

MEMORANDUM

TO: File

FROM: Hans

DATE: February 6, 2013

SUBJECT: **DISCOVERY DEPOSITION OF DEFENDANT, DAVID GAGNON**

CASE: PAUL DULBERG

On February 4, 2013, I appeared for the discovery deposition of Defendant, David Gagnon taken before court reporter, Margaret Maggie Orton at Urbanski Reporting, 312/977-1777. The transcript was not ordered at the time, but we will call and have it ordered soon.

David Gagnon is kind of an unusual fellow. He is a very free spirit and talkative to the extent that he has difficulty remaining on point and many times his answers will flow into new issues and topics without much hesitation. He does come across somewhat likeable, however, but is an unusual sort and may come across at trial as somewhat defensive in his testimony. He testified to the following favorable and unfavorable points:

FAVORABLE TESTIMONY:

1. He agrees that as he was attempting to move forward with the chainsaw towards the limb to cut it, he struck Paul's right forearm causing him injury.
2. He admits that Paul was holding the branch with his left arm and reaching to hold the branch with his right arm when Paul's arm was struck by the chainsaw.
3. Paul had no pre-accident history of any problems with his right forearm.
4. He has not really been in contact with Paul much since the accident and doesn't know the nature and extent of his injury other than he does know that Paul has had some difficulty with his right arm since the accident.

UNFAVORABLE TESTIMONY:

1. He has spoke to Paul on several occasions after the accident during which Paul has indicated that "he might not have to work anymore" and "this lawsuit might be a great event in his life" and that he would share \$10,000 if he ends up settling for \$100,000 with David Gagnon - although Dave admits that Paul never conditioned Dave's testimony on any recovery or payment.
2. He believes Paul was reaching for the branch so that he could hold on to the lower end of the branch and keep it steady while Dave was cutting the limbs from the branch. However, Paul never grabbed onto the branch with his right before and this was something unknown to him

and he did not realize Paul was going to do this until just before Paul was cut with the chainsaw.

David Gagnon lives with his wife, Pamela at 39010 90th Place, Genoa, WI 53128. They have been married since 2008. Both he and Pam are longtime friends of Paul Dulberg. He has known Paul his whole life practically.

He explained that there were three particular conversations he had with Paul since Paul's accident in which Paul commented in a very questionable nature on the accident and how that might help him financially:

1. First, on the day of the accident after they left the hospital together and before they left the parking lot, Paul indicated to him that "we could make a lot of money at this."
2. For months after the accident, he was at Paul's house visiting along with Paul's roommate, Michael Mcartor when Paul mentioned that "this could be the best thing that happened to me because he will not have to work the rest of his life." This is the only visit he had at Paul's house since the accident.
3. Paul visited David at his home in 2012 after the suit was filed and Paul told him that "he would share \$10,000 of any money he gets if gets at least \$100,000 if it goes well for him." Dave responded that "what do you want me to say, that he was weilding the chainsaw and was negligent." Dave then said that he would not do that. Paul said "that would make it easier."

These three conversations are the only conversations he has had with Paul since the accident in any substantial sense and although he is not sure what Paul meant or implied with these statements, he felt that he was wanting Dave to say things favorable to his case to help him settle the case. Dave refused. However, Dave agreed that Paul never conditioned Dave's testimony on anything Dave said, although he did say it would "make it easier."

Dave graduated from high school in Johnsbury in 1985. Since then he started some college courses but never finished a college degree, but instead has been working most of his life since high school self-employed doing auto repair and body work. He does it at his home.

As for his use for chainsaws, he began using them probably around 1985, mostly on camping trips to cut up wood. In 2000 to 2004, he owned two different chainsaws but only one worked. He would use it from time to time to cut things in the yard. In 2004, he maybe used the chainsaw about 15 times until Paul's accident in June 2011. Most were on camping trips. Other than on camping trips, he would have used his friend, Mike's chainsaw on one occasion, another time was on a camping trip, another time would have been on his own property using a friend's chainsaw and the last time was just before the accident at his parent's house helping to cut up some wood. He recalls earlier in 2011, his parent's bought a brand new chainsaw and they were going to use it to cut down some wood in the backyard. He is not sure who they intended to use the chainsaw until he was asked two days before beginning work at his parent's house in June 2011, if he would help cut a couple pine trees down.

His parents are Carolyn and William McGuire. Carolyn is his natural mother, William is his step-father. His natural father died in 1996. His mother has been living at the same house since 1971. The address is 1016 W. Elder, McHenry, IL. It is on a one-third acre and it's a ranch house. There are only about 10 trees on the property. Before Paul's accident there were 13. Two of them were pine trees. He recalls a couple days before Paul's accident he spoke with his mother and father about removing a couple pine trees so that they can install a new shed. The older shed had come down because it was old. The parents agreed to pay him \$15 an hour for the work. Two days later he began the work on his own at his parent's property. He cut down several limbs from the two pine trees. The next day he went over to Paul's house in the morning to see if Paul wanted to help him for getting paid about \$15 an hour as well. They never talked about money but that was what he was implying, Paul would get paid as much as he is getting paid from his parents. He did not intend Paul to ever use the chainsaw on the day of the accident. He is not real sure what he expected Paul to do to help him other than to help stack the wood and clean up the tree debris. They never really discussed what Paul's work would do but Dave always planned on being the only one to use the chainsaw.

The two pine trees were in the backyard and they were about 50 feet tall a piece. They had a lot of branches on them. There were many limbs coming out from the base of the pine tree. It was over 25 years old. The process of cutting up the trees were as follows:

They would take a large limb maybe 4 to 5 feet tall and Paul would hold it in front of him vertically with his left hand out from his body and his right hand on his side. Dave would then begin 18" below Paul's left hand and start cutting on the sides of the branch all of the limbs off of the branch. The limbs were coming off horizontally from the vertical branch. He would cut off all of the horizontal limbs beginning 18" below Paul's hand. He did say that Paul is the one that chose to hold up the limbs or branches, it was not his decision. His decision was to use the two sawhorses and lay the branches over the sawhorses so that he could cut them down. (But that would be a lot more difficult because you would have to keep on picking up pieces as you cut the tree limbs from the sawhorses). Anyway, for about 25 to 30 different branches, Paul would hold them up with his left hand in front of him vertically and Dave would cut the limbs off of these branches. On the last one, Dave described that he cut about 4 limbs off the vertical branch Paul was holding and on the fourth one as he went down to cut the branch the branch bent a bit and gave way and he could not cut the limb cleanly, so he went down to cut the limb again at the same time as Paul was using his right arm and bringing it around to hold on to the branch to keep it steady. As Dave was going in with the chainsaw to cut this fourth limb from the branch the chainsaw struck Paul's right forearm. Immediately, they knew that he had to be taken to the hospital. Paul said let's go. Dave got in Paul's car and drove Paul to the hospital and they went in and got treated. Dave implied that it was not "a deep cut." But he has no medical expertise. Then when they got out of the hospital Paul said what Dave described earlier in this memo about "Paul saying that he could make a lot of money at this." He didn't really keep in touch with Paul much since the accident. Once suit was filed he became very angry at Paul because of some of the things that Paul was saying about "financially benefitting" from the claim.

As to his parents, he said that parents had no expertise in using a chainsaw and were not outside when the accident occurred. His parents were not directing on how he was to do the work, but he was to do the work on his own and in his own way. When I asked him questions about him directing Paul's work he said that he never directed Paul to do anything and that they had worked together on

other days and he just thought that they were working together and would work on their own to get the work done.