certain evidence related to his conviction in 1989 for kidnapping, sexually torturing, and murdering a twelve-year-old girl. His motion was authorized by 15 M.R.S. § 2138(4-A) and its substance was generated by scientific advancements in the detection, extraction, and analysis of DNA evidence. Over the State's objection, the Court granted Mr. Dechaine's motion in an order dated July 22, 2022. Thereafter, the DNA analysis was completed and the results were submitted to the Court. Mr. Dechaine then requested a new trial based on the results.

On December 20, 2023, before conducting a hearing on the motion, the Court issued an Order on Scope of Evidence. The purpose of the order was to limit the extent of the testimony and exhibits that might be introduced at the hearing, consistent with the terms of the statute. *See* 15 M.R.S. § 2138(10).

After the scope of the evidence was defined, but before the hearing pursuant to 15 M.R.S. § 2138(10), Mr. Dechaine filed an independent petition for post-conviction review. This was not his first request for such relief but it was the first to raise a particular theory: that the prosecutor at his trial had committed reversible misconduct in arguing that the absence of certain evidence was "the way God made it," and that his own defense attorney had provided ineffective assistance of counsel in not challenging that assertion. Mr. Dechaine has advanced the same argument in the context of his motion for new trial.

The State filed a motion to dismiss the petition for post-conviction review on the basis of untimeliness. That motion remains pending. The Court conducted a testimonial hearing on the motion for new trial on April 18 and April 19, 2024, at which the State was represented by Assistant Attorneys General Donald W. Macomber and Leanne Robbin and Deputy Attorney General Lisa J. Marchese. Mr. Dechaine was represented by Attorneys John E. Nale and Stuart W. Tisdale. Before reviewing the evidence and applicable law and ruling on both pending motions, the Court thanks all counsel. Each lawyer was well-organized, vigorous in advocacy, and sensitive and dignified in presentation.

**Governing Statute: 15 M.R.S. § 2138(10)(C)**

The statute pursuant to which Mr. Dechaine seeks a new trial is 15 M.R.S. § 2138(10)(C). To be granted a new trial, Mr. Dechaine must demonstrate by clear and convincing evidence that:

> (1) The DNA test results, when considered with all the other evidence in the case, old and new, admitted in the hearing conducted under this section . . . would make it probable that a different verdict would result upon a new trial;
> (2) The proferred DNA test results have been discovered by [him] since the trial;
> (3) The proferred DNA test results could not have been obtained by [him] prior to trial by the exercise of due diligence;
> (4) The DNA test results and other evidence admitted at the hearing . . . are material to the issue as to who is responsible for the crime for which [he] was convicted; and
> (5) The DNA test results and other evidence admitted at the hearing . . . are not merely cumulative or impeaching, unless it is clear that such impeachment would have resulted in a different verdict.

15 M.R.S. § 2138(10)(C)(1)-(5).

The parties do not contest that Mr. Dechaine has fulfilled the criteria specified in 15 M.R.S. § 2138 subsections (C)(2) through (5). Left unresolved is Mr. Dechaine's contention under subsection (C)(1)—that the DNA evidence produced by new, enhanced testing, "when considered with all the other evidence in the case, old and new, admitted in the hearing conducted under this section . . . would make it probable that a different verdict would result upon a new trial." To frame the parties' disagreement, the Court must first review the long history of this case, beginning with the trial and continuing through Mr. Dechaine's sequential challenges to the jury's verdict.

**History of the Case**

After a ten-day jury trial in March 1989, Mr. Dechaine was found guilty of Intentional or Knowing Murder, Depraved Indifference Murder, Kidnapping, and two counts of Gross Sexual Misconduct. Mr. Dechaine was sentenced to concurrent life sentences on the two murder charges and concurrent twenty-year sentences on each of the other counts.

Mr. Dechaine appealed his convictions and his sentences in April 1989. The appeal of his sentences was denied without comment on May 4, 1990. On March 15, 1990, the Law Court affirmed his convictions "after modifying the judgment to reflect a single conviction for murder for which one sentence is imposed." *State v. Dechaine*, 572 A.2d 130, 131 (Me. 1990).

On May 5, 1992, Mr. Dechaine filed a motion for a new trial based on newly discovered evidence. The Court held a hearing on the motion, at which Mr. Dechaine offered testimony by several witnesses "directed towards establishing that [an alternative suspect] had both a motive to kill [the victim] and the opportunity to do so." *State v. Dechaine*, 630 A.2d 234, 237 (Me. 1993). On July 31, 1992, the Court denied Mr. Dechaine's motion, and the Law Court upheld that denial on August 26, 1993. *See id.*

On September 29, 1995, Mr. Dechaine filed a pro se petition for post-conviction review. The State moved to dismiss the petition pursuant to 15 M.R.S. § 2128(5).[1] (*See* State's Post-Hr'g Mem. B App. 1-2.) After hearing, the Court granted the State's motion on February 10, 1999, "holding that not only had Dechaine failed to rebut the statutory presumption of prejudice . . . but that the state also had demonstrated actual prejudice." *Dechaine v. Warden*, No. 00-123-P-H, 2000 WL 1183165, at *16 (D. Me. July 28, 2000).

Mr. Dechaine filed a petition for writ of habeas corpus in the United States District Court for the District of Maine on April 26, 2000. On July 28, 2000, Magistrate Judge David Cohen recommended the petition be denied without hearing. *See Dechaine*, 2000 WL 1183165, at *21. The United States District Court affirmed that recommended decision on November 21, 2000, and denied Mr. Dechaine's petition.

On May 20, 2003, Mr. Dechaine filed a motion in Superior Court entitled "Post-Judgment Conviction Motion for DNA Analysis and for New Trial." *See* 15 M.R.S. §§ 2137-2138 (enacted by P.L. 2001, ch. 469, § 1), *repealed and replaced by* P.L. 2005, ch. 659, §§ 1-5 (effective Sept. 1, 2006). On September 23, 2005, Mr. Dechaine moved orally through his attorney to withdraw his motion because he "could not meet his burden under the DNA statute to prove that only the perpetrator of the crimes could be the source of the DNA evidence." Order on Def.'s Mot. for a New Trial at 10, No. ROCSC-CR-1989-00071 (Apr. 9, 2014). On November 8, 2005, the Court granted that motion, dismissing Mr. Dechaine's motion for DNA analysis and motion for a new trial without prejudice.

Thereafter, the Legislature repealed and replaced section 2138 to include an alternative burden, under which the movant does not need to prove that only the perpetrator of the crimes

[1] At that time, the statute permitted the dismissal of a petition "if it appear[ed] that by delay in its filing the State [had] been prejudiced in its ability to respond to the petition or to retry the petitioner." 15 M.R.S. § 2128(5) (1995), *repealed and replaced by* P.L. 1997, ch. 399, § 3 (effective Sept. 19, 1997) (establishing the filing deadline for a petition asserting a direct impediment). Subsection (5) was eventually repealed altogether. *See* P.L. 2011, ch. 601, § 9 (effective Aug. 30, 2012).

could be the source of the DNA evidence. *See* P.L. 2005, ch. 659, §§ 2-5 (effective Sept. 1, 2006), 15 M.R.S. § 2138(10)(C).

On August 28, 2008, Mr. Dechaine filed a motion titled "Motion for New Trial and Motion for DNA Analysis."[2] After ordering the DNA analysis Mr. Dechaine requested, holding hearings on June 12 through June 14, 2012, ordering additional DNA analysis requested by Mr. Dechaine at the close of those hearings, and holding additional hearings on November 7 and November 8, 2013, the Court denied Mr. Dechaine's motion by order dated April 9, 2014. *See* Order on Def.'s Mot. for a New Trial at 28 (Apr. 9, 2014). Mr. Dechaine appealed the decision and the Law Court affirmed the denial of his motion on July 21, 2015. *See State v. Dechaine*, 2015 ME 88, ¶ 1, 121 A.3d 76.

**Existing Record Evidence**

The body of evidence generated by these events was substantially captured by the Law Court's narrative in its affirmance of the Superior Court's denial of Mr. Dechaine's earlier motion for a new trial brought pursuant to the post-conviction DNA analysis statute. *See id.* ¶¶ 3, 10, 15-29. In its summary, the Law Court quoted extensively from Magistrate Judge Cohen's recommended decision of July 28, 2000. *See id.*, ¶ 3 (quoting *Dechaine*, 2000 WL 1183165, at *1-10, *13-17, *19-21). After reviewing the evidence, Magistrate Judge Cohen articulated certain questions the record could not answer and that might cast doubt on Mr. Dechaine's guilt:

> The voluminous record in this case raises troubling questions. How could the professedly non-violent Dechaine have randomly abducted a twelve-year-old child and committed this atrocious crime? Dechaine denied under oath that he did it. No fingerprints, hairs or fibers matching those of Dechaine were found on or near the victim or at the . . . home [from which she went missing]. Conversely, no fingerprints, hairs or fibers matching those of [the victim] were found on Dechaine or in or on Dechaine's truck. Debris, including a pink synthetic fiber, was found near the crime scene that had no apparent connection to Dechaine or [the victim]. The Maine State Police tracking dog did not pick up a track from one side of Dechaine's truck to the other evidence that the state conceded was "a little ambiguous." [The victim] had been

[2] Although 15 M.R.S. § 2138 has been amended four times since 2006, subsection 10 has remained substantively the same. The motion now before the Court was filed pursuant to the version of the statute that became effective on July 29, 2016.

> warned not to let a stranger into the house, and there was no evidence of a struggle there. Dechaine's purported confessions contained no details of the crime. Dechaine was cooperative with police officers, allowing his person and his truck to be searched (although he admitted both that he hid his keys and at various points lied).

*Dechaine*, 2000 WL 1183165, at *19.

DNA testing made an early appearance in Mr. Dechaine's case. He sought a continuance a month before trial to seek DNA examination, then in its infancy, of some of the physical evidence. The motion was denied. Scientific analysis was conducted on a number of items with technology customary at the time. Evidence at trial showed that the blood under the victim's fingernails was found to match her own type. The rope that bound the victim's hands was described as similar both to rope found in Mr. Dechaine's truck and to a third length of rope found in the woods near the crime scene, and the latter two lengths of rope were found once to have been a single rope. Microscopic analysis of fibers found on the victim's right wrist, left hand, and right palm were found to resemble fibers in the scarf used to strangle her.[3] A tire track in the driveway of the house from which the victim was abducted was found consistent with the left front tire of Mr. Dechaine's truck.

DNA analysis has developed in the decades since Mr. Dechaine's conviction and has been employed in support of his efforts to secure a new trial. In 1993, DNA analysis of clippings of the victim's two thumbnails—all that remained after the other eight fingernails were consumed in blood-typing—was conducted by CBR Laboratories in Boston, Massachusetts. (*See* Def.'s Ex. 12-A.) CBR's participation was enabled by a series of unusual events in which Mr. Dechaine's then-attorney secured the clippings from the court clerk (thereby corrupting the chain of custody) and sent them for testing without informing the State or the Court. *See* Order on Def.'s Mot. for a New Trial at 12 (Apr. 9, 2014). The testing that followed counsel's maneuvers showed there were two or more

[3] Mr. Dechaine claimed ownership of the scarf through his counsel's closing argument, but that information is not actually included in the trial record. (*See* Trial Tr. vol. 8, 1463, 1467 (Mar. 17, 1989).) Mr. Dechaine's ownership of the scarf is not germane to this Order.

donors to DNA found in an extract from half of the left thumbnail clipping and that Mr. Dechaine was not one of them. (*See* Def.'s Ex. 12-A.) The typing of the right thumbnail clipping extract was inconclusive, and therefore "[n]o conclusion [could] be made about possible contributors to the DNA typed in [that item]." (Def.'s Ex. 12-A, at 2.) The findings concerning the extract from half of the left thumbnail clipping were confirmed, with reservations, by Catharine MacMillan, a DNA analyst at the Maine State Police Crime Laboratory.[4] She detected a mixed DNA profile of at least two donors that was consistent with the victim and a male donor but excluded Mr. Dechaine. (*See* Hr'g Tr. 22, 34-35 (July 29, 2011).) Upon testing the remaining half of each thumbnail, Ms. MacMillan detected a partial DNA profile from a single source that was consistent with the victim, but "did not detect any mixture or a second donor." (Hr'g Tr. 248 (June 12, 2012).) In 2011, the left thumbnail extract generated by CBR was sent to Cellmark Forensics in Dallas, Texas, for further analysis. *See id.* 226, 236. Cellmark's analysis verified the presence of male DNA from a single male contributor and produced a partial profile from that individual. (*See* Hr'g Tr. 26-28 (June 13, 2012).)

After the governing statute was amended to its current form in 2006,[5] Mr. Dechaine filed the second motion for new trial outlined above and this Court conducted hearings in 2012 and 2013. The evidence the Court considered, and in particular the nature and limitations of the DNA evidence presented to it, was described in detail in the Court's order of April 9, 2014. *See* Order on Def.'s Mot. for a New Trial at 11-22 (Apr. 9, 2014). Based on all the evidence, the Court determined that Mr. Dechaine had failed to prove his contention. *See id.* at 25, 28. In support of its conclusion, the Court noted that the male DNA detected in testing the victim's left thumbnail had not been

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[4] (*See, e.g.*, Hr'g Tr. 34 (July 29, 2011) ("This mixture is low-level. It's degraded. And half of it I don't know what the profile is. There's a lot of information missing that would be necessary to make a match statement. It is consistent with at least two people, and there's certain assumptions that I have made when I say it's consistent with [the victim]. It could be a two person mixture. It could be three or four, but because I'm missing so much of it, I can't say. Even [the victim], her profile drops out of the mixture profile.").)

[5] *See supra* note 2.

connected with the murderer—in particular, the Court emphasized that the male DNA from the thumbnail had not been found on any of the other items tested.[6] *Id.* at 27 ("[M]ale DNA detected on the other items after the June 2012 hearings did not match the profile from the fingernail clipping."). The Court found "credible and persuasive" expert testimony that the male DNA found on the thumbnail had been deposited by contamination. *Id.* at 26.

**Basis for the Pending Motion**

Mr. Dechaine's pending motion is based on new DNA testing equipment and techniques that allow infinitesimal amounts of genetically coded material to be extracted from relevant items, amplified, and read. The interpretive technology has been similarly enhanced to allow ever finer and more detailed readings of the materials extracted and amplified. In particular, Mr. Dechaine bases his request for a new trial on one critical feature of the new findings: a showing of similarity between the male DNA on the thumbnail and previously undetected DNA on the scarf used to strangle the victim. This newly detected evidence responds directly to part of the Court's rationale in denying Mr. Dechaine's motion in 2014. *See id.* at 27.

**Nature and Scope of the Hearing Pursuant to 15 M.R.S. § 2138(10)**

In the hearings conducted in 2012 and 2013, the Court defined the scope of evidence to be presented as follows: "Only previously admitted evidence and new evidence explaining the DNA analysis, results, or interpretation will be admissible at the DNA Hearing." Order at 6, No. ROCSC-CR-1989-00071 (Nov. 10, 2010). The Court noted "[t]he statute is narrow, and [the] hearing's focus is on the meaning of DNA evidence in light of the existing record." *Id.* at 7. This Court's order of December 20, 2023, governing the more recent hearing, defines a similar scope. *See* Order on Scope of Evid., No. ROCSC-CR-1989-00071 (Dec. 20, 2023). The actual leeway the Court gave counsel at

[6] The "other items tested" were the t-shirt, bra, handkerchief, and scarf. *See* Order on Def.'s Mot. for a New Trial at 20 (Apr. 9, 2014).

the recent hearing was generous, because any new evidence might in theory lead jurors to view existing evidence, old and new, differently. Given this broad scope, counsel were allowed to present testimony from Rodney D. Englert, an expert in crime scene reconstruction, to link the new DNA evidence to the trial record.

**Alleged Prosecutorial Misconduct**

Before analyzing the new DNA evidence in conjunction with all the other evidence in the case, old and new, the Court must resolve an argument Mr. Dechaine presents in both in his petition for post-conviction review and his argument for new trial: that the State unconstitutionally swayed the jury by commenting on the absence of certain evidence in closing argument:

> The point as we tried to make to you with regard to this kind of evidence, whether it be fingerprints or fibers or hairs or what have you, sometimes you have it and sometimes you don't. I can give you no better answer than to say that's the way God made it.

(Trial Tr. vol. 8, 1412 (Mar. 17, 1989).) The State argues that the petition is untimely, the claimed error could have been raised on direct appeal, and it could have been addressed in Mr. Dechaine's first petition for post-conviction review. The Court agrees. If, as Mr. Dechaine argues, the State committed misconduct by making a specific and purposeful appeal to the Deity, the State's error in doing so would have been as obvious in 1989 as he says it is now. There is no mechanism for reviving now an argument that could have been made decades ago.

Beyond that procedural infirmity, the Court cannot agree with the substance of Mr. Dechaine's argument. The State did not appeal to God's will, God's desire, God's view of the evidence, or anything else that might encourage the jury to convict Mr. Dechaine. In context, the prosecutor's comment is simply a theistic version of "that's the way it goes." The State's motion to dismiss the petition for post-conviction review must therefore be GRANTED.

## New DNA Evidence

Having summarized the history of the case and the existing record, the Court turns to the new evidence. Before evaluating the new evidence and its probative capacity, the Court must consider its sources, the witnesses who testified about it, and the limitations of the testing that generated it.

### Sources and Witnesses

The new DNA evidence on which Mr. Dechaine bases his motion was the product of testing conducted and analyzed by Gary C. Harmor, the executive director of the Serological Research Institute (SERI) in Richmond, California. Mr. Harmor testified and presented his findings concerning testing of six items with which he was provided:

- the stick used to penetrate the victim's vagina shortly before her death;
- the stick used to penetrate the victim's rectum shortly before her death;
- the victim's t-shirt;
- the victim's bra;
- the scarf used to strangle the victim; and
- the handkerchief used to gag the victim.

Two of those items, the victim's t-shirt and bra, were subjected to further testing by Cybergenetics, a company based in Pittsburgh, Pennsylvania.

In addition to Mr. Harmor, the Court heard from Rick W. Staub, Ph.D., the chief forensic consultant at Staub Forensic Genetics, who had testified as an expert for the defense a decade ago and was called to comment on Mr. Harmor's results; from Ms. MacMillan, the forensic DNA analyst who is now retired from the Maine State Police Crime Laboratory but has been involved with the case since 2003; and from Meghan Clement, a forensic DNA consultant called by the State to respond to Dr. Staub's observations. The State further presented testimony by Sergeant Scott Bryant, the team commander of the Maine State Police Evidence Response Team, to respond to Mr. Englert's observations concerning the crime scene and the way evidence was gathered. Other

evidence the Court received included laboratory reports, the experts' reports and CVs, and photographs. Both parties also submitted post-hearing memoranda.

**Limitations of the New DNA Evidence**

There is no DNA evidence in the entire record of this case of the type that might definitively link a particular person to a crime or definitively exonerate a person wrongly convicted of a crime. Examples of such powerful and conclusive evidence might include a single person's autosomal DNA left on a murder weapon by touch or a single person's semen found in the body of a rape victim. (*See* Hr'g Tr. 33, 42-49 (Apr. 18, 2024).) Autosomal DNA contains DNA inherited from both mother and father and is unique to all persons except for identical siblings. *See id.* at 43-44.

To the contrary, the DNA analyses in this case have the capacity at best to rule in or rule out populations of potential contributors. Mr. Harmor detected DNA mixtures from two or more contributors rather than from single sources on all but one item, the rectal stick. The samples taken restricted Mr. Harmor, for the most part, to using a Y-STR analysis, which (unlike autosomal analysis) identifies only male DNA on the Y chromosome that is passed from father to son. (*See* Hr'g Tr. 33, 42-49 (Apr. 18, 2024).) The DNA results are therefore meaningful only insofar as Mr. Dechaine or the unknown male DNA profile from the thumbnail can be included or excluded as a member of a possible contributing population.

The test results are limited by the physical degradation of the items tested. The record shows the six items tested began to degrade at the time of the victim's death and have further deteriorated since the trial. (*See* Hr'g Tr. 55-56 (Apr. 18, 2024); Hr'g Tr. 21, 105 (Apr. 19, 2024).) When first gathered, the items had lain in the woods for approximately two days in hot and humid weather. (*See* Hr'g Tr. 59, 149 (Apr. 18, 2024).) Any DNA that attached to them in 1988 is now over thirty-six years old and may no longer be detectable—degradation can cause DNA evidence to become undetectable if not to disappear altogether. (*See, e.g.*, Hr'g Tr. 99 (Apr. 18, 2024) (direct examination

of Dr. Staub, explaining the term "dropout").) Not only is the DNA detected and tested by SERI degraded, it exists in extremely small quantities: as examples, the most DNA recovered from any one item was "about 40 cells[']worth of male DNA [from the] scarf," and there were "approximately nine . . . male cells[']worth of DNA" recovered from the vaginal stick. (Hr'g Tr. 22-23 (Apr. 19, 2024).) The items were also subject to potential contamination. They were carried out of the woods by persons not wearing masks, gloves, or other protective gear, and then processed in a crime lab in which not even rudimentary precautions against contamination were taken: no masks, no gloves, no sterilization of instruments. (*See* Hr'g Tr. 39 (Apr. 18, 2024); Hr'g Tr. 33-34, 38-41, 179-80 (Apr. 19, 2024); State's Exs. 3A-3B.) There was no documentation introduced at the hearing recording how any item was stored between its recovery in 1988 and SERI's testing, and therefore no way to rule out incidental contamination. The storage of the thumbnails themselves before they were tested by CBR and Ms. MacMillan, as noted above, was especially problematic.

These limitations of quality and amount are consequential because the existence of DNA on an item is not necessarily meaningful. Detectible DNA does not, by itself, indicate when or how it was applied. (*See* Hr'g Tr. 39 (Apr. 18, 2024); Hr'g Tr. 29, 57 (Apr. 19, 2024).) Neither does the presence of DNA indicate what if anything the person who deposited it did with the item. Some persons shed DNA freely that can be detected on items they have touched. (*See, e.g.*, Hr'g Tr. 60-61 (Apr. 18, 2024); Hr'g Tr. 29-30 (Apr. 19, 2024).) Other persons might handle an item and leave little or no DNA. (*See, e.g.*, Hr'g Tr. 60-61 (Apr. 18, 2024); Hr'g Tr. 29-30 (Apr. 19, 2024).) DNA can be deposited by unmasked breathing over an item. DNA can be transferred by touch from one item to another. (*See* Hr'g Tr. 28 (Apr. 19, 2024) (Ms. Clement's testimony regarding the secondary transfer, direct transfer, and indirect transfer of DNA).) DNA contamination can occur even in a laboratory that is conscientious in its sanitation and evidence handling. (*See, e.g.*, Hr'g Tr. 29 (June 14, 2012) (testimony of Dr. Frederick Bieber regarding the possibility of contamination in Dr. David Bing's

laboratory); Hr'g Tr. 40 (Apr. 18, 2024) (testimony of Mr. Harmor regarding instances of contamination in the SERI laboratory).)

**Mr. Harmor's Test Results**

For his testing with the new enhanced technology, Mr. Harmor was given the six items listed above along with a reference sample of DNA from the victim, a reference sample from Mr. Dechaine, the male DNA profile from the victim's left thumbnail as developed earlier by Ms. MacMillan and Cellmark, and the results of tests on the victim's t-shirt and bra conducted by Cybergenetics.

Mr. Harmor's results reflect the limitations of Y-STR analysis:

- vaginal stick: "a weak and incompete Y-STR DNA mixture"—"mixture" denoting DNA from more than one contributor—that Mr. Harmor interpreted as originating from three male contributors, with no major contributor. Mr. Dechaine or a member of his paternal lineage could be a contributor, as could approximately one in fifty-three male persons in the general population. (*See* H'rg Tr. 41-43, 46 (Apr. 18, 2024); Def.'s Ex. 1, at 2.)

- rectal stick: Mr. Harmor's weakest results, an incomplete Y-STR profile from which Mr. Dechaine was excluded. (*See* H'rg Tr. 44-45 (Apr. 18, 2024); Def.'s Ex. 1, at 3.)

- t-shirt: an autosomal DNA mixture interpreted as originating from four contributors, including at least one male. The victim was a likely contributor and Mr. Dechaine could not be included or excluded. (*See* H'rg Tr. 45-46 (Apr. 18, 2024); Def.'s Ex. 1, at 3.)

- bra: an autosomal DNA mixture interpreted as originating from four contributors, including at least one male and one female (very likely the victim), from which Mr. Dechaine was excluded. (*See* H'rg Tr. 47 (Apr. 18, 2024); Def.'s Ex. 1, at 3.)

- scarf: a Y-STR mixture indicating four male contributors, which could include Mr. Dechaine or someone from his paternal lineage, as well as approximately one in 119 males in the general population. (*See* H'rg Tr. 47-48 (Apr. 18, 2024); Def.'s Ex. 1, at 3.)

- handkerchief: a weak and incomplete Y-STR mixture with at least two male contributors, from which Mr. Dechaine was excluded. (*See* H'rg Tr. 49 (Apr. 18, 2024); Def.'s Ex. 1, at 3.)

The results from Cybergenetics, signed by two analysts and the company's chief scientific officer, confirmed Mr. Dechaine's exclusion from the DNA found on the bra. Unlike Mr. Harmor's

testing, Cybergenetics also excluded Mr. Dechaine from the DNA found on the t-shirt. (*See* Def.'s Ex. 3, at 2-3.)

Mr. Harmor compared his new, technologically advanced, results with the more primitive male DNA profile from the thumbnail, generated more than a decade ago. His comparison showed that the unknown male source of the thumbnail DNA could be excluded from the vaginal stick, the bra, and the handkerchief. (*See* H'rg Tr. 52-54 (Apr. 18, 2024); Def.'s Ex. 6, at 2.) The unknown male profile could not be compared to the new results from the rectal stick or included or excluded from the DNA found on the t-shirt. (*See* H'rg Tr. 52-53 (Apr. 18, 2024); Def.'s Ex. 6, at 2.) The unknown male profile from the thumbnail or someone from that person's paternal lineage could be included as a contributor to the DNA mixture found on the scarf. (*See* H'rg Tr. 53 (Apr. 18, 2024); Def.'s Ex. 6, at 2.)

In relevant comparisons, then, Mr. Dechaine was excluded from the male DNA derived from the victim's left thumbnail; Mr. Dechaine was included and the unknown male excluded as a possible contributor to the DNA mixture found on the vaginal stick, which is known to have been used to attack the victim; and both Mr. Dechaine and the unknown male are possible contributors to the DNA mixture found on the scarf, which was used to strangle her. Mr. Harmor found the similarity between the unknown male DNA from the thumbnail and the DNA mixture from the scarf to be "not real strong" and not a "definitive" association. (H'rg Tr. 35, 54 (Apr. 18, 2024).) In fact, the same similarity exists for approximately one in thirty-three males in the general population. (*See* H'rg Tr. 54 (Apr. 18, 2024); Def.'s Ex. 6, at 2.) One in thirty-three males could potentially encompass thousands of men. (*See* H'rg Tr. 54 (Apr. 18, 2024).)

The correlation of the unknown male's DNA on the thumbnail and scarf, however suggestive, is undermined by the reality of degradation and the uncontrolled variable of possible contamination. The experts do not know when the unknown male DNA was deposited on the

thumbnail. (*See, e.g.*, Hr'g Tr. 29, 93 (Apr. 19, 2024).) They cannot confirm Mr. Dechaine's contention that it is derived from the blood under the thumbnail as opposed to some other surface of the nail or different biological material.[7]

**Consideration of the DNA Evidence with All the Other Evidence in the Case, Old and New**

It is not this Court's province to find Mr. Dechaine guilty or not guilty. That decision was made by a jury in 1989. This Court's task is to assess the extent to which the new DNA evidence might influence another jury's verdict were it presented with all the other evidence generated in the case. *See* 15 M.R.S. § 2138(10)(C)(1) (requiring a person seeking a new trial to demonstrate that the new DNA results, "when considered with all the other evidence in the case, old and new, admitted in the hearing conducted under this section . . . would make it probable that a different verdict would result upon a new trial.").

What might a jury make of this suggestive but not definitive evidence, some inculpatory of Mr. Dechaine and some exculpatory, generated by laboratory analyses performed over decades, using different technologies to examine ever more degraded evidence in ever more infinitesimal quantities, presented by experts who contest critical nuances of interpretation? Dr. Staub thought the correlation between the unknown male DNA from the thumbnail and the male DNA found on the scarf was important. He testified that the possible inclusion of the male DNA profile on the scarf seriously undercut the theory that the thumbnail DNA was the product of contamination. (*See* Hr'g Tr. 110 (Apr. 18, 2024).) Dr. Staub further commented, "[I]f I were in a police department and

[7] This subject was explored at length. Mr. Harmor stated that based on the materials he was provided, he could not tell whether the DNA was from one side of the nail or the other. (*See* Hr'g Tr. 50-51 (Apr. 18, 2024).) Ms. Clement testified that one cannot tell from a DNA mixture whether it is "a mixture of blood and blood, . . . blood and skin cells," or "blood and . . . saliva that would contain epithelial cells," and that "there's no way to tell that the male unknown profile is from blood or not." (Hr'g Tr. 35-36 (Apr. 19, 2024).) Ms. MacMillan offered that the unknown male DNA profile "could be from saliva, . . . touch, skin cells, it could be somebody sneezing, it could be seminal fluid, we do not know that second contributor." (Hr'g Tr. 92-93 (Apr. 19, 2024).)

this case had no suspect and this is all we had, we certainly would be looking very strongly to see if we could identify that person that is the contributor of the thumbnail DNA." *Id.* at 106. He thought the male DNA from the thumbnail was rare enough that a further CODIS search might identify a single person. *See id.* at 107-08. Mr. Dechaine amplifies the point in his argument by noting the prevalence of popular ideas about DNA evidence and its reliability.

At a new trial, the jury would consider a large body of circumstantial evidence: the sighting of Mr. Dechaine's truck near the scene of the abduction, his emergence from the woods near where the victim's body was found, a tire impression consistent with the left front tire of his truck found near the house from which the victim was abducted, the similarity of the rope fragments, his items found in the driveway of that house, and the appearance that the items remaining in his truck had recently been sat upon when Mr. Dechaine was allegedly alone. The jury would be presented with Mr. Dechaine's many admitted lies. Its members would note the many tiny stab wounds inflicted on the victim and also note the absence from Mr. Dechaine's key chain—surprising to his wife—of the pen knife he routinely carried.

In addition to the evidence reviewed above, the jurors would be asked to rationalize, disbelieve, or otherwise discount every single one of Mr. Dechaine's incriminating statements recorded in the case. Those statements merit close analysis:

- When he first encountered law enforcement officers on the evening of July 6, 1988, and was told they were investigating a missing twelve-year-old girl, Mr. Dechaine "put both of his hands up to his mouth and said: "oh my God, you think I did this." (Trial Tr. vol. 2, 361 (Mar. 9, 1989).) Mr. Dechaine offered at trial that this reaction was a response to an officer's "aggressiveness at that time," and that he had "already been accused." (Trial Tr. vol. 6, 1240 (Mar. 15, 1989); (Trial Tr. vol. 7, 1346-47 (Mar. 16, 1989).)

- Later in the same interview, when asked how his papers ended up in the driveway of the house from which the missing girl disappeared, Mr. Dechaine "whoever grabbed the girl saw [the papers], placed them at the head of the driveway to set me up." (Trial Tr. vol. 2, 283 (Mar. 9, 1989).) At that point, the officers had informed Mr. Dechaine only that the twelve-year-old girl was missing, and had not mentioned abduction or kidnapping. *See id.* At trial, Mr. Dechaine

attributed this statement, in part, to a "heated exchange" with the officer. (Trial Tr. Vol. 7 1344-45 (Mar.16, 1989).)

- Two days later, on the afternoon of July 8, 1988, after the victim's body was found, Detective Alfred Hendsbee of the Maine State Police and other officers went to Mr. Dechaine's house to execute a search warrant. (*See* Trial Tr. vol. 4, 799 (Mar. 13, 1989).) When the detective arrived at the house, Mr. Dechaine and his wife were sitting on the front porch. *Id.* Mr. Dechaine got up and walked toward the detective "at a rapid pace," and stated: "I know what you are here for. . . . I can't believe that I could do such a thing. The real me is not like that. I know me. I couldn't do anything like that. It must be somebody else inside me . . . who is doing this." *Id.* When the detective got out of his car, Mr. Dechaine stated "do what you have to do." *Id.* Detective Hendsbee informed him that he was there to execute a search warrant, and Mr. Dechaine responded "do what you've got to do" and "I just can't believe I could do that." *Id.* at 799-800. Mr. Dechaine made several similar statements during the execution of the search warrant, and "stated at one time that he can't believe he killed this girl and he can't even kill his own chickens; he has to take them to the slaughter house to have them killed." *Id.* at 802. He also "stated that he couldn't have done something like this. It's not the real [him]. He's a person who likes to help people, do things for people, and he made his life doing that." *Id.* at 803. On direct examination at trial, Mr. Dechaine stated that when Detective Hendsbee arrived to execute the search warrant, "I went over to ask him if they were implicating me in [the victim's] murder," to which the detective nodded his head. (Trial Tr. vol. 7, 1271-72 (Mar. 16, 1989).) When asked on cross whether he told Detective Hendsbee that "the real [him] couldn't have" killed the victim, Mr. Dechaine responded, "I said I couldn't have done it." *Id.* at 1301. He denied telling the detective "it must be somebody else inside me doing it." *Id.* at 1369.

- After he was arrested and had completed the booking process at the sheriff's department on the afternoon of July 8, 1988, Mr. Dechaine made several spontaneous statements to Detective Mark Westrum of the Sagahadoc Sheriff's Department over a period of about half an hour. (*See* Trial Tr. vol. 4, 829-33 (Mar. 13, 1989).) Among them were:

    - As he was washing the fingerprint ink off his hands, Mr. Dechaine said "I don't know whatever made me do that" and "I can't believe it happened." *Id.* at 829. Detective Westrum and Mr. Dechaine then went back into the booking room and sat down. *Id.* at 829-30. Detective Westrum testified that after a few minutes, Mr. Dechaine began speaking: "he said . . .: Oh my God; it should have never happened. Why did I do this? At this time he again started to sob and he cried again somewhat." *Id.* at 830. Mr. Dechaine then stated, "I went home and told my wife that I did something bad and she just laughed at me," and then "I told her I wouldn't kill myself; besides that's the easy way out. *Id.* The detective testified that Mr. Dechaine again "sobbed somewhat," and he offered him a cigarette. *Id.* Detective Westrum testified that when Mr. Dechaine finished smoking the cigarette he said, "[P]lease believe me, something inside must have made me do that. Please believe me." *Id.* at 830-31.

      Mr. Dechaine addressed this sequence on direct examination at trial by testifying that Detective Westrum came into the booking room and "asked if he could do anything for me and asked me how I was doing," to which "I told him I was doing terribly. I couldn't believe this was happening." (Trial Tr. vol. 7, 1285 (Mar. 16, 1989).)

Mr. Dechaine testified that he stated, "I was shocked and horrified by the whole thing. That a mistake had been made." *Id.* at 1286. He testified that he may have said "I can't believe it happened" in reference to his arrest. *Id.* at 1286. He denied saying "I don't know whatever made me do this," "Oh my God, why did I do this," "I went home and told my wife that I had done something bad and she laughed at me," "I told her I wouldn't kill myself; besides that's the easy way out," or "please believe me; something inside must have made me do that." *See id.* at 1286-87. When asked if he said, "Why would I do this," Mr. Dechaine testified, "I may have asked [the detective] why he believed that I would have done something like this." *Id.* at 1287. Mr. Dechaine denied making the statement: "I didn't think that it actually happened until I saw her face in the news; then it all came back. I remember it." *Id.* He testified that, on the contrary, "When I saw her on the news I told my wife that I had never before seen that child." *Id.* On cross-examination Mr. Dechaine further testified, "Many of the things that Detective Westrum said that I said I never uttered." *Id.* at 1369. Mr. Dechaine testified, "I told [the detective] that when I saw [the victim's] face on the TV that I had never before in my life laid eyes on that girl." *Id.* at 1371. When asked whether the detective "got it 180 degrees the opposite and 180 degrees wrong," Mr. Dechaine responded, "Yes. That's correct." *Id.*

- The detective reminded Mr. Dechaine that he had the right to remain silent and did not have to speak at all, to which Mr. Dechaine stated "I know." (Trial Tr. vol. 4, 831 (Mar. 13, 1989).) After a brief silence, Mr. Dechaine stated: "I knew they were coming after me. I was waiting. . . . It was something inside that must have made me do that. . . . I can only look forward; that's all I have left. . . . Why would I do this?" *Id.*

  On cross-examination at trial, Mr. Dechaine denied having stated that there was something inside of him that made him do it. (Trial Tr. vol. 7, 1301 (Mar. 16, 1989).) He admitted having told Detective Westrum, "I knew they were coming after me." *Id.* at 1356.

- The detective testified that Mr. Dechaine became emotional and began walking around the room, repeating "Why? Why?" (Trial Tr. vol. 4, 831 (Mar. 13, 1989).) After he sat down again, he looked up at the detective and stated: "I didn't think it actually happened until I saw her face on the news; then it all came back to me. I remembered it." *Id.* at 831. He began to cry again and said, "Why did I kill her?" and "What punishment could they ever give me that would equal what I've done." *Id.*

  Mr. Dechaine responded to this account on cross-examination by denying having said, "Why did I kill her," and testifying that he had instead "asked [the detective] why was I being accused of killing her." (Trial Tr. vol. 7, 1371 (Mar. 16, 1989).) He testified that he did not recall saying, "What punishment could they ever give me that would equal what I've done?" and testified: "When I asked him why I said why in terms of why I had been arrested." *Id.*

- The detective testified that Mr. Dechaine became emotional, crying "very loudly" and "thrashing about on his chair." (Trial Tr. vol. 4, 831-32 (Mar. 13, 1989).) The detective testified that he got up and walked toward Mr. Dechaine,

who "reached out and grabbed [him] around the waist, . . . crying and . . . saying: Why, Mark? Why? [Mr. Dechaine] hugged [him] very tightly for about two minutes crying." *Id.* at 832.

On cross-examination, Mr. Dechaine admitted having said "Why, Mark? Why, Mark?" (Trial Tr. vol. 7, 171 (Mar. 16, 1989).)

- After he calmed down and smoked another cigarette offered by the detective, Mr. Dechaine stated, "I feel so bad for her. My God, how must her mother and father feel? It was something inside that must have made me do that." (Trial Tr. vol. 4, 832 (Mar. 13, 1989).) He then said: "how can I live with myself again? . . . I wish I had never gone on that road that day. Why couldn't my truck have broken down inside instead." *Id.* The detective asked Mr. Dechaine "if he had had a chance to talk to anybody about how he was feeling," to which he answered, "I don't think my wife believes me." *Id.*

- Later, Detective Westrum sat in the back seat of a cruiser with Mr. Dechaine when he was transported to the jail. *Id.* at 833-34. Unprompted, Mr. Dechaine told the detective, "I can't believe I did that" and asked, "Why did you guys ever let me go home that night?" *Id.*

  Mr. Dechaine addressed this on cross-examination by testifying that he had said "if you really believe I did this why did you let me go home that night." (Trial Tr. vol. 7, 1356-57 (Mar. 16, 1989).) When asked, "You didn't hear Detective Westrum say the first part of the phrase, you just said if you guys really believe me?" Mr. Dechaine answered, "That's what I asked him." *Id.* at 1357.

- On the evening of July 8, 1988, after he completed the intake process at the jail, Mr. Dechaine approached two corrections officers standing at the booking desk and stated either, "You people need to know I'm the one who murdered that girl, and you may want to put me in isolation," or, as remembered by the second officer,"You people need to know that I'm the one that murdered that girl. You may want to place me in isolation." (Trial Tr. vol. 5, 855, 872 (Mar. 14, 1989).)

  On direct examination at trial, Mr. Dechaine testified that he had told the corrections officers, "I'm the man accused of the murder of [the victim]" and "asked to be placed accordingly." (Trial Tr. vol. 7, 1292 (Mar. 16, 1989).) When asked, "Did you say to them you people need to know that I'm the one who murdered that girl and you may want to put me in isolation?," Mr. Dechaine testified: "I really don't believe I could have said that. If I did it was certainly a regrettable error of semantics. To the best of my recollection I certainly thought nothing of it. I told them I was the one accused of murdering [the victim]." *Id.*

Members of a jury would evaluate Mr. Dechaine's explanations of these statements. They might accept one or more of them, or agree that one or more statements were either, as counsel contends, "flippant," Def.'s Post-Hr'g Mem. 34, or "shocked" and "confused." (Hr'g Tr. 255 (Apr. 19, 2024).) But it is hardly likely a jury would disregard every single statement. The statements lack

detail, but that lack seems much less significant than the number of admissions, the span of time over which they were given, the several persons to whom they were given, the nature of the interactions in which they were offered, and the absence of any reported drug use between Mr. Dechaine's prolonged interaction with officers on July 6 and his arrest on July 8. Also noteworthy is that several admissions were made on July 8, after Mr. Dechaine and his wife had consulted with Attorney George M. Carlton, Jr.

At a new trial, Mr. Dechaine would present the new DNA results in the context of a particular theory of the way the crime was committed. He claims the perpetrator bound the victim's hands before strangling her with the scarf but that she was able to "dig" or stab him with her fingernails and draw his blood. He argues this would account for the blood seen under the victim's nails in photographs and, if believed, would support Mr. Dechaine's contention that an unknown perpetrator was the source of DNA found on both the left thumbnail (from which Mr. Dechaine was excluded) and the scarf.

Whether any struggle occurred has been disputed before. In its order denying Mr. Dechaine's 2008 motion for a new trial based on DNA analysis, the Court found that "[t]here was no evidence of a struggle between the perpetrator and the victim in this case," noting that the victim's "nails were not broken, there was no visible tissue under her fingernails, and there was no other evidence to indicate that she had fought with her assailant," and therefore "a factfinder would have to speculate that [the victim] struggled with her attacker and somehow managed to get his DNA under her thumbnail." Order on Def.'s Mot. for a New Trial at 25-26 (Apr. 9, 2014). The Law Court, affirming that denial, noted that "the [trial] court was justified in finding that there was no evidence that [the victim] had struggled with her killer." *Dechaine*, 2015 ME 88, ¶ 32, 121 A.3d 76. In his recent testimony, Mr. Englert argued quite forcefully that as a matter of logic the victim must have fought her attacker. (*See, e.g.*, Hr'g Tr. 116 (Apr. 19, 2024).) But he acknowledged not having

accounted for a lethal puncture wound to the victim's jugular vein that was inflicted before she was strangled with the scarf.

Ms. MacMillan's testimony refuted the idea that the victim had fought her attacker. She said when she examined the half-thumbnails (right and left) before testing them, she did not observe any tissue adhering to the nails or any red/brown staining. (*See* Hr'g Tr. 85 (Apr. 19, 2024).) She also testified that the CBR report did not note whether the thumbnail clippings examined were bloody. *See id.* at 81. In 2012, when asked whether she knew what the biological source of the unknown male DNA was, Ms. MacMillan testified, "I don't know," because "I didn't test or do any presumptive testing on it or confirmatory testing. I don't believe Dr. Bing conducted any testing on [the left thumbnail]. He didn't run like an OT or a HemaTrace that would determine if it was blood. He didn't do any presumptive screening for semen." (Hr'g Tr. 253-54 (June 12, 2012).) In 2011, when asked whether she saw anything "that would enable [her] or anyone else to determine that anything was under any nail," Ms. MacMillan responded, "No." (Hr'g Tr. 20-21 (July 29, 2011).) When asked if she could determine what biological material the DNA came from, assuming there was DNA under the nail, Ms. MacMillan answered, "No. Those types of tests are presumptive tests that have to be conducted before you start your DNA extraction. So, at this point, I had a dry powder [(the thumbnail extract developed by CBR)] that I assumed was DNA." *Id.* at 21.

Mr. Dechaine's theory, then, depends on the jury reaching three separate conclusions. The first is that the victim, weakened by a fatal stab wound to her neck and with her hands bound, summoned the capacity to fight her attacker. The second is that the victim was able to draw blood notwithstanding that her hands were bound facing inward. And the third is that the victim's bloody and desperate defense left no physical evidence other than blood under her nails—that there was no tissue under the victim's nails, only blood, because she inserted her fingernails into the attacker at

such a precise and indeed surgical angle—"digging" rather than "scratching"—that her nails were unbroken and the attacker's skin unscraped.

**Conclusion and Order**

The Court agrees with Dr. Staub that the correlation of the DNA on the thumbnail and on the scarf is interesting. Were there not such a body of evidence identifying Mr. Dechaine as the attacker, the Court would agree this slim lead should be explored. But the Court cannot agree this one imprecise correlation within a broad population of men is of substantial value in the overall context of "all the other evidence in the case, old and new." It is simply another evidentiary anomaly that cannot be accounted for by the existing record.

This is not a close case. The statutory standard is high: "clear and convincing evidence"—"evidence that provides the fact-finder with an abiding conviction that the truth of the proponent's contentions is highly probable," *Grondin v. Hanscom*, 2014 ME 148, ¶ 11, 106 A.3d 1150—that the new DNA test results, when considered with all the other evidence in the case, old and new, would make a different verdict probable following a new trial. *See* 15 M.R.S. § 2138(10)(C)(1). The new DNA evidence is weak, vague, and without practical meaning. It does nothing to undermine the old evidence that so fully supported the jury's original verdict. *See, e.g., Dechaine*, 572 A.2d at 132 n.3. The new evidence presented at the hearing on Mr. Dechaine's motion appears to the Court clear and convincing that a new trial would produce exactly the same result.

In reaching its conclusion, the Court does not rely on the conversation between then-Deputy Attorney General Fernand R. LaRochelle and Mr. Dechaine's then-attorney, George M. Carlton, Jr., on July 8, 1988. (*See* State's Post-Hr'g Mem. B App. 21-22 (Affidavit of Fernand R. LaRochelle).) That conversation is as damning as Mr. Dechaine's incriminating statements and indeed provides the type of detail Magistrate Judge Cohen noted was absent from those statements: Mr. Carlton confirmed that the victim was no longer alive and that her body would be found (as it

was later that day) in the area the authorities were then searching. The Court's assessment is that this conversation would not constitute hearsay and would be admissable at a new trial, but it is redundant to the Court's conclusion in this matter.

In their presentation, Mr. Dechaine's lawyers referred to an enlarged photograph of the victim that was taken after her body was disinterred. They attached a blank piece of paper to the photograph to cover the victim's lower torso. This was an act of sensitivity to those in the gallery, particularly members of the victim's family who were said to be in attendance. But nothing could spare observers the rest of the evidence: the photographs of the victim in her temporary grave, of her dead face, of her bound hands with their bloody nails; or the accompanying narrative that recounted her death, with repeated and detailed reference to the implements of torture obscured by the paper.

Sarah Cherry was twelve years old when she suffered and died. Had she lived, she would now be approaching fifty. This case is exhausted. Perhaps now the poor dead child might rest.

The entry will be:

The State's motion to dismiss in KNOCD-CR-2024-00414 is GRANTED.

Defendant's motion for a new trial in ROCSC-CR-1989-00071 is DENIED.

The Clerk may incorporate this Order upon the docket by reference.

Dated: January 30, 2025

Bruce C. Mallonee

The Hon. Bruce C. Mallonee
Justice, Maine Superior Court