

ORIGINAL

Discovery Deposition  
of **DAVID GAGNON**

**Date:** February 4, 2013

**Case:** Dulberg v. Gagnon

**Urbanski**  
Reporting Company

**Phone: 312-977-1777**

STATE OF ILLINOIS     )  
                              )     SS.  
COUNTY OF McHENRY    )

IN THE CIRCUIT COURT FOR THE TWENTY-SECOND  
JUDICIAL CIRCUIT  
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,                     )  
                              )     )  
Plaintiff,                        )  
                              )     )  
vs.                                ) No. 12 LA 178  
                              )     )  
DAVID GAGNON, Individually,     )  
and as Agent of CAROLINE        )  
McGUIRE and BILL McGUIRE;       )  
and CAROLINE McGUIRE and        )  
BILL McGUIRE, Individually,     )  
                              )     )  
Defendants.                        )

The deposition of DAVID A. GAGNON taken before  
Margaret Maggie Orton, Certified Shorthand Reporter  
and Registered Professional Reporter, taken pursuant  
to the provisions of the Illinois Code of Civil  
Procedure and the Rules of the Supreme Court thereof  
pertaining to the taking of depositions for the  
purpose of discovery at 3421 West Elm Street, McHenry,  
Illinois, commencing at 1:12 p.m. on February 4, 2013.

1 APPEARANCES:

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6 On behalf of the Plaintiff;

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17 On behalf of the Defendants Carolyn McGuire and  
18 Bill McGuire.

19 \* \* \* \* \*

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1 (Witness sworn.)

2 MR. MAST: All right. This is the discovery  
3 deposition of David Gagnon taken pursuant to notice in  
4 accordance with the applicable rules.

5 WHEREUPON:

6 DAVID A. GAGNON,  
7 called as a witness herein, having been first duly  
8 sworn, was examined and testified as follows:

9 EXAMINATION

10 BY MR. MAST:

11 Q Mr. Gagnon, I'm Hans Mast. I represent Paul  
12 Dulberg. I'm going to ask you some questions  
13 regarding this chain saw incident. Start out with  
14 some background information. I just want to make  
15 sure -- And I imagine you've never given a deposition  
16 before; is that correct?

17 A I have on my own behalf. I was in a car  
18 accident several years back.

19 Q Okay. So you know the process?

20 A Fairly well, yeah.

21 Q Okay. So really the process is simple.  
22 Questions and then you answer the questions and we go  
23 back and forth until we're done, okay?

24 A Okay.

1 Q I want to make sure, though, that your  
2 answers are responsive to my questions. So if you  
3 don't understand the question, let me know. Otherwise  
4 if you answer it, we're all going to assume that you  
5 understood the question, okay?

6 A I understand.

7 Q Okay. Let's see what else. You're aware  
8 obviously of Paul's accident that this case is all  
9 about that happened, I think, at your parents' house  
10 during some chain saw work at their house? You're  
11 aware of that?

12 A Yes, I'm aware of that.

13 Q Okay. And I believe, and you can correct me  
14 if I'm wrong on anything obviously, but I believe it  
15 happened June 28th, 2011? Does that --

16 A Yes.

17 Q -- sound right?

18 A Yes, that sounds correct.

19 Q Okay. Do you remember what day of the week  
20 that was?

21 A No, I do not.

22 Q Was it Saturday or Sunday?

23 A No, it was not. It was during the week, I'm  
24 quite sure.

1 Q Okay. I'd like to start now and go through  
2 some background information. So why don't we start  
3 with this: What's your date of birth?

4 A 4-3-67.

5 Q And that makes you how old today?

6 A I am 45.

7 Q Are you employed today?

8 A I am self-employed as I have been my entire  
9 life.

10 Q What are you self-employed in doing?

11 A I do auto restorations and collision repair.

12 Q Do you do that under your own name?

13 A I do that under the name of Dave's Auto Body.

14 Q At home?

15 A Yes.

16 Q Is that an incorporation or some type of  
17 formal --

18 A No.

19 Q -- organization?

20 A No. No.

21 Q Okay. How long have you been doing auto  
22 restoration and collision repair under Dave's Auto  
23 Body, under that name?

24 A Probably 20 years.

1 Q Has it always been full-time?

2 A I would have liked it to have been. As work  
3 comes, I work on that; otherwise, I fill the void with  
4 other things that I can perform.

5 Q All right. Have you had to fill the void  
6 with other things in the last ten years?

7 A Yes, and I have been employed with other  
8 people in between.

9 Q Okay. So we'll get to that in a minute,  
10 then, okay?

11 A Okay.

12 Q What is your current address?

13 A 39010 90th Place, Genoa City, Wisconsin.

14 Q So that's right over the border here to the  
15 north?

16 A Yeah. 53128 is the zip.

17 Q Who do you live with there?

18 A My wife.

19 Q What's her name?

20 A Pamela.

21 Q Anybody else live at that address?

22 A No.

23 Q Do you have any children?

24 A No, I do not.

1 Q And your Social Security number?

2 A In full?

3 Q Yes.

4 MR. CALLAHAN: Can we do this off the record  
5 then?

6 MR. MAST: We can do it off the record.

7 BY MR. MAST:

8 Q Let's say on the record, what are the last  
9 four digits?

10 A 2535.

11 Q 2535?

12 A Yes.

13 MR. MAST: Okay. Give it to us off the record  
14 now.

15 (Discussion off the record.)

16 BY MR. MAST:

17 Q Did you give us your --

18 MR. CALLAHAN: Back on the record?

19 MR. MAST: Back on the record.

20 BY MR. MAST:

21 Q Did you give us your full Social Security  
22 number off the record?

23 A Yes.

24 Q Okay. All right. Do you have any criminal

1 convictions on your record in the last ten years?

2 A No.

3 Q How long have you known Paul Dulberg?

4 A 35 years.

5 Q And 35 years, how did you meet him?

6 35 years --

7 A Riding bicycles in a place we had deemed  
8 called the mini trails.

9 Q So were you neighbors, or ...

10 A We lived close by. He lives in Pistakee  
11 Terrace, my mother -- or my mother lives in Pistakee  
12 Terrace; he lives in Pistakee Highlands which is  
13 about, I would say, a quarter mile maybe away from one  
14 another.

15 Q And the mini trails were by your mother's  
16 house?

17 A They were closer to his home.

18 Q Closer?

19 A They were closer to his home. They were just  
20 down the road from his home.

21 Q Okay. And since you kind of met at the  
22 trails and you became -- a friendship arose?

23 A Yeah. Yes.

24 Q Okay. Has that friendship been in pretty

1 good standing since then till today?

2 A Yes, and as of right now I don't know where  
3 it stands. I have not spoken with him as I was  
4 directed not to.

5 Q Fair enough. But at least in your mind is it  
6 still in good standing -- Hold on. Let me just finish  
7 the questions. Is your friend- -- At least in your  
8 mind, is your friendship still in good standing with  
9 Paul Dulberg today?

10 A No.

11 Q Okay. And is that because of the suit?

12 A Yes.

13 Q Okay. Fair enough. Understood about that.

14 Until the suit was filed, okay, was your  
15 friendship with Paul Dulberg in good standing?

16 A Yes.

17 Q Had it been all the way for those 35 years  
18 until the suit was filed?

19 A Yes.

20 Q Okay. So there was never any times where  
21 your friendship was seriously tested over that  
22 35 years?

23 A No.

24 Q Is that correct?

1           A     That's correct.

2           Q     Okay. And you can correct me if I say  
3 something that's not accurate, but so is it my  
4 feeling, even though you don't know what Paul's view  
5 of your friendship is, this suit being filed against  
6 you has brought negative feelings in your mind about  
7 your friendship?

8           A     Yes, and only recently, if I may.

9           Q     Okay. Go ahead.

10          A     At first when it had arisen, this situation,  
11 we were still talking to one another and I was freely  
12 submitting both insurance information, whatever he  
13 requested because, you know, there wasn't a problem at  
14 that time. But things turned as Paul had said some  
15 things that didn't really go well with me.

16          Q     You mean in his deposition or somewhere else?

17          A     Personally to me.

18          Q     Well, if -- I guess I've got to ask you what  
19 those things were then.

20          A     Okay. After bringing him to the hospital  
21 after this occurrence took place with his vehicle, we  
22 had left. Myself still being very (inaudible) and my  
23 heart being concerned as to his condition because he's  
24 my friend, he turned to me just leaving the hospital



1 and said that we can make a lot of money at this.

2 Q Okay. Was anybody else present during that  
3 conversation?

4 A No. No.

5 Q Was that in your car on the way from the  
6 hospital?

7 A That was in his vehicle immediately leaving  
8 the hospital and still in the parking lot at the  
9 hospital.

10 Q Was that the same day of your accident -- of  
11 his accident?

12 A Yes.

13 Q Okay. So that would have been June 28, 2011,  
14 he was discharged out of the hospital and he was in  
15 his car?

16 A Passenger's seat; I was driving, yeah.

17 Q Okay. Did you not have a car at the time or  
18 something?

19 A No. His vehicle was at my house -- my  
20 mother's house, I should say, where the occurrence  
21 happened; and when we left, he said, Just take my car,  
22 so we took his vehicle to the --

23 Q All right. Let me stop you because I  
24 understand what you're saying. You're saying after

1 his injury you drove his car with him as a passenger  
2 to the hospital?

3 A Yes.

4 Q He got treated, discharged, and then you were  
5 back in his car going back to your mom's house?

6 A Never left the parking lot and he said that.

7 Q No, I understand that --

8 A Yes, but that's --

9 Q -- but that's where you were going?

10 A Yes. Yes.

11 Q All right. Let's try not to -- I'll try and  
12 won't talk over you; you try not to talk over me.

13 All right. So you're leaving the  
14 hospital still in his car on the way to your mother's  
15 house, right? Right? That's on the way? That's  
16 where you were going?

17 A Right, that's where we were going, but we  
18 still had not left the parking lot.

19 Q All right. I didn't say anything about where  
20 you were. I'm saying you're in the car on the way to  
21 your mother's house, right?

22 A Yes.

23 Q Okay.

24 A Yes.

1           Q     But before you left the parking lot, you're  
2     in the car in the parking lot of the hospital and  
3     that's when he made that statement?

4           A     Yes.

5           Q     Did he say anything else during that  
6     conversation that you -- that you didn't like?

7           A     No.

8           Q     Okay. So that was the extent of anything  
9     that he said about financial aspects of this case?

10          A     Yes.

11          Q     Is that the only time he said anything about  
12     financial aspects of this case?

13          A     No.

14          Q     When is the next time he said anything like  
15     that?

16          A     I had visited him shortly after because we  
17     were still in friendship, and I stopped in his home,  
18     and ...

19          Q     How soon after the accident?

20          A     Oh, this is about three or four months after  
21     the accident.

22          Q     Okay.

23          A     It was -- Now, I remember it was cold. It  
24     was winter so I can't say exactly what day, but I was

1 leaving and he had mentioned that, This may possibly  
2 be the best thing that could happen to me because I  
3 won't have to work the rest of my life.

4 Q Any witness to that conversation?

5 A Yes, Michael Mcartor.

6 Q Who?

7 A Michael Mcartor, who lives with him.

8 Q How do you spell the last name?

9 A Capital M small C, Artor, A R T O R or E R;  
10 I'm not quite certain of that spelling, but he resides  
11 with Paul there at his home.

12 Q Where Paul's living now?

13 A Yes.

14 Q Okay. And where did that conversation take  
15 place four months after the accident?

16 A In his kitchen where -- In his kitchen.

17 Q And the extent of this conversation regarding  
18 the financial aspects that we're talking about is that  
19 he said, This might be the best thing that happened to  
20 me, and what else? Was there anything else?

21 A Because I may not have to work another day of  
22 my life.

23 Q Because I what?

24 A May not have to work another day of my life.

1 Q Did he say anything else during that  
2 conversation now about the financial aspects of this  
3 accident?

4 A No.

5 Q Did he say anything else during that  
6 conversation that you found uncomfortable or wrong?

7 A No. No.

8 Q Okay. Any other things that Paul has said  
9 that you believed were wrong or had some kind of  
10 financial component to this accident other than those  
11 two that we've -- you've already described?

12 A There was also another instance where he  
13 visited me at my home, I believe it was in 2012 when  
14 things were going along here; we were still in  
15 conversation with one another.

16 Q Okay. Let me just stop you. After the suit  
17 was filed or before the suit was filed?

18 A It was after the suit was filed, yeah.

19 Q Okay.

20 A And he was not -- if not coaching me,  
21 reassuring me that if I did make it easier, shall we  
22 say, or ... that I would be awarded something for my  
23 cooperation in it.

24 Q Was there any witnesses to that

1 communication?

2 A No. No.

3 Q Did he say how you would be awarded?

4 A No.

5 Q Did he promise to pay you anything in  
6 exchange for your testimony?

7 A Yes.

8 Q What did he promise to pay you?

9 A \$10,000.

10 Q What did he say?

11 A If he got a hundred thousand dollars.

12 Q What was the -- I need to know the exact  
13 wording of that communication so that we all can  
14 understand what he said.

15 A If this goes well for me, I wouldn't have a  
16 problem with giving you \$10,000 if say I was to get a  
17 hundred thousand dollars.

18 Q Okay. Did he, though, make that hundred --  
19 that \$10,000 conditional on what you would say or just  
20 said, If it goes well for me, I'll give you 10,000 out  
21 of the hundred thousand?

22 A He didn't place conditions on it.

23 Q Okay.

24 A I was assuming.

1           Q     Okay. Fair enough. That's very honest of  
2     you. I appreciate that. This is my question then --  
3     Well, let me go further. Did he say anything else  
4     during that conversation in 2012 about anything you  
5     felt was inappropriate or uncomfortable for you or  
6     related to financial interests that he was --

7           A     No.

8           Q     -- talking about?

9           A     No, he did not.

10          Q     Okay. Any other conversations with Paul now?  
11     We've talked three different incidents now so I want  
12     to make sure I've talked about everything. Is there  
13     any other conversation you've had with Paul or contact  
14     with Paul regarding any uncomfortable or uneasy  
15     conversations or things he said relating to either  
16     financial interests or some other component of the  
17     suit or claim?

18          A     There was one time where he came up and he  
19     was asking for information, which I gave him, my  
20     insurance.

21          Q     When was this? Just give me a date so I know  
22     how to ...

23          A     I cannot supply you with a date. I could say  
24     that it was before that last incident that I just

1 spoke of of the hundred thousand and \$10,000 offering  
2 there.

3 Q Was it after suit was filed or before suit --

4 A It was after the suit was filed.

5 Q Okay.

6 A And he showed up at my residence with an  
7 iPad, which he's into techy things, things like that,  
8 and I wasn't aware that there was a camera on front  
9 and back but I was aware that there was a camera that  
10 was on and he was showing me what was being viewed on  
11 the screen, and then we proceeded into our house and  
12 it was on again. He was showing me how you can look  
13 at the front and the rear screen and me not being of  
14 much interest of this device, I just told him, Could  
15 you shut that thing off. I felt as though I was being  
16 inventoried.

17 Q Okay.

18 A So that would be the only other issue.

19 Q Okay. Fair enough.

20 A Yeah.

21 Q I appreciate that. Did he say or do anything  
22 that you felt was wrong or inappropriate regarding the  
23 case in and of itself?

24 A No.



1 Q Okay. Nothing about financial interest --

2 A Not that time, no, nothing.

3 Q Okay. Do me a favor, and you're doing very  
4 good so far, but you were just kind of cutting me off  
5 the last --

6 A I'm sorry.

7 Q -- part of my sentence and I want to make  
8 sure you understand the full thing I'm going to say,  
9 okay? So let's try not to cut each other off.

10 All right. So at least, and you can  
11 correct me if I'm wrong, as I understand it, there are  
12 just three conversations where Paul made any  
13 statements that felt -- that made you feel  
14 uncomfortable pertaining to financial parts of the  
15 lawsuit?

16 A Yes.

17 Q Okay. Or the claim; fair enough?

18 A Yes. Yes.

19 Q And that was the day of the accident where he  
20 made that one-sentence statement, correct?

21 A Mm-hmm.

22 Q Yes?

23 A Yes. Yes.

24 Q And that was four months later where he made

1 that statement about, This could be the best thing  
2 that could happen to me because I might not have to  
3 work the rest of my life?

4 A Yeah.

5 Q Yes?

6 A Yes.

7 Q And then there was the last thing that was in  
8 2012 after suit was filed where he said -- although he  
9 didn't condition it, he said, Hey, if I get a hundred  
10 thousand, I'll give you \$10,000 of that?

11 A Yes.

12 Q Right?

13 A Yes.

14 Q Okay. And would it be fair to say, including  
15 that last 2012 conversation, he never said, If you do  
16 this for me, I'll do this for you; fair enough?

17 A Yes.

18 Q Is that true?

19 A That's true.

20 Q Okay. So he never -- You could make the  
21 assumptions you want, and you're free to do that,  
22 okay, but my question is nothing he ever said  
23 pertained to having him wanting you to lie for him?

24 MR. BARCH: I'm going to object. It's

1 argumentative, but go ahead.

2 MR. MAST: Go ahead.

3 MR. CALLAHAN: I'll join that objection.

4 BY THE WITNESS:

5 A No, he was blatantly asking me in regards to  
6 what he was asking me to do to make it easier for him.

7 Q Right.

8 A And making it easier for him would not just  
9 be submitting the truth in my judgment, but it would  
10 be submitting to what he would want me to say so that  
11 it would be easier for him.

12 Q I understand what your judgment is.

13 A Yes.

14 Q This is what I'm questioning, though. My  
15 question is what he said to you, okay. You can take  
16 any assumptions you want from what he said to you;  
17 you're free to do that, okay. My question, though, is  
18 did he ever tell you that he wanted you to lie for  
19 him?

20 A He did not say he wanted me to lie for him,  
21 no.

22 Q Okay. You took that from an inference of  
23 what else he said that you've already told me, right?

24 A Yes.

1 Q Those were inferences you made from what he  
2 told you, correct?

3 A Yes.

4 Q Okay. Did you ever say, Hey, do you want me  
5 to lie for you -- Well, let me put it this way. I'm  
6 going to try to just summarize it.

7 Is it fair to say he never asked you to  
8 lie for him?

9 A That is correct.

10 Q Okay. Is it fair to say he never agreed to  
11 give you money in exchange for what you would say to  
12 him -- say for him?

13 A There is one more thing that I said that I'm  
14 recollecting now.

15 Q Okay.

16 A And I said, Well, what would you want me to  
17 say, that I was freewheeling a chain saw and I was  
18 negligent?

19 And he said, That sure would make things  
20 easy.

21 Q Okay. And when did he say that, which  
22 conversation?

23 A That same conversation when he spoke of the  
24 hundred thousand dollars and the \$10,000.

1 Q So that's the 2012 conversation?

2 A Yes. Yes.

3 Q Okay. And what -- So let me get it clear  
4 now. The 2012 conversation that we've already talked  
5 about was after suit was filed?

6 A Yeah.

7 Q It says, If you would -- What you're saying  
8 he said is if he would be awarded something, say a  
9 hundred thousand dollars, he would give you \$10,000 of  
10 it, right?

11 A Yes.

12 Q And now you're adding on to what else did he  
13 say?

14 A He -- I said to him, Well, what would you  
15 expect from me? What would you want me to say, I was  
16 freewheeling a chain saw and I was negligent? I said  
17 I would not do that. I'm going to tell the truth.  
18 And that's basically where our friendship -- I haven't  
19 spoke to him really very much or been with him or  
20 conversed with him since then.

21 Q All right. You're going a little further  
22 than what I'm asking, though, but that's fine. My  
23 question was, what more did he say and you told me  
24 what you said, all right, so let's just go straight

1 with what I'm asking. I'm asking other than, Hey, if  
2 I get a hundred thousand dollars, I'd be glad to give  
3 you \$10,000 of that, other than Paul saying that, what  
4 else do you recall Paul saying in that 2012  
5 conversation at your house?

6 A Nothing.

7 Q Oh, okay. It was just what you said then?

8 A That's what I said after. I sufficed by way  
9 of example, Is this what you would want?

10 And he said, That sure would make it  
11 easy.

12 Q Well, then that is something that he said.  
13 Listen, this is what I'm trying to get at, I'm trying  
14 to find out what he said, okay?

15 A Okay. He said nothing in response to that  
16 except he said, That sure would make it easy.

17 Q All right. You're interrupting me again.  
18 Let's go back at it again.

19 A Okay.

20 Q I want to go step by step because I want to  
21 try to find out everything you're going to say. I  
22 don't want there to be any stones unturned, okay?

23 A Yeah.

24 Q You told me that in that 2012 conversation he

1 said, If I get a hundred thousand dollars, I'd be  
2 happy to give you \$10,000 of that. Is that what he  
3 said?

4 A Correct, that is what he said.

5 Q Okay. In response to that, what did you say?

6 A I said, What would you want me to say, I was  
7 freewheeling a chain saw and I was negligent? I said,  
8 I will not do that.

9 Q Okay. All right. Stop. That's what you  
10 said, okay. And then what did he say in response --

11 A Nothing.

12 Q -- to that?

13 Okay. Nothing, right?

14 A Nothing.

15 Q Okay. Because I thought you said that he  
16 said, Well, that would make it easier.

17 A Correct. I'm sorry. That was his closing  
18 statement after I said that.

19 Q So he did say something?

20 A Yes, he did. I'm sorry.

21 Q Okay. So let's go through it again now.

22 A All right.

23 Q Because I want to make the chronology, I want  
24 to make that correct, okay?

1           A     Okay.

2           Q     In the 2012 conversation at your house you  
3     said that Paul made a statement that, If I get a  
4     hundred thousand dollars of this, I'll give you --  
5     I'll be happy to give you \$10,000 of this -- of that.  
6     Is that what he said?

7           A     Correct.

8           Q     Okay. In response to that you said, What do  
9     you want me to say, that I was freewheeling and  
10    negligent? I will not do that. Was that your  
11   statement?

12          A     That was my --

13          MR. CALLAHAN: I thought he said freewheeling a  
14   chain saw and that I was negligent.

15   BY MR. MAST:

16          Q     Okay. Is that what you said?

17          A     Yes.

18          Q     Okay. And then in response to that, what did  
19   he say?

20          A     He said, That would make it easy.

21          Q     Okay. Did he say that's what he wants you to  
22   say or did he just say those words?

23          A     He just said those words.

24          Q     Okay. Is that all he ever said then after



1 that conversation at the end of that conversation?

2 A Yes.

3 Q All he said was, That would make it easy?

4 A Yes.

5 Q Okay. All right. So we've got three  
6 conversations, one on the day of the accident where he  
7 said, We can make a lot of money at this, right?

8 A Correct.

9 Q That's all he said during that conversation  
10 that was uneasy or uncomfortable or financially  
11 motivated, correct?

12 A Yes.

13 Q Okay. Second conversation four months later,  
14 you visited him at his house, right?

15 A Yes.

16 Q And he said, This may be the best thing that  
17 happened to me; I might not have to work the rest of  
18 my life?

19 A Yes.

20 Q Is that all that he said that was uneasy or  
21 uncomfortable or related financially to this case?

22 A Yes.

23 Q And the third thing was 2012 where he said if  
24 he gets a hundred, he'd give you ten and then you

1 said, Well, what, if I say that -- What do you want me  
2 to say, if I'm wheeling it, the chain saw, and  
3 negligent?

4 And he said, Well, that would make it  
5 easy.

6 Is that everything out of that  
7 conversation that was uneasy, uncomfortable or  
8 financially related?

9 A That is all, yes.

10 Q Okay. Have you now --

11 MR. CALLAHAN: Can I object? I think he did  
12 leave off that one comment, I'm sorry, the one he  
13 said, I won't do that.

14 BY MR. MAST:

15 Q Okay. Yes, and you also said you wouldn't do  
16 that after you --

17 A I said that I would not do that, yes.

18 Q After your con- -- After your response to  
19 what he said, you said, I would not do that?

20 A Yes.

21 Q Okay. Have we now covered everything that  
22 you and Paul talked about after the accident that made  
23 you feel uncomfortable, uneasy or financially related  
24 to this accident?

1 A Yes, that would be all.

2 Q Okay. Very good. That wasn't too hard.

3 A No.

4 Q Oh, one final question on those things.

5 A Okay.

6 Q Were there any witnesses to either of those  
7 three conversations other than you said the --

8 A Michael Mcartor.

9 Q Michael Mcartor was a witness to the second  
10 one four months after the accident?

11 A Yes, which was at Paul's home in his kitchen,  
12 yes.

13 Q Right. Any other witnesses to any other  
14 parts of those communications?

15 A No.

16 Q Just you and Paul and then the second  
17 conversation was with Michael?

18 A Correct.

19 Q Okay. Are you friends with Michael? Have  
20 you ever been friends with Michael?

21 A I've been friends with Michael probably about  
22 25 years.

23 Q Are you still friends with Michael?

24 A As far as I know, yes.

1 Q Okay.

2 A This is not related to him.

3 Q So the reason you're not friends with Paul  
4 anymore is after the third conversation in 2012 where  
5 you said, I would not do that, and he said, That would  
6 make it easy, you haven't spoken to him since; but in  
7 your mind it's not friendly because of what you  
8 thought he was asking you to do?

9 A Yes.

10 Q Fair enough?

11 A Yes.

12 Q Do you know in his mind if he thinks you're  
13 still friends?

14 A I do not know.

15 MR. CALLAHAN: I'd just object as to relevancy  
16 and as to speculation.

17 BY THE WITNESS:

18 A I don't know.

19 MR. BARCH: Join the objections.

20 BY THE WITNESS:

21 A I haven't spoken to him. I don't --

22 Q Hold on. Just let them give the -- All  
23 right. They objected.

24 MR. CALLAHAN: You may answer.

1 BY MR. MAST:

2 Q What's your answer to that question? Do you  
3 know in Paul's mind whether he thinks you guys are  
4 still friends or not?

5 A I do not know. I have not conversed with him  
6 in quite a while now.

7 Q All right. And then that fourth thing that  
8 you talked about didn't really have to do with any  
9 statements but he had an iPad and it looked like he  
10 was videoing or something. He didn't do anything  
11 wrong during that; you just weren't sure what he was  
12 up to, right?

13 A Right.

14 Q Okay. That didn't have anything to do with  
15 any statements or anything; fair enough?

16 A Fair.

17 Q Okay. So we've covered all the statements  
18 that Paul made that made you feel uncomfortable?

19 A Yes.

20 Q Okay. All right. How long have you been  
21 married?

22 A I've been married since 2008, August 16th.

23 Q Okay. Does your wife Pamela know Paul?

24 A Yes.

1 Q On a -- like a friendly basis or just sees  
2 him every now and then? I mean, how would you  
3 describe her knowledge of Paul, just passing?

4 A He's my friend and is friends with him is the  
5 same; there was never anything between us until ...

6 Q I mean, did she spend as much time with  
7 Paul --

8 A No.

9 Q -- as you did?

10 A No.

11 Q Okay. Her contact with Paul was just passing  
12 then? It wasn't where she would do anything with him?

13 A Correct.

14 Q Is that fair enough?

15 A Yeah, correct.

16 Q Okay. And she doesn't have any knowledge  
17 regarding any communications Paul made regarding the  
18 incident that were uncomfortable or financially  
19 motivated?

20 A No.

21 Q Is that fair?

22 A That's fair.

23 Q Okay. Okay. What's the highest level of  
24 education you have?

1           A     I was accepted at DeKalb University. I  
2     didn't pursue it until its end, and then I went to  
3     College of Lake County.

4           Q     You mean Northern Illinois Medical Center --  
5     Northern Illinois University?

6           A     Yeah, DeKalb College.

7           Q     Okay. All right. I know, I'm just trying to  
8     connect the dots here.

9                     You were accepted at Northern but you  
10    never went there?

11          A     Oh, no, I went there and I just -- because of  
12    turns of events in my life, personal, I did not  
13    finish, and --

14          Q     All right. But I'm not getting to that  
15    point. I'm just --

16          A     Okay.

17          Q     The question was, where did you go to -- the  
18    highest level of education, that's the question.

19          A     I was accepted at Northern Illinois  
20    University.

21          Q     You weren't just accepted. You went there,  
22    right?

23          A     Yes.

24          Q     Okay. How long did you go to Northern

1 Illinois University?

2 A Two months.

3 Q Okay. And what program were you there, just  
4 general?

5 A Program?

6 Q What type of degree? What program?

7 A Oh, engineering.

8 Q Okay.

9 A Mechanical engineering.

10 Q Okay. And what year was that, approximately?

11 A That was 1985.

12 Q Instead of going to DeKalb or at least after  
13 two months of going to DeKalb, where did you go after  
14 that?

15 A I pursued employment as an auto body worker.

16 Q With who?

17 A It was called Lakeland Autobody. It was in  
18 Volo, Illinois.

19 Q Are they still together?

20 A No.

21 Q How long did you work there?

22 A Three years.

23 Q Doing auto body work?

24 A Correct.



1 Q Who was your supervisor?

2 A Owner and supervisor Brian Schuman  
3 (phonetic).

4 Q Brian what?

5 A Schuman.

6 Q Schuman?

7 A Yeah, Schuman.

8 Q So after two months of DeKalb, you went to  
9 Lakeland Auto?

10 A Mm-hmm.

11 Q Right?

12 A Yes, correct.

13 Q Okay. When did you go to -- You said you  
14 went to another college?

15 A CLC, College of Lake County.

16 Q When was that?

17 A I believe that was 1987.

18 Q Sometime while you were at Lakeland?

19 A Yeah, I was -- Yes, I was working at the auto  
20 body.

21 Q And how long were you at CLC?

22 A I want to say six months.

23 Q Okay. On what program?

24 A Same, mechanical engineering.

1 Q Did you finish that program?

2 A No, I did not.

3 Q Why not?

4 A Because I needed to earn money, and I wasn't  
5 earning enough doing -- going to school and working.

6 Q Okay.

7 A Pretty physical job, auto body.

8 Q Okay. Any other college education after high  
9 school?

10 A Completed, no.

11 Q Not -- I didn't say completed, any other  
12 college education after high school? Did you go to  
13 any other colleges?

14 A None other than the ones I had mentioned.

15 Q That's what I'm asking you.

16 A Okay.

17 Q You went to NIU and CLC. Any other college?

18 A No.

19 Q Okay. Where did you graduate high school?

20 A Johnsburg.

21 Q What year?

22 A 1985.

23 Q Okay. After Lakeland Auto, which I'm  
24 assuming was somewhere around -- when you finished

1 somewhere around 1988, '89, somewhere around there?

2 A Finished ...

3 Q When you finished Lakeland Auto, I'm assuming  
4 that was somewhere around '88 or '89?

5 A Yes. Yes.

6 Q Okay. Where did you go after that?

7 A I became self-employed performing the same.

8 Q To the present date?

9 A Yeah.

10 Q Okay.

11 A Yes.

12 Q Okay. Have you worked for anybody else  
13 during 1989 until now other than yourself?

14 A Yes.

15 Q How many jobs are we talking, lots?

16 A One at a machine shop, Swiss Automation in  
17 South Barrington, that was between 1999 and 2001, and  
18 then just currently last winter working at a place  
19 called Advantage Auto Body for three months. They let  
20 me go.

21 Q Where was that?

22 A That -- I'm not sure what town it is. It's  
23 in Wisconsin and about two miles from my home between  
24 Powers Lake and Burlington.

1 Q Okay.

2 A I'm not sure what town it resides in.

3 Q And when did they let you go?

4 A They let me go just at Christmastime last  
5 year.

6 Q 2012 Christmas?

7 A Yes.

8 Q All right. Any other employment since high  
9 school we have not discussed?

10 A No.

11 Q Okay. Do you have any training other than  
12 being self-trained on working with a chain saw?

13 A No.

14 Q So you're -- Well, let me ask you this way:  
15 How long have -- Well, strike that.

16 How long have you -- Strike that.

17 When's the first time you operated a  
18 chain saw yourself?

19 A Age 18.

20 Q Okay. About '85? No, wait. Is that '85?

21 MR. CALLAHAN: Yeah.

22 BY THE WITNESS:

23 A Yeah.

24 Q Yeah. About 1985 then?

1 A Mm-hmm.

2 Q Yes?

3 A Yes.

4 Q Yes. Okay.

5 Whose chain saw was that that you  
6 operated first?

7 A I do not recollect. We were camping, and I  
8 picked up a chain saw and was cutting firewood for the  
9 group that was there.

10 Q Okay. Was Paul with you at the time?

11 A No.

12 Q Okay. Have you ever owned a chain saw?

13 A Yes.

14 Q Okay. Do you own one now?

15 A No.

16 Q Okay. During what period of time did you own  
17 a chain saw?

18 A Oh, 2000 till 2004.

19 Q And for what reason did you own it and then  
20 no longer own it during those four years?

21 A A friend had garbage-picked it. It was an  
22 old really big chain saw that I rebuilt. I used it  
23 several times and then I sold it at a garage sale  
24 along with another unit that was just like it.

1 Someone wanted to fix up theirs too, so ... It was an  
2 old David Bradley chain saw; it was a very old model.

3 Q Wait, I missed some of that. You said you  
4 had one that you got from a friend from a garage sale  
5 but another, what was the other one?

6 MR. CALLAHAN: No.

7 MR. MAST: Sorry.

8 BY THE WITNESS:

9 A No, I had -- I had one that I operated and  
10 then I picked one up at a garage sale.

11 Q So you had two of them?

12 A Yeah, I had two of them, and I sold them both  
13 at the same time, yeah. One worked and one didn't.

14 Q And that was from 2000 to 2004?

15 A Correct.

16 Q Okay. During 2000-2004, did you use those  
17 chain saws on any type of continual basis?

18 A No.

19 Q They were just there for -- because you had  
20 fixed them up and you just kind of liked to have them  
21 around?

22 A No, they were very useful because they were  
23 large and I used them on my property to trim off a  
24 large maple branch that had fallen.

1 Q Oh, so you used them?

2 A I used the one that was working. The other  
3 one was not operational.

4 Q The one that was working that you owned from  
5 2000-2004, the one chain saw that was working, you  
6 used only for your own personal use on your personal  
7 property?

8 A Yes.

9 Q Had you used a chain saw from 1985 until  
10 2000?

11 A Yes.

12 Q Whose chain saws?

13 A Once again, I'm a camper and there would be a  
14 time when I would just elect myself to cut the wood, I  
15 just ...

16 Q Let me ask it this way, maybe it will be  
17 easier, because I know these aren't all easy  
18 questions. Before 2000, okay, when you first got your  
19 own chain saw, how many times would you have operated  
20 a chain saw over the 15 years?

21 A At least a dozen times.

22 Q Were they all during camping trips?

23 A Yes.

24 Q Okay. And they were all somebody else's

1 chain saw they brought to the camping site and you  
2 used them to cut up for camping wood?

3 A Yes.

4 Q Okay. And then beginning of 2000 you would  
5 use them a little bit more frequently because it was  
6 yours and you were using it on your property?

7 A Yes.

8 Q Okay. Do you have some type of forest or  
9 something on your property that you use it for, or ...

10 A No, I have negligent neighbors that when  
11 trees fall, they don't --

12 Q Okay.

13 A -- they don't really seem to attend to them,  
14 so I opted to do the clearing myself.

15 Q Okay. So you clear up a tree here and there?

16 A Yeah. Yes.

17 Q And I know there's no way -- easy way to do  
18 this, but I still have to ask the question. From 2000  
19 to 2004 what would you estimate the number of times  
20 you used a chain saw?

21 A Three times.

22 Q All right. So up until 2004 the total times  
23 you used a chain saw was about 15 times?

24 A Correct.



1 Q Okay. All right. From 2004 until this  
2 accident in June of 2011, how many times did you use a  
3 chain saw?

4 A Four times.

5 Q And whose chain saw was it?

6 A The first time was a friend's, on his  
7 property; second time, again, camping; third time on  
8 my property, and the fourth and final time was at my  
9 mother's place.

10 Q Now, when you say your property, whose chain  
11 saw was it?

12 A That would be my friend Mike.

13 Q The first -- The first -- Well, okay. That  
14 would be the same friend that you operated the chain  
15 saw on his property the first time that you were  
16 spelling these out?

17 A After the 2004, yes. Yes.

18 Q Yeah. So beginning in 2004 when you no  
19 longer owned a chain saw, the first time you used it  
20 after that was with a friend at his house?

21 A Yes.

22 Q And that's Mike's?

23 A Yeah. Not Mike Mcartor.

24 Q No, I --

1 A Okay. I'm just clarifying.

2 Q That's fine. Okay. Second time was out  
3 camping cutting up firewood?

4 A Correct.

5 Q Third time was at your house with Mike's  
6 chain saw?

7 A Yes.

8 Q And fourth time was at your parents' house?

9 A Yes.

10 Q Okay. And was that fourth time at your  
11 parents' house the day of this incident or before the  
12 day of this incident?

13 A It was the day of that incident.

14 Q Okay. So if I were to -- and I know this  
15 isn't the easiest thing to do, but if the day of the  
16 incident was June 28, 2011, when was the last time you  
17 used a chain saw before that date?

18 A Oh. Datewise?

19 Q Some estimate, yeah. Within a month, a year,  
20 three years?

21 A It was a year.

22 Q Within a year?

23 A Yeah, within a year.

24 Q So it would have been the prior summer maybe?

1 A Yes.

2 Q Okay.

3 A Yeah, a storm took down some branches in my  
4 yard.

5 Q So that third incident after 2004, which you  
6 spelled out four times you used a chain saw, that  
7 third incident where it was Mike's chain saw on your  
8 property was the one in 2010 during the summer?

9 A Yes.

10 Q Okay. And then the next time you used a  
11 chain saw was on your parents' property on the day of  
12 Paul's accident with your parents' chain saw?

13 A Yes.

14 Q Okay. Did your parents ever attempt to  
15 educate you or train you on how to operate a chain saw  
16 at any time in your life?

17 A No.

18 Q Up till today?

19 A No.

20 Q Okay.

21 MR. CALLAHAN: Excuse me. You say -- Just to be  
22 clear, his parents, do you mean Mr. McGuire and  
23 Mrs. McGuire or his father and Mrs. McGuire?

24 MR. MAST: Okay. So those are two different

1 answers, I take it?

2 MR. CALLAHAN: Yes.

3 MR. MAST: All right. So we'll go through that.  
4 We will go through that.

5 BY MR. MAST:

6 Q Well, any -- All right. Whether it's  
7 stepparents or real biological parents, we'll just put  
8 them all in one group, okay.

9 Whether it's your stepparents or real  
10 biological parents, have your parents, meaning  
11 either/or, ever attempted to train you or direct you  
12 in the proper method or way to operate a chain saw  
13 your entire life until today?

14 A No.

15 Q Okay. Might as well go through your parents  
16 then. Bill and Carolyn McGuire, are they your  
17 parents?

18 A My mother is my biological mother, Carolyn  
19 McGuire. William McGuire is not my biological father.

20 Q Okay. So William McGuire is your stepfather?

21 A Correct.

22 Q Is your father -- your natural father living?

23 A No.

24 Q Okay. When did he pass?

1 A 1996.

2 Q Okay. I'm assuming he had never did anything  
3 with you with regard to chain saws; is that fair to  
4 say?

5 A We never interacted in that way.

6 Q Okay. Did either William or Carolyn McGuire  
7 ever interact with you with regard to how to use the  
8 chain saw?

9 A No.

10 Q Okay. Are your -- So when I say parents,  
11 since your father passed and Carolyn is your natural,  
12 I'll just talk about Carolyn and William as your  
13 parents, then, okay? Is that fair to you?

14 A That would be fair to me.

15 Q Okay. Have your parents -- What was I going  
16 to ask you? Oh, what do your parents do presently for  
17 a living?

18 A They're currently both retired.

19 Q Okay. Do you know how long they'd been  
20 retired?

21 A My mother, I believe, two years now. She was  
22 employed at Intermatic --

23 Q Okay.

24 A -- in Spring Grove, and William McGuire

1 worked for last Tempest Construction, and he was an  
2 industrial commercial drywaller.

3 Q Okay. To your knowledge -- and, again, we'll  
4 probably end up deposing them soon so we'll ask them,  
5 but to your knowledge do either of your parents have  
6 any expertise or experience in operating chain saws  
7 except just, you know, doing it on their own and  
8 around the house?

9 A They never have operated. They bought that  
10 tool specifically for that -- the cutting of the trees  
11 that needed to be done on their property.

12 Q And they weren't going to use it then? They  
13 were letting --

14 A No.

15 Q -- you do it?

16 A Right.

17 Q Okay. So they -- The chain saw that you were  
18 operating at the time of Paul's accident on their  
19 property, your parents' property, that chain saw was  
20 purchased by your parents for that particular project?

21 A I wouldn't say they bought it and then do  
22 this, they bought the chain saw because they had known  
23 that there would be -- need to be work done --

24 Q Okay.

1           A     -- and I later was elected to do that.

2           Q     So when they purchased the chain saw -- and,  
3 again, I'll ask them these questions, but I'm  
4 wondering what your knowledge is, when they purchased  
5 this chain saw, your parents, did they purchase it  
6 knowing that you were going to use it or just that  
7 somebody else and not them were going to use it?

8           MR. BARCH: Speculation, but go ahead, objection.

9 BY THE WITNESS:

10          A     I can answer that when they purchased it that  
11 they didn't solely purchase it with intent for me to  
12 use it.

13          Q     Wait. I missed the beginning of that.

14          A     When they purchased that, they did not solely  
15 purchase it for my usage.

16          Q     Okay.

17          A     They had purchased it for trimming of trees  
18 on their property --

19          Q     Right.

20          A     -- and then when I was elected or became the  
21 person who did the work, I used that chain saw.

22          Q     I understand that. My question has one  
23 little branch more to it. My question was, did they  
24 purchase it thinking somebody else other than

1 themselves were going to operate that chain saw?

2 A You would have to ask them that question.

3 Q So you don't know?

4 A I do not know.

5 Q Okay. Fair enough. Had you known either of  
6 your parents ever to operate a chain saw before Paul's  
7 accident?

8 A Neither one of them have ever operated a  
9 chain saw.

10 Q You know that?

11 A I know that.

12 Q Okay. What kind of -- Are they still living  
13 in the same house they were living at the time of the  
14 accident?

15 A Yes.

16 Q Okay. What kind of property is that if you  
17 describe it? Is it like a small little half-acre  
18 property, or is it a larger --

19 A It's a small one, third-acre residential --  
20 what is it called? -- ranch.

21 Q Okay.

22 A Ranch home, full basement.

23 Q How many trees would you say are on their  
24 physical third-acre of property, if you had to give me



1 an estimate?

2 A I'm going to tell you.

3 Q Okay.

4 A Currently?

5 Q Yes.

6 A Ten.

7 Q Okay. Prior to the day of Paul's accident,  
8 how many trees were on that property?

9 A 12. Oh, 13.

10 Q So on the day of Paul's accident, did you  
11 take all three of those down then?

12 A I didn't take any trees down that day --

13 Q Okay.

14 A -- or during this occurrence.

15 Q Okay. I see. Just limbs?

16 A Yes.

17 Q Okay. We're going to get to that as we go  
18 here. Okay.

19 So even at the time Paul was injured,  
20 there were still 13 trees on the property?

21 A Yes.

22 Q But there were less limbs on the property, I  
23 take it then --

24 A Yes.

1 Q -- at the time of Paul's accident?

2 A Yes.

3 Q All right. Who took down those three trees  
4 on your parents' property after Paul's accident?

5 MR. BARCH: I'm going to object to the relevance,  
6 but go ahead.

7 BY THE WITNESS:

8 A Please reask the question.

9 Q All right. You said there were -- You said  
10 there are ten trees now on your parents' property?

11 A Yes.

12 Q And you said at the time of Paul's accident  
13 there were 13 trees on the property?

14 A Yes.

15 Q So I'm assuming three trees were taken down;  
16 is that right?

17 A Yes. Two were only related to that  
18 occurrence, though, and they were pine trees. The  
19 other tree that I'm saying is gone was an apple tree  
20 that was removed later by, I think, Bill. It was just  
21 a small little apple tree that was --

22 Q All right. Hold on. You're going way too  
23 far with my question.

24 A Okay.

1 Q My question is --

2 A Sorry for being all-inclusive.

3 Q It's okay.

4 A I know. I'm just apologizing.

5 Q No, you don't have to apologize, and let me  
6 just give you kind of an idea. You're being helpful  
7 and open, and I appreciate that. The thing is,  
8 though, I'm still going to have to go through those  
9 questions again as I go through this so it's not going  
10 to cut down the time. So I'm just trying to tell you.

11 A I'm in no hurry.

12 Q Okay. The three trees that were taken down  
13 since Paul's accident -- we'll get to when and all,  
14 who and all that -- who took those three trees down?

15 A I don't know.

16 Q Okay. Okay. Before the day of Paul's  
17 accident, so before June 28, 2011, had you known Paul  
18 ever to operate a chain saw?

19 A Yes.

20 Q Okay. How frequently?

21 A I don't know.

22 Q How did you know then if he operated a chain  
23 saw?

24 A I've seen him operating a chain saw.

1 Q Where?

2 A Camping, on his property, cutting telephone  
3 poles that he got for free to make use out of them.

4 Q Okay. Had you known him to operate a chain  
5 saw before the day of his accident in a fairly  
6 reasonable manner?

7 A Yes.

8 Q He wasn't, like, dangerous swinging it around  
9 or anything like that?

10 A No.

11 Q Okay. So he would operate it, would you say,  
12 in a safe manner before the day of the accident?

13 MR. BARCH: I'm going to object to --

14 BY THE WITNESS:

15 A I'm not qualified --

16 MR. BARCH: Let me object to the foundation.

17 But go ahead and answer.

18 BY THE WITNESS:

19 A I'm not really qualified to determine what  
20 safe is, I mean ...

21 Q Everyone has their own definition. I'm just  
22 asking you under your own belief of what safe is --

23 A Yes.

24 Q Let me finish the question. Under your own

1 belief of what safe is, do you believe Paul operated  
2 before the day of his accident, whatever times you saw  
3 him, the chain saw in a safe manner?

4 A Yes.

5 Q Okay. Had Paul ever seen you operate a chain  
6 saw before the day of his accident?

7 A Yes.

8 Q Where was that?

9 A Multiple times camping and also on my  
10 mother's property.

11 Q Well, let's go back then because when I asked  
12 you how many times you operated the chain saw after  
13 2004, you only described one time on your mother's  
14 property and that was on the day of the accident.

15 A Does operating -- to clarify it -- include  
16 starting or actually cutting wood? Because there's --

17 Q Fair question but you didn't -- you didn't  
18 condition it when I asked you that before so that's  
19 why I'm going back.

20 A Okay.

21 Q We can -- I'm glad to define it any way you  
22 want. I'm just -- You didn't clarify it before so  
23 that's why I'm going back.

24 A Okay.

1           Q     I asked you just recently, just the past  
2 question, how many times had Paul -- I'm trying to  
3 remember the question. How many times did Paul see  
4 you operate a chain saw before the day of his  
5 accident, right? I think that was the question. And  
6 you said numerous times, I think; is that right?

7           A     Yes. Paul has seen me operate a chain saw  
8 before.

9           Q     Before the day of his accident --

10          A     Yes.

11          Q     -- on numerous occasions?

12          A     Yes.

13          Q     Okay. And then you were describing when and  
14 under what circumstances?

15          A     Yeah.

16          Q     In addition to camping, those different  
17 camping trips, he would sometimes be on camping trips  
18 with you?

19          A     Yes.

20          Q     And he would see you operate a chain saw  
21 during those camping trips?

22          A     Yes.

23          Q     And you would see him operating a chain saw  
24 during those camping trips?

1           A     Yes.

2           Q     Okay. And putting the camping trips aside,  
3 had Paul ever seen you operate a chain saw any other  
4 time before the day of his accident other than on  
5 camping trips? And operate, if you want to know what  
6 definition of operate is, I'm happy to tell you  
7 that --

8           A     Yes, please.

9           Q     -- in my view but you can define it any way  
10 you want. Operate means using the chain saw to cut  
11 wood.

12          A     No, starting a chain saw and making sure that  
13 it's running. That operating I thought you meant it  
14 running, not literally using it.

15          Q     Okay. So let's -- Let me ask the question  
16 again now that we have the definition.

17          A     Okay.

18          Q     If we define chain saw operation as operating  
19 a chain saw so as to cut wood or cut any other object  
20 I guess for that purpose, have you now, based on that  
21 definition, ever -- has Paul ever seen you operate a  
22 chain saw before the day of his accident other than at  
23 camping trips?

24          A     No.

1 Q Okay.

2 A No. No.

3 Q But when I've asked you about you seeing Paul  
4 operate a chain saw, you meant and referred to him  
5 using the chain saw to cut things, right, that was  
6 your answer?

7 A I've seen him using a chain saw to cut  
8 things, yes.

9 Q Yeah, okay.

10 A Yes.

11 Q So before the day of Paul's accident, setting  
12 aside the camping trips, Paul has seen you start a  
13 chain saw to get it running but not use it?

14 A Yes.

15 Q Okay. Under what circumstances?

16 A It's good to start a piece of machinery every  
17 now and then and you may --

18 Q Where and when? What are we talking about?  
19 At your mom's house?

20 A Yeah, probably in the garage there at my  
21 mom's house.

22 Q Because they had the chain saw?

23 A No, they didn't have the chain saw then.

24 I'm -- You're talking about the chain saw that was in



1 the accident?

2 Q Okay. Let's go back.

3 A Or are you talking about chain saw in  
4 general?

5 Q Fair enough. Let me ask it this way: Did  
6 your parents purchase a chain saw to cut trees in  
7 2011?

8 A I don't know.

9 Q All right. The chain saw that you were  
10 operating --

11 A Yes.

12 Q -- at the time of Paul's accident was your  
13 parents' chain saw, right?

14 A Correct.

15 Q When did they purchase that chain saw?

16 A Shortly before the incident.

17 Q Are we talking if the accident happened  
18 June 28th, sometime in June?

19 A I wasn't there for the purchase. I wouldn't  
20 know the purchase date.

21 Q Okay. Sometime that summer, though; fair  
22 enough?

23 A Yes.

24 Q Okay. And before they purchased that chain

1 saw in the summer of 2011, did your parents own any  
2 other chain saws to your knowledge?

3 A No.

4 Q Okay. So the chain saw that Paul would have  
5 seen before the day of his accident, see you start but  
6 not operate, would be the chain saw that your parents  
7 purchased in 2011 or some other chain saw?

8 A It would be some other chain saw.

9 Q Where? Putting aside the camping trips,  
10 remember I talked, putting aside that.

11 A Yes, in my mother's garage.

12 Q Whose chain saw was it?

13 A I don't even recollect. I, you know ...

14 Q Okay.

15 A It was a piece of machine I was starting to  
16 keep it in good working order.

17 Q Okay. But it wasn't your parents and it  
18 wasn't yours?

19 A That's correct.

20 Q Okay. How many times did he see you start a  
21 chain saw but not use it under your description  
22 before?

23 A I don't know.

24 Q Couple, maybe two or three times?

1 A I don't know. I don't know.

2 Q Okay. At least once; fair enough?

3 A At least once, yeah.

4 Q Okay. All right. Have you ever used a chain  
5 saw and operated a chain saw, meaning cut things for  
6 money in your life?

7 A No.

8 Q And, I mean, whether through your employment  
9 or through somebody just giving you money to do it,  
10 you'd never done it for money; is that fair to say?

11 A That's fair to say.

12 Q Okay. The work you were doing, and we're  
13 going to slowly get into that now, but the work you  
14 were doing for your parents on the day of Paul's  
15 injury, June 2011, was that work you were being paid  
16 for or not?

17 A Yes, I was being compensated.

18 Q Okay. So doesn't that -- isn't that contrary  
19 to the answer you just gave me then?

20 A No --

21 MR. CALLAHAN: I'd just object to form.

22 BY THE WITNESS:

23 A -- because you asked if I did it before that  
24 incident.

1           Q     No, I did ever. My word was ever, but I'll  
2 say it again. Look it, I just want the truth. I  
3 don't care. If you don't understand my question, I'll  
4 restate it.

5                     My question before, I think, if you  
6 looked at the record, said had you ever operated a  
7 chain saw for money. Now, maybe you meant before the  
8 accident --

9           A     Yes, I did.

10          Q     -- but I didn't phrase it that way.

11          A     Okay.

12          Q     So let's go back and correct it. Okay. We  
13 can do that.

14                    The question is, ever means in your  
15 lifetime. Have you ever operated a chain saw for  
16 money in your lifetime?

17          A     Yes.

18          Q     Okay. And was that -- the times you did it  
19 for money, was that only with your parents?

20          A     That one, yep, the occurrence that we're  
21 speaking of, that was the only time that I was paid.

22          Q     The day of the accident?

23          A     The day of the accident.

24          Q     All right. Okay. Before the day of the

1 accident, had you ever cut -- Strike that. Let me --  
2 Let me get ...

3 Before the day of your accident, had you  
4 ever cut any trees down with a chain saw or limbs,  
5 parts of trees, with a chain saw at your parents'  
6 house? Before the date of --

7 A Reask that question.

8 Q Pardon?

9 A Could you please reask that question?

10 Q Okay. Before the day of Paul's accident --

11 A Yes.

12 Q -- had you ever operated a chain saw at your  
13 parents' house, meaning to cut things?

14 A No.

15 Q Okay.

16 A No.

17 Q So the day of the accident was the first day  
18 in your life you ever operated a chain saw to cut  
19 things at your parents' house; fair enough?

20 A Yes.

21 Q Okay. All right. So I'm assuming, given  
22 that answer, the same answer would hold true for Paul.  
23 Paul never assisted and/or operated a chain saw to cut  
24 things at your parents' house before the day of his

1 accident; is that fair to say?

2 A Yes.

3 Q Okay. And I want to make sure you caught  
4 that I used the word assisted, meaning he never  
5 assisted anybody, whether yourself or anybody else, in  
6 the trimming of trees or cutting down of trees at your  
7 parents' house before the day of his accident; is that  
8 correct?

9 A That's correct.

10 Q Okay. Okay. Did Paul -- Well, let me ask it  
11 this way: How frequent in the year before the  
12 accident would Paul, to your knowledge, be visiting  
13 your parents' house?

14 A At least twice a month.

15 Q And would it be only to visit with you or  
16 would he be there sometimes when you wouldn't be  
17 there, to your knowledge?

18 A He would be there when I wasn't there.

19 Q When you weren't there?

20 A Yeah.

21 Q What was his -- and that's what I'm not sure  
22 about, what is his relationship with your parents that  
23 would make him come to your parents' house when you're  
24 not there, what's the --

1           A     He would show up assuming that I was there  
2     and knowing my mother since they worked at the same  
3     place of employment, interacted there, that he would  
4     sit and just speak with them on a friendly basis.

5           Q     Okay. So he was good friends with your  
6     parents?

7           A     Yes.

8           Q     Okay. Do you know if your parents still hold  
9     goodwill to him today or whether that has changed?

10          MR. BARCH: Speculation.

11         BY THE WITNESS:

12          A     I don't know. You'd have to ask them.

13          Q     Do you know if your parents have overheard  
14     Paul say anything that was uncomfortable or  
15     financially motivated relating to this claim at all?

16          A     No, I believe that they have not.

17          Q     Okay. And same with your wife? I think we  
18     already talked about that, right?

19          A     Correct.

20          Q     Okay. Would Paul have any reason, in your  
21     knowledge, to visit your parents when you weren't  
22     there? Now, I know he'd go there and you happened not  
23     to be there so he'd talk to them; but, I mean, was  
24     there anything that would take him to your parents'

1 house if he knew you weren't going to be there?

2 MR. BARCH: Speculation.

3 BY THE WITNESS:

4 A A friendship.

5 Q Go ahead.

6 A Friendship again.

7 Q Okay. So would there be times Paul would  
8 visit your parents' house merely to visit them and not  
9 even -- whether you're there or not?

10 A No, he would arrive there with the purpose of  
11 seeing me and me not being there, he would stay being  
12 congenial and friendly towards my mother.

13 Q Okay. And that's why I asked the other  
14 question; let me say it again. My question is, if  
15 Paul knew you weren't going to be at the house, would  
16 there be any -- ever any instance where you know that  
17 he would visit your parents' house anyway?

18 A That would be between Paul and my parents  
19 then.

20 Q So you don't know?

21 A I don't know.

22 Q Okay. That's what I was trying to get at.

23 A Okay.

24 Q Okay. Do you know if Paul ever worked at



1- your parents' house doing anything before the day of  
2 his accident?

3 A Yes.

4 Q What types of things would he do at your  
5 parents' house for work?

6 A Well, there was a large elm tree that was  
7 removed in the front yard by another provider; I do  
8 not know their name, and he said, I would like that  
9 firewood. So I helped him load it onto a large  
10 trailer and I believe that large pile of wood still  
11 sits on his property.

12 Q Okay.

13 A To some extent. He's used some of it.

14 Q What year would that have been?

15 A Just 2010.

16 Q Okay.

17 A Just before this incident where she was  
18 getting into the mode of upgrading the home, you know.

19 Q I get it. So it would have been the summer  
20 before this accident then?

21 A Yes.

22 Q Okay. So --

23 A Or it may -- it may have been that same  
24 summer.

1 Q Okay.

2 A That question would probably be better off  
3 answered by my mother.

4 Q So the answer is, I don't know the time,  
5 that's your answer when that happened? You don't know  
6 when that happened?

7 A It was before this occurrence and shortly  
8 before that.

9 Q Okay. But the work that you're describing in  
10 that answer that Paul did at your parents' house  
11 before the day of his accident was simply to collect  
12 wood that had already been cut up and pile it onto a  
13 truck to take it to his house?

14 A Correct.

15 Q Okay. So I guess my question was more  
16 designed toward did Paul do any work for your parents  
17 or for the property itself at your parents' property?

18 A Yeah, he --

19 Q Before the day of his accident?

20 A Yes, he moved a large load of wood onto a  
21 trailer removing it from their property for his own  
22 usage.

23 Q Okay. Just once?

24 A That day was the -- That day we made several

1 trips.

2 Q What day?

3 A I don't know exactly what day, that's what  
4 was in dis- -- and we were uncertain of as to right  
5 there but it was before this occurrence possibly that  
6 same summer.

7 Q All right. So this is what you're saying,  
8 you're saying before Paul's accident --

9 A Yes.

10 Q -- whether that year or the year before,  
11 there was an instance where an elm tree was cut down  
12 and Paul made one or more trips to collect the cut up  
13 wood on a pickup truck to take to his house?

14 A Correct.

15 Q Other than that, has Paul done any other work  
16 on your parents' house before the day of his accident?

17 A None that I'm aware of.

18 Q Okay. Do your parents have any experience or  
19 expertise in cutting down trees?

20 A No.

21 Q Okay. So other than hauling firewood from  
22 your parents' house on one or two occasions before the  
23 day of his accident, Paul never did any other type of  
24 errands around their house, the parents' house; is

1 that fair to say?

2 MR. BARCH: Foundation, but go ahead.

3 BY MR. MAST:

4 Q That you know of obviously.

5 A That I know of.

6 Q None?

7 A That I know of, none.

8 Q Okay. How long have your parents lived at  
9 that house?

10 A My mother, biological mother, has lived there  
11 since 1971.

12 Q And give us the address of the house so we  
13 could have that.

14 A 1016 West Elder, McHenry, Illinois 600, I  
15 think it's, 51 now. It may have changed.

16 Q Okay. And is that once -- And that's --  
17 After your father passed, that's where she was  
18 remarried and began to live there then, correct?

19 A She was remarried be- -- No, she was  
20 remarried before his passing.

21 Q I see.

22 A Yeah.

23 Q Okay. So until you moved out of the house,  
24 you had lived at that house almost your entire

1 childhood, right?

2 A I lived there until I was 30 years old.

3 Q Okay.

4 A 29. 29. 29 years old. 1999 June 1st I  
5 moved to my new residence, which I currently live at.

6 Q From your -- From about four years old,  
7 right?

8 A Yeah.

9 Q Okay.

10 A Yes.

11 Q All right. And let's take you to the day of  
12 the accident. When were you first -- Well, strike  
13 that.

14 On the day of the accident, on the day  
15 the accident occurred, came upon you, did you already  
16 know your parents had purchased a chain saw?

17 A Yes.

18 Q Okay. And do you know the purpose of why  
19 they purchased it?

20 MR. CALLAHAN: I'd just object as being asked and  
21 answered.

22 But you may answer.

23 BY THE WITNESS:

24 A I don't know. I don't know.

1           Q     Okay. When did you first know that they  
2 wanted you -- your parents wanted you to cut -- do  
3 some cutting with the chain saw on their property?  
4 When did you first learn that?

5           A     Actually, I offered my services to them.  
6 They had need to rebuild a shed and with the shed  
7 down, there was an opportune time for trees to come  
8 down.

9           Q     What shed down, what do you mean?

10          A     There was an old shed that if -- since it was  
11 taken down because it was in disrepair, planning to  
12 put up a new one, there was an opportunity to now drop  
13 these trees where there was a clear field, clear area.

14          Q     Fair enough. When was that that you offered  
15 your services to cut the trees down?

16          A     Two days before the occurrence.

17          Q     Okay. Were you at their house when this  
18 conversation arose?

19          A     Yes, I was.

20          Q     Okay. Was Paul with you?

21          A     No.

22          Q     It was just you and your two parents?

23          A     Yes.

24          Q     And it was discussed -- Did you bring up the

1 issue or did they bring up the issue?

2 A Well, as I've mentioned, it was an ongoing  
3 upgrading of the property and it was just discussed  
4 that now is an opportune time to do that.

5 Q My question was, who brought up the issue, if  
6 you know, about cutting the trees down?

7 A I did.

8 Q Okay. And it was something like, Hey, now's  
9 a good time with the shed down, why don't we cut those  
10 trees down?

11 A Yes.

12 Q Something like that. Okay. And there were  
13 three trees in particular that were --

14 A Two.

15 Q All right. Let me just finish the question.  
16 My question was, there were three trees in particular  
17 to cut down and you're saying there were only two?

18 A There are three trees that since that  
19 occurrence are now gone.

20 Q Right.

21 A Two of which were involved in the occurrence  
22 which were pine trees.

23 Q When you say involved in the occurrence, what  
24 do you mean?

1           A       The ones that were being trimmed up, that  
2 were being considered to be removed at that time.

3           Q       Okay. So let's go back to the conversation  
4 two days before Paul's accident when you brought up  
5 the issue of cutting the trees down, was the topic of  
6 cutting the trees down involving only two trees at  
7 that point?

8           A       Yes.

9           Q       And they were pine trees?

10          A       Yes.

11          Q       Okay. And how tall were the pine trees?

12          A       I would -- In my best guesstimate, I would  
13 say 50 feet tall.

14          Q       Both of them?

15          A       Yes.

16          Q       And they had been on the property ever since  
17 you knew?

18          A       Yes. I watched my mother plant them herself.

19          Q       Oh, okay. So when you were a very young  
20 child?

21          A       Yes.

22          Q       Okay. And what necessitated that they be  
23 removed given the rebuilding of the shed?

24          A       At that time they had become large and an



1 overburden.

2 Q Just taking up a lot of space --

3 A Yes.

4 Q -- and in the way?

5 A Yes. Hanging over the area adjoining  
6 neighbors. They were a nuisance. They needed to come  
7 down. They weren't decaying at all, but they were --  
8 they were too full.

9 Q So would the trees have been about over  
10 25 years old then at the time?

11 A Yes. Yes.

12 Q But they were in good health?

13 A Yes.

14 Q So it was elective in taking them down, not a  
15 necessity, correct?

16 A It was a necessity as to -- Well, that was  
17 the opportune time. I mean, as I said, the shed was  
18 gone, so ...

19 Q I get it. I'm saying elective meaning that  
20 they didn't have to be taken down for the safety of  
21 anybody, they were being taken down more for  
22 convenience's sake; fair enough?

23 MR. CALLAHAN: If you know.  
24

1 BY THE WITNESS:

2 A I don't know. I don't -- I don't really know  
3 at what point they chose to. I suggested that they  
4 come down and they chose to have me take them down.

5 Q Were they being taken down for any safety  
6 reason?

7 A No.

8 Q Okay. The third tree, what kind of -- The  
9 third tree that was taken down after Paul's accident,  
10 what kind of tree was that?

11 A It was an apple tree.

12 Q And that tree being taken down, at least in  
13 your view, had nothing to do with the shed issue then,  
14 right?

15 A Nothing at all.

16 Q Right?

17 A Yes.

18 Q Okay. And that's why you described earlier  
19 in the deposition the two trees, the two pine trees,  
20 were taken down in relation to this accident because  
21 you were taking trees down at the time of the accident  
22 or at least the intent was to take trees down at the  
23 time of the accident to make room for the shed?

24 A No, the shed was already standing before

1 that. It was torn down because it was in disrepair.  
2 It being torn down, it seemed as though it was an  
3 opportune time to take down these trees that were  
4 large and overgrown.

5 Q Okay. So you said, Hey, why don't we take  
6 down the trees now. It's a good time to take down the  
7 two trees, and they said yes, right?

8 A Yes.

9 Q Okay. Did you tell them how long it would  
10 take to do the work?

11 A No.

12 Q Did they offer you to pay you -- Did they  
13 offer to pay you some money to take the two pine trees  
14 down?

15 A Yes.

16 Q How much?

17 A It was a matter of hourly wage, \$15 an hour.

18 Q Was there any scope discussed as far as how  
19 long it was going to take you to do the work?

20 A No.

21 Q Any time frame on how long it would take you  
22 to do it?

23 A No.

24 Q And the scope of the work that at least as

1 discussed was just taking the two pine trees down,  
2 correct?

3 A Yes.

4 Q All right. And that would include the limbs,  
5 cutting it up into wood, and then hauling it off the  
6 property?

7 A Not hauling it off the property; that's why I  
8 was cutting up the limbs to stack it on the property.

9 Q Okay. So that -- Just fair enough. I just  
10 want to get the scope of it. The scope was cutting  
11 the tree down, including all limbs and parts of the  
12 trees, the two trees, and getting them cut up into  
13 stacks and then stacking the wood?

14 A Yes.

15 Q And then that would be the end of the work?

16 A Yes.

17 Q Okay. And it only involved those two pine  
18 trees, right?

19 A Yes.

20 Q Are you aware of any photographs that show  
21 those pine trees before they were cut?

22 A No.

23 Q Or during them being cut?

24 A No.

1 Q Or after they were cut?

2 A No.

3 Q Or how they are today?

4 A No.

5 Q Okay. Once you discussed two days before  
6 Paul's accident doing the work and how much you were  
7 going to get paid, what was the next step in your  
8 preparation for doing the work?

9 A I by myself trimmed the trees up to about  
10 40 --

11 Q No. No. You went -- You jumped too far  
12 ahead. Let me just -- I said the next step. So the  
13 next step would be two days later showing up on the  
14 property, getting ready to cut them off then, I'm  
15 assuming, right?

16 A Mm-hmm.

17 Q Yes?

18 A Yes.

19 Q Did you do anything in the interim to  
20 prepare, like go buy a set of gloves or something?  
21 I'm just trying to find out what you had to do.

22 A No.

23 Q Okay. When you cut trees of this size and  
24 nature down, do you have to wear goggles?

1 A I suppose that a person should.

2 Q Did you?

3 A No.

4 Q Did you wear a helmet?

5 A No.

6 Q Gloves?

7 A Yes. Yes.

8 Q Okay. Work gloves?

9 A Yes.

10 Q Boots?

11 A I can't recollect if I was wearing boots or  
12 shoes that day.

13 Q Okay. Any other type of particular things  
14 that you would wear specific to cutting trees down?

15 A No.

16 Q Other than gloves and clothes?

17 A No.

18 Q No. Okay.

19 Who decided the day that you were going  
20 to start the work?

21 A I did.

22 Q Okay. Did you just show up out of the blue  
23 or did you say, I'll be back in two days to start the  
24 work?

1           A     I said that I'll be back and start the work  
2     on a pre- -- on the day, you know, the day I began --

3           Q     Okay.

4           A     -- which is two days before Paul's -- the  
5     incident happened.

6           Q     Right. So we're two days before the  
7     accident, you talked about what you were going to do,  
8     how much it was going to cost, blah-blah-blah, and  
9     then did you say, I'll come back in two days to start  
10    the work, or how was it decided when you were going to  
11    start the work?

12          A     It's my mother. It's kind of a free -- You  
13    know, it isn't like I've got to show up for work at  
14    10:00 o'clock. It wasn't really decided. I showed up  
15    at my own accord and began to work.

16          Q     That's all I'm asking you.

17          A     And then I --

18          Q     That's fine. So you showed up when you  
19    wanted to, right?

20          A     Yes.

21          Q     Okay. So there wasn't any preset day that  
22    you were going to start the work?

23          A     No.

24          Q     Is that correct?

1           A     That's correct.

2           Q     Okay. And when you showed up on June 28,  
3     2011, was that the only thing you were going to do  
4     there that day at your parents' house is cut those two  
5     trees down?

6           A     That day that I showed up, I was only going  
7     to trim the branches off of the trees.

8           Q     Prepare them for, like, the next day's work  
9     of starting to cut them down?

10          A     Yes.

11          Q     Okay. Were there a lot of branches on each  
12     tree?

13          A     Yes, it's a pine tree.

14          Q     Okay.

15          A     There's many branches on pine trees.

16          Q     And the branches can get thick as well,  
17     right?

18          A     Thick by way of ...

19          Q     By way of being just thick.

20          A     Diameter?

21          Q     Yeah.

22          A     No, not really. Branches --

23          Q     I mean, we're not talking like a half an inch  
24     around. We're talking they can be several inches



1 around even on the branches.

2 A There were no limbs on that tree that were  
3 probably over 3 inches in diameter.

4 Q Okay. Fair enough. Let me ask that then,  
5 just it sounds like you have some understanding. Of  
6 the two trees, how many trees would you say were about  
7 3 inches in diameter on both trees?

8 A How many branches?

9 Q Were 3 inches in diameter at one side or one  
10 end?

11 A Between the two trees?

12 Q Yep.

13 A Six.

14 Q Okay.

15 A The lowermost were the thickest.

16 Q And were you going to start at the bottom and  
17 go up or start at the top and go down?

18 A Start at the bottom and go up.

19 Q Okay. So if the first day of work -- And  
20 that was the day Paul was injured, the first day of  
21 work, right?

22 A No. The first day of work that I performed  
23 on those trees was the day before Paul showed up. I  
24 had already cut down all the limbs off the trees.

1           Q     All right. Hold on. You're going too fast  
2     so --

3           A     Okay.

4           Q     -- let's slow down a little bit. You showed  
5     up two days after speaking to your parents to work so  
6     that would have been the day before Paul's accident?

7           A     Yes.

8           Q     Okay. So that would have been the 27th?

9           A     Yes. It was preparatory work, you know ...

10          Q     I understand that, but I want to go step by  
11     step. So on June 27 you show up at your parents'  
12     house?

13          A     Yes.

14          Q     Which is two days after you first talk to  
15     them about this and you showed up to do the  
16     preparatory work?

17          A     Yes.

18          Q     Okay. And how long were you on their  
19     property that day, on the 27th?

20          A     Four hours.

21          Q     And what did you do during that four hours on  
22     the 27th?

23          A     I trimmed branches up to about 40 feet on  
24     both trees.

1 Q Up?

2 A Up. From the bottom going up.

3 Q You've got to let me -- We've got to go back  
4 and forth with this because I'm not going to  
5 understand you. You're saying from the ground up  
6 40 feet high you trimmed all the trees off of those  
7 two trees -- all the branches off those two trees on  
8 June 27th?

9 A Yes.

10 Q And they were now all on the ground, those  
11 limbs?

12 A Yes.

13 Q Correct?

14 A Yes.

15 Q How many limbs are we talking?

16 A I don't know.

17 Q Like 30, something like that?

18 A I would say more than that. You're talking  
19 about 40 or 50 feet and if a pine tree has a limb at  
20 every foot or so, you can pretty much figure out it  
21 probably would be more like hundreds.

22 Q Hundreds of limbs?

23 A Yeah.

24 Q Okay. Varying sizes?

1 A Yes.

2 Q Okay.

3 A Decreasing in diameter as we went higher, of  
4 course.

5 Q Okay. And did you work by yourself on that  
6 day, the 27th?

7 A Yes.

8 Q So Paul was not on the property on that day,  
9 correct?

10 A Correct.

11 Q By the time you were working on the property  
12 on June 27th, 2011, did Paul know the work you were  
13 doing?

14 A I don't know.

15 Q Okay. When did you first talk to Paul about  
16 what work you were going to do on your parents' house  
17 with these trees in June?

18 A On the 28th I had made my travels to my  
19 mother's house after doing the preparatory work on the  
20 27th, and I figured that Paul, since he was sitting  
21 idle and unemployed and we worked together on trees  
22 before, that he would possibly want to give a hand in  
23 helping me to get rid of the scrub that was already on  
24 the ground.

1 Q So you called him?

2 A I stopped by his home.

3 Q Before getting to your parents' house?

4 A Yes.

5 Q And was Paul home?

6 A Yes.

7 Q And did you say, Hey, I'm cutting some trees  
8 down at my parents', do you want to help clean some of  
9 it up?

10 A That's what I said.

11 Q Okay. Did you say anything else differently  
12 than what I've just said?

13 A No, basically would you like to give a hand  
14 at my mother's property to help me clean up the brush  
15 I cut down.

16 Q Now, my assumption, you can correct me if I'm  
17 wrong, but at least that conversation at Paul's house  
18 the day of his accident, my assumption is you weren't  
19 asking him to help you cut the tree down, but you were  
20 helping him deal with what was already cut?

21 A Yes.

22 Q Okay.

23 A Our intentions that day were not to take the  
24 trees down; it was to clean up the brush on the ground

1       itself that I already cut the day before.

2           Q       Was your intention on that day, the 28th, to  
3       do any use of the chain saw?

4           A       Yes.

5           Q       Okay. You were going to cut up the limbs  
6       that were already on the ground?

7           A       Yes.

8           Q       Had you begun to cut any of the limbs on the  
9       ground the day before?

10          A       The larger ones I had already cut on my own  
11       into sections.

12          Q       On the 27th?

13          A       On the 27th, yeah.

14          Q       Okay.

15          A       And then realized I'm going to need help.

16          Q       Okay.

17          A       You know, there's a lot here.

18          Q       So the 27th now, the four-hour work you --

19          A       Yeah.

20          Q       -- the four-hour work you did on the 27th  
21       included trimming up 40 feet on each tree and then  
22       trimming up some of the larger limbs that are on the  
23       ground now cutting them up?

24          A       Yes.

1 Q Okay. Then you get to the 28th and realize  
2 this is a pretty big amount of work to do, you could  
3 use some help?

4 A Yes.

5 Q Okay. And what specific task did you expect  
6 Paul would be needed to do at your parents' house when  
7 you spoke to him that morning before going to the  
8 house?

9 A There was really no outline. I just simply  
10 went to a friend's house and asked him if he'd like to  
11 help me with my chores that I was doing that day. I  
12 told him it was brush that was on the ground, and I  
13 would like to cut it up for firewood or just to get --  
14 consolidate it into a pile so it could be stacked.

15 Q Were you planning on him using the chain saw  
16 at all?

17 A No.

18 Q Okay. You were going to be the one to use  
19 the chain saw?

20 A Yes.

21 Q And did he ever use the chain saw that day?

22 A No.

23 Q Okay. And I mean the day of his accident, he  
24 never used a chain saw?

1           A     Correct, he did not use the chain saw on the  
2 day of his accident.

3           Q     Okay. All right. Now, when you use the word  
4 brush, having Paul help you clean up brush, you mean  
5 the limbs that are on the ground that you cut the day  
6 before, right?

7           A     Yes.

8           Q     Okay. Not just a bunch of leaves and stuff.  
9 It was the limbs, the actual limbs themselves?

10          A     The actual limbs, yes.

11          Q     So the assistance that Paul was going to give  
12 since he wasn't going to be using the chain saw the  
13 day of his accident, was that to hold the limbs while  
14 you cut them up?

15          A     It wasn't intended to be that way and I  
16 didn't direct him to do so. We just kind of got to  
17 work and that's the technique that we both were  
18 comfortable with --

19          Q     Okay.

20          A     -- and then from there moved forward with  
21 doing that.

22          Q     Fair enough. So the morning of Paul's  
23 accident before you got to your parents' house when  
24 you went to Paul's house to talk to him, you didn't



1 talk details, you just said, Hey, Paul, I need some  
2 help cutting up some brush at my parents' house, can  
3 you give me a hand?

4 A Yes.

5 Q Okay. And he said yeah?

6 A He said yes.

7 Q Did you work on any arrangement where he  
8 would get paid or was it just for him to volunteer?

9 A At that time there was no questions about  
10 money.

11 Q Okay. What was your assumption then, if you  
12 had any?

13 A That maybe we can get the job done before the  
14 day was over.

15 Q So all the limbs that you had already cut  
16 that were on the ground, which you described as maybe  
17 hundreds, hundreds in plural --

18 A Mm-hmm, right.

19 Q -- you were hoping to at least get those all  
20 cut up that day?

21 A Yes.

22 Q Okay. And what was your assumption as far as  
23 what, if anything, you were going to pay Paul, if you  
24 were going to pay him anything? I don't know.

1 A Equal to what I was being paid, \$15 an hour.

2 Q Oh, so your parents were going to pay now  
3 both of you \$15 an hour?

4 A I was assuming that they would.

5 Q Okay. Did they ever agree to before Paul's  
6 accident?

7 A No.

8 Q Okay. Had you ever talked to Paul about that  
9 arrangement before his accident?

10 A No.

11 Q Okay. That was just your -- kind of your --

12 A Yeah, I was going to --

13 Q Hold on. Hold on. Let me finish the  
14 question. That was just your kind of own assumption?

15 A Yes.

16 Q Okay. Did Paul leave with you to go to your  
17 parents' house or did he come at a different time in a  
18 different vehicle?

19 A He came about a half-hour after I had asked  
20 him to in his vehicle. Could have been more.

21 Q Okay.

22 A Somewhere between a half-hour and an hour  
23 before he arrived.

24 Q Fair enough. What time did you arrive at

1 your parents' on the day of Paul's accident on the  
2 28th?

3 A 10:00, 11:00 o'clock. Before noon.

4 Q Okay.

5 A That's the best I can recollect.

6 Q Okay. And how long did you anticipate it was  
7 going to require both you two to cut up these trees as  
8 you said completely?

9 A I have no --

10 Q These limbs. I'm sorry.

11 A I had no estimate in my mind or need to  
12 construct one. I just was going to work with a friend  
13 and get the job done.

14 Q Okay. Were you expecting, though, that it  
15 would be done that day?

16 A I was hoping. I wasn't expecting.

17 Q Okay. Okay. So if you arrived from 10:00 to  
18 11:00 sometime that day of Paul's accident, you're  
19 saying Paul would arrive somewhere around 10:30 to  
20 11:30?

21 A Yes.

22 Q And he arrived alone in his car?

23 A Yes.

24 Q Okay. And we're going to have to use some

1 kind of time frame that we can agree on even though  
2 we're not sure just so that we can do the  
3 chronological order of things here. So if we assume  
4 that -- and, again, I know this is just an assumption  
5 but just for the purposes of figuring out when things  
6 happened, if we assume you arrived at 11:00 and Paul  
7 arrived at 11:30, okay?

8 A Mm-hmm.

9 Q All right?

10 A Yes.

11 Q How soon after Paul arrived at 11:30 would  
12 his accident have occurred?

13 A I believe about an hour.

14 Q So if he arrived at -- If Paul arrived at  
15 11:30, his accident happened around 12:30; fair  
16 enough?

17 A Yes. Or if arriving at 10:30, the accident  
18 happened at 11:30.

19 Q I get it. I get it. We can do that, I'm  
20 just -- I want to get the chronological time frame.  
21 So if we assume you get there at 11:00, Paul got there  
22 at 11:30, his accident happened around 12:30; fair  
23 enough?

24 A Yes.

1 Q Okay. And when Paul's accident occurred, he  
2 was in the midst of helping you cut up these trees,  
3 right?

4 A Yes.

5 Q Okay. Other than you and -- Were you also in  
6 the midst of cutting down -- helping cut up the trees?

7 A Yes, I was -- Yes, when he showed up, I was  
8 already in the process of working.

9 Q All right. So when Paul's accident occurred,  
10 both of you were working together to cut up these  
11 trees?

12 A Yes.

13 Q Was anyone else working with you two?

14 A No.

15 Q Was anyone else watching you two?

16 A No.

17 Q Were your parents in or out of the house  
18 during the time that Paul had arrived up to the time  
19 of his injury?

20 A They were in the house.

21 Q Okay. Do you know if your parents even knew  
22 Paul was over?

23 A Yes, they did because when I arrived I told  
24 them that Paul would be coming over to help me.

1 Q Okay. And that's fine but that's not quite  
2 what I was asking. Do you know if your parents knew  
3 he was actually on the property at the time of the  
4 accident?

5 A Yes, they did know that he was on the  
6 property.

7 Q How did they know that?

8 A Because his vehicle was parked outside and  
9 they could visually see that his vehicle was there.

10 Q Okay. And they can connect the dots; I get  
11 it.

12 A They see him. Okay. Sorry.

13 Q I can't talk while you're talking. Let me --

14 A I know.

15 Q My question was, at the time of Paul's  
16 accident do you know if your parents were aware that  
17 he was on their property? Even they could have looked  
18 out and saw the car, I get it, but do you know if they  
19 were aware?

20 A I don't know.

21 Q Okay. Do you know anyone that was aware Paul  
22 was on your parents' property at the time of his  
23 accident other than you?

24 A No, I do not know.

1           Q     Okay. Were there any visitors or witnesses  
2 to the work on the property at your parents' house for  
3 the hour Paul was there leading up and at the time of  
4 his accident?

5           A     No.

6           Q     Okay. So the only witnesses you're aware of  
7 of the circumstances leading up to the accident and  
8 Paul's accident itself, the only witnesses to that are  
9 you and Paul, right?

10          A     Correct.

11          Q     Okay. All right. Now, I've got to ask a few  
12 questions that -- don't take it personally but these  
13 are just questions we always ask in these depositions  
14 of witnesses, okay? So it's nothing against you, it's  
15 just we always ask these.

16                     Any alcohol to drink that day?

17          A     I don't drink alcohol.

18          Q     Okay. Any medications?

19          A     None.

20          Q     Any drugs anyway?

21          A     No.

22          Q     Any type of drugs?

23                     Paul, same question for Paul, if you  
24 know, drugs, alcohol?

1           A     Paul's not a drinker to my knowledge, and I  
2     wouldn't know about any prescribed drugs because I'm  
3     not him.

4           Q     Okay. Did Paul seem to be acting normal  
5     leading up to the time of his accident?

6           A     Yes.

7           Q     Were you having any internal stressors or any  
8     problems internally for you at the time of this?

9           A     No.

10          Q     Okay. Were your parents keeping any type of  
11     watch over the work you were doing to kind of see how  
12     things progressed?

13          A     No.

14          Q     Okay. So the -- from the beginning to the  
15     end, the work that was being done by you to cut the  
16     trees up was done under your own supervision, under  
17     your own control?

18          A     Under my supervision.

19          Q     Yeah. Was anybody telling you what to do and  
20     how to do it?

21          A     No.

22          Q     Were your parents in any way telling you how  
23     to do things as far as cutting up the trees?

24          A     No.



1           Q     How you did it, the method and means for  
2 cutting up the trees, was that done under -- by your  
3 own control and your own decisions?

4           A     By my own decisions.

5           Q     Okay. The manner in which the work was being  
6 done at the time of this accident, was that done in  
7 the manner that you wanted it to be done?

8           A     Until Paul arrived.

9           Q     Okay. How about when Paul arrived, did he  
10 change things?

11          A     He chose -- He chose to take up his own  
12 technique or helping, and I went along with it because  
13 we worked together in a good fashion for so many years  
14 previous to that.

15          Q     Leading up to the time of his accident, okay,  
16 was Paul doing anything wrong working at the property?

17          A     No.

18          Q     Okay. Was he doing everything appropriately?

19          A     It seemed so.

20          Q     Okay. And did you have to criticize him or  
21 instruct him to do things differently because you were  
22 not happy with the way Paul was doing his work leading  
23 up to the time of his accident?

24          A     No, I gave no instruction basically to him.

1           Q     You left it up to him to do the best for him  
2     and you did the best for you?

3           A     We've worked well together in the past.  
4     There was no need for instructions. It was a mutual  
5     understanding of two men working together.

6           Q     Okay. But is my question correct, you left  
7     Paul to work appropriately under his own control and  
8     you were to work appropriately under your own  
9     control --

10          A     Yes.

11          Q     -- correct?

12          A     Yes.

13          Q     Okay. And leading up to the time of Paul's  
14     accident, did you notice Paul doing anything unsafe or  
15     wrong in your view?

16          A     No.

17          Q     Leading up to the time of the accident, did  
18     you believe you were doing anything unsafe or wrong in  
19     the process of the work leading up to Paul's accident?

20          A     No.

21          Q     Okay. When Paul was -- Well, Paul was  
22     eventually cut by your chain saw, correct?

23          A     Paul was cut by a chain saw.

24          Q     A chain saw that you were using and

1 operating, right?

2 A Correct.

3 Q Okay. I said your chain saw and you're  
4 probably saying well, it wasn't my chain saw; that's  
5 what you're thinking, right?

6 A That's correct, yeah.

7 Q Okay. But it was -- When I meant your chain  
8 saw, I meant the chain saw you had control of,  
9 correct?

10 A Then that's what I'll agree to, yes.

11 Q All right. So you're agreeing and accepting  
12 the fact that Paul was, during the process of working  
13 at your parents' house, cut by a chain saw while you  
14 were holding the chain saw and while it was running,  
15 correct?

16 A Yes.

17 Q Okay. And -- Oh, here it is. I was looking  
18 all around for these; they're right in front of me.

19 These photographs were marked during  
20 Paul's deposition, okay? All right?

21 A (Nodding.)

22 Q You have to answer a word.

23 A Yes.

24 Q All right. Do you know, without looking at

1 the photograph, where Paul was cut by the chain saw  
2 you were operating at the time of his accident on  
3 June 28, 2011, on his body, where?

4 A Yes, exactly where.

5 Q Where?

6 A On his right forearm.

7 Q Okay.

8 A (Indicating.)

9 Q Is that the only place he was cut?

10 A Yes.

11 Q Okay. I'm going to show you a photograph. I  
12 just want to make sure it's the same injury that he  
13 talked about, okay?

14 MR. CALLAHAN: Can I take a look? Thanks.

15 BY MR. MAST:

16 Q We've got what's marked as Exhibits 2A, 2B,  
17 2C, 2D, 2E, 2F, 2G, 2H, 2I, 2J, okay?

18 A Yes.

19 Q These aren't all I'm going to ask you about  
20 but the first page, 2A, does that appear to show his  
21 right arm and the scarring where he was cut by the  
22 chain saw you were operating at the time of his  
23 accident?

24 A Yes.

1 Q Okay. Is that the only spot he was cut shown  
2 in this photograph?

3 A Yes.

4 Q Okay. And maybe you can't tell on 2B, but I  
5 think that's the same injury. Can you tell?

6 A Sure looks good to me.

7 Q Looks like the same one?

8 A Yeah.

9 Q Okay. How about 2C, does that look like the  
10 same injury?

11 A Yes, it does.

12 Q 2D. If he has his hand down to his right, it  
13 would be on the backside of the --

14 A Yes.

15 Q -- forearm, correct?

16 A Yes.

17 Q And that's where it shows on 2D?

18 A Yes.

19 Q And that's the injury that was caused by the  
20 chain saw you were operating at the time of the  
21 accident?

22 A Yes.

23 Q Okay. All right. So Paul arrived about a  
24 half an hour to your parents' house after you arrived

1 on June 28, 2011, right?

2 A Yes, about a half an hour.

3 Q And by that time, when Paul arrived at your  
4 parents' house, you had already been working?

5 A Yes.

6 Q Okay. So you had the chain saw in hand and  
7 you were cutting things or not?

8 A No.

9 Q What were you doing?

10 A I was sorting.

11 Q You were what?

12 A Sorting the branches. When you have pine  
13 trees, they get snagged, snarled, and tangled  
14 together. I was placing them so that they could be  
15 fed in a safe manner as, you know, to lift it up and  
16 to work with it.

17 Q Okay. What was the manner which you wanted  
18 to use to -- Well, strike that.

19 Having Paul come and assist you, did you  
20 have an expected manner in which you preferred to have  
21 him assist you?

22 A No.

23 Q So you just left it up to him to decide?

24 A Well, he showed up and as I had said, we just

1 worked well together. We understood one another.

2 Q But my question was --

3 A I didn't specifically have any expectations  
4 or did I direct him to do anything.

5 Q So my question then was, did you just leave  
6 it up to him to decide what to do and how to help you  
7 or did you have to tell him, Hey, hold that branch.  
8 I'll cut that branch?

9 A I left it up to him.

10 Q So how would he know what branch you wanted  
11 to cut unless you told him what branch to cut?

12 A He didn't cut. He held.

13 Q How did he -- I'm sorry. I didn't say it  
14 right. How did he know what branch to hold unless you  
15 told him what branch to hold?

16 A I didn't tell him. He chose --

17 Q How would he know then is the question.

18 A You'd have to ask him. I don't know.

19 Q Well, was he supposed to just guess what  
20 branch to hold on to?

21 A There was no guessing, but ...

22 Q How was he going to know then?

23 A Because we've done this before. We've  
24 watched each other work. We've worked with tools

1 before in the past.

2 Q Okay. But that's not my question, okay?  
3 We're hoping that he's going to hold the branch you're  
4 going to end up cutting, right, the same branch?

5 A I never intended him to hold the branch.

6 Q Okay.

7 A He chose to hold the branches.

8 Q All right. So you're telling me -- Well,  
9 what work were you wanting Paul to help you with then?

10 A There was moving material, there was stacking  
11 wood, there was raking the ground.

12 Q Moving material, stacking what?

13 A Stacking wood.

14 Q Okay.

15 A And raking.

16 Q Was there a rake available?

17 A Was there a rake available?

18 Q Mm-hmm.

19 A Yes.

20 Q Okay. Stacking wood meaning after it's all  
21 cut up into little foot pieces, you would stack them  
22 up --

23 A Into 18 inch pieces.

24 Q -- to store them, correct?



1           A     Into 18 inch pieces and then stack, yeah.

2           Q     You're doing fine but please let me finish my  
3 question before you get to the answer, okay, because  
4 we're going to have a hard time if we don't have  
5 separation, okay? So maybe give me one beat after I'm  
6 done and then give me your answer, okay?

7                     Moving material meaning what?

8           A     Once it's cut, to stack it and then to clean  
9 up the area where we were working.

10          Q     All right. So moving material, stacking the  
11 wood, and raking up the debris, those were the three  
12 things you envisioned Paul was going to assist you  
13 with?

14          A     Yes.

15          Q     Okay. Before Paul arrived at the property,  
16 were you envisioning that he was going to help hold  
17 some of the branches so you could cut them?

18          A     No.

19          Q     That was not even in the back of your mind?

20          A     No.

21          Q     Okay. Did you not want Paul to help hold the  
22 branches or you just didn't know if he was going to or  
23 not?

24          A     I didn't know that he was going to do that.

1 Q Okay.

2 A No.

3 Q Did you want him to hold the branches or did  
4 you not want him to hold the branches or did you not  
5 care?

6 A It wasn't a matter of not caring. He chose  
7 to and then we went with it.

8 Q Okay. So was that appropriate for you that  
9 he hold the branches for you then?

10 A It seemed to be appropriate at the time.

11 Q Okay. I'm just trying to find out whether he  
12 was holding these branches --

13 A I understand.

14 Q Hold on. Hold on. I'm trying to find out  
15 whether he's holding these branches against your will  
16 or not. Obviously there was some --

17 A No, he was not holding them against my will.  
18 He was helping --

19 MR. CALLAHAN: Wait until he finishes the  
20 question.

21 THE WITNESS: Okay. I thought he was finished.  
22 BY MR. MAST:

23 Q So he was holding the branches ultimately and  
24 eventually with your acceptance and permission; fair

1 enough?

2 A Acceptance, yes.

3 Q Well, if you didn't permit him to do it, you  
4 would have told him not to, right?

5 A I don't control Paul's hands nor did I direct  
6 him to do it at that time. He chose to pick them up  
7 and we both started working together and that's the  
8 method we chose. It wasn't like hey, this is right or  
9 wrong; we just went to work.

10 Q I understand. This is what I'm saying, if  
11 Paul did something you didn't want him to do, you  
12 would tell him not to do that, I assume, right?

13 A I suppose, yeah.

14 Q Okay.

15 A Yes.

16 Q Did you ever have to tell Paul not to do  
17 something before he got hurt and got cut by the chain  
18 saw?

19 A No.

20 Q Okay. So up to the time that Paul got hurt,  
21 he was doing the work in a way that was okay to you,  
22 correct?

23 A Yeah.

24 Q Okay.

1           A     Yes.

2           Q     And he was doing the work in an appropriate  
3 way to you, correct?

4           A     Appropriate?

5           Q     Yes.

6           A     To me?

7           Q     Right.

8           A     Acceptable. I don't know about appropriate.  
9 If you want to look up what is the definition of  
10 appropriate.

11          Q     Okay. You just don't know what the word  
12 means. Okay. Because I can -- I can use a different  
13 word.

14          A     Oh, no, I know what the word means, it's the  
15 way you're using it. You're telling me that I deemed  
16 it appropriate that his actions what he was doing  
17 without me telling him to do anything different were  
18 okay or not okay, and what I'm saying is that it was  
19 two friends -- Let me just have one moment.

20          Q     Go ahead.

21          A     And it was two friends working together who  
22 have worked in similar situations, and I guess our  
23 assumption in it was that we knew what we were doing,  
24 the both of us. I didn't think that Paul would

1       jeopardize himself or me and likewise.

2               Q       Okay.

3               A       That's where we were at.

4               Q       So my question is, was Paul doing everything  
5       leading up to the time he was hurt in an acceptable  
6       fashion to you?

7               A       Yes.

8               Q       Was he doing anything inappropriate before he  
9       got hurt?

10              A       No.

11              Q       Okay. Had he been doing -- Had Paul been  
12       doing something inappropriate prior or at the time he  
13       got hurt, you would have told him not to do that,  
14       correct?

15              A       Again, inappropriate, I don't under- --

16              Q       Okay. If he was doing something unsafe, you  
17       would have told him not to do something unsafe,  
18       correct?

19              A       That wasn't even really considered. It  
20       wasn't -- I'm honestly telling you that it wasn't a  
21       thought in my mind at the time.

22              Q       I'm not asking you if you considered it. If  
23       you can say -- Hold on. Wait. You stopped. Let me  
24       go. If you don't know, you can just say I don't know

1 but the question is if Paul was doing something  
2 unsafe, would you have told him or directed him not to  
3 do something unsafe?

4 A Yes.

5 Q Okay. That's all I'm asking. So your  
6 testimony is that you never told Paul once what to do  
7 prior to his injury on that property, correct?

8 MR. CALLAHAN: I just object as to form of the  
9 question.

10 BY MR. MAST:

11 Q Is that correct or not?

12 MR. CALLAHAN: You may answer.

13 BY THE WITNESS:

14 A Ask the question again, please.

15 Q My under- -- Strike that.

16 Did you ever tell Paul what to do or how  
17 to do it before he got hurt by being cut by the chain  
18 saw on the date of his accident --

19 A No, I did not.

20 Q -- at your parents' house? Huh?

21 A No, I did not.

22 Q Never told him what to do?

23 A No.

24 Q Never told him how to do it?

1           A     No.

2           Q     Okay. So when he first arrived at, let's  
3 say, 11:30, what was the first thing he did?

4           A     He was watching me sort the branches and  
5 said, What can I do to help? And I said --

6           Q     Let's go step by step. Okay. So he was  
7 watching you sort branches, right?

8           A     Yes.

9           Q     Okay. I want to go just step by step now  
10 because we're going to get toward the accident and I  
11 don't want to go too fast, okay?

12          A     Okay.

13          Q     So let's go step by step here. He got there.  
14 You were sorting branches. You mean putting them in  
15 piles?

16          A     No. They were already in a pile and as I had  
17 mentioned earlier, pine, when you cut it, it needs to  
18 be addressed or orientated. If you put branches like  
19 this, it's going to pull out unsafely. So if you  
20 stack them with the cut ends like this, you can easily  
21 pull them off one another.

22          Q     Okay.

23          A     That's why I was sorting, so that it would  
24 go ...

1           Q     I got it. Sorting branches. Paul gets there  
2 and says, Can I help, right?

3           A     How may I help.

4           Q     How may I help. Okay.

5                     And what do you say?

6           A     I said, Well, I'm sorting branches. I guess  
7 you can start by doing that.

8           Q     Okay. So you had him start sorting branches  
9 with you then?

10          A     Yes.

11          Q     Okay. And how long was he sorting branches  
12 with you?

13          A     Maybe another 15 minutes after I had spent  
14 some time doing it myself.

15          Q     All right. So -- Got you. So now we're at  
16 about -- and I know these are just guesstimates, but I  
17 just want to get a chronology. We're at about 11:45  
18 now, okay?

19          A     Mm-hmm.

20          Q     Yes?

21          A     Yes.

22          Q     What happens next?

23          A     The piles were sorted, time went by and chose  
24 to start cutting the branches up. At first we had



1 placed them on these horses.

2 Q Well, wait. You're going into detail now. I  
3 want to go step by step. The next step; that's all I  
4 asked.

5 A Okay.

6 Q The next step was to start cutting the  
7 branches up?

8 A Yes.

9 Q Okay. Who decided to start cutting the  
10 branches up? Was that your decision?

11 A Yes.

12 Q Okay. So after the piles were sorted, you  
13 said, Let's start cutting the branches, right?

14 A Yes.

15 Q Okay. And did he say, Can I help?

16 A He was there to help. I don't recollect if  
17 he specifically said --

18 Q Okay.

19 A -- that.

20 Q So when you started cutting the branches,  
21 what was Paul's task during the cutting of the  
22 branches?

23 A To put them on the horses.

24 Q The sawhorses?

1 A Yeah.

2 Q How many sawhorses do you have?

3 A There was two there.

4 Q And how far apart were they spaced?

5 A Four feet.

6 Q And were you going to be putting them on the  
7 sawhorses too or was that only what Paul was going to  
8 do?

9 A That's what Paul was going to do, remove them  
10 from the sorted piles onto the sawhorses.

11 Q And when he puts them on the sawhorses, you  
12 were going to cut them up with a chain saw?

13 A Yes.

14 Q Okay. Who told Paul or who gave Paul that  
15 job task? Was that you?

16 A Yes.

17 Q Okay. So the next step, piles are sorted  
18 now, let's start cutting the branches. Paul, why  
19 don't you put the branches on top of the sawhorses and  
20 me, meaning you, I'll cut these branches on the  
21 sawhorses up with the chain saw. That's the -- what's  
22 going on, right?

23 A Yes.

24 Q Okay. How long did that occur?

1           A     Ten minutes.

2           Q     All right. So we're getting close now to  
3 noon. What happens next?

4           A     Paul opted to stand them up.

5           Q     Wait. Wait. Say that again. I missed that.

6           A     Paul opted to stand them up instead of  
7 working on the sawhorses, and I just continued  
8 cutting. It seemed like it was okay to do.

9           Q     Okay. Fair enough. So instead of putting  
10 the branches across the two sawhorses, you're saying  
11 Paul on his own opted to stand them up aside of the  
12 sawhorses?

13          A     Yes.

14          Q     So it would be leaning up against just one  
15 sawhorse?

16          A     No, freestanding large end.

17          Q     Oh, you mean and hold them with his hand?

18          A     Hold them with his hand. He was holding them  
19 with his left hand to make a point of that.

20          Q     Got you. Got you. Okay. So instead of  
21 using the sawhorses, you're saying Paul decided to  
22 hold them by himself with his left arm up while you  
23 cut them from ground up; is that right? I need an  
24 answer.

1 A Top down.

2 Q Okay. So let me say it again then. Instead  
3 of using these sawhorses, you're saying Paul took it  
4 on his own to hold the branches with his left arm up  
5 and the branches down to the ground and you would cut  
6 from the top down to the ground each branch, right?

7 A Yes.

8 Q And that was Paul's chosen way that he was  
9 going to hold the branches?

10 A Yes.

11 Q Did you in any way voice any objection to him  
12 doing it that way?

13 A No.

14 Q Okay. And for how long a period of time were  
15 you cutting these branches in that manner where Paul  
16 was holding them up with his left arm to the ground  
17 and you were cutting them from the top down?

18 A 20 minutes.

19 Q Okay. So now we're at about 12:20, if my  
20 math is correct. Is that about right?

21 MR. BARCH: Hans?

22 MR. MAST: Yes.

23 MR. BARCH: Can I just ask, are these little  
24 horizontal cuts or are we talking --

1 MR. MAST: Well, I was going to get to that. I  
2 want to first get the time line down. Yeah, we'll get  
3 to that, but I will ask it now then.

4 BY MR. MAST:

5 Q So Paul is holding the limb -- the branches  
6 up with his left arm over his head, the branch is now  
7 from his left arm and hand going down to the ground  
8 and you were starting up below his hand and cutting  
9 every 18 inches?

10 A No, I was cutting the branches off of the  
11 limb.

12 Q Got it. So you were cutting vertically up  
13 and down. While he was holding the tree vertically,  
14 you were cutting the horizontal branches in a vertical  
15 fashion --

16 A Yes.

17 Q -- from a top to a bottom?

18 A Yes.

19 Q And I imagine each branch has probably 30,  
20 40, 50 little --

21 A I would --

22 Q -- branches off of it?

23 A I would say --

24 Q Hold on. Let me finish the question.

1           A     Okay. Sorry.

2           Q     Let me say it again now. Every branch or  
3 limb or whatever that Paul's holding above his head  
4 with his left arm, I'm assuming those branches, if  
5 they're reaching to the ground, are going to have 30  
6 to 40 little branches coming off of it horizontally,  
7 correct?

8           A     Not that many.

9           Q     Okay. Maybe 20 then?

10          A     Or less.

11          Q     Okay. So those are the 20 little branches  
12 coming off of that branch that Paul was holding  
13 vertically that you were cutting?

14          A     Yes.

15          Q     And then the branch would be left bare branch  
16 from his hand to the ground?

17          A     Yes.

18          Q     And then what would he do with that branch  
19 then, set it on the sawhorses to be cut up?

20          A     Set it off to the side. We never got to  
21 actually cutting up the whole load of wood because of  
22 what --

23          Q     Happened?

24          A     -- happened, yeah.

1 Q His injury?

2 A Yes.

3 Q Okay. So for 20 minutes you and Paul worked  
4 where he would hold a limb up with his left hand over  
5 his head and the branch would be vertically down to  
6 the ground and you would be cutting from top to bottom  
7 each of the little limbs, 20 or so, off of that branch  
8 he was holding?

9 A Correct.

10 Q And how many separate branches did you do for  
11 that 20 minutes? How many separate branches did Paul  
12 have to hold?

13 A I'll estimate between 25 and 30.

14 Q Okay. And then what happened after that  
15 20 minutes of doing that work? What was next?

16 A We arrived at a branch being held in the same  
17 fashion that was a little flimsy and in making the  
18 first cut, that went well as the uppermost one, second  
19 one and of course a pine, you know, they're left and  
20 right so I'm not just cutting on this side. I'm over  
21 here, over here, taking it down, taking it down. One  
22 didn't go through; and at the same time I went to go  
23 make the second cut, he put his right hand down to  
24 support it so it wouldn't bow and it did go through

1 and it just nicked his arm.

2 Q Okay.

3 A And that's -- that's what happened.

4 Q Fair enough. Now, that's the one that sounds  
5 like where his accident happened, right?

6 A Yes.

7 Q Okay. Because -- I see. Okay. Because if  
8 Paul arrived at 11:30, you're saying his accident  
9 happened around 12:30 which would be about the time  
10 where we reached going through the task by task,  
11 right?

12 A Yes.

13 Q I got you. Okay. So were you still working  
14 at the time of Paul's injury with being cut by the  
15 chain saw in the manner of where he's holding the  
16 limbs up -- the branches up with his left hand over  
17 his head and you're cutting the horizontal branches  
18 off of that branch? You're still doing that at the  
19 time of his injury?

20 A That's what we were doing at the time of the  
21 injury.

22 Q Because you said you only did that for  
23 20 minutes and then you did something and I thought  
24 you were going to say you were doing something



1 differently. You were still doing that at the time of  
2 his injury, right?

3 A We stopped as soon as he was injured.

4 Q Okay. Let me ask it this way: Once Paul  
5 opted to hold the branches up with his left hand  
6 instead of using the sawhorses and you started cutting  
7 the limbs now off of that branch --

8 A Yes.

9 Q -- and you said you did 25 to 30 of those  
10 branches --

11 A Yes.

12 Q -- the last branch you did, is that the  
13 branch that Paul was holding when he was hurt?

14 A Well, it was the last branch that we did  
15 because he did get hurt.

16 Q That's what I just said.

17 A Yeah, we just stopped.

18 Q Let me say it again because I want --

19 A Yes, I agree.

20 Q Let me say it again.

21 A Okay.

22 Q You gave an estimate of like for 20 minutes  
23 you were cutting these horizontal limbs off of a  
24 branch that Paul was holding overhead, remember that?

1 A Yes.

2 Q You said you did that for about 20 minutes.

3 A Yes.

4 Q And you did 25 to 30 separate branches,  
5 right? Right?

6 A Estimating, yes.

7 Q Okay. The last branch that you did in that  
8 fashion, is that the branch that Paul was holding when  
9 he was cut?

10 A Yes.

11 Q Oh, okay. Because this is why I was a little  
12 confused. You said at around 12:00, and I know we're  
13 just doing estimates on times, but you said around  
14 12:00 you did -- for 20 minutes you cut those 25 to 30  
15 branches; so I thought there was something else you  
16 were doing then after that by the time Paul got hurt,  
17 but that 20 minutes is inclusive of the time of his  
18 injury then, right?

19 A Yes.

20 Q Okay. So really the time frame you gave me  
21 from the time Paul arrived at 11:30 until his accident  
22 was more 50 minutes; does that sound about right?

23 A It's really hard to recollect the time frame  
24 when it wasn't relative at the time. There was --

1 Q I understand that.

2 A Let me finish, please. There was no time  
3 frame of getting the job done nor was I aware of the  
4 exact time that it happened because what was most  
5 important at that time when it did happen was to get  
6 him to the hospital.

7 Q I understand.

8 A And the only time that -- And the only time  
9 that I checked the clock is when we checked into the  
10 emergency room.

11 Q I understand all that.

12 A Okay.

13 Q That's not what my concern was. My concern  
14 was you gave me an hour after Paul arrived is when his  
15 accident occurred but the time line we gave was only  
16 50 minutes by the time his accident occurred.

17 A Did you say 50 minutes?

18 Q 50.

19 A Okay.

20 Q So I just want to make sure we're not missing  
21 some other element of work that he was doing.

22 A No. No, we're not.

23 Q Okay.

24 MR. BARCH: I'm going to object because he's been

1 giving estimates all along, but go ahead.

2 BY MR. MAST:

3 Q All right. So under the estimates of time  
4 that we're giving, Paul arrives around 11:30, you  
5 start the type of work that Paul is holding the trees  
6 up by his left hand overhead as opposed to using the  
7 sawhorses around noon. You do that for about  
8 20 minutes in your estimate and that's when he's  
9 injured, correct?

10 A Yes.

11 Q All right. So that last branch that Paul was  
12 holding when he was injured, that's what I want to  
13 talk about now. And that was a branch similar to the  
14 25 or more before that, right --

15 A Yes.

16 Q -- that you were cutting, correct?

17 A Yes.

18 Q And you had cut these branches 25 to 30 times  
19 without incident, without any problem, correct?

20 A Yes.

21 Q And that Paul was holding the branches the  
22 same way in all those 25 to 30 times without incident,  
23 correct?

24 A Yes.

1           Q     Okay. And they were all being held over  
2 Paul's head if Paul's 5, 8, then they were probably  
3 what, maybe six and a half feet over his -- or six and  
4 a half feet from the ground?

5           A     They varied in amount of debris on each limb  
6 and height. As you go up a tree --

7           Q     Okay.

8           A     -- the lengths diminish.

9           Q     So sometimes Paul is holding the branch  
10 directly out?

11          A     Deviating between four and six --

12          Q     You've got to let me finish my question, and  
13 you can answer in any way you want but at least let me  
14 finish.

15                     So Paul might be holding some branches  
16 out directly out from his chest, some over his head  
17 just varying -- depending on height --

18          A     Yes.

19          Q     -- of the branch?

20          A     Yes. Yes.

21          Q     Okay. So anywhere from four feet off the  
22 ground he might be holding a branch to six and a half  
23 feet to maybe seven feet?

24          A     No, not six and a half feet. I would say

1 somewhere between four and five feet.

2 Q Okay.

3 A Somewhere in and around just right here.

4 Q Fair enough.

5 A Yeah.

6 Q So Paul is holding with his left arm -- or  
7 left hand out from his body extending out the branch  
8 is from anywhere from four feet off the ground to five  
9 feet off the ground, correct?

10 A The point where he was clasping that limb,  
11 yes, would be four to five feet above the ground.

12 Q And then underneath where he's grasping is  
13 where you're cutting?

14 A Correct.

15 Q The first cut that you're going to make is  
16 the highest off the ground is how far under his hand?

17 A A foot and a half, foot. So it really  
18 depe- --

19 Q All right. A foot and a half or a foot?

20 A May I finish?

21 Q Well, it's going to be best if you just  
22 answer what I'm asking and not try to add on every  
23 time.

24 A (Inaudible) sit here through that. I'm

1       sorry.

2               Q       What's that?

3               A       I'm sorry.  It's just my character.

4               Q       Well, that's fine.  The question is this,  
5       he's holding these branches extending his arm out and  
6       holding them four to five feet off the ground  
7       depending on the height of the branch, right?

8               A       Yes.

9               Q       Okay.  And you are cutting the first cut  
10       about 18 inches below his hand, correct?

11              A       Yes.

12              Q       That's the first cut, yes?

13              A       Yes.

14              Q       So that the branch that he's holding after  
15       you cut it is going to be about 18 inches long, right?  
16       The piece of wood that's in his hand after you make  
17       your first cut is going to be 18 inches long?

18              A       No.  No, he was placing the whole limb -- if  
19       I may, I know she can't record this.  There's your  
20       limb off your tree.  There's a pile of them.  Stump  
21       down, that's where I cut it, the larger portion down  
22       to the ground.  He would hold the smaller portion  
23       because on a pine tree they grow like this.  If you  
24       don't know that, they grow upwards like that.  So I

1 was cutting in the crotches of them. He was holding  
2 it, and I would stay away from him cutting off -- and  
3 I would not, like, cut towards the top, which is  
4 smaller, it's useless wood; we were just trying to get  
5 rid of the debris. So he would hold it and I would  
6 start cutting like this and put it over there. Off  
7 the pile --

8 Q I got you.

9 A -- another one --

10 Q I got you.

11 A -- stump down and hold it like that.

12 Q I got you. So he is not cutting -- The base  
13 of the branch that Paul's actually holding, you're not  
14 cutting that?

15 A No.

16 Q You're cutting the stems or limbs that come  
17 off of that horizontally?

18 A The sub limbs off the main limbs that were  
19 already removed.

20 Q Is that correct?

21 A Yes.

22 Q Okay. And the -- Although there might be  
23 limbs off of that branch all the way up to his hand,  
24 you're starting 18 inches below his hand just to stay



1 away from his hand, right?

2 A Yes. Yes.

3 Q Okay. So when you're done cutting that  
4 branch, there is still going to be some smaller limbs  
5 coming off of that branch at the top by his hand and  
6 that's okay, you can deal with it later?

7 A Correct.

8 Q Okay. So after you're done cutting  
9 horizontally all those horiz- -- Strike that.

10 After you're done cutting vertically all  
11 those horizontal limbs off of that branch, he puts the  
12 branch back and picks up another branch and you do  
13 that 25 to 30 times before Paul's injury?

14 A Yes.

15 Q Okay. The branch that Paul was holding when  
16 he was injured.

17 A Yes.

18 Q Describe how high or off the ground he was  
19 holding that.

20 A Five feet.

21 Q Okay. And was it a branch like all the other  
22 branches?

23 MR. CALLAHAN: Just object to form of the  
24 question.

1 BY THE WITNESS:

2 A By way of species?

3 Q No. Was it any different from any of the  
4 other 25 to 30 branches he had held previously?

5 A It may have been a smaller one that is by way  
6 of diameter that he chose to hold up.

7 Q This is what I'm asking. I'm not asking what  
8 you might -- what might have happened. I'm asking  
9 you, based upon you being there and I wasn't there,  
10 was the branch that Paul was holding when he was  
11 injured different in any way that you can tell that  
12 you recall than any of the 25 to 30 branches he had  
13 held previously without incident?

14 A None of the branches were exactly the same.

15 Q I understand that, but I --

16 A I don't know how to answer the question then.

17 Q Well, let --

18 A The --

19 Q Hold on. You answered it then. If you don't  
20 know how to answer it; you've answered it. So let me  
21 ask it a different way then. Other than every branch  
22 being a little different in size and thickness and  
23 amount of limbs off of it, is there anything unusual,  
24 anything necessarily different from that branch than

1 the other 25 to 30 branches?

2 A No.

3 Q Okay. And in appearance, the branch looked  
4 like any of the other 25 to 30 that you had cut just  
5 previously, correct?

6 A Yes.

7 Q Okay. And probably a similar number of -- a  
8 similar number of cuts off of this branch that Paul  
9 was holding when he was injured, you were going to  
10 have to make a similar number of cuts on that branch  
11 as to the other 25 to 30 branches you were cutting?

12 A Generally, yes.

13 Q Okay.

14 A Okay.

15 Q How many cuts were you able to make off of  
16 the branch that Paul was holding at the time of his  
17 injury before he got injured?

18 A Four.

19 Q Okay. So if I'm going to draw a picture of  
20 the branch, okay, and we're assuming that's a five  
21 foot branch and it has limbs going all off it up and  
22 down the branch, right? Right? Correct?

23 A (Nodding.)

24 Q Yes? I'm waiting for a word.

1           A     I'm waiting to see what --

2           Q     I'm not expecting you -- You don't have to  
3 follow my picture. I'm just saying if I'm --

4           A     Well, I don't follow your description so I'm  
5 looking at the picture.

6           Q     Okay. Well, I'm drawing a picture myself  
7 to --

8           A     Okay.

9           Q     -- demonstrate to you --

10          A     I'll wait till you're done.

11          Q     No, I can demonstrate it to you. I don't  
12 care. You can look at it.

13                     This is a branch and then it has all  
14 these limbs coming off it in varying sizes, widths,  
15 and heights, okay? Fair enough?

16          A     No, it's not the description of what was  
17 being cut. That's why I --

18          Q     All right. You describe what was being cut  
19 then.

20          A     The description of a pine branch or a limb is  
21 that it starts at a certain diameter, whether it be  
22 3 inches or 2 inches, and over its length, which is  
23 also varying, it diminishes to just pine needles.  
24 About increments of every and varying also between

1 6 and 12 inches are branches again that from the  
2 larger diameter where it was cut from the tree begin  
3 to get lesser and lesser as you go towards the end of  
4 the branch.

5 Q Okay.

6 A There is a varying amount of how many  
7 branches are on there because no tree is exactly the  
8 same, so I was in conflict with what you were  
9 thinking --

10 Q Okay. Fair enough.

11 A -- it looked like.

12 Q So Paul's holding the branch at the top?

13 A Correct.

14 Q Okay. With his left hand?

15 A Yes.

16 Q What's he doing with his right hand?

17 A No.

18 Q Just to the side -- to the side of him?

19 A Just aside -- aside and away, yeah.

20 Q Okay.

21 A Standing away from it actually as you had  
22 physically shown it.

23 Q All right. What you're saying is he's  
24 extending his left arm out in front of him keeping his

1 body away --

2 A Yes.

3 Q -- his left arm above and holding the branch  
4 while his right arm is aside of him so the branch is  
5 standing vertically maybe three feet from his body;  
6 fair enough?

7 A Yes.

8 Q Okay. And then you start cutting these  
9 horizontal limbs off the branch at about 18 inches  
10 below his hand?

11 A Yes.

12 Q Okay. And do you remember how many cuts you  
13 had to make at a distance of about 18 inches from his  
14 hand before he was hurt? I'm not saying going further  
15 down, I'm just saying at the 18-inch mark where you  
16 were going to start the cuts.

17 A One.

18 Q Made one cut?

19 A One cut.

20 Q Okay. You got one cut?

21 A Very --

22 Q Hold on.

23 A I know that.

24 Q All right. Then you go down another distance

1 to make the second cut?

2 A To make another singular cut on a different  
3 branch, yeah.

4 Q How far down do you go?

5 A It varies with how -- how far apart they are  
6 on the branch. I would say between 6 -- 8 and  
7 12 inches.

8 Q Listen, I don't want to guess so this is my  
9 question, okay? Hold on. Hold on. We know he's  
10 holding it at the top.

11 A Yeah.

12 Q We know it's about five feet, you said. We  
13 know your first cut is 18 inches from his hand, right?  
14 We know those things, right?

15 A Yes.

16 Q Okay. So my question is, based on what  
17 you've just told me now, how far down from the first  
18 cut that's 18 inches from his hand is the second cut  
19 on -- give me your estimate.

20 A I will give you an estimate of between 8 and  
21 12 inches.

22 Q Okay. So that's the next limb is 8 to  
23 12 inches, right?

24 A Yes.

1           Q     All right. And then how far down is the next  
2 limb that you're cutting from that one you just cut,  
3 the second one?

4           A     Again, 8 to 12 inches.

5           Q     All right. And you're now on your fourth  
6 one. How far is the fourth one from the third one?

7           A     There are branches on either side of that  
8 limb, which means I would cut this one, this one.  
9 This one, this one (indicating).

10          Q     Okay.

11          A     It looks like this.

12          Q     I got you.

13          A     Okay.

14          Q     So what you're saying is, and I'm putting on  
15 my diagram on the same side -- hold on -- on the same  
16 side, but what you're saying is when you cut the first  
17 one, the second one is going to be on the other side?

18          A     Yes.

19          Q     Okay. That's fine. You can describe that.  
20 So the first one is on one side; you cut that  
21 18 inches from his hand. The second one's on the  
22 other side; you cut that 8 to 12 inches below the  
23 first one?

24          A     Yes.



1 Q The third one's on the same side as the first  
2 cut 8 to 12 inches below the second one, right?

3 A Yes.

4 Q And where's the fourth one? Same side as the  
5 second one?

6 A On the right side.

7 Q Over here?

8 A Staggered one, two, three, four.

9 Q Right. So it's the same side as the second  
10 cut then. If you have one, two, three, four --

11 A I wasn't methodically approaching each branch  
12 going left and right per se like, oh, I've got to  
13 start here or start there. It really mattered where  
14 he grabbed it and what was -- what was below his hand  
15 for me to start cutting and again --

16 Q Listen.

17 A And, again, the branches aren't aligned as  
18 you are drawing them. It's relative to me because --

19 Q Listen. The easiest process is for you to  
20 either say you know something or you don't know  
21 something, but you keep first leading --

22 A Sorry.

23 Q Hold on. Hold on. Hold on. You first lead  
24 me down here and then you just say well, I don't know

1 then. Tell me what you don't know and I'll move on,  
2 okay, but I'm going with what you're telling me. If  
3 you don't know something, you just say I don't know.

4 Let's start over. He's holding his left  
5 hand at the top of the branch. His first cut is about  
6 18 inches below his hand, right?

7 A Yes.

8 Q On one side of that limb or branch?

9 A Yes.

10 Q Okay. So that limb is 18 inches down. You  
11 cut that limb off, that horizontal limb, and then you  
12 go down probably on the other side 8 to 12 inches and  
13 you cut the limb on the other side?

14 A No.

15 Q Okay. What? You tell me.

16 A On a pine tree they're grouped, that's what I  
17 was trying to show you, like this. They're not  
18 staggered all over the place. When they grow, it's a  
19 fan and they grow out like this. So it being stood  
20 up, I'd go one, two, three, four.

21 Q That's what I just did here but we can do it  
22 again. Let's try it again.

23 A Okay, but --

24 Q Hold on. This is what I'm trying to

1 understand and I'm trying to make it easy, but we can  
2 go through this. He's holding the branch up with his  
3 left hand and I'm trying to find out what distances  
4 you cut each of those four limbs until he's hurt,  
5 okay? I'm trying to find that out.

6 MR. CALLAHAN: Excuse me. It's just that there's  
7 a disconnect here.

8 MR. MAST: Well, that's why I have to ask these  
9 questions. We'll get there.

10 MR. CALLAHAN: I understand. I'm thinking he's  
11 thinking that on your branch this branch comes out  
12 like -- it'd be on a 45-degree angle up --

13 THE WITNESS: Yes.

14 MR. CALLAHAN: -- if I may. Then there's  
15 branches like this and this with the pine needles on  
16 them so he's cutting this one here, this one here, and  
17 this one here.

18 BY MR. MAST:

19 Q Are you making three cuts on one branch?

20 MR. CALLAHAN: Four cuts.

21 MR. MAST: No, I don't think that's what he's  
22 saying.

23 MR. CALLAHAN: I think that's --  
24

1 BY THE WITNESS:

2 A I'm making one cut.

3 Q Here, let me do it. I think this is what --

4 A May I?

5 Q Hold on. Yeah, I'd be happy to. Let's  
6 probably do it that way. Make it easy.

7 A Thank you.

8 Q We'll save about a half an hour of questions.

9 A Right.

10 Q I was trying to get it described that way but  
11 it might be easier just to do it this way.

12 A Oh, I'm going to make it pretty. We've got  
13 time. I have time.

14 Q You want some crayons?

15 A I'm going to make a Christmas tree for you.  
16 That is a pine branch.

17 Q Okay. Now, let me ask the questions here.  
18 All right.

19 A I'm cutting it right here in the crotch.

20 Q I've got it. See, your answers aren't going  
21 to help unless they're after my questions.

22 A We'll get it all figured out.

23 Q All right. We're going to mark as Gagnon  
24 Exhibit 1 that pretty tree you just drew, okay?

1           A     Thank you.

2           MR. BARCH:   You'll have to call it a -- It's a  
3     single branch, not a whole tree.

4           THE WITNESS:   Single branch.

5           MR. MAST:   Okay.   It's a branch.   All right.   I'm  
6     sorry.   I'm not good at these things.

7     BY MR. MAST:

8           Q     All right.   That's a -- Obviously it's not to  
9     scale or anything, but it's just a drawing of a pine  
10    branch, right?

11          A     Correct.

12          Q     And it's supposed to represent, even though  
13    it's not exact, a typical type of pine branch that you  
14    and Paul were cutting on the day of his accident?

15          A     Correct.

16          Q     Okay.   Different sizes, different amount of  
17    limbs coming off them but that's a representative of  
18    those types of branches, right?

19          A     Yes, it is.

20          Q     Okay.   So if we look at this, the base is  
21    obviously going to be wider than the top of it, right?

22          A     Yes.

23          Q     So I'm going to put a T on your drawing where  
24    the top of that is and a B where the base is.   Did I

1 just do that?

2 A Yes.

3 Q So we know what words to use?

4 A Yeah.

5 Q Okay. So I'm going to put T O P and B A S E.

6 So we can refer so that we're using the same language.

7 Paul is going to be holding with his left hand the top  
8 of the branch, right?

9 A Correct.

10 Q And then the base is going to be against the  
11 ground in a vertical fashion from where he's holding  
12 at the top, right?

13 A Yes.

14 Q And then starting 18 inches below his hand,  
15 you were going to start cutting on either side of that  
16 branch the horizontal limbs that are coming off that  
17 branch, right?

18 A Yes.

19 Q Okay. So if this were a branch that Paul was  
20 holding, his hand would be at the top and then you  
21 would make one cut -- oh, you'd start -- okay, you'd  
22 skip the top of it --

23 A Because it's --

24 Q Hold on. You'd skip the top limbs because

1 that's too close to his hand so you'd come down to  
2 maybe the next set 18 inches below and start making a  
3 cut there?

4 A Yes.

5 Q Then you'd go on the other side and make  
6 another cut?

7 A Yes.

8 Q That's two. Then you'd make another cut on  
9 there --

10 A Yes.

11 Q -- that's three. Then make another cut;  
12 that's four. Then cut there, five. Cut there, six.  
13 And you have the whole branch cut, right?

14 A Yes.

15 Q Okay. So let's number these one, two, three,  
16 four, five, six. Does that number what we just  
17 discussed?

18 A Yes.

19 Q So you're basically at least on this  
20 demonstrative drawing, you're making six separate cuts  
21 off of this branch and then you put the branch down on  
22 the ground and get a new one?

23 A Yes.

24 Q Okay. All right. That did clear up about a

1 half an hour, so thank you.

2 A You're welcome.

3 Q Okay. And I'm sure they weren't all six cuts  
4 every branch, right?

5 A No, they varied.

6 Q Is six pretty much an average or no?

7 A No.

8 Q As far as --

9 A There's no average.

10 Q Okay. There's maybe six, eight, ten,  
11 something like that?

12 A There's no average. There's no way to  
13 average it.

14 Q Okay. The branch that Paul was holding when  
15 he was injured was a branch like most other branches  
16 although in different sizes, correct?

17 A Yes.

18 Q Okay. And you're telling me you made four  
19 cuts until he was injured?

20 A Fourth cut he got injured.

21 Q Okay. On the fourth cut?

22 A On the fourth cut.

23 Q Fair enough. So if we just start with that  
24 one branch that Paul's holding and discuss what you



1 did up and to the time he was injured, you made the  
2 first vertical cut from the horizontal limb 18 inches  
3 below his hand, you made the second one on the other  
4 side just like you did on Exhibit 1 here, then you  
5 went down 8 to 12 inches lower, made the third cut on  
6 one side, then you're going to the other side to cut  
7 the fourth cut, right?

8 A Yes, correct.

9 Q What happens when you're going from the third  
10 cut to the fourth cut that you believe is what caused  
11 Paul to get injured?

12 A The fourth cut, not much unlike all the other  
13 ones, the branch bowed. It may have been because it  
14 wasn't rigid; it may have been weaker than the rest.  
15 I don't know.

16 Q Can I stop you for a minute just so I know  
17 what you mean by bowed. What do you mean, it was --  
18 it was like limp?

19 A Yes.

20 Q Okay.

21 A Yes, not as rigid as the other one perhaps.

22 Q So when you say -- I don't want to jump too  
23 far. When you say bowed then, that means when you  
24 press the chain saw down, it kind of gives a little

1 bit more?

2 A Yes. Yes.

3 Q Okay. All right. So you're saying the  
4 fourth limb that you're going to cut, that limb is a  
5 little more weak, it gives a little bit more than the  
6 other three that you already cut?

7 A The main branch taken from the tree is what  
8 I'm talking about. I'm not talking about the branch  
9 I'm cutting off. As I approached the crotch, the main  
10 branch which I depicted on the drawing there gave way.

11 Q Okay. So if we -- Hold on. If we define  
12 then just so we know we're talking the same language,  
13 the branch is the solid continuous piece of wood that  
14 Paul's holding whereas the limbs are the parts that  
15 come off of that branch. Let's use those terms, okay?

16 A The limb is the larger piece; the branches  
17 are what come off the limb.

18 Q All right. I'm sorry. All right. We'll do  
19 it that way then. Let's define it that way.

20 MR. BARCH: Don't you watch that show on TV,  
21 those Ax Men?

22 MR. MAST: No. No. No, I don't.

23 BY MR. MAST:

24 Q So let's put that on the -- I'm going to

1 write that on here so we use these same words.

2 Because I don't want to change the words so I put on  
3 Exhibit 1 here branch for the little parts that come  
4 off the main limb.

5 A Yes.

6 Q Fair enough?

7 A Yes.

8 Q That's what we're going to describe?

9 A Yes.

10 Q All right. So what you're talking about is  
11 so we use the same terminology, the limb is what  
12 Paul's holding with his hand that goes vertically from  
13 his hand to the ground?

14 A Correct.

15 Q And the branches are the things you're  
16 cutting off of that limb six to eight or so cuts,  
17 right?

18 A Yes.

19 Q Okay. So what you're saying is after you cut  
20 three of the branches off of the limb Paul's holding,  
21 the fourth branch -- What happens with the fourth  
22 branch?

23 A The limb had flexed slightly causing the  
24 chain saw to come out of the crotch.

1 Q Okay.

2 A At that time, without moving away from that  
3 instance, I approached the cut again. Simultaneously  
4 Paul wanting to help me went to support it with his  
5 right hand and at that same time I went through the  
6 cut and I nicked his arm.

7 Q Okay. Okay. Now, when you're saying Paul  
8 went to -- what did you say? -- support it?

9 A Yes, support it.

10 Q What was he -- Do you know what he was going  
11 to do with his right hand?

12 A I'll tell you what he did with his right  
13 hand. He actually grabbed the limb and supported it.

14 Q What part of the limb?

15 A Below the next cut that I was -- the last cut  
16 that I made when it flexed and just below the one that  
17 I'm talking about and followed through.

18 Q All right.

19 A The fourth cut.

20 Q So let's talk numbers.

21 A The fourth cut.

22 Q You just made the third cut.

23 A Yes.

24 Q And the fourth cut was still the same

1 distance from the top of the limb --

2 A Yes.

3 Q -- but it was on the other side --

4 A Yes.

5 Q -- of the third cut, right?

6 A Yes.

7 Q And had you cut the fourth branch by the time  
8 Paul was injured?

9 A No.

10 Q Okay. So the fourth branch was still there?

11 A Yes.

12 Q But you were attempting to cut it, right?

13 A Yes.

14 Q And when Paul was holding with his left hand  
15 the limb, it kind of flexed because it's held up  
16 against the ground?

17 A Yes.

18 Q And it kind of bowed a little bit and you're  
19 saying Paul then with his right arm did what?

20 A Went to support it below that cut as I went  
21 to finish the cut.

22 Q Okay. So when you cut his arm, Paul's arm,  
23 was his right arm on any part of that limb or branch?

24 A Yes.

1 Q What part?

2 A Below the fourth cut which did not go all the  
3 way through.

4 Q Okay.

5 A He would have been like this (indicating).

6 Q All right. Hold on. So you just  
7 demonstrated that his left arm was up, his right arm  
8 was down on this limb, right?

9 A Correct.

10 Q So when you -- when he had his right arm on  
11 the limb and his left arm on the limb together, his  
12 right arm was below the fourth branch that you were  
13 going to cut, right?

14 A Yes.

15 Q How far below?

16 A Maybe 8 inches. His hand was collapsed onto  
17 the limb about 8 inches below that last cut that  
18 didn't go through.

19 Q Fair enough. Okay. And when you made that  
20 first attempt to cut that fourth branch, was his hand  
21 there at that time or was that after you tried to make  
22 that first attempt?

23 A It was after I made the first attempt at the  
24 fourth cut.

1           Q     Okay. You made the first attempt at the  
2 fourth cut and because the limb bowed, you were not  
3 able to penetrate the fourth branch, correct?

4           A     Correct.

5           Q     So did you just in a split second go back and  
6 try it again or did you wait a couple seconds or what  
7 happened? How long was the process?

8           A     Like microseconds. It was -- You know, it's  
9 a matter of just going -- and at the speed you can  
10 see -- I'll describe if I need to or if you want me  
11 to -- cut, cut and also the manner in which I'm  
12 cutting, it's called the locked elbow position. You  
13 don't just freewheel a saw. Nip, nip, nip, and it  
14 went ... I was like okay. And at that same time he  
15 just reached over to kind of help me out so it  
16 wouldn't flex and that's how it all came together.

17          Q     All right. Well, if he's reaching over and  
18 that's why you cut him, then that leads me to believe  
19 that he's not holding on to the limb at the time that  
20 you cut him.

21          A     Oh, he's holding on to the limb.

22          Q     So is he reaching over at the time you cut  
23 him or is he already holding on to the limb?

24          A     Simultaneously as he reached down to that

1 limb standing like this flexed like that. At the same  
2 time I went to finish the cut and I did finish the  
3 cut. Like I said, it just --

4 Q All right.

5 A Just --

6 Q Hold on. You're going way too fast for us  
7 and we're going to have to repeat the questions over  
8 and over again and if we can just go step by step,  
9 okay?

10 A Okay.

11 Q As he -- As you make the first attempt at  
12 cutting that fourth branch, the tree flexes and your  
13 saw blade bounces up or do you --

14 A Slightly bounces up, yes.

15 Q Okay. Then do you immediately put it back  
16 down to cut it a second time to try to cut it a second  
17 time or do you wait? Do you hesitate?

18 A I didn't hesitate.

19 Q So you immediately did it then, right?

20 A Say it again. No, just the last part.

21 Q I know. I get it. Your first attempt to cut  
22 the fourth branch to the second attempt to cut the  
23 fourth branch there was no hesitation, it was just  
24 tried to go down and get it, it bent and then you went



1 back down to get it and you cut it off?

2 A Yeah.

3 Q And that's -- When you went back down to get  
4 it that second time, that fourth branch, that's when  
5 you cut his arm?

6 A That's when he placed his hand there and got  
7 it cut.

8 Q Right.

9 A Yes.

10 Q Okay. So when he was cut -- physically when  
11 the cut occurred, was his right hand on the limb or  
12 not?

13 A Yes, it was on the limb.

14 Q Did you know it was on the limb?

15 A Yes, I did. It was clasping the limb.

16 Q Okay. How long was his right hand clasping  
17 the limb below the forth branch that you were going to  
18 cut before you cut his arm?

19 A It's hard to operate a stopwatch while you're  
20 operating a chain saw. I really can't give you a time  
21 frame as to something that happened so quickly and  
22 when two men come together. Like I said, I can't -- I  
23 can't answer that question. I don't know. I don't  
24 know.

1           Q     Listen, you gave me five minutes of why you  
2     don't know. Just tell me you don't know, that's fine.  
3     We can move on.

4           A     I'm sorry. It's my character. I'm very  
5     inclusive in my answer descriptive.

6           Q     All right. Well, I'm just trying to tell you  
7     you don't need to do that.

8           A     And I'm working on it right now.

9           Q     All right.

10          A     I'm glad you --

11          Q     So the question is, and I'm not saying is it  
12     five minutes between the time you first tried to cut  
13     it until the second time you cut it. I understand  
14     we're talking seconds, okay. My question is --

15          A     Milliseconds.

16          Q     All right. Milliseconds. Fine. My question  
17     is, when you went down to cut that fourth branch the  
18     first time and the tree bent --

19          A     Yes.

20          Q     -- and you had to go down right away and cut  
21     it a second time, when you went toward that fourth  
22     branch to cut it a second time, when you went toward  
23     it, was his right arm on the limb at that time or was  
24     he off it and going toward it to hold on to it?

1           A     At the exact same time that my saw went  
2 through that fourth cut, his hand clasped that limb.

3           Q     That's not my question. My question is this;  
4 I'm going to say it again. My question is, you went  
5 down to cut that fourth branch off and the limb bowed  
6 so you went at it again; and my question is, when you  
7 went at it again for that second cut on that fourth  
8 branch, was his right hand clasping below that fourth  
9 branch at that point?

10          A     In time?

11          Q     Yeah.

12          A     Simultaneously.

13          Q     Okay. So that simultaneously you're saying  
14 when you're going after that fourth branch the second  
15 time --

16          A     Yeah.

17          Q     -- he's now at the same time grasping on  
18 below that fourth branch to hold on to the limb?

19          A     Yes.

20          Q     Okay. And do you see him as he is moving his  
21 right arm toward the limb to hold on to it or do you  
22 just see at the last second when your saw is going  
23 towards the branch?

24          A     I was focused on the branch and the cut. I

1 wasn't looking at him.

2 Q So your answer is you didn't see his hand  
3 moving toward the --

4 A No, I did not see his hand.

5 Q You've got to let me finish the question.

6 A I'm sorry.

7 Q We're going to be here all day. Your answer  
8 is you did not see his hand motioning toward the  
9 limb -- his right hand motioning toward the limb to  
10 hold on to it, you only saw it right when it clasped  
11 the limb right when you were going at the branch a  
12 second time?

13 A Yes.

14 Q So the time -- Simultaneously when you're  
15 cutting that fourth branch, that's when you go through  
16 that branch and then you end up going into his arm,  
17 correct, his forearm?

18 MR. CALLAHAN: I'd just object to the form of the  
19 question.

20 BY THE WITNESS:

21 A You're leading me into cutting him and that's  
22 not what happened.

23 Q Oh, I'm sorry.

24 A I feel as though I am.

1           Q     I get what you're saying. I'm sorry, maybe  
2     that wasn't the way you wanted me to word it. I'll  
3     try to word it differently.

4           A     Thank you.

5           Q     You're -- At least from what you're saying  
6     is, you are motioning toward that fourth branch a  
7     second time in attempts to cut it so you're moving the  
8     chain saw, as you said, in that rigid locked position  
9     with your elbow --

10          A     Yes.

11          Q     -- toward that fourth branch to cut it,  
12     right?

13          A     Yes.

14          Q     So if you're going toward that fourth branch  
15     to cut it, and I understand you're saying his right  
16     arm is locking on to that limb at the same time,  
17     right? Right?

18          A     Yes.

19          Q     But you're moving the chain saw forward to  
20     cut that branch, right?

21          A     Yes.

22          Q     So when you're moving that chain saw forward  
23     to cut that branch, that moving forward manner ends up  
24     striking his forearm in the manner that it did to cut

1 him, right?

2 A I think we're overlooking the word  
3 simultaneous. I'm sorry that I can't just answer your  
4 question but it's -- the description is --

5 Q What do you mean?

6 A The description is not fitting the instance  
7 that happened for me per se.

8 Q Put his arm movement aside for a minute.

9 A Okay.

10 Q Okay?

11 A All right.

12 Q We know simultaneously he's using his right  
13 arm to grab on to that limb while you're making that  
14 second cut to the fourth branch, right?

15 A Yes.

16 Q That's happening simultaneously; I understand  
17 that.

18 A Yes. Okay.

19 Q My question is, while you were going down to  
20 that second cut of that fourth branch, you're moving  
21 the chain saw forward to cut that branch, right?

22 A Yes.

23 Q And in the process of moving the chain saw  
24 forward to cut that fourth branch, that is the process

1 that takes your saw blade into his arm. Whether his  
2 arm is moving or not, we can -- I can ask that next,  
3 but the process of you moving forward with the chain  
4 saw is part of what led to his arm being cut, right?

5 MR. BARCH: I'm going to object to the form of  
6 the question. It's also argumentative. Go ahead.

7 BY MR. MAST:

8 Q Go ahead.

9 MR. CALLAHAN: I'll join that objection.

10 BY THE WITNESS:

11 A As you had said, it's part of how it  
12 happened.

13 Q Right.

14 A It's an equal share.

15 Q Okay. Equal share meaning you're saying his  
16 arm's moving near the limb as well as the chain saw  
17 you are operating is pushing forward toward that limb  
18 and the arm and the chain saw meet and he becomes  
19 injured, correct?

20 A Correct.

21 Q Okay.

22 (A short break was had.)

23 BY MR. MAST:

24 Q All right. Finish up where we got this tree

1 now. So you're holding the chain saw, you're going  
2 for that second attempt at the fourth branch to cut  
3 it, and while you are cutting that fourth branch is  
4 when the -- when Paul's arm is struck; is that right?

5 A Yes.

6 Q And so the chain saw is under your control at  
7 the time, right?

8 A Yes.

9 Q You're not out of control, are you?

10 A I'm in control with the chain saw, yes.

11 Q Okay. And you're wanting to cut it when this  
12 happens, right? You're wanting to cut with it when it  
13 happens?

14 A Yes.

15 Q Okay. You are attempting to cut the branch  
16 and that's when Paul's arm is attempting to hold on to  
17 the limb, right?

18 A Correct.

19 Q And the chain saw is in motion when Paul's  
20 arm is struck, correct?

21 A Yes.

22 Q Okay. And the first time you see Paul's arm  
23 is when his right hand is grasping the base of the  
24 limb below the fourth branch, correct?



1 A Yes.

2 Q You don't see it coming from the side toward  
3 that bottom part of the --

4 A No.

5 Q -- of the -- of the limb, correct?

6 A No, I did not, correct.

7 Q Is that correct?

8 A (Nodding.)

9 Q Okay. Is that correct?

10 A That is correct.

11 Q Okay. Okay. When he gets cut, what is the  
12 first thing that happens? Does he scream? Do you say  
13 something? What's the first thing that happens the  
14 split second he's cut?

15 A I say no. He says yes.

16 Q And what do you mean by no? You mean no,  
17 that's not happening or what?

18 A Yeah, like no. No, it didn't happen.

19 Q Okay. And he says what?

20 A Yes. Let's go.

21 Q Yes what?

22 A Let's go.

23 Q Let's go what?

24 A Let's get out of here. It's time to go.

1 We've got to go to the hospital, you know. Yes, let's  
2 go.

3 Q That's the first thing that happens once he's  
4 cut, right?

5 A Yes.

6 Q And when he gets cut, are you able to see the  
7 chain saw making contact with his arm, or how do you  
8 first discover he's cut?

9 A It just looked like I could have nipped him.  
10 It was so close that it looked like I could have  
11 touched him.

12 Q Okay.

13 A That's what I did, I touched him.

14 Q All right. Had Paul ever held a limb before  
15 he got cut with both hands before this?

16 A No.

17 Q Okay. So you did not expect him to do that?

18 A No, I did not.

19 Q Okay. And after you say no and he says yes,  
20 do you guys -- do you basically put the chain saw down  
21 and get in his car and go to the hospital?

22 A I threw the chain saw down and got in his car  
23 to go to the hospital.

24 Q Was he bleeding?

1           A     Yes.

2           Q     Do you know -- and, again, I don't know are  
3 fine answers. I'm not trying to imply you know things  
4 but I just have to ask. Do you know how far or how  
5 deep the chain saw went into his arm?

6           A     I could tell you pretty accurately. I was  
7 there in the operating room. It never went past the  
8 epidermis.

9           Q     What do you mean, the skin?

10          A     Yeah.

11          Q     Did it open the skin?

12          A     Yes.

13          Q     And it was bleeding?

14          A     Yes.

15          Q     Okay. Well, I mean, the doctors will be able  
16 to tell us how deep it went. Are you telling me you  
17 have some kind of medical ability to tell how far it  
18 got cut?

19          A     I'm educated to a certain extent and I was  
20 educated there in the emergency room and I heard  
21 everything that was being said and I was shown and  
22 even Paul said look, and I was right there the whole  
23 time looking.

24          Q     You don't have any medical education or

1 ex- --

2 A No, I don't.

3 Q Wait. Back and forth here, please, please.  
4 You don't have any medical education or training, do  
5 you?

6 A No.

7 Q Okay. So any type of depth of incision or  
8 cut that you would be talking about would be just  
9 based upon what you saw visually, correct?

10 A It was visual, yes.

11 Q You never went with your finger inside the  
12 wound?

13 A No.

14 Q Or any type of object?

15 A No measuring devices were employed, no.

16 Q Okay. Did you hear the doctors talk about  
17 how far it was cut in?

18 A Yes.

19 Q How far did they say?

20 A Not deep, that was their assessment.

21 Q Okay.

22 A He was lucky.

23 Q Okay.

24 A It only hit the fascia; that's what they

1       said.

2               Q     All right.  Do you know -- You've known Paul  
3     a long time before the accident?

4               A     35 years.

5               Q     Okay.  Have you ever known him to be injured  
6     in any way before this accident?

7               A     Yes.

8               Q     Okay.  What is that?

9               A     A car accident.

10              Q     When was that?

11              A     I cannot put a pin date on it, but I can say  
12     it was over seven years ago.

13              Q     Okay.  So maybe around 2006, somewhere around  
14     there?

15              A     I am guessing at that, but I know that there  
16     was an instant which he was involved in an accident  
17     and he also pursued.

18              Q     Okay.  Here, listen.  Just follow me.  If you  
19     follow me, we'll go where we need to go and get there  
20     fast, okay?

21              A     As I said, it's a struggle because of my  
22     character.

23              Q     All right.

24              A     I'm descriptive and inclusive.

1 Q Fair enough.

2 A You don't have to keep correcting me -- or  
3 you do have to correct me; that's your job, but --

4 Q Fair enough.

5 A -- I'll try to get there for you, okay?

6 Q All right. Motor vehicle accident about  
7 2006. Were you in the accident with him?

8 A No.

9 Q Do you know what injuries he suffered in that  
10 auto accident?

11 A Nerve damage to the left elbow that was  
12 allegedly struck.

13 Q In this case you mean?

14 A In that other -- Yeah.

15 Q Did he ever have any surgery for that left  
16 elbow?

17 A I know he was poked and prodded. I don't  
18 know if he was -- had actual open surgery for it  
19 though.

20 Q Did he ever resolve that injury up until the  
21 accident in this case?

22 A I don't know.

23 Q Okay. Other than a left elbow nerve injury  
24 in a motor vehicle accident around 2006, any other

1 injuries from that motor vehicle accident?

2 A I don't know.

3 Q Okay. How do you know about that left elbow  
4 nerve injury then?

5 A Because he showed people and talked about it  
6 openly.

7 Q Was it a different location than where he was  
8 lacerated or cut in the chain saw in this case?

9 A Yes, it was an entirely different arm.

10 Q Oh, I'm sorry. You're right. I'm sorry. I  
11 wasn't thinking that far ahead. Good. In this  
12 case -- In this case the chain saw was the right arm.  
13 In that case it was the left elbow, right?

14 A Yes.

15 Q Okay. Any other injuries other than the  
16 motor vehicle accident?

17 A I'm not aware of.

18 Q Okay. Any other prior -- prior to this case,  
19 any prior injuries to Paul?

20 A Not that I'm aware of.

21 Q Any prior conditions of ill health with Paul  
22 before his chain saw accident?

23 A I'm not aware of any.

24 Q In the four or five year let's say -- Strike

1 that.

2 In the five years before this chain saw  
3 accident in June of 2011, was Paul in any way disabled  
4 or limited in what he could do physically?

5 A I don't know.

6 Q Okay. Well, to what extent you do know -- to  
7 what extent your contact you've had with him, you're  
8 not aware of any; fair enough?

9 A Correct.

10 Q Okay. Are you aware that Paul was under any  
11 medical consultation or treatment in the five years  
12 prior to Paul's chain saw accident in this case?

13 A I am not aware.

14 Q Okay. After this accident are you aware of  
15 Paul receiving medical treatment from time to time for  
16 his right arm laceration?

17 A Yes.

18 Q How many times -- Let's say in the month  
19 after this chain saw accident, how many times did you  
20 see Paul? I mean, was it every day?

21 A No. No. Maybe three or four times since  
22 this accident I've seen him.

23 Q Total?

24 A Yeah.



1 Q Up until now?

2 A Yeah.

3 Q Oh, I see. So it's been very infrequent  
4 then?

5 A Yes.

6 Q Okay.

7 A Just the instances where we exchanged what I  
8 had given in the beginning of this deposition.

9 Q Right.

10 A Those are the only times I spoke to him.

11 Q All right. So let me summarize that just to  
12 make sure we're clear. What you're saying is, I'm  
13 assuming before the accident you saw Paul a lot,  
14 right, or not?

15 A I wouldn't even say frequency. From time to  
16 time.

17 Q Maybe once every couple of weeks or  
18 something?

19 A Yeah, that's honest. That's fair.

20 Q All right. So let me word that all out then.  
21 Before the accident you were seeing Paul every couple  
22 of weeks maybe infrequently; fair enough?

23 A Infrequently, okay, yes.

24 Q Fair enough?

1 A Yes.

2 Q After the accident you saw Paul only on those  
3 occasions where you had words with him that you  
4 described at the beginning of the deposition?

5 A Correct.

6 Q And that would have been, looks like, four  
7 times?

8 A Yeah.

9 Q Right?

10 A Yeah.

11 Q Okay.

12 A With the exception of the one time when he  
13 did come up to help me work, but we didn't discuss  
14 anything that had to do with the case; he just came up  
15 to work.

16 Q When was that? Was that a different time?

17 A It was after the accident. He helped me do a  
18 roof on my house.

19 Q So it's different than the four times we  
20 talked about at the beginning of the deposition?

21 A Yeah, we were talking about conversation and  
22 this wasn't really conversation. It was -- we were  
23 just working.

24 Q Okay. So that's why I'm trying to get this

1 summarized.

2 A Okay.

3 Q After the accident we talked about four  
4 different times you had a conversation with Paul about  
5 various things. We talked about those, we tried to  
6 give approximate dates and things.

7 A Yes.

8 Q Okay. Other than those four conversations  
9 with Paul, you said there was one other time you  
10 had -- you were with Paul after his accident and that  
11 was to do a roof?

12 A My roof at my home, yeah.

13 Q Okay. When was that?

14 A It would be October.

15 Q Of what year?

16 A 2011.

17 Q Same year as the accident?

18 A Yes. Yeah.

19 Q All right. So you did -- Was he helping you  
20 do roofing work on your house?

21 A He was helping me tear it off.

22 Q Okay. Did he have any kind of bandage or  
23 brace on his right arm from the injury in this case?

24 A No.

1 Q How many days was he helping you?

2 A Just one.

3 Q For how many hours?

4 A Five, six hours.

5 Q Okay. So you're saying after the accident in  
6 October of 2011, we're talking maybe about four months  
7 after the accident, Paul helped you on one day five to  
8 six hours to pull your old roof up off your house?

9 A Yes.

10 Q Okay. Was anybody else helping you --

11 A Yes.

12 Q -- during that time?

13 Who?

14 A Mike Shoshie, neighborhood friend.

15 Q How do you spell that?

16 A S H O S H I E.

17 Q Is he still a neighborhood friend?

18 A Yes, he is.

19 Q Where does he live?

20 A Two blocks away from me. I can't give you  
21 his address; I don't retain it in my memory, but I  
22 know where he lives. I could submit that to you at a  
23 later time if you'd like.

24 Q Very good.

1 MR. BARCH: I need to at least go on record that  
2 we started around 1:00. There's been some breaks,  
3 it's now 3:45. If Mr. Gagnon's attorney is going to  
4 stick to the three-hour limit, I need some time.

5 MR. MAST: I'll try to wrap it up.

6 MR. BARCH: I know, but I don't want to get to  
7 the three-hour point and have the plug pulled.  
8 There's only 15 to 20 minutes left.

9 MR. MAST: Well, I guess that's -- that's -- I  
10 mean, we didn't -- Hold on.

11 MR. BARCH: Well, I think you and I have a duty  
12 to share our time.

13 MR. MAST: Before the dep we didn't really  
14 discuss this so it's fair that you bring that up. I  
15 don't know if you have a lot, but I'm trying to wrap  
16 it up now with me. I don't think I'm going to take  
17 the full -- I don't think I'm going to be a half an  
18 hour from now. I don't know how much time you have so  
19 is it -- do you have a lot of time or are you just  
20 looking at 10, 15 minutes?

21 MR. BARCH: Yeah.

22 MR. MAST: Yeah, so we should be fine.

23 MR. CALLAHAN: Yeah, during the break Mr. Mast  
24 and I discussed this. We're told the deposition

1 started at 1:12. He said he'd wrap it up so you  
2 should have time.

3 MR. MAST: Yeah.

4 MR. BARCH: Okay. Good. I just want to make  
5 sure we're all on the same page, that's all.

6 MR. CALLAHAN: If you go a little over, I'm not  
7 going to jump up and scream.

8 BY MR. MAST:

9 Q Anyone other than Mike Shoshie, you and Paul  
10 that was assisting on your roof at the time Paul was  
11 helping you?

12 A No one else was assisting but there were  
13 witnesses that seen him helping in those duties.

14 Q That was my next question by the way. Who  
15 was that?

16 A Joe Vlk.

17 Q How do you spell the last name?

18 A V L K. No vowels.

19 Q Where does he live?

20 A In the neighborhood by me also.

21 Q Anybody else?

22 A My wife.

23 Q Okay. And are you aware of him having any  
24 difficulties in helping you during those five or

1 six hours because of his injury in this case?

2 A He seemed to not exert himself fully and was,  
3 if not nursing, staying away from using that arm in  
4 full but nonetheless was still grappling and moving.

5 Q Fair enough. So you're allowing the fact  
6 that he was reserving some of his -- saving himself a  
7 little bit for the right side where he hurt his arm in  
8 this chain saw accident as if there was something  
9 still lingering there?

10 A Yes.

11 Q Okay. But he still was able to help you for  
12 five or six hours irrespective of what might be his  
13 ongoing issue?

14 A Yes.

15 Q Okay. So other than those five to six hours  
16 that given day in October 2011, you had four other  
17 meetings and conversations with Paul that we already  
18 fully talked about and there's no more need to detail  
19 those anymore; fair enough?

20 A Correct.

21 Q Okay. And the first conversation was coming  
22 right out of the hospital that day of the accident,  
23 right?

24 A Yes.

1           Q     The next one was four months later, the other  
2     one was 2012 and the last one wasn't about any  
3     financial thing but it was a little bit before the  
4     2012 meeting; fair enough?

5           A     Yes.

6           Q     Okay. Have you now told me everything that  
7     you had -- Well, strike that.

8                     Let me ask this question first. Did you  
9     and Paul at any time discuss how or why the accident  
10    occurred?

11          A     No.

12          Q     Okay. And that's on both sides. You never  
13    told Paul, Hey, why were you holding on to the branch,  
14    or, I didn't know you were doing that, or, Why were  
15    you grabbing with your right arm? You never told that  
16    to Paul, did you?

17          A     No.

18          Q     And Paul never said, Hey, why were you  
19    cutting the way you did, or anything like that; he  
20    wasn't complaining to you?

21          A     No.

22          Q     Okay. Have you talked to anybody else other  
23    than your attorney and your insurance company about  
24    what happened?



1           A     No. My mother. Just back to my mother.

2           Q     Oh, and you might have -- You know what?  
3     This isn't a big deal, but I think in terms of just  
4     being all-inclusive, you did -- I printed out what my  
5     assistant wrote down from a recorded statement that  
6     you knew I was taking over the phone of you, correct?

7           A     Yes.

8           Q     Did you read this at all?

9           A     That one I -- Yeah.

10          Q     Huh?

11          A     Yeah.

12          Q     This is the narrative from the recorded  
13     statement that she took down and I'm assuming she took  
14     it down right. I didn't go and read it and listen to  
15     it.

16          A     Yeah, I had a few blanks in there and such  
17     that, you know ...

18          Q     Well, hold on. The question is --

19          A     Yeah.

20          Q     And I'll mark this as Exhibit 2, okay, and  
21     I'll just put a 2 for now. But would you agree  
22     that -- and I know you didn't listen to the recording  
23     so I understand that, but would you agree that reading  
24     this narrative marked as Exhibit 2 accurately states

1 what you would have said on that phone call to me?

2 MR. CALLAHAN: I'd just object to the form of the  
3 question and as to the number of variables with the  
4 recording and with the transcription of the process  
5 itself, including some of the language in the  
6 transcript and ask him if he could -- I think it's  
7 better if this would be pointed out page by page or --  
8 excuse me -- line by line more or less if he's  
9 agreeing with that.

10 MR. MAST: I can do that. Yeah. Joe, I'm just  
11 trying to make it easy.

12 MR. CALLAHAN: Yeah.

13 BY MR. MAST:

14 Q Let me put it this way: Have you read this  
15 narrative from your recorded statement?

16 A Yes.

17 Q Is there anything in the narrative -- and  
18 I'll let you read it again if you need to, is there  
19 anything in this narrative, Exhibit 2, that you  
20 believe you did not say that's attributed to you?

21 MR. BARCH: Form of the question, but go ahead.

22 BY MR. MAST:

23 Q Here, I'll give it to you again. Just read  
24 it through. I don't want to go through line by line

1 unless you want to but basically I'm asking you, did  
2 you say those words and is this --

3 A This besides the blanks that are there --

4 Q Yeah, besides the blanks.

5 A -- yeah.

6 Q Okay. All right.

7 MR. CALLAHAN: And I'd just point out too that  
8 there seems to be -- like if you read that thing in  
9 total, there are eight parts where the subject and  
10 verb don't agree, there's parts where it goes on, it  
11 doesn't make sense and that also has to be considered  
12 as well as to the totality of the accuracy and the  
13 candor of the statement.

14 BY MR. MAST:

15 Q Okay. This is my question, and again I know  
16 you didn't compare the audio to that statement; but  
17 you read that statement and all I'm asking is, you  
18 generally recall giving me a statement over the phone,  
19 right?

20 A Yes, I do.

21 Q And does that generally, and again we can  
22 listen to it to find out specifically what it says;  
23 but does that generally meet with your recollection of  
24 what you said?

1 A Yes.

2 Q Okay. And that's Exhibit 2, correct?

3 A Yes.

4 Q All right. Again, it is what it is. Let's  
5 put Exhibit 2 on here so we can keep track of these  
6 things. Okay.

7 Now --

8 MR. MAST: Oh, I didn't put this on the record.  
9 I'd like to put this on the record. I don't have  
10 answers today of interrogatories, nor I don't think  
11 this response is to my production request. Let me  
12 just see. No, this response to the production request  
13 is to codefendants' response. So I don't have that  
14 discovery, nor answers to interrogatories to my  
15 discovery. I'm assuming nothing is going to be crazy  
16 or different than what went over today but to the  
17 extent it does, I'm going to reserve my right to the  
18 extent I need to, but let's just mark this as  
19 Exhibit 3.

20 BY MR. MAST:

21 Q And what Exhibit 3 is, is what I was given  
22 today right before the deposition are, Mr. Gagnon,  
23 your answers to codefendants' interrogatories and  
24 response to production request. Nothing that you need

1 to concern yourself to other than I will ask you  
2 Exhibit 3, is this your signed answers to  
3 interrogatories that you're giving in this case?

4 A Yes, I received this in the mail and answered  
5 those questions as they are printed.

6 Q And you signed it verifying these are your  
7 true and correct answers, correct?

8 A Yes.

9 MR. BARCH: Do you have a signed version? I  
10 don't have a signed one.

11 MR. MAST: Yeah, it's signed.

12 BY MR. MAST:

13 Q All right. Has -- I think defense counsel  
14 already answered this, but I just want to make sure  
15 that you haven't heard anything that your defense  
16 counsel hasn't heard -- has your homeowners insurance  
17 rejected or reserved their right for coverage in this  
18 case at all, to your knowledge?

19 MR. CALLAHAN: I'd just object, it may call for  
20 privileged conversation and I object as to it may call  
21 for conversations with insurance company but -- and I  
22 can answer as far as I know, there's been no rejection  
23 of anything, and I'll make that stipulation --

24 MR. MAST: I'll accept your answer then; that's

1 fine. All right. Let me just look through your  
2 answers to interrogatories, the ones that I've got.  
3 Hold on one minute.

4 BY MR. MAST:

5 Q Have you talked to your mother -- Or strike  
6 that.

7 Have you talked to your parents at all  
8 about this incident with regard to whether they saw  
9 anything?

10 A No.

11 Q Okay. Do you know if they saw anything  
12 regarding the incident?

13 A I know they didn't see how it went down.

14 Q Did they -- Do you know if they saw the  
15 process of what you and Paul were doing in cutting  
16 these branches down?

17 A No.

18 Q Okay. Do you know if they knew about the  
19 incident before you left the property that day?

20 A Yeah, they knew that something had  
21 happened --

22 Q Okay.

23 A -- bad.

24 Q Okay. Since you only met or spoke with Paul

1 on a few various occasions after the incident, I'm  
2 assuming you're not really up-to-date on the nature  
3 and extent of his recovery and/or his medical injury;  
4 fair enough?

5 A No, I'm not.

6 Q Is that fair enough?

7 A That's fair.

8 Q Okay. So what limitations or the severity of  
9 the injury and what it's turned out to be, you don't  
10 know about; fair enough?

11 A I don't know.

12 Q Okay. And the work you were doing was at the  
13 request of your parents, correct?

14 A It was at the submitting of my parents for my  
15 suggestion that it was a good time to do this.

16 Q It was for purposes of your parents. It was  
17 their property and it was --

18 A Yes.

19 Q -- work doing --

20 A It was for purposes of my --

21 Q Hold on.

22 A Okay.

23 Q It was for their purpose, your parents'  
24 purpose to do it. You weren't benefiting yourself in

1 doing it, were you, other than getting money for it?

2 MR. BARCH: I object to the form of that  
3 question. It calls for legal opinions.

4 MR. MAST: I don't --

5 BY MR. MAST:

6 Q Go ahead. Do you want me to ask the question  
7 again?

8 A Yeah.

9 Q All right. The work you were doing in  
10 cutting the tree on your parents' property when this  
11 injury occurred was to benefit your parents, correct?

12 A Yes.

13 MR. BARCH: Same objection.

14 BY MR. MAST:

15 Q Okay. And you were getting paid to do it,  
16 correct?

17 A Yes.

18 Q Okay.

19 MR. MAST: Go ahead. I'll let you go and see if  
20 I have anything else here.

21

22

23

24



EXAMINATION

1

2

BY MR. BARCH:

3

4

5

Q Hopefully don't have to cover everything over again, but I do want to back up a little bit. Mike McArdle?

6

A Mike Mcartor.

7

Q Mcartor?

8

A Yeah, Mcartor.

9

10

Q He was a friend of yours for a long time as well?

11

A Yes.

12

13

Q And what's the connection between him and Mr. Dulberg? I mean ...

14

15

A They both live together in Paul's mother's home.

16

Q They've been living together for years?

17

A Ten years.

18

Q Ten years?

19

20

And it's a sensitive question, but are they a couple?

21

A A lot of people wonder.

22

Q Okay. Well, do you know?

23

A I don't know.

24

Q You've known them both for years.



1 statements?

2 A No. No, Mike is a listener.

3 Q Okay.

4 A He stays out of things.

5 Q And I may be confused but was that the same  
6 conversation where he -- where you basically said you  
7 wouldn't tell something that wasn't true?

8 A No, that was a separate conversation. I was  
9 leaving his house and he kind of just blurted out  
10 across the kitchen where Mike was witness to him  
11 saying it.

12 Q The one that Mike was there, there wasn't any  
13 discussion about money or --

14 A No.

15 Q -- testifying any certain way?

16 A No.

17 Q Okay. All right. I guess going back to this  
18 whole situation, what brought you out to your -- I  
19 guess to this -- to do this work at your mom and dad's  
20 place. That's your mom, right?

21 A Yes.

22 Q Carolyn is your mom, and Bill's been your  
23 stepfather for years?

24 A For years, yeah.

1           Q     And you were there -- If I understand what  
2     you're saying, you were there, there was a discussion  
3     as to what to do with these trees now that the shed  
4     was down?

5           A     Correct.

6           Q     And it was just a -- if I heard your  
7     testimony, a good opportunity to take down these  
8     overhanging trees?

9           A     Yes.

10          Q     Was there plans to put up a new shed?

11          A     No. Actually, we installed the same size  
12     shed on the same platform in the same spot after the  
13     trees came down.

14          Q     Okay.

15          A     As I said, it was opportune because it was  
16     absent now.

17          Q     Okay. But was there -- the long-range plan  
18     was to put a new shed back in the same spot?

19          A     Yes.

20          Q     A replacement?

21          A     Yes.

22          Q     All right. So before doing that, it was --  
23     your thought is let's get rid of this overhanging  
24     tree?

1           A     Yes.

2           Q     All right. And I -- I -- This whole notion  
3 as to whether you were paid or not paid, did they end  
4 up giving you cash for doing work out there?

5           A     I did a multitude of things; but yes, for  
6 that job --

7           Q     Okay.

8           A     -- there was many upgrades done on the  
9 property, so ...

10          Q     Did you consider yourself to be their  
11 employee or were you just doing a favor for them for  
12 money, what?

13          A     No, I was -- I was doing a favor and because  
14 of the times, I was getting money where I could and my  
15 mom wanted to supply me with some kind of means of  
16 income because I couldn't find it anywhere else and I  
17 provided a service for her.

18          Q     You called it at one point a chore --

19          A     A chore.

20          Q     -- that you were doing for them?

21          A     Yeah.

22          Q     All right. Now, with respect to the tree  
23 trimming and then ultimately whether they were  
24 removed, did either Bill or Carolyn come out there and

1 tell you how they wanted this done?

2 A No.

3 Q Prior to you undertaking that job, did you  
4 sit down with them and have them tell you what they  
5 wanted done, what their expectations were, or anything  
6 like that?

7 A No.

8 Q Have you ever actually seen either one of  
9 them use a chain saw?

10 A No.

11 Q Would you agree that you were free to cut  
12 those limbs, take down the branches, to do that in any  
13 way you saw fit?

14 A Yes.

15 Q And you didn't have an invoice or a written  
16 contract with them --

17 A No.

18 Q -- or anything like that?

19 A No.

20 Q And then this whole concept as to whether  
21 David was there -- I'm sorry -- as to why Paul was  
22 there, he was there -- you invited him over?

23 A I did.

24 Q And Mr. and Mrs. McGuire may have known he

1 was coming over?

2 A Yes.

3 Q You told them that?

4 A Yes.

5 Q Did you tell them that he was coming over to  
6 help you?

7 A I said that I asked Paul to help me today and  
8 they didn't say anything because we worked together  
9 before and they're friends, so ...

10 Q And at that point, if I heard your testimony,  
11 there was no discussion between you and your parents  
12 about them paying for Paul's time?

13 A No.

14 Q And that wasn't something that you and Paul  
15 even talked about?

16 A No.

17 Q Even up until the point of injury, that was  
18 not a subject of conversation?

19 A No, it was not.

20 Q Do you know if he was planning on taking some  
21 of the trimmed-up branches for firewood?

22 A I was assuming in my mind that that would  
23 suffice him initially, yes, because he had already  
24 taken some before from the front yard. He has a

1 fireplace at his home that he burns --

2 Q Okay.

3 A -- where we don't -- or she doesn't here.

4 Q That was an assumption but was it actually a  
5 subject of conversation between you and he?

6 A No, we did not discuss it.

7 Q So in terms of what, if anything, Paul might  
8 get out of it, as you sit here today, you don't recall  
9 any discussions with Paul about what he would get in  
10 return for helping you?

11 A No, he just agreed to help a friend take down  
12 some trees.

13 Q And I -- if I'm understanding your testimony  
14 too, Paul wasn't trying to override anything you were  
15 doing; he wasn't telling you what to do either?

16 A No.

17 Q There was a lot of unspoken things happen  
18 between the two of you?

19 A Yes.

20 Q The branch that you and Mr. Dulberg were  
21 working on -- I'm sorry -- the limb that you and he  
22 were working on, that one you mentioned as you were  
23 cutting that fourth branch as turning, that one  
24 flexed?



1 A Yes.

2 Q And you used the word flexed, at one point  
3 also bowed, you used that word?

4 A Yes.

5 Q If I'm understanding what you're saying, the  
6 actual limb itself bent?

7 A Yes.

8 Q All right. Did you have that happen on any  
9 of the other 24 to 29 branches that you were cutting?

10 A No.

11 Q That was the first time that happened?

12 A Yes.

13 Q All right. And the -- at the point in time  
14 you described, and I don't want to go through in  
15 detail what you and Mr. Mast just went over, but you  
16 described how you were moving for that -- at the  
17 second attempt to get that fourth branch; and if I  
18 understood your testimony, simultaneously Mr. Gagnon  
19 is coming in with his right arm to grab the limb --

20 A Mr. Dulberg, yes.

21 Q -- and the saw and his arm converged  
22 simultaneously?

23 A Yes..

24 Q Okay. Had Mr. Dulberg gotten his hand

1 anywhere near the chain saw any closer than 12 to  
2 18 inches anytime prior to that?

3 A No.

4 Q At any point in time did you perceive or fear  
5 that he was getting his arm too close or hand or  
6 whatever, any part of his body too close to the blade  
7 of the chain saw that you were operating?

8 A No. No.

9 Q Right up until the very end?

10 A No.

11 Q Did you ex- -- As you were cutting, having  
12 down 24 to 29 branches, because this happened you're  
13 estimating on the twenty-fifth or thirtieth branch,  
14 correct?

15 A Yeah, somewhere around there.

16 Q Limb. Did you expect him to be putting his  
17 arm in there to help with the flex?

18 A No, because none of them flexed previous to  
19 that. I didn't foresee it at all.

20 Q All right. And would you agree that prior to  
21 June 28, 2011, indeed right up until the point where  
22 Mr. -- where the saw came in contact with  
23 Mr. Dulberg's arm, you knew that a chain saw could cut  
24 somebody?

1 A Yes.

2 Q You didn't have to be told that --

3 A No.

4 Q -- by anybody else?

5 A Did not have to be told that.

6 Q And would you also agree that you knew that  
7 it would be important if you were using a chain saw to  
8 keep it clear of somebody else's arm and hands and  
9 body for that matter?

10 A Yes.

11 Q You didn't have to be told that by anybody?

12 A No.

13 Q And you talked about a certain position you  
14 took with the chain saw, you called it a lock --

15 A Locked elbow.

16 Q Locked elbow?

17 A Yeah.

18 Q Is that where one hand's on there -- there's  
19 like a bar that you can hold the chain saw with?

20 A Yes.

21 Q Then there's another part where there's a  
22 trigger?

23 A Yes.

24 Q You actually have to pull the trigger to get

1 the chain to move?

2 A Yes.

3 Q And which elbow are you talking about being  
4 locked, both of them?

5 A Right elbow locked into my ribs so that my  
6 strokes were short.

7 Q Okay. So that was some -- that was a  
8 technique that you were using to maintain control over  
9 that chain saw?

10 A Yes.

11 Q Is that something that you learned just in  
12 practice or something you heard before?

13 A No, I witnessed people doing it when they're  
14 in close quarters because sometimes you'll have to do  
15 that. You know, I have a friend who does tree  
16 trimming and I'd just seen it performed before.

17 Q Okay.

18 A It's also less fatiguing on the worker.

19 Q And it may be elementary but correct me if  
20 I'm wrong, you were -- as you were using the saw to  
21 cut those branches off the limbs, part of what you  
22 were doing is removing these limbs, correct?

23 A Yes.

24 Q The branches from the limbs?

1 A Yeah.

2 Q And part of what you're doing is trying to  
3 not hurt yourself --

4 A Correct.

5 Q -- in the process?

6 A Yeah.

7 Q Were you also endeavoring to not hurt  
8 Mr. Dulberg?

9 A Yes. I had no intentions of hurting anyone.

10 Q At any point in time prior -- right up until  
11 the point where the chain blade came into contact with  
12 Mr. Dulberg's arm, did you feel there was a -- did you  
13 feel compelled or was there anything causing you to  
14 feel compelled to tell him to keep his hands or arms  
15 out of the way?

16 A No, they were not in the way.

17 Q He was doing that all the way up until that  
18 point in time?

19 A Yes.

20 Q And if I heard you, you don't know all the  
21 injuries -- the extent of any injuries or  
22 complications Mr. Dulberg had as a result of that car  
23 accident that he had?

24 A Nerve damage is all I was aware of.

1 Q Okay. Whether he broke his neck or had any  
2 residuals with the elbow, rehab or surgeries, none of  
3 that you don't know?

4 A Yeah, I don't know.

5 MR. BARCH: All right. That's all I have.

6 MR. CALLAHAN: I just have one -- two quick  
7 questions that you may want to have some follow-up on  
8 if I can just go?

9 MR. MAST: Okay.

10 EXAMINATION

11 BY MR. CALLAHAN:

12 Q Mr. Gagnon, are you aware of any other work  
13 that Mr. Dulberg has done in addition to helping you  
14 tear off a roof after the date of the incident?

15 A He tends a garden which is his whole front  
16 yard this summer, the last summer. He did some -- He  
17 did some renovation and tear-out work for a -- kind of  
18 strange you asked that, but a homosexual that lives in  
19 Twin Lakes and he just freely gave up, he's like,  
20 Yeah, I met your friend Paul.

21 You know, he helped me tear out the dry  
22 wall in my basement and stuff and then I was like, oh,  
23 really? And I asked him if he would testify and he  
24 said, I don't want to get involved. So maybe he'd

1 want to get involved now, I don't know, but that was  
2 the one example; and then of course on my home, my  
3 roofing.

4 Q So he did some demolition work for some other  
5 people?

6 A Yeah.

7 Q And that was referred to in your statement  
8 that you gave Mr. Mast before this deposition?

9 A Yes.

10 MR. CALLAHAN: Okay. That's all I have.

11 MR. MAST: Yeah, I want to follow up on that.

12 FURTHER EXAMINATION

13 BY MR. MAST:

14 Q He tends a garden. Do you ever watch him  
15 tend the garden?

16 A I've seen him tend to his garden.

17 Q Since the accident?

18 A Physically walking in his garden and picking  
19 vegetables, yeah. I mean, as far as tilling and that,  
20 no, I have not seen him labor as far as tilling,  
21 although he did borrow my tiller to till it.

22 Did I see -- Did I see him? No.

23 Q Okay. Have you ever seen him till his  
24 garden?

1 A No.

2 Q The only thing you've seen him do since his  
3 accident as far as his garden is to pick vegetables?

4 A Yeah.

5 Q Okay. And that's just by when you drive by  
6 you see him doing that?

7 A He's -- He told me at those times when I was  
8 there, you know, look at all the produce I have.

9 Q He told you when? What are we talking about?

10 A When I was there.

11 Q After the accident?

12 A Yeah. On those -- On those occasions that I  
13 mentioned, he's got all his, you know, vegetables and  
14 stuff lined up at his house.

15 Q You're going too fast. On what occasions?  
16 These conversations we talked about at the beginning  
17 of this deposition weren't all at his house.

18 A No, the one where I was in the kitchen.

19 Q Right. That's the one time. You said --

20 A Such as -- Such as that, you know, and --

21 Q Wait. Wait.

22 A His brother doesn't tend the garden.

23 Q Hold on. Hold on. Stop. After the accident  
24 how many times have you been to his house?



1 A As I had said.

2 Q How many?

3 A As I had said.

4 Q What is as I had said? What answer -- How  
5 many is that?

6 A You've got it written down right there.

7 Q How many? I don't know what you're talking  
8 about. How many?

9 A I told you the one time in the kitchen.

10 Q Right.

11 A And there you go.

12 Q So one time?

13 A Yeah.

14 Q Okay. Just say one then; that's the answer.  
15 So the question is, how many times have you been to  
16 Paul's house since his accident? It's one time,  
17 right?

18 A Yeah.

19 Q Is that a yes?

20 A Yes.

21 Q Okay. So the times that you've seen anything  
22 that he's done with his garden, have you ever visited  
23 him to see what he does in the garden?

24 A No, I didn't witness him working in the

1 garden.

2 Q Okay. So what you're saying is the testimony  
3 you just gave about him tending the garden is what you  
4 have had that one conversation when you were at his  
5 house that one time after the accident, right?

6 A Yeah.

7 Q And that was a conversation you had with him  
8 and he said, Hey, look at what I do when I tend my  
9 garden?

10 A Yeah. I was figuring maybe the dog helped  
11 him, you know.

12 Q You know, I'm not trying to be funny. I'm  
13 just trying to get the facts, okay? Because what you  
14 say might -- you might not understand but it leaves a  
15 lot of inferences. I'm trying to finish -- find out  
16 exactly what you mean as far as so I don't have to  
17 infer what you mean, okay?

18 A Okay.

19 Q So I'm not trying to be funny about it. You  
20 were there at his house one time after the accident,  
21 right?

22 A Yes.

23 Q And that was the time four months after the  
24 accident?

1 A Yes.

2 Q Okay. And that's the information then that  
3 you got about him tending his garden, correct?

4 A Yes.

5 Q Okay. You've never seen him tend his garden  
6 since the accident, have you?

7 A Picking fruit, tending? Yeah. I mean, are  
8 you talking about tilling soil? Are you talking about  
9 walking in the garden in the sense --

10 Q Have you seen --

11 A What are you saying is tending?

12 Q All right.

13 A I don't understand.

14 Q Okay. I understand that.

15 A Okay.

16 Q How many times have you seen him in his  
17 garden since the accident?

18 A We'll say ten times driving by his house,  
19 going into the neighborhood that I used to live in, no  
20 conversations, not stopping by, not talking to him.

21 Q I got the answer, ten times.

22 A But I'd usually seen him in his garden.

23 Q During those ten times you've seen him in his  
24 garden since the accident, what things have you seen

1 him do?

2 A Harvesting vegetables.

3 Q Picking vegetables?

4 A Yes.

5 Q Okay. With his hands?

6 A Yes.

7 Q Putting them in some type of basket or  
8 something?

9 A Yes.

10 Q Okay. And you would see him just by passing  
11 by so it'd be a matter of a couple seconds you would  
12 see him, right?

13 A Yes.

14 Q For each of those ten times, right?

15 A Yes.

16 Q And those are ten separate dates?

17 A Yes.

18 Q Over a course of a summer?

19 A Over the course of since this occurrence.

20 Q Okay. So that would be two summers?

21 A So two summers, right.

22 Q Okay. Very good. Let's talk about that  
23 renovation work then. The renovation work that you're  
24 talking about isn't something you saw him do, it's

1 something that somebody else told you that he has  
2 done, right?

3 A Yes.

4 Q And who is the individual, what's his name?

5 A Mike Thomas.

6 Q Mike Thomas?

7 A Yeah.

8 Q He's the homosexual you were talking about?

9 A Yes.

10 Q And he lives in where?

11 A He lives in Twin Lakes.

12 Q Okay. Are you friends with him?

13 A No.

14 Q Okay. So you don't know personally what Paul  
15 did, if anything, at Mike Thomas's house, you just  
16 know what Mike Thomas told you, correct?

17 A Correct.

18 Q Okay. So whether he actually did renovation  
19 work, meaning Paul, you don't know; fair enough?

20 A His basement was renovated.

21 Q Whether Paul did the work or not, you don't  
22 know; fair enough?

23 A I was told that he did the work.

24 Q Right, and so now I'm asking do you know if

1 Paul did the work or just through what you were told?

2 A I was informed that Paul had done the work  
3 inadvertently without asking for me to be revealed  
4 that someone -- someone had told me that I know this  
5 person.

6 Q All right. Here, let me say it a different  
7 way.

8 A I know, you're trying to work it your way.

9 Q I'm not trying to work -- I'm just trying to  
10 get the basis of what you're saying and you didn't see  
11 him do the work, right?

12 A No, I didn't see him do the work.

13 Q So you don't know if he really did the work,  
14 do you, other than what somebody told you, correct?

15 A That's a fair assumption.

16 Q And Mike is the only person that told you he  
17 did the renovation work, right?

18 A That is correct.

19 Q And what part of the renovation work you  
20 don't know; fair enough?

21 A That's a fair assumption.

22 Q Okay.

23 MR. MAST: That's all I have. Thanks.

24

FURTHER EXAMINATION

BY MR. CALLAHAN:

Q I hate to do this but one more question. Have you seen Mr. -- In the time you've seen Mr. Dulberg after the accident, have you seen him working on his computer?

A I've seen him working on his computer, yes.

Q All right. And he seems to be able to use both hands on the computer?

A He's always on his computer, yeah.

Q Okay.

A That's what he does.

MR. CALLAHAN: That's all I have. Thank you.

MR. MAST: Now I've got to ask you that. All right.

FURTHER EXAMINATION

BY MR. MAST:

Q How many times have you been to Paul's house since the accident, just that one time?

A Yes.

Q Is that the only time you've seen him operate his computer after the accident?

A That was the time that I've seen him, yeah.

Q Okay. Fair enough.

1 MR. MAST: All right.

2 MR. CALLAHAN: Signature reserved.

3 (Witness excused.)

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1 STATE OF ILLINOIS )  
 2 ) SS.

3 COUNTY OF McHENRY )

4 IN THE CIRCUIT COURT FOR THE TWENTY-SECOND  
 5 JUDICIAL CIRCUIT  
 6 McHENRY COUNTY, ILLINOIS

7 PAUL DULBERG, )

8 Plaintiff, )

9 vs. )

10 No. 12 LA 178 )

11 DAVID GAGNON, Individually, )

12 and as Agent of CAROLINE )

13 McGUIRE and BILL McGUIRE; )

14 and CAROLINE McGUIRE and )

15 BILL McGUIRE, Individually, )

16 Defendants. )

17 I, DAVID A. GAGNON, state that I have read the  
 18 foregoing transcript of the testimony given by me at  
 19 my deposition on February 4, 2013, and that said  
 20 transcript constitutes a true and correct record of  
 21 the testimony given by me at the said deposition  
 22 except as I have so indicated on the errata sheets  
 23 provided herein.

24 \_\_\_\_\_  
 DAVID A. GAGNON

No corrections (Please initial) \_\_\_\_\_  
 Number of errata sheets submitted \_\_\_\_\_ (pgs.)

SUBSCRIBED AND SWORN to  
 before me this \_\_\_\_\_ day  
 of \_\_\_\_\_, 2013.

\_\_\_\_\_  
 NOTARY PUBLIC

1       STATE OF ILLINOIS   )  
                                  )   SS.  
2       COUNTY OF COOK     )

3  
4           I, Margaret Maggie Orton, Certified Shorthand  
5   Reporter and Registered Professional Reporter, do  
6   hereby certify that on February 4, 2013, the  
7   deposition of the witness, DAVID A. GAGNON, called by  
8   the Plaintiff, was taken before me, reported  
9   stenographically, and was thereafter reduced to  
10  typewriting under my direction.

11           The said deposition was taken at the offices of  
12  Thomas J. Popovich, 3421 West Elm Street, McHenry,  
13  Illinois; and there were present counsel as previously  
14  set forth.

15           The said witness, DAVID A. GAGNON, was first  
16  duly sworn to tell the truth, the whole truth, and  
17  nothing but the truth, and was then examined upon oral  
18  interrogatories.

19           I further certify that the foregoing is a true,  
20  accurate, and complete record of the questions asked  
21  of and answers made by the said witness, DAVID A.  
22  GAGNON, at the time and place hereinabove referred to.  
23  
24

1           The signature of the witness, DAVID A. GAGNON,  
2 was reserved by agreement of counsel.

3           The undersigned is not interested in the within  
4 case, nor of kin or counsel to any of the parties.

5           Witness my official signature on this 9th day of  
6 December, 2013.

7  
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11   
12 MARGARET MAGGIE ORTON, CSR, RPR

13 CSR No. 084-004046  
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