ORIGINAL

Discovery Deposition of **DAVID GAGNON**

Date: February 4, 2013

Case: Dulberg v. Gagnon

Urbanski
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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.

APPEARANCES:

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On behalf of the Defendants Carolyn McGuire and Bill McGuire.

* * * * * *

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(Witness sworn.)

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

WHEREUPON:

DAVID A. GAGNON,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. MAST:

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

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

Q Okay. So you know the process?

A Fairly well, yeah.

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

A Okay.

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

A I understand.

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

A Yes, I'm aware of that.

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

A Yes.

Q -- sound right?

A Yes, that sounds correct.

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

A No, I do not.

Q Was it Saturday or Sunday?

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

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

A 4-3-67.

Q And that makes you how old today?

page 6 –

? DAVE'S AUTO BODY

– BUSINEE ID #

SEARCH FOR DAVE'S AUTO BODY + SEARCH FOR TELEPHONE # FOR DAVE'S AUTO BODY OF GENOA CITY, WIS CAME UP EMPTY

DAVID GAGNON HAS BEEN UNEMPLOYED FOR APPROXIMATELY ~~12~~ 25 YEARS OF THE PAST 29 YEARS SINCE HIS 18th BIRTHDAY.

have been my entire

ed in doing?

nd collision repair.

r own name?

of Dave's Auto Body.

or some type of

been doing auto

nder Dave's Auto

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

A 4-3-67.

Q And that makes you how old today?

A I am 45.

Q Are you employed today?

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

Q What are you self-employed in doing?

A I do auto restorations and collision repair.

Q Do you do that under your own name?

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

Q At home?

A Yes.

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

A No.

Q -- organization?

A No. No.

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

A Probably 20 years.

Q Has it always been full-time?

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

Q All right. Have you had to fill the void

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a City, Wisconsin.

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CABIN WISCONSIN LLC
Twin Lakes, WI
All-season rentals

Pag 7

PAMELA'S LAST NAME
CAME UP WITH:
DIXON
KNIGHT
MATTIO
GAGNON

DAVID HAS A SON: COLIN BAZILEWICH
CHILD SUPPORT SETTEMENT
RECORDED IN McHENRY COUNTY
MOTHER: NICOLE - LIVES IN FLORIDA


Lakefront & Lakeview Cabins


Lake Mary frontage

We're Pet Friendly!

cabinwisconsin.com

cabinwisconsin.com

SETTLEMENT OVER CHILD → RECORDED IN McHENRY Co. COURTS
MOM to Dave's SON Colin Bazilewich

AREA

Q Has it always been full-time?

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

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

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

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

A Okay.

Q What is your current address?

A 39010 90th Place, Genoa City, Wisconsin.

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

A Yeah. 53128 is the zip.

Q Who do you live with there?

A My wife.

Q What's her name?

A Pamela.

Q Anybody else live at that address?

A No.

Q Do you have any children?

A No, I do not.

Settlement over child RECORDED IN McHENRY Co. COURTS

Nicole Bazilewich - Mom to Daves son Colin Bazilewich FLORIDA TAMPA BAY AREA

Q And your Social Security number?
A In full?
Q Yes.
MR. CALLAHAN: Can we do this off the record then?
MR. MAST: We can do it off the record.
BY MR. MAST:
Q Let's say on the record, what are the last four digits?
A 2535.
Q 2535?
A Yes.
MR. MAST: Okay. Give it to us off the record now.
(Discussion off the record.)
BY MR. MAST:
Q Did you give us your --
MR. CALLAHAN: Back on the record?
MR. MAST: Back on the record.
BY MR. MAST:
Q Did you give us your full Social Security number off the record?
A Yes.
Q Okay. All right. Do you have any criminal

convictions on your record in the last ten years?

A No. → Not Past 10 yrs But older around 25 yrs ago.

Q How long have you known Paul Dulberg?

A 35 years. —

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lives in Pistakee

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David Till I was 19 yrs old 1989

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DAVID GAGNON & PAUL DULBERG KNEW OF EACH OTHER STARTING ABOUT ~~18~~ 15 YEARS AGO THRU PAUL'S FRIENDS. PAUL NEVER EVEN TALKED TO DAVID PRIOR TO THIS TIME.

#7 PAUL WAS BEING BABYSAT AT SUE DVORAK'S HOUSE AT THE TIME DAVID SAYS THEY MET ON "BIKE TRAILS". DAVID ~~WAS~~ IS OLDER THAN PAUL BY ABOUT 3 or 4 YEARS & DID NOT EVEN KNOW PAUL 35 YEARS AGO

convictions on your record in the last ten years?

A No. → Not PAST 10 YRS But older around 25 yRS ago.

Q How long have you known Paul Dulberg?

A 35 years. —

Q And 35 years, how did you meet him?

35 years --

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

Q So were you neighbors, or ...

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

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

A They were closer to his home.

Q Closer?

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

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

A Yeah. Yes. — No DIDN'T EVEN TALK WITH David T. 11 I was 19 YRS OLD 1989

Q Okay. Has that friendship been in pretty

good standing since then till today?

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

Q Fair enough. But at least in your mind is it

. Let me just finish

- At least in your

good standing with

use of the suit?

derstood about that.

filed, okay, was your

ood standing?

for those ~~35~~ 18 years

er any times where

ted over that

Page 10

2. NO - ~~I TOLD HIM~~ DAVE TOLD PAUL HE WAS GOING TO CAUSE A DIVORCE BETWEEN DAVE & PAM IF HE SUED FOR THE INJURY TO HIS ARM

DAVE & PAUL WERE NEVER GOOD OR CLOSE FRIENDS.

good standing since then till today?

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

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

A No.

Q Okay. And is that because of the suit?

A Yes.

Q Okay. Fair enough. Understood about that.

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

A Yes.

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

A Yes.

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

A No.

Q Is that correct?

A That's correct.

Q Okay. And you can correct me if I say something that's not accurate, but so is it my feeling, even though you don't know what Paul's view of your friendship is, this suit being filed against

in your mind about

if I may.

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Paul had said some

with me.

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with his vehicle, we

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ondition because he's

eaving the hospital

page 11
#20 thru 24 - HERESAY -

BULLSHIT

PAUL WAS VERY DRUGGED UP WHEN HE LEFT THE HOSPITAL. HE HAD A PRESCRIPTION FOR PAIN PILLS THAT HE HAD TO SCREAM AT DAVID TO GET FILLED.

TOLD DAVID ALL HE WANTED WAS TO GET PRESCRIPTION FILLED AND TO GO HOME.

DAVID FINALLY RELENTED AND ALLOWED PAUL'S PRESCRIPTION TO BE FILLED BUT REFUSED TO TAKE PAUL HOME AND INSTEAD TOOK HIM BACK TO BILL & CAROLYN'S HOUSE

A That's correct.

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

A Yes, and only recently, if I may.

Q Okay. Go ahead.

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

Q You mean in his deposition or somewhere else?

A Personally to me.

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

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

and said that we can make a lot of money at this. —No

Q Okay. Was anybody else present during that conversation?

A No. No.

PAGE 12 & 13

DAVID & CAROLYN REFUSED TO CALL 911. THEY WENT IN THE HOUSE, SLAMMED DOOR SHUT & LEFT PAUL IN THE YARD.

DAVID WOULDN'T ALLOW PAUL IN DAVID'S CAR BECAUSE PAUL WAS BLEEDING BADLY.

PAUL TOLD DAVID - THEN TAKE MY TRUCK, I NEED TO GO TO THE HOSPITAL

the way from the

immediately leaving

ing lot at the

your accident -- of

e been June 28, 2011,

tal and he was in

driving, yeah.

car at the time or

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the occurrence

, Just take my car,

wouldn't let me in his car Because of blood

ou because I

're saying after

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

Q Okay. Was anybody else present during that conversation?

A No. No.

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

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

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

A Yes.

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

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

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

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

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

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

A Yes.

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

A Never left the parking lot and he said that.

Q No, I understand that --

A Yes, but that's --

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

A Yes. Yes.

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

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

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

I wanted to go Home Dave Drove to His Mothers and I Refused to take me Home

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

A Yes.

Q Okay.

A Yes.

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

A Yes. - LIE Never said that, I was on heart meds. and JUST WANTED A SMOKE & GO HOME & GO TO BED

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

A No.

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

A Yes.

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

A No.

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

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

Q How soon after the accident?

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

Q Okay.

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

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

Q Any witness to that conversation?

A Yes, Michael Mcartor.

ves with him.

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ent?

In his kitchen.

conversation regarding

talking about is that

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thing else?

to work another day of

me After for Mike Thomas

other day of my life.

Page 15
~~Page 14 & PAGE 13~~

#1 thru #10 - NEVER HAPPENED

#13 - ~~ABUSE~~ DAVE MADE PROFIT SUGGESTION TO PAUL -
2 WITNESSES - MIKE McARTOR & TOM KOST

#16 CONVERSATION TOOK PLACE IN BASEMENT AWAY FROM PAUL'S MOTHER WHO WAS IN THE KITCHEN

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

Q Any witness to that conversation?

A Yes, Michael Mcartor.

Q Who?

A Michael Mcartor, who lives with him.

Q How do you spell the last name?

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

Q Where Paul's living now?

A Yes.

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

A In his kitchen where -- In his kitchen.

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

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

Q Because I what?

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

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

A No.

Q Did he say anything else during that

mfortable or wrong?

s that Paul has said
had some kind of
dent other than those
described?
instance where he
it was in 2012 when
were still in

p you. After the suit
filed?
was filed, yeah.

ot coaching me,
it easier, shall we
ded something for my

s to that

Page 16
PAUL WENT TO DAVE'S RESIDENCE WITH I-PAD TO TAKE A PICTURE OF MAILBOX OR ANYTHING THAT WOULD REVEAL DAVE'S ~~STREET~~ ADDRESS.
12 thru 20 - LIE

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

A No.

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

A No. No.

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

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

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

A It was after the suit was filed, yeah.

Q Okay.

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

Q Was there any witnesses to that

communication?

A No. No.

Q Did he say how you would be awarded?

A No.

Q Did he promise to pay you anything in

pay you?

usand dollars.

to know the exact

that we all can

me, I wouldn't have a

if say I was to get a

make that hundred --

you would say or just

ll give you 10,000 out

ions on it.

what's the difference?

Page 17

PAUL HAD NO WAY AT THE TIME OF KNOWING WHAT & IF ANY HOME INSURANCE WOULD COVER THIS SO NO WAY COULD HE SPOUT $100,000

#1 thru 24 - LIE

communication?

A No. No.

Q Did he say how you would be awarded?

A No.

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

A Yes.

Q What did he promise to pay you?

A $10,000.

Q What did he say?

A If he got a hundred thousand dollars.

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

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

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

A He didn't place conditions on it.

Q Okay.

A I was assuming.

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

A No.

Q -- talking about?

A No, he did not.

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

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

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

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

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

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

A It was after the suit was filed.

Never Saw Dave after Suit was Filed

Q Okay.

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

Q Okay.

A So that would be the only other issue.

Q Okay. Fair enough.

A Yeah.

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

A No.

Q Okay. Nothing about financial interest --

A Not that time, no, nothing.

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

A I'm sorry.

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

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

A Yes.

Q Okay. Or the claim; fair enough?

A Yes. Yes.

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

A Mm-hmm.

Q Yes?

A Yes. Yes.

Q And that was four months later where he made

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

A Yeah.

Q Yes?

A Yes.

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

A Yes.

Q Right?

A Yes.

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

A Yes.

Q Is that true?

A That's true.

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

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

argumentative, but go ahead.

MR. MAST: Go ahead.

MR. CALLAHAN: I'll join that objection.

BY THE WITNESS:

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

Q Right.

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

Q I understand what your judgment is.

A Yes.

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

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

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

A Yes.

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

A Yes.

Q Okay. Did you ever say, Hey, do you want me to lie for you -- Well, let me put it this way. I'm

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he never asked you to

ay he never agreed to

hat you would say to

g that I said that I'm

would you want me to

hain saw and I was

sure would make things

say that, which

when he spoke of the

$10,000.

Page 23
#16 - #24
EMBELLISHING ON HIS
LIE

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

A Yes.

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

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

A That is correct. TRUE

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

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

Q Okay.

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

And he said, That sure would make things easy.

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

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

Q So that's the 2012 conversation?

A Yes. Yes.

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

A Yeah. — NO

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

A Yes. — For what?

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

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

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

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

A Nothing.

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

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

And he said, That sure would make it easy.

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

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

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

A Okay.

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

A Yeah.

Q You told me that in that 2012 conversation he

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

A Correct, that is what he said.

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

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

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

A Nothing.

Q -- to that?

Okay. Nothing, right?

A Nothing.

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

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

Q So he did say something?

A Yes, he did. I'm sorry.

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

A All right.

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

A Okay.

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

A Correct.

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

A That was my --

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

BY MR. MAST:

Q Okay. Is that what you said?

A Yes.

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

A He said, That would make it easy.

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

A He just said those words.

Q Okay. Is that all he ever said then after

that conversation at the end of that conversation?

A Yes.

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

A Yes.

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

A Correct.

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

A Yes.

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

A Yes.

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

A Yes.

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

A Yes.

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

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

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

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

A That is all, yes.

Q Okay. Have you now --

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

BY MR. MAST:

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

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

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

A Yes.

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

A Yes, that would be all.

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

A No.

Q Oh, one final question on those things.

A Okay.

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

A Michael Mcartor.

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

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

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

A No.

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

A Correct.

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

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

Q Are you still friends with Michael?

A As far as I know, yes.

Q Okay.

A This is not related to him.

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

A Yes.

Q Fair enough?

A Yes.

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

A I do not know.

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

BY THE WITNESS:

A I don't know.

MR. BARCH: Join the objections.

BY THE WITNESS:

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

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

MR. CALLAHAN: You may answer.

BY MR. MAST:

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

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

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

A Right.

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

A Fair.

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

A Yes.

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

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

Q Okay. Does your wife Pamela know Paul?

A Yes.

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

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

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

A No.

Q -- as you did?

A No.

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

A Correct.

Q Is that fair enough?

A Yeah, correct.

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

A No.

Q Is that fair?

A That's fair.

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

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

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

A Yeah, DeKalb College.

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

You were accepted at Northern but you never went there?

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

ARRESTED FOR DRUGS

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

A Okay.

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

A I was accepted at Northern Illinois University.

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

A Yes.

Q Okay. How long did you go to Northern

Illinois University?

A Two months.

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

A Program?

Q What type of degree? What program?

A Oh, engineering.

Q Okay.

A Mechanical engineering.

Q Okay. And what year was that, approximately?

A That was 1985.

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

A I pursued employment as an auto body worker.

Q With who?

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

Q Are they still together?

A No.

Q How long did you work there?

A Three years.

Q Doing auto body work?

A Correct.

Q Who was your supervisor?

A Owner and supervisor Brian Schuman (phonetic).

Q Brian what?

A Schuman.

Q Schuman?

A Yeah, Schuman.

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

A Mm-hmm.

Q Right?

A Yes, correct.

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

A CLC, College of Lake County.

Q When was that?

A I believe that was 1987.

Q Sometime while you were at Lakeland?

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

Q And how long were you at CLC?

A I want to say six months.

Q Okay. On what program?

A Same, mechanical engineering.

Q Did you finish that program?
A No, I did not.
Q Why not?
A Because I needed to earn money, and I wasn't earning enough doing -- going to school and working.
Q Okay.
A Pretty physical job, auto body.
Q Okay. Any other college education after high school?
A Completed, no.
Q Not -- I didn't say completed, any other college education after high school? Did you go to any other colleges?
A None other than the ones I had mentioned.
Q That's what I'm asking you.
A Okay.
Q You went to NIU and CLC. Any other college?
A No.
Q Okay. Where did you graduate high school?
A Johnsburg.
Q What year?
A 1985.
Q Okay. After Lakeland Auto, which I'm assuming was somewhere around -- when you finished

somewhere around 1988, '89, somewhere around there?

A Finished ...

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

A Yes. Yes.

Q Okay. Where did you go after that?

A I became self-employed performing the same.

Q To the present date?

A Yeah.

Q Okay.

A Yes.

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

A Yes.

Q How many jobs are we talking, lots?

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

Q Where was that?

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

ONLY WORKED FOR 4 YRS 3 MO OUT OF 27 YRS SINCE H.S.?

- Burlington WI

Q Okay.

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

Q And when did they let you go?

A They let me go just at Christmastime last year.

Q 2012 Christmas?

A Yes.

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

A No. — ONLY 3 JOBS IN 25 YRS - NONE LASTING MORE THAN A YEAR OR 2? HOW DID HE SURVIVE?

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

A No.

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

How long have you -- Strike that.

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

A Age 18.

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

MR. CALLAHAN: Yeah.

BY THE WITNESS:

A Yeah.

Q Yeah. About 1985 then?

A Mm-hmm.

Q Yes?

A Yes.

Q Yes. Okay.

Whose chain saw was that that you operated first?

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

Q Okay. Was Paul with you at the time?

A No.

Q Okay. Have you ever owned a chain saw?

A Yes.

Q Okay. Do you own one now?

A No. ~~What happened to it?~~

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

A Oh, 2000 till 2004.

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

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

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

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

MR. CALLAHAN: No.

MR. MAST: Sorry.

BY THE WITNESS:

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

Q So you had two of them?

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

Q And that was from 2000 to 2004?

A Correct.

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

A No.

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

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

Q Oh, so you used them?

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

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

A Yes.

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

A Yes.

Q Whose chain saws?

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

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

A At least a dozen times.

Q Were they all during camping trips?

A Yes.

Q Okay. And they were all somebody else's

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

A Yes.

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

A Yes.

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

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

Q Okay.

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

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

A Yeah. Yes.

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

A Three times.

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

A Correct.

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

A Four times. 3? OR 4?

Q And whose chain saw was it?

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

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

A That would be my friend Mike. MIKE who?

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

A After the 2004, yes. Yes.

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

A Yes.

Q And that's Mike's?

A Yeah. Not Mike Mcartor.

Q No, I --

A Okay. I'm just clarifying.

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

A Correct. - what campground allows chainsaws?

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

A Yes.

Q And fourth time was at your parents' house?

A Yes.

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

A It was the day of that incident. —?

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

A Oh. Datewise?

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

A It was a year. — LIAR

Q Within a year?

A Yeah, within a year.

Q So it would have been the prior summer maybe?

A Yes.

Q Okay.

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

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

A Yes.

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

A Yes.

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

A No.

Q Up till today?

A No.

Q Okay.

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

MR. MAST: Okay. So those are two different

answers, I take it?

MR. CALLAHAN: Yes.

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

BY MR. MAST:

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

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

A No.

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

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

Q Okay. So William McGuire is your stepfather?

A Correct.

Q Is your father -- your natural father living?

A No.

Q Okay. When did he pass?

A 1996.

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

A We never interacted in that way.

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

A No.

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

A That would be fair to me.

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

A They're currently both retired.

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

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

Q Okay.

A -- in Spring Grove, and William McGuire

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

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

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

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

A No.

Q -- you do it?

A Right.

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

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

Q Okay.

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

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

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

BY THE WITNESS:

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

Q Wait. I missed the beginning of that.

A When they purchased that, they did not solely purchase it for my usage. FOR who else?

Q Okay.

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

Q Right.

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

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

themselves were going to operate that chain saw?

A You would have to ask them that question.

Q So you don't know?

A I do not know.

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

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

Q You know that?

A I know that.

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

A Yes.

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

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

Q Okay.

A Ranch home, full basement.

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

an estimate?

A I'm going to tell you.

Q Okay.

A Currently?

Q Yes.

A Ten.

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

A 12. Oh, 13.

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

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

Q Okay.

A -- or during this occurrence.

Q Okay. I see. Just limbs?

A Yes.

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

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

A Yes.

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

A Yes.

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

A Yes.

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

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

BY THE WITNESS:

A Please reask the question.

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

A Yes.

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

A Yes.

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

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

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

A Okay.

Q My question is --

A Sorry for being all-inclusive.

Q It's okay.

A I know. I'm just apologizing.

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

A I'm in no hurry.

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

A I don't know. — Dave took the apple tree down!

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

A Yes.

Q Okay. How frequently?

A I don't know.

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

A I've seen him operating a chain saw.

Q Where?

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

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

A Yes.

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

A No.

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

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

BY THE WITNESS:

A I'm not qualified --

MR. BARCH: Let me object to the foundation.

But go ahead and answer.

BY THE WITNESS:

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

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

A Yes.

Q Let me finish the question. Under your own

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

A Yes.

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

A Yes.

Q Where was that?

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

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

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

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

A Okay.

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

A Okay.

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

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

Q Before the day of his accident --

A Yes.

Q -- on numerous occasions?

A Yes. — twice

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

A Yeah.

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

A Yes. — ONLY ONCE was David and I Camping at the Same Place

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

A Yes. — Name a single campground in america That allows Campers To use a chainsaw To cut wood All Sell wood and allow a hatchet OR AXE. ONLY!

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

I found 2 over 1000 miles away Tx + Ca.

A Yes. — NO, I Never Ran a Chainsaw while Camping.

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

A Yes, please.

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

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

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

A Okay.

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

A No. — False — At My Moms House - Apple Tree + one time Camping

Q Okay.

A No. No.

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

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

Q Yeah, okay.

A Yes.

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

A Yes.

Q Okay. Under what circumstances?

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

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

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

Q Because they had the chain saw?

A No, they didn't have the chain saw then. I'm -- You're talking about the chain saw that was in

the accident?

Q Okay. Let's go back.

A Or are you talking about chain saw in general?

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

A I don't know. ??? He should've used it.

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

A Yes.

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

A Correct.

Q When did they purchase that chain saw?

A Shortly before the incident.

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

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

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

A Yes.

Q Okay. And before they purchased that chain

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

A No. — ELECTRIC?

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

A It would be some other chain saw.

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

A Yes, in my mother's garage.

Q Whose chain saw was it?

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

Q Okay.

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

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

A That's correct.

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

A I don't know.

Q Couple, maybe two or three times?

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

Q Okay. At least once; fair enough?

A At least once, yeah.

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

A No.

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

A That's fair to say.

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

A Yes, I was being compensated.

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

A No --

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

BY THE WITNESS:

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

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

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

A Yes, I did.

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

A Okay.

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

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

A Yes.

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

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

Q The day of the accident?

A The day of the accident.

Q All right. Okay. Before the day of the

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

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

A Reask that question.

Q Pardon?

A Could you please reask that question?

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

A Yes.

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

A No.

Q Okay.

A No.

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

A Yes.

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

accident; is that fair to say?

A Yes.

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

A That's correct.

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

A At least twice a month.

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

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

Q When you weren't there?

A Yeah.

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

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

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

A Yes.

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

MR. BARCH: Speculation.

BY THE WITNESS:

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

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

A No, I believe that they have not.

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

A Correct.

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

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

MR. BARCH: Speculation.

BY THE WITNESS:

A A friendship.

Q Go ahead.

A Friendship again.

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

A No, he would arrive there with the purpose of seeing me and me not being there, he would stay being congenial and friendly towards my mother. - Dave Didn't Live There ~~4~~ FOR MANY MANY YRS.

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

A That would be between Paul and my parents then.

Q So you don't know?

A I don't know.

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

A Okay.

Q Okay. Do you know if Paul ever worked at

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

A Yes.

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

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

Q Okay.

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

Q What year would that have been?

A Just 2010.

Q Okay.

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

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

A Yes.

Q Okay. So --

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

Q Okay.

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

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

A It was before this occurrence and shortly before that. - Thought NO TREES were Removed Before the Incident.

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

A Correct. - True - Except it went To Neighbors House

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

A Yeah, he --

Q Before the day of his accident?

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

Q Okay. Just once?

A That day was the -- That day we made several ONE TRIP

trips.

Q What day?

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

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

A Yes.

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

A Correct.

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

A None that I'm aware of.

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

A No.

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

that fair to say?

MR. BARCH: Foundation, but go ahead.

BY MR. MAST:

Q That you know of obviously.

A That I know of.

Q None?

A That I know of, none.

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

—Does he have a step mom?

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

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

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

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

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

Q I see.

A Yeah.

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

childhood, right?

A I lived there until I was 30 years old.

Q Okay.

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

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

A Yeah.

Q Okay.

A Yes.

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

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

A Yes.

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

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

But you may answer.

BY THE WITNESS:

A I don't know. I don't know. - Obviously to cut something

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

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

Q What shed down, what do you mean?

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

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

A Two days before the occurrence.

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

A Yes, I was.

Q Okay. Was Paul with you?

A No.

Q It was just you and your two parents?

A Yes.

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

issue or did they bring up the issue?

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

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

A I did.

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

A Yes.

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

A Two.

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

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

Q Right.

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

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

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

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

A Yes.

Q And they were pine trees?

A Yes.

Q Okay. And how tall were the pine trees?

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

Q Both of them?

A Yes.

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

A Yes. I watched my mother plant them herself.

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

A Yes.

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

A At that time they had become large and an

overburden.

Q Just taking up a lot of space --

A Yes.

Q -- and in the way?

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

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

A Yes. Yes.

Q But they were in good health?

A Yes.

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

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

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

MR. CALLAHAN: If you know.

BY THE WITNESS:

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

Q Were they being taken down for any safety reason?

A No.

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

A It was an apple tree.

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

A Nothing at all.

Q Right?

A Yes.

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

A No, the shed was already standing before

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

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

A Yes.

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

A No.

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

A Yes.

Bill + Carol Deal ↓

Q How much?

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

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

A No.

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

A No.

Q And the scope of the work that at least as

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

A Yes.

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

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

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

A Yes.

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

A Yes.

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

A Yes.

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

A No.

Q Or during them being cut?

A No.

Q Or after they were cut?

A No.

Q Or how they are today?

A No.

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

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

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

A Mm-hmm.

Q Yes?

A Yes.

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

A No.

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

A I suppose that a person should.
Q Did you?
A No. — He Had Safety Glasses on - Sweat Kept Him HAving To Wipe Them off
Q Did you wear a helmet?
A No.
Q Gloves?
A Yes. Yes.
Q Okay. Work gloves?
A Yes.
Q Boots?
A I can't recollect if I was wearing boots or shoes that day. — Boots
Q Okay. Any other type of particular things that you would wear specific to cutting trees down?
A No.
Q Other than gloves and clothes?
A No.
Q No. Okay.

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

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

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

Q Okay.

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

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

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

Q That's all I'm asking you.

A And then I --

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

A Yes.

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

A No.

Q Is that correct?

A That's correct.

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

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

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

A Yes.

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

A Yes, it's a pine tree.

Q Okay.

A There's many branches on pine trees.

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

A Thick by way of ...

Q By way of being just thick.

A Diameter?

Q Yeah.

A No, not really. Branches --

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

around even on the branches.

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

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

A How many branches?

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

A Between the two trees?

Q Yep.

A Six.

Q Okay.

A The lowermost were the thickest.

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

A Start at the bottom and go up.

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

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

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

A Okay.

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

A Yes.

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

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

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

A Yes.

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

A Yes.

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

A Four hours.

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

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

Q Up?

A Up. From the bottom going up.

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

A Yes.

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

A Yes.

Q Correct?

A Yes.

Q How many limbs are we talking?

A I don't know.

Q Like 30, something like that?

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

Q Hundreds of limbs?

A Yeah.

Q Okay. Varying sizes?

A Yes.

Q Okay.

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

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

A Yes.

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

A Correct.

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

A I don't know.

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

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

slang - Loser who thinks he is Something

DOES DAVE Know What scrub means - TO Rub or wash?

Q So you called him?

A I stopped by his home.

Q Before getting to your parents' house?

A Yes.

Q And was Paul home?

A Yes.

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

A That's what I said.

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

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

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

A Yes.

Q Okay.

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

itself that I already cut the day before.

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

A Yes.

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

A Yes.

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

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

Q On the 27th?

A On the 27th, yeah.

Q Okay.

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

Q Okay.

A You know, there's a lot here.

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

A Yeah.

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

A Yes.

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

A Yes.

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

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

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

A No.

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

A Yes.

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

A No.

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

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

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

A Yes.

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

A The actual limbs, yes.

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

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

Q Okay.

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

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

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

A Yes. - Dave never stopped by Paul's the morning of

Q Okay. And he said yeah?

A He said yes.

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

A At that time there was no questions about money.

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

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

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

A Mm-hmm, right. - in 4 hrs?

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

A Yes.

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

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

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

A I was assuming that they would.

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

A No.

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

A No.

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

A Yeah, I was going to --

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

A Yes.

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

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

Q Okay.

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

Q Fair enough. What time did you arrive at

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

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

Q Okay.

A That's the best I can recollect.

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

A I have no --

Q These limbs. I'm sorry.

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

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

A I was hoping. I wasn't expecting.

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

A Yes.

Q And he arrived alone in his car?

A Yes.

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

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

A Mm-hmm.

Q All right?

A Yes.

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

A I believe about an hour.

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

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

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

A Yes.

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

A Yes.

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

A Yes, I was -- Yes, when he showed up, I was already in the process of working. -No

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

A Yes.

Q Was anyone else working with you two?

A No. -Bill was earlier

Q Was anyone else watching you two?

A No. -Parents

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

A They were in the house. -Lie- Both were outside

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

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

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

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

Q How did they know that?

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

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

A They see him. Okay. Sorry.

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

A I know.

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

A I don't know.

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

A No, I do not know.

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

A No. – Yes, Dawes sister Dian

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

A Correct. – Carolyn, Bill, Dian?

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

Any alcohol to drink that day?

A I don't drink alcohol. – I Believe thats true.

Q Okay. Any medications?

A None. – IDont Know...

Q Any drugs anyway?

A No. – Dont Know

Q Any type of drugs?

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

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

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

A Yes.

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

A No. → Didn't Dave have expectations of what he wanted to accomplish that DAY?

Q Okay. Were your parents keeping any type of watch over the work you were doing to kind of see how things progressed? → How would He Know this?

A No. - Yes they were - Carol admits Bringing out water Both Carol & Bill admit Being out there Playing with my Dog. - very small yard - hard lot to see & Hear chainsaw cutting

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

A Under my supervision. ✓

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

A No. - TRUE & FALSE Parents had ~~a~~ input all MORNING into afternoon

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

A No. - yes, They wanted it to FALL IN a certain spot So it Didn't Hit Garage OR Pool. Bill ~~want~~ was & wanted to Burn the Branches - Dave insisted on cutting them up.

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

A By my own decisions.

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

A Until Paul arrived.

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

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

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

A No.

Q Okay. Was he doing everything appropriately?

A It seemed so.

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

A No, I gave no instruction basically to him.

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

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

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

A Yes.

Q -- correct?

A Yes.

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

A No.

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

A No.

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

A Paul was cut by a chain saw.

Q A chain saw that you were using and

operating, right?

A Correct.

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

A That's correct, yeah.

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

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

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

A Yes.

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

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

A (Nodding.)

Q You have to answer a word.

A Yes.

Q All right. Do you know, without looking at

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

A Yes, exactly where.

Q Where?

A On his right forearm.

Q Okay.

A (Indicating.)

Q Is that the only place he was cut?

A Yes.

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

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

BY MR. MAST:

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

A Yes.

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

A Yes.

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

A Yes.

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

A Sure looks good to me.

Q Looks like the same one?

A Yeah.

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

A Yes, it does.

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

A Yes. → His Discription of the accident Doesn't Place it Here

Q -- forearm, correct?

A Yes.

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

A Yes.

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

A Yes.

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

on June 28, 2011, right?

A Yes, about a half an hour.

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

A Yes.

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

A No.

Q What were you doing?

A I was sorting.

Q You were what?

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

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

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

A No.

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

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

worked well together. We understood one another.

Q But my question was --

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

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

A I left it up to him.

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

A He didn't cut. He held.

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

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

Q How would he know then is the question.

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

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

A There was no guessing, but ...

Q How was he going to know then?

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

before in the past.

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

A I never intended him to hold the branch.

Q Okay.

A He chose to hold the branches.

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

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

Q Moving material, stacking what?

A Stacking wood.

Q Okay.

A And raking.

Q Was there a rake available?

A Was there a rake available?

Q Mm-hmm.

A Yes.

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

A Into 18 inch pieces.

Q -- to store them, correct?

A Into 18 inch pieces and then stack, yeah.

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

Moving material meaning what?

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

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

A Yes.

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

A No.

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

A No.

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

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

Q Okay.

A No.

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

A It wasn't a matter of not caring. He chose to and then we went with it. — I'm IN charge of his project again. LOL

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

A It seemed to be appropriate at the time. yes?

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

A I understand.

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

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

MR. CALLAHAN: Wait until he finishes the question.

THE WITNESS: Okay. I thought he was finished.

BY MR. MAST:

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

enough?

A Acceptance, yes.

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

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

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

A I suppose, yeah.

Q Okay.

A Yes.

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

A No.

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

A Yeah.

Q Okay.

A Yes.

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

A Appropriate?

Q Yes.

A To me?

Q Right.

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

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

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

Q Go ahead.

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

jeopardize himself or me and likewise.

Q Okay.

A That's where we were at.

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

A Yes.

Q Was he doing anything inappropriate before he got hurt?

A No.

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

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

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

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

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

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

A Yes.

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

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

BY MR. MAST:

Q Is that correct or not?

MR. CALLAHAN: You may answer.

BY THE WITNESS:

A Ask the question again, please.

Q My under- -- Strike that.

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

A No, I did not. - Liar Wow.

Q -- at your parents' house? Huh?

A No, I did not. - Denial till He's Dead?

Q Never told him what to do?

A No. - again

Q Never told him how to do it?

A No. unbelievable

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

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

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

A Yes. ~~Thought~~ Didn't he state earlier that he had SORTED all the Branches before Paul showed up? - NEED to go Back & Look.

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

A Okay.

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

A No. They were already in a pile and as I had mentioned earlier, pine, when you cut it, it needs to be addressed or orientated. why If you put branches like this, it's going to pull out unsafely. Why? What's makes it unsafe? So if you stack them with the cut ends like this, you can easily pull them off one another. Like what?

Q Okay.

A That's why I was sorting, so that it would go ... - Dave had a plan?

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

A How may I help.

Q How may I help. Okay.

And what do you say?

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

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

A Yes.

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

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

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

A Mm-hmm.

Q Yes?

A Yes.

Q What happens next?

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

placed them on these horses.

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

A Okay.

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

A Yes.

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

A Yes.

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

A Yes.

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

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

Q Okay.

A -- that.

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

A To put them on the horses.

Q The sawhorses?

A Yeah.

Q How many sawhorses do you have?

A There was two there.

Q And how far apart were they spaced?

A Four feet.

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

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

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

A Yes.

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

A Yes.

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

A Yes.

Q Okay. How long did that occur?

A Ten minutes.

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

A Paul opted to stand them up.

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

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

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

A Yes.

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

A No, freestanding large end.

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

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

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

A Top down.

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

A Yes.

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

A Yes. NO - that's insane

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

A No. - why the Hell NOT?

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

A 20 minutes.

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

MR. BARCH: Hans?

MR. MAST: Yes.

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

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

BY MR. MAST:

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

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

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

A Yes.

Q -- from a top to a bottom?

A Yes.

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

A I would --

Q -- branches off of it?

A I would say --

Q Hold on. Let me finish the question.

A Okay. Sorry.

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

A Not that many.

Q Okay. Maybe 20 then?

A Or less.

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

A Yes.

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

A Yes.

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

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

Q Happened?

A -- happened, yeah.

Q His injury?

A Yes.

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

A Correct.

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

A I'll estimate between 25 and 30.

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

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

and it just nicked his arm.

Q Okay.

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

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

A Yes.

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

A Yes.

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

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

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

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

A We stopped as soon as he was injured.

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

A Yes.

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

A Yes.

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

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

Q That's what I just said.

A Yeah, we just stopped.

Q Let me say it again because I want --

A Yes, I agree.

Q Let me say it again.

A Okay.

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

A Yes.

Q You said you did that for about 20 minutes.

A Yes.

Q And you did 25 to 30 separate branches, right? Right? — Less than 1 min Per Branch?

A Estimating, yes.

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

A Yes.

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

A Yes.

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

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

Q I understand that.

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

Q I understand.

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

Q I understand all that.

A Okay.

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

A Did you say 50 minutes?

Q 50.

A Okay.

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

A No. No, we're not.

Q Okay.

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

giving estimates all along, but go ahead.

BY MR. MAST:

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

A Yes.

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

A Yes.

Q -- that you were cutting, correct?

A Yes.

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

A Yes.

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

A Yes.

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

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

Q Okay.

A -- the lengths diminish.

Q So sometimes Paul is holding the branch directly out?

A Deviating between four and six --

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

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

A Yes.

Q -- of the branch?

A Yes. Yes.

Q Okay. So anywhere from four feet off the ground he might be holding a branch to six and a half feet to maybe seven feet?

A No, not six and a half feet. I would say

somewhere between four and five feet. 4-5'

Q Okay.

A Somewhere in and around just right here.

Q Fair enough.

A Yeah.

Q So Paul is holding with his left arm -- or left hand out from his body extending out the branch is from anywhere from four feet off the ground to five feet off the ground, correct?

A The point where he was clasping that limb, yes, would be four to five feet above the ground.

Q And then underneath where he's grasping is where you're cutting?

A Correct.

Q The first cut that you're going to make is the highest off the ground is how far under his hand?

A A foot and a half, foot. So it really depe- --

Q All right. A foot and a half or a foot?

A May I finish?

Q Well, it's going to be best if you just answer what I'm asking and not try to add on every time.

A (Inaudible) sit here through that. I'm

showing Temper

sorry. — Attitude is showing

Q What's that?

A I'm sorry. It's just my character. ← Lack of It. - Internal Stressors ?

Q Well, that's fine. The question is this, he's holding these branches extending his arm out and holding them four to five feet off the ground depending on the height of the branch, right?

A Yes.

Q Okay. And you are cutting the first cut about 18 inches below his hand, correct?

A Yes. - thought he said 1ft Confirmed after saying 1½ft. earlier.

Q That's the first cut, yes?

A Yes.

Q So that the branch that he's holding after you cut it is going to be about 18 inches long, right? The piece of wood that's in his hand after you make your first cut is going to be 18 inches long?

A No. No, he was placing the whole limb -- if I may, I know she can't record this. There's your limb off your tree. There's a pile of them. Stump down, that's where I cut it, the larger portion down to the ground. He would hold the smaller portion because on a pine tree they grow like this. If you don't know that, they grow upwards like that. So I

was cutting in the crotches of them. He was holding it, and I would stay away from him cutting off -- and I would not, like, cut towards the top, which is smaller, it's useless wood; we were just trying to get rid of the debris. So he would hold it and I would start cutting like this and put it over there. Off the pile --

Q I got you.

A -- another one --

Q I got you.

A -- stump down and hold it like that.

Q I got you. So he is not cutting -- The base of the branch that Paul's actually holding, you're not cutting that?

A No.

Q You're cutting the stems or limbs that come off of that horizontally?

A The sub limbs off the main limbs that were already removed.

Q Is that correct?

A Yes.

Q Okay. And the -- Although there might be limbs off of that branch all the way up to his hand, you're starting 18 inches below his hand just to stay

away from his hand, right?

A Yes. Yes.

Q Okay. So when you're done cutting that branch, there is still going to be some smaller limbs coming off of that branch at the top by his hand and that's okay, you can deal with it later?

A Correct.

Q Okay. So after you're done cutting horizontally all those horiz- -- Strike that.

After you're done cutting vertically all those horizontal limbs off of that branch, he puts the branch back and picks up another branch and you do that 25 to 30 times before Paul's injury?

A Yes. In 20 minutes

Q Okay. The branch that Paul was holding when he was injured.

A Yes.

Q Describe how high or off the ground he was holding that.

A Five feet.

Q Okay. And was it a branch like all the other branches?

MR. CALLAHAN: Just object to form of the question.

BY THE WITNESS:

A By way of species?

Q No. Was it any different from any of the other 25 to 30 branches he had held previously?

A It may have been a smaller one that is by way of diameter that he chose to hold up. He's trying to inject Faolt again

Q This is what I'm asking. I'm not asking what you might -- what might have happened. I'm asking you, based upon you being there and I wasn't there, was the branch that Paul was holding when he was injured different in any way that you can tell that you recall than any of the 25 to 30 branches he had held previously without incident?

A None of the branches were exactly the same.

Q I understand that, but I --

A I don't know how to answer the question then.

Q Well, let --

A The --

Q Hold on. You answered it then. If you don't know how to answer it; you've answered it. So let me ask it a different way then. Other than every branch being a little different in size and thickness and amount of limbs off of it, is there anything unusual, anything necessarily different from that branch than

the other 25 to 30 branches?

A No.

Q Okay. And in appearance, the branch looked like any of the other 25 to 30 that you had cut just previously, correct?

A Yes.

Q Okay. And probably a similar number of -- a similar number of cuts off of this branch that Paul was holding when he was injured, you were going to have to make a similar number of cuts on that branch as to the other 25 to 30 branches you were cutting?

A Generally, yes.

Q Okay.

A Okay.

Q How many cuts were you able to make off of the branch that Paul was holding at the time of his injury before he got injured?

A Four. Definitive

Q Okay. So if I'm going to draw a picture of the branch, okay, and we're assuming that's a five foot branch and it has limbs going all off it up and down the branch, right? Right? Correct?

A (Nodding.)

Q Yes? I'm waiting for a word.

A I'm waiting to see what --

Q I'm not expecting you -- You don't have to follow my picture. I'm just saying if I'm --

A Well, I don't follow your description so I'm looking at the picture.

Q Okay. Well, I'm drawing a picture myself to --

A Okay.

Q -- demonstrate to you --

A I'll wait till you're done.

Q No, I can demonstrate it to you. I don't care. You can look at it.

This is a branch and then it has all these limbs coming off it in varying sizes, widths, and heights, okay? Fair enough?

A No, it's not the description of what was being cut. That's why I --

Q All right. You describe what was being cut then.

A The description of a pine branch or a limb is that it starts at a certain diameter, whether it be 3 inches or 2 inches, and over its length, which is also varying, it diminishes to just pine needles. About increments of every and varying also between

6 and 12 inches are branches again that from the larger diameter where it was cut from the tree begin to get lesser and lesser as you go towards the end of the branch.

Q Okay.

A There is a varying amount of how many branches are on there because no tree is exactly the same, so I was in conflict with what you were thinking --

Q Okay. Fair enough.

A -- it looked like.

Q So Paul's holding the branch at the top?

A Correct.

Q Okay. With his left hand?

A Yes.

Q What's he doing with his right hand?

A No. — NO What?

Q Just to the side -- to the side of him?

A Just aside -- aside and away, yeah.

Q Okay.

A Standing away from it actually as you had physically shown it. — Describe it.

Q All right. What you're saying is he's extending his left arm out in front of him keeping his

Developing his thoughts on the fly rather than true recollection

Continue again after longer pause

Both? Oxymoron?

body away --

A Yes.

Q -- his left arm above and holding the branch while his right arm is aside of him so the branch is standing vertically maybe three feet from his body; fair enough?

A Yes.

Q Okay. And then you start cutting these horizontal limbs off the branch at about 18 inches below his hand?

A Yes.

Q Okay. And do you remember how many cuts you had to make at a distance of about 18 inches from his hand before he was hurt? I'm not saying going further down, I'm just saying at the 18-inch mark where you were going to start the cuts.

A One.

Q Made one cut?

A One cut.

Q Okay. You got one cut?

A Very --

Q Hold on.

A I know that.

Q All right. Then you go down another distance

to make the second cut?

A To make another singular cut on a different branch, yeah.

Q How far down do you go?

A It varies with how -- how far apart they are on the branch. I would say between 6 -- 8 and 12 inches.

Q Listen, I don't want to guess so this is my question, okay? Hold on. Hold on. We know he's holding it at the top.

A Yeah.

Q We know it's about five feet, you said. We know your first cut is 18 inches from his hand, right? We know those things, right?

A Yes.

Q Okay. So my question is, based on what you've just told me now, how far down from the first cut that's 18 inches from his hand is the second cut on -- give me your estimate.

A I will give you an estimate of between 8 and 12 inches.

Q Okay. So that's the next limb is 8 to 12 inches, right?

A Yes.

Q All right. And then how far down is the next limb that you're cutting from that one you just cut, the second one?

A Again, 8 to 12 inches.

Q All right. And you're now on your fourth one. How far is the fourth one from the third one?

A There are branches on either side of that limb, which means I would cut this one, this one. This one, this one (indicating).

Q Okay.

A It looks like this.

Q I got you.

A Okay.

Q So what you're saying is, and I'm putting on my diagram on the same side -- hold on -- on the same side, but what you're saying is when you cut the first one, the second one is going to be on the other side?

A Yes.

Q Okay. That's fine. You can describe that. So the first one is on one side; you cut that 18 inches from his hand. The second one's on the other side; you cut that 8 to 12 inches below the first one?

A Yes.

Q The third one's on the same side as the first cut 8 to 12 inches below the second one, right?

A Yes.

Q And where's the fourth one? Same side as the second one?

A On the right side.

Q Over here?

A Staggered one, two, three, four.

Q Right. So it's the same side as the second cut then. If you have one, two, three, four --

A I wasn't methodically approaching each branch going left and right per se like, oh, I've got to start here or start there. It really mattered where he grabbed it and what was -- what was below his hand for me to start cutting and again --

Q Listen.

A And, again, the branches aren't aligned as you are drawing them. It's relative to me because --

Q Listen. The easiest process is for you to either say you know something or you don't know something, but you keep first leading --

A Sorry.

Q Hold on. Hold on. Hold on. You first lead me down here and then you just say well, I don't know

then. Tell me what you don't know and I'll move on, okay, but I'm going with what you're telling me. If you don't know something, you just say I don't know.

Let's start over. He's holding his left hand at the top of the branch. His first cut is about 18 inches below his hand, right?

A Yes.

Q On one side of that limb or branch?

A Yes.

Q Okay. So that limb is 18 inches down. You cut that limb off, that horizontal limb, and then you go down probably on the other side 8 to 12 inches and you cut the limb on the other side?

A No.

Q Okay. What? You tell me.

A On a pine tree they're grouped, that's what I was trying to show you, like this. They're not staggered all over the place. When they grow, it's a fan and they grow out like this. So it being stood up, I'd go one, two, three, four.

Q That's what I just did here but we can do it again. Let's try it again.

A Okay, but --

Q Hold on. This is what I'm trying to

understand and I'm trying to make it easy, but we can go through this. He's holding the branch up with his left hand and I'm trying to find out what distances you cut each of those four limbs until he's hurt, okay? I'm trying to find that out.

MR. CALLAHAN: Excuse me. It's just that there's a disconnect here. - Because Dave is making it up as he goes Rather than Recalling a memory

MR. MAST: Well, that's why I have to ask these questions. We'll get there.

MR. CALLAHAN: I understand. I'm thinking he's thinking that on your branch this branch comes out like -- it'd be on a 45-degree angle up -- What is @ 45°

THE WITNESS: Yes.

MR. CALLAHAN: -- if I may. Then there's branches like this and this with the pine needles on them so he's cutting this one here, this one here, and this one here.

BY MR. MAST:

Q Are you making three cuts on one branch?

MR. CALLAHAN: Four cuts.

MR. MAST: No, I don't think that's what he's saying.

MR. CALLAHAN: I think that's --

BY THE WITNESS:

A I'm making one cut.

Q Here, let me do it. I think this is what --

A May I?

Q Hold on. Yeah, I'd be happy to. Let's probably do it that way. Make it easy.

A Thank you.

Q We'll save about a half an hour of questions.

A Right.

Q I was trying to get it described that way but it might be easier just to do it this way.

A Oh, I'm going to make it pretty. We've got time. I have time.

Q You want some crayons?

A I'm going to make a Christmas tree for you. That is a pine branch.

Q Okay. Now, let me ask the questions here. All right.

A I'm cutting it right here in the crotch.

Q I've got it. See, your answers aren't going to help unless they're after my questions.

A We'll get it all figured out.

Q All right. We're going to mark as Gagnon Exhibit 1 that pretty tree you just drew, okay?

A Thank you.

MR. BARCH: You'll have to call it a -- It's a single branch, not a whole tree.

THE WITNESS: Single branch.

MR. MAST: Okay. It's a branch. All right. I'm sorry. I'm not good at these things.

BY MR. MAST:

Q All right. That's a -- Obviously it's not to scale or anything, but it's just a drawing of a pine branch, right?

A Correct.

Q And it's supposed to represent, even though it's not exact, a typical type of pine branch that you and Paul were cutting on the day of his accident?

A Correct.

Q Okay. Different sizes, different amount of limbs coming off them but that's a representative of those types of branches, right?

A Yes, it is.

Q Okay. So if we look at this, the base is obviously going to be wider than the top of it, right?

A Yes.

Q So I'm going to put a T on your drawing where the top of that is and a B where the base is. Did I

just do that?

A Yes.

Q So we know what words to use?

A Yeah.

Q Okay. So I'm going to put T O P and B A S E. So we can refer so that we're using the same language. Paul is going to be holding with his left hand the top of the branch, right?

A Correct.

Q And then the base is going to be against the ground in a vertical fashion from where he's holding at the top, right?

A Yes.

Q And then starting 18 inches below his hand, you were going to start cutting on either side of that branch the horizontal limbs that are coming off that branch, right?

A Yes.

Q Okay. So if this were a branch that Paul was holding, his hand would be at the top and then you would make one cut -- oh, you'd start -- okay, you'd skip the top of it --

A Because it's --

Q Hold on. You'd skip the top limbs because

that's too close to his hand so you'd come down to maybe the next set 18 inches below and start making a cut there?

was The first cut ON Dares Left or Right of Center Branch?

A Yes.

Q Then you'd go on the other side and make another cut?

A Yes.

Q That's two. Then you'd make another cut on there --

A Yes.

Q -- that's three. Then make another cut; that's four. Then cut there, five. Cut there, six. And you have the whole branch cut, right?

A Yes.

Q Okay. So let's number these one, two, three, four, five, six. Does that number what we just discussed?

A Yes.

Q So you're basically at least on this demonstrative drawing, you're making six separate cuts off of this branch and then you put the branch down on the ground and get a new one?

A Yes.

Q Okay. All right. That did clear up about a

half an hour, so thank you.

A You're welcome.

Q Okay. And I'm sure they weren't all six cuts every branch, right?

A No, they varied.

Q Is six pretty much an average or no?

A No.

Q As far as --

A There's no average.

Q Okay. There's maybe six, eight, ten, something like that?

A There's no average. There's no way to average it.

Q Okay. The branch that Paul was holding when he was injured was a branch like most other branches although in different sizes, correct?

A Yes.

Q Okay. And you're telling me you made four cuts until he was injured?

A Fourth cut he got injured.

Q Okay. On the fourth cut?

A On the fourth cut.

Q Fair enough. So if we just start with that one branch that Paul's holding and discuss what you

did up and to the time he was injured, you made the first vertical cut from the horizontal limb 18 inches below his hand, you made the second one on the other side just like you did on Exhibit 1 here, then you went down 8 to 12 inches lower, made the third cut on one side, then you're going to the other side to cut the fourth cut, right?

A Yes, correct.

Q What happens when you're going from the third cut to the fourth cut that you believe is what caused Paul to get injured?

A The fourth cut, not much unlike all the other ones, the branch bowed. It may have been because it wasn't rigid; it may have been weaker than the rest. I don't know.

Q Can I stop you for a minute just so I know what you mean by bowed. What do you mean, it was -- it was like limp?

A Yes.

Q Okay.

A Yes, not as rigid as the other one perhaps.

Q So when you say -- I don't want to jump too far. When you say bowed then, that means when you press the chain saw down, it kind of gives a little

bit more?

A Yes. Yes.

Q Okay. All right. So you're saying the fourth limb that you're going to cut, that limb is a little more weak, it gives a little bit more than the other three that you already cut?

A The main branch taken from the tree is what I'm talking about. I'm not talking about the branch I'm cutting off. As I approached the crotch, the main branch which I depicted on the drawing there gave way.

Q Okay. So if we -- Hold on. If we define then just so we know we're talking the same language, the branch is the solid continuous piece of wood that Paul's holding whereas the limbs are the parts that come off of that branch. Let's use those terms, okay?

A The limb is the larger piece; the branches are what come off the limb.

Q All right. I'm sorry. All right. We'll do it that way then. Let's define it that way.

MR. BARCH: Don't you watch that show on TV, those Ax Men?

MR. MAST: No. No. No, I don't.

BY MR. MAST:

Q So let's put that on the -- I'm going to

write that on here so we use these same words. Because I don't want to change the words so I put on Exhibit 1 here branch for the little parts that come off the main limb.

A Yes.

Q Fair enough?

A Yes.

Q That's what we're going to describe?

A Yes.

Q All right. So what you're talking about is so we use the same terminology, the limb is what Paul's holding with his hand that goes vertically from his hand to the ground?

A Correct.

Q And the branches are the things you're cutting off of that limb six to eight or so cuts, right?

A Yes.

Q Okay. So what you're saying is after you cut three of the branches off of the limb Paul's holding, the fourth branch -- What happens with the fourth branch?

A The limb had flexed slightly causing the chain saw to come out of the crotch.

Now its when his saw is already cutting vs. giving way?

? thought HC said it was giving way as he approached the crotch

Q Okay.

A At that time, without moving away from that instance, I approached the cut again. Simultaneously Paul wanting to help me went to support it with his right hand and at that same time I went through the cut and I nicked his arm.

Q Okay. Okay. Now, when you're saying Paul went to -- what did you say? -- support it?

A Yes, support it.

Q What was he -- Do you know what he was going to do with his right hand?

A I'll tell you what he did with his right hand. He actually grabbed the limb and supported it.

Q What part of the limb?

A Below the next cut that I was -- the last cut that I made when it flexed and just below the one that I'm talking about and followed through.

Q All right.

A The fourth cut.

Q So let's talk numbers.

A The fourth cut.

Q You just made the third cut.

A Yes.

Q And the fourth cut was still the same

distance from the top of the limb --

A Yes.

Q -- but it was on the other side --

A Yes.

Q -- of the third cut, right?

A Yes.

Q And had you cut the fourth branch by the time Paul was injured?

A No. Then what made the limb Bow?

Q Okay. So the fourth branch was still there?

A Yes.

Q But you were attempting to cut it, right?

A Yes.

Q And when Paul was holding with his left hand the limb, it kind of flexed because it's held up against the ground?

A Yes.

Q And it kind of bowed a little bit and you're saying Paul then with his right arm did what? Below which cut

A Went to support it below that cut as I went to finish the cut. Below 30-34" off GROUND?

Q Okay. So when you cut his arm, Paul's arm, was his right arm on any part of that limb or branch?

A Yes. ARM OR Hand?

Q What part?

A Below the fourth cut which did not go all the way through. — Before? Wouldn't the ~~Branch~~ Limb unbow Between cuts?

Q Okay.

A He would have been like this (indicating). ?

Q All right. Hold on. So you just demonstrated that his left arm was up, his right arm was down on this limb, right? ~~Arm~~ Paul's arms are 18" from armpit to wrist.

A Correct.

Q So when you -- when he had his right arm on the limb and his left arm on the limb together, his right arm was below the fourth branch that you were going to cut, right?

A Yes.

Q How far below? 22-26" from ground just above my knee?

A Maybe 8 inches. His hand was collapsed onto the limb about 8 inches below that last cut that didn't go through. Already clasped? This would place the chainsaw above my arm. - I was cut on the underside of arm

Q Fair enough. Okay. And when you made that first attempt to cut that fourth branch, was his hand there at that time or was that after you tried to make that first attempt?

A It was after I made the first attempt at the fourth cut. Earlier he answered he hadn't cut the fourth Before

How much time Does it Take to Identify, Formulate & Respond vs. cut Lift cut again?

Can't keep his story together

Q Okay. You made the first attempt at the fourth cut and because the limb bowed, you were not able to penetrate the fourth branch, correct?

A Correct.

Q So did you just in a split second go back and try it again or did you wait a couple seconds or what happened? How long was the process?

A Like microseconds. It was -- You know, it's a matter of just going -- and at the speed you can see -- I'll describe if I need to or if you want me to -- cut, cut and also the manner in which I'm cutting, it's called the locked elbow position. You don't just freewheel a saw. Nip, nip, nip, and it went .. I was like okay. And at that same time he just reached over to kind of help me out so it wouldn't flex and that's how it all came together.

Q All right. Well, if he's reaching over and that's why you cut him, then that leads me to believe that he's not holding on to the limb at the time that you cut him.

A Oh, he's holding on to the limb.

Q So is he reaching over at the time you cut him or is he already holding on to the limb?

A Simultaneously as he reached down to that

limb standing like this flexed like that. At the same time I went to finish the cut and I did finish the cut. Like I said, it just --

Q All right.

A Just --

Q Hold on. You're going way too fast for us and we're going to have to repeat the questions over and over again and if we can just go step by step, okay?

A Okay.

Q As he -- As you make the first attempt at cutting that fourth branch, the tree flexes and your saw blade bounces up or do you --

A Slightly bounces up, yes.

Q Okay. Then do you immediately put it back down to cut it a second time to try to cut it a second time or do you wait? Do you hesitate?

A I didn't hesitate.

Q So you immediately did it then, right?

A Say it again. No, just the last part.

Q I know. I get it. Your first attempt to cut the fourth branch to the second attempt to cut the fourth branch there was no hesitation, it was just tried to go down and get it, it bent and then you went

back down to get it and you cut it off?

A Yeah.

Q And that's -- When you went back down to get it that second time, that fourth branch, that's when you cut his arm?

A That's when he placed his hand there and got it cut. ← Puts Blame on PAUL

Q Right.

A Yes.

Q Okay. So when he was cut -- physically when the cut occurred, was his right hand on the limb or not?

A Yes, it was on the limb. - clinched?

Q Did you know it was on the limb?

A Yes, I did. It was clasping the limb.

Q Okay. How long was his right hand clasping the limb below the forth branch that you were going to cut before you cut his arm?

A It's hard to operate a stopwatch while you're operating a chain saw. I really can't give you a time frame as to something that happened so quickly and when two men come together. Like I said, I can't -- I can't answer that question. I don't know. I don't know. - He Seemed to Know earlier

Milliseconds/ Simultaneous???

were we hugging or texting

Microseconds?

Losing it again

Swing of Losing it

Q Listen, you gave me five minutes of why you don't know. Just tell me you don't know, that's fine. We can move on.

A I'm sorry. It's my character. I'm very inclusive in my answer descriptive. - I Don't know" IS INCLUSIVE?

Q All right. Well, I'm just trying to tell you you don't need to do that.

A And I'm working on it right now. - ON what? Character? OR Bull shit story line

Q All right.

A I'm glad you -- - what?

Q So the question is, and I'm not saying is it five minutes between the time you first tried to cut it until the second time you cut it. I understand we're talking seconds, okay. My question is --

A Milliseconds. - Thought He didn't know NOW BACK TO milliseconds

Q All right. Milliseconds. Fine. My question is, when you went down to cut that fourth branch the first time and the tree bent --

A Yes.

Q -- and you had to go down right away and cut it a second time, when you went toward that fourth branch to cut it a second time, when you went toward it, was his right arm on the limb at that time or was he off it and going toward it to hold on to it?

A At the exact same time that my saw went through that fourth cut, his hand clasped that limb.

Q That's not my question. My question is this; I'm going to say it again. My question is, you went down to cut that fourth branch off and the limb bowed so you went at it again; and my question is, when you went at it again for that second cut on that fourth branch, was his right hand clasping below that fourth branch at that point?

A In time?

Q Yeah.

A Simultaneously.

Q Okay. So that simultaneously you're saying when you're going after that fourth branch the second time --

A Yeah.

Q -- he's now at the same time grasping on below that fourth branch to hold on to the limb?

A Yes. - ~~es~~ again?

Q Okay. And do you see him as he is moving his right arm toward the limb to hold on to it or do you just see at the last second when your saw is going towards the branch?

A I was focused on the branch and the cut. I

wasn't looking at him.

Q So your answer is you didn't see his hand moving toward the --

A No, I did not see his hand.

Q You've got to let me finish the question.

A I'm sorry.

Q We're going to be here all day. Your answer is you did not see his hand motioning toward the limb -- his right hand motioning toward the limb to hold on to it, you only saw it right when it clasped the limb right when you were going at the branch a second time?

A Yes.

Q So the time -- Simultaneously when you're cutting that fourth branch, that's when you go through that branch and then you end up going into his arm, correct, his forearm?

MR. CALLAHAN: I'd just object to the form of the question.

BY THE WITNESS:

A You're leading me into cutting him and that's not what happened.

Q Oh, I'm sorry.

A I feel as though I am.

Q I get what you're saying. I'm sorry, maybe that wasn't the way you wanted me to word it. I'll try to word it differently.

A Thank you.

Q You're -- At least from what you're saying is, you are motioning toward that fourth branch a second time in attempts to cut it so you're moving the chain saw, as you said, in that rigid locked position with your elbow --

A Yes.

Q -- toward that fourth branch to cut it, right?

A Yes.

Q So if you're going toward that fourth branch to cut it, and I understand you're saying his right arm is locking on to that limb at the same time, right? Right?

A Yes.

Q But you're moving the chain saw forward to cut that branch, right?

A Yes.

Q So when you're moving that chain saw forward to cut that branch, that moving forward manner ends up striking his forearm in the manner that it did to cut

him, right?

A I think we're overlooking the word simultaneous. I'm sorry that I can't just answer your question but it's -- the description is --

Q What do you mean?

A The description is not fitting the instance that happened for me per se.

Q Put his arm movement aside for a minute.

A Okay.

Q Okay?

A All right.

Q We know simultaneously he's using his right arm to grab on to that limb while you're making that second cut to the fourth branch, right?

A Yes.

Q That's happening simultaneously; I understand that.

A Yes. Okay.

Q My question is, while you were going down to that second cut of that fourth branch, you're moving the chain saw forward to cut that branch, right?

A Yes.

Q And in the process of moving the chain saw forward to cut that fourth branch, that is the process

that takes your saw blade into his arm. Whether his arm is moving or not, we can -- I can ask that next, but the process of you moving forward with the chain saw is part of what led to his arm being cut, right?

MR. BARCH: I'm going to object to the form of the question. It's also argumentative. Go ahead.

BY MR. MAST:

Q Go ahead.

MR. CALLAHAN: I'll join that objection.

BY THE WITNESS:

A As you had said, it's part of how it happened.

Q Right.

share of what?

A It's an equal share.

- moving DOWN= moving FORWARD?

Q Okay. Equal share meaning you're saying his arm's moving near the limb as well as the chain saw you are operating is pushing forward toward that limb and the arm and the chain saw meet and he becomes injured, correct?

A Correct.

Q Okay.

(A short break was had.)

BY MR. MAST:

Q All right. Finish up where we got this tree

now. So you're holding the chain saw, you're going for that second attempt at the fourth branch to cut it, and while you are cutting that fourth branch is when the -- when Paul's arm is struck; is that right?

A Yes.

Q And so the chain saw is under your control at the time, right?

A Yes.

Q You're not out of control, are you?

A I'm in control with the chain saw, yes.

Q Okay. And you're wanting to cut it when this happens, right? You're wanting to cut with it when it happens?

A Yes.

Q Okay. You are attempting to cut the branch and that's when Paul's arm is attempting to hold on to the limb, right?

A Correct.

Q And the chain saw is in motion when Paul's arm is struck, correct?

A Yes.

Q Okay. And the first time you see Paul's arm is when his right hand is grasping the base of the limb below the fourth branch, correct?

Puts Chainsaw above? cut is underside of ARM

A Yes.

Q You don't see it coming from the side toward that bottom part of the --

A No. -

Q -- of the -- of the limb, correct?

A No, I did not, correct. -- ~~I thought~~ earlier He said I was moving in to help him.

Q Is that correct?

A (Nodding.)

Q Okay. Is that correct?

A That is correct. — 3x

Q Okay. Okay. When he gets cut, what is the first thing that happens? Does he scream? Do you say something? What's the first thing that happens the split second he's cut?

A I say no. He says yes. What? Thats one hell of a tolerance I must HAVE

Q And what do you mean by no? You mean no, that's not happening or what?

A Yeah, like no. No, it didn't happen. He did Deny his part But thats Not what was Said.

Q Okay. And he says what?

A Yes. Let's go.

Q Yes what?

A Let's go.

Q Let's go what?

A Let's get out of here. It's time to go.

Dave wanted out of Here.. HE Just cut Me and wanted TO RUN.

We've got to go to the hospital, you know. Yes, let's go.

Q That's the first thing that happens once he's cut, right?

A Yes. — FALSE

Q And when he gets cut, are you able to see the chain saw making contact with his arm, or how do you first discover he's cut?

A It just looked like I could have nipped him. It was so close that it looked like I could have touched him. — Downplaying — His EYES were on My arm when he cut it!

Q Okay.

A That's what I did, I touched him. — with YOUR Hands?

Q All right. Had Paul ever held a limb before he got cut with both hands before this?

A No.

Q Okay. So you did not expect him to do that?

A No, I did not.

Q Okay. And after you say no and he says yes, do you guys -- do you basically put the chain saw down and get in his car and go to the hospital?

A I threw the chain saw down and got in his car to go to the hospital. — Thought we Ran in house & Carol Bandaged me — LOL

Q Was he bleeding?

A Yes. -TRUE

Q Do you know -- and, again, I don't knows are fine answers. I'm not trying to imply you know things but I just have to ask. Do you know how far or how deep the chain saw went into his arm?

A I could tell you pretty accurately. I was there in the operating room. It never went past the epidermis. — All the DR's + STAFF + XRAYS were wrong?

Q What do you mean, the skin?

A Yeah.

Q Did it open the skin? 40% of ARM was cut!

A Yes. -TRUE

Q And it was bleeding?

A Yes. -TRUE

Q Okay. Well, I mean, the doctors will be able to tell us how deep it went. Are you telling me you have some kind of medical ability to tell how far it got cut?

A I'm educated (12th grade) to a certain extent and I was educated there in the emergency room and I heard everything that was being said and I was shown and even Paul said look, and I was right there the whole time looking. — DR. DAVE KNOWS ALL — LOL

Q You don't have any medical education or

ex- --

A No, I don't.

Q Wait. Back and forth here, please, please. You don't have any medical education or training, do you?

A No.

Q Okay. So any type of depth of incision or cut that you would be talking about would be just based upon what you saw visually, correct?

A It was visual, yes. – Thought he JUST said He was there in the ER. & Heard Everything

Q You never went with your finger inside the wound?

A No.

Q Or any type of object?

A No measuring devices were employed, no.

Q Okay. Did you hear the doctors talk about how far it was cut in?

A Yes.

Q How far did they say?

A Not deep, that was their assessment.

Q Okay.

A He was lucky.

Q Okay.

A It only hit the fascia; that's what they

The DR's HAD Measuring Devices As well as XRAYS

DR. Looked me in EYES & Said it went through 40% of Forearm and ~~[illegible]~~ that I would have Died if I Didn't get medical Help ASAP

LIE WOW!

– Lucky HA! You Asshole

– Thought it was the epidermis DR. Dane

said.

Q All right. Do you know -- You've known Paul a long time before the accident?

A 35 years. (21 yrs.)

Q Okay. Have you ever known him to be injured in any way before this accident?

A Yes.

Q Okay. What is that?

A A car accident.

Q When was that?

A I cannot put a pin date on it, but I can say it was over seven years ago.

Q Okay. So maybe around 2006, somewhere around there?

A I am guessing at that, but I know that there was an instant which he was involved in an accident and he also pursued. (Pursued what? — NEVER HAD TO Persue anything, other Driver was honest about it.)

Q Okay. Here, listen. Just follow me. If you follow me, we'll go where we need to go and get there fast, okay?

A As I said, it's a struggle because of my character. — Criminal

Q All right.

A I'm descriptive and inclusive. — What Does he mean? He HAS made up almost everything in this Dep.

Q Fair enough.

A You don't have to keep correcting me -- or you do have to correct me; that's your job, but --

Q Fair enough.

A -- I'll try to get there for you, okay?

Q All right. Motor vehicle accident about 2006. Were you in the accident with him?

A No.

Q Do you know what injuries he suffered in that auto accident?

A Nerve damage to the left elbow that was allegedly struck.

Q In this case you mean?

A In that other -- Yeah.

Q Did he ever have any surgery for that left elbow?

A I know he was poked and prodded. I don't know if he was -- had actual open surgery for it though.

Q Did he ever resolve that injury up until the accident in this case?

A I don't know.

Q Okay. Other than a left elbow nerve injury in a motor vehicle accident around 2006, any other

injuries from that motor vehicle accident? — whiplash Resulting in 5 Degencrative Cervical Discs.

A I don't know.

Q Okay. How do you know about that left elbow nerve injury then?

A Because he showed people and talked about it openly. — He Heard a rumor, ~~and I~~

Q Was it a different location than where he was lacerated or cut in the chain saw in this case?

A Yes, it was an entirely different arm. — TRUE

Q Oh, I'm sorry. You're right. I'm sorry. I wasn't thinking that far ahead. Good. In this case -- In this case the chain saw was the right arm. In that case it was the left elbow, right?

A Yes.

Q Okay. Any other injuries other than the motor vehicle accident?

A I'm not aware of.

Q Okay. Any other prior -- prior to this case, any prior injuries to Paul?

A Not that I'm aware of.

Q Any prior conditions of ill health with Paul before his chain saw accident?

A I'm not aware of any.

Q In the four or five year let's say -- Strike

that.

In the five years before this chain saw accident in June of 2011, was Paul in any way disabled or limited in what he could do physically?

A I don't know. – Told him I couldn't do certain things, like Hand Branches with left arm

Because we hadn't had much to do with each other in 15 yrs.

Q Okay. Well, to what extent you do know -- to what extent your contact you've had with him, you're not aware of any; fair enough?

A Correct.

Q Okay. Are you aware that Paul was under any medical consultation or treatment in the five years prior to Paul's chain saw accident in this case?

A I am not aware.

Q Okay. After this accident are you aware of Paul receiving medical treatment from time to time for his right arm laceration?

A Yes. – How - From who?

Q How many times -- Let's say in the month after this chain saw accident, how many times did you see Paul? I mean, was it every day?

A No. No. Maybe three or four times since this accident I've seen him.

But Later He Sees Paul gardening Dozens of times since Check earlier

Q Total?

A Yeah.

Q Up until now?

A Yeah.

Q Oh, I see. So it's been very infrequent then?

A Yes.

Q Okay.

A Just the instances where we exchanged what I had given in the beginning of this deposition.

Q Right.

A Those are the only times I spoke to him.

Q All right. So let me summarize that just to make sure we're clear. What you're saying is, I'm assuming before the accident you saw Paul a lot, right, or not?

A I wouldn't even say frequency. From time to time.

Q Maybe once every couple of weeks or something?

A Yeah, that's honest. That's fair.

Q All right. So let me word that all out then. Before the accident you were seeing Paul every couple of weeks maybe infrequently; fair enough?

A Infrequently, okay, yes.

Q Fair enough?

A Yes.

Q After the accident you saw Paul only on those occasions where you had words with him that you described at the beginning of the deposition?

A Correct.

Q And that would have been, looks like, four times?

A Yeah.

Q Right?

A Yeah.

Q Okay.

A With the exception of the one time when he did come up to help me work, but we didn't discuss anything that had to do with the case; he just came up to work.

Q When was that? Was that a different time?

A It was after the accident. He helped me do a roof on my house.

Q So it's different than the four times we talked about at the beginning of the deposition?

A Yeah, we were talking about conversation and this wasn't really conversation. It was -- we were just working.

Q Okay. So that's why I'm trying to get this

summarized.

A Okay.

Q After the accident we talked about four different times you had a conversation with Paul about various things. We talked about those, we tried to give approximate dates and things.

A Yes.

Q Okay. Other than those four conversations with Paul, you said there was one other time you had -- you were with Paul after his accident and that was to do a roof?

A My roof at my home, yeah.

Q Okay. When was that?

A It would be October.

Q Of what year?

A 2011.

Q Same year as the accident?

A Yes. Yeah.

Q All right. So you did -- Was he helping you do roofing work on your house?

A He was helping me tear it off.

Q Okay. Did he have any kind of bandage or brace on his right arm from the injury in this case?

A No.

Q How many days was he helping you?
A Just one.
Q For how many hours?
A Five, six hours. — 2 or 3 hours - I gave up + left
Q Okay. So you're saying after the accident in October of 2011, we're talking maybe about four months after the accident, Paul helped you on one day five to six hours to pull your old roof up off your house?
A Yes.
Q Okay. Was anybody else helping you --
A Yes.
Q -- during that time?
Who?
A Mike Shoshie, neighborhood friend.
Q How do you spell that?
A S H O S H I E.
Q Is he still a neighborhood friend?
A Yes, he is.
Q Where does he live?
A Two blocks away from me. I can't give you his address; I don't retain it in my memory, but I know where he lives. I could submit that to you at a later time if you'd like. - Please DO
Q Very good.

← Found out Dave & this guy are Partners in Crime, ≠ won't elaborate Here!
Can't FIND this guy on Internet at all. Wonder Why

MR. BARCH: I need to at least go on record that we started around 1:00. There's been some breaks, it's now 3:45. If Mr. Gagnon's attorney is going to stick to the three-hour limit, I need some time.

MR. MAST: I'll try to wrap it up.

MR. BARCH: I know, but I don't want to get to the three-hour point and have the plug pulled. There's only 15 to 20 minutes left.

MR. MAST: Well, I guess that's -- that's -- I mean, we didn't -- Hold on.

MR. BARCH: Well, I think you and I have a duty to share our time.

MR. MAST: Before the dep we didn't really discuss this so it's fair that you bring that up. I don't know if you have a lot, but I'm trying to wrap it up now with me. I don't think I'm going to take the full -- I don't think I'm going to be a half an hour from now. I don't know how much time you have so is it -- do you have a lot of time or are you just looking at 10, 15 minutes?

MR. BARCH: Yeah.

MR. MAST: Yeah, so we should be fine.

MR. CALLAHAN: Yeah, during the break Mr. Mast and I discussed this. We're told the deposition

started at 1:12. He said he'd wrap it up so you should have time.

MR. MAST: Yeah.

MR. BARCH: Okay. Good. I just want to make sure we're all on the same page, that's all.

MR. CALLAHAN: If you go a little over, I'm not going to jump up and scream.

BY MR. MAST:

Q Anyone other than Mike Shoshie, you and Paul that was assisting on your roof at the time Paul was helping you?

A No one else was assisting but there were witnesses that seen him helping in those duties.

Q That was my next question by the way. Who was that?

A Joe Vlk. — another Partner in crime — I Don't Know either witness and Don't know how they know me.

Q How do you spell the last name?

A V L K. No vowels.

Q Where does he live?

A In the neighborhood by me also.

Q Anybody else?

A My wife.

Q Okay. And are you aware of him having any difficulties in helping you during those five or

VLK can be found on Internet and ~~does~~ is listed in Geneva city.

six hours because of his injury in this case?

A He seemed to not exert himself fully and was, if not nursing, staying away from using that arm in full but nonetheless was still grappling and moving.

Q Fair enough. So you're allowing the fact that he was reserving some of his -- saving himself a little bit for the right side where he hurt his arm in this chain saw accident as if there was something still lingering there?

A Yes.

Q Okay. But he still was able to help you for five or six hours irrespective of what might be his ongoing issue?

A Yes.

Q Okay. So other than those five to six hours that given day in October 2011, you had four other meetings and conversations with Paul that we already fully talked about and there's no more need to detail those anymore; fair enough?

A Correct.

Q Okay. And the first conversation was coming right out of the hospital that day of the accident, right?

A Yes.

Q The next one was four months later, the other one was 2012 and the last one wasn't about any financial thing but it was a little bit before the 2012 meeting; fair enough?

A Yes.

Q Okay. Have you now told me everything that you had -- Well, strike that.

Let me ask this question first. Did you and Paul at any time discuss how or why the accident occurred?

A No.

Q Okay. And that's on both sides. You never told Paul, Hey, why were you holding on to the branch, or, I didn't know you were doing that, or, Why were you grabbing with your right arm? You never told that to Paul, did you?

A No.

Q And Paul never said, Hey, why were you cutting the way you did, or anything like that; he wasn't complaining to you?

A No.

Q Okay. Have you talked to anybody else other than your attorney and your insurance company about what happened?

A No. My mother. Just back to my mother.

Q Oh, and you might have -- You know what? This isn't a big deal, but I think in terms of just being all-inclusive, you did -- I printed out what my assistant wrote down from a recorded statement that you knew I was taking over the phone of you, correct?

A Yes.

Q Did you read this at all?

A That one I -- Yeah.

Q Huh?

A Yeah.

Q This is the narrative from the recorded statement that she took down and I'm assuming she took it down right. I didn't go and read it and listen to it.

A Yeah, I had a few blanks in there and such that, you know ...

Q Well, hold on. The question is --

A Yeah.

Q And I'll mark this as Exhibit 2, okay, and I'll just put a 2 for now. But would you agree that -- and I know you didn't listen to the recording so I understand that, but would you agree that reading this narrative marked as Exhibit 2 accurately states

what you would have said on that phone call to me?

MR. CALLAHAN: I'd just object to the form of the question and as to the number of variables with the recording and with the transcription of the process itself, including some of the language in the transcript and ask him if he could -- I think it's better if this would be pointed out page by page or -- excuse me -- line by line more or less if he's agreeing with that.

MR. MAST: I can do that. Yeah. Joe, I'm just trying to make it easy.

MR. CALLAHAN: Yeah.

BY MR. MAST:

Q Let me put it this way: Have you read this narrative from your recorded statement?

A Yes.

Q Is there anything in the narrative -- and I'll let you read it again if you need to, is there anything in this narrative, Exhibit 2, that you believe you did not say that's attributed to you?

MR. BARCH: Form of the question, but go ahead.

BY MR. MAST:

Q Here, I'll give it to you again. Just read it through. I don't want to go through line by line

unless you want to but basically I'm asking you, did you say those words and is this --

A This besides the blanks that are there --

Q Yeah, besides the blanks. ---=Fucked? or Fuck

A -- yeah.

Q Okay. All right.

MR. CALLAHAN: And I'd just point out too that there seems to be -- like if you read that thing in total, there are eight parts where the subject and verb don't agree, there's parts where it goes on, it doesn't make sense and that also has to be considered as well as to the totality of the accuracy and the candor of the statement. - Davids Testimony in this Dep. Doesn't make Sense so it fits his "Character"

BY MR. MAST:

Q Okay. This is my question, and again I know you didn't compare the audio to that statement; but you read that statement and all I'm asking is, you generally recall giving me a statement over the phone, right?

A Yes, I do.

Q And does that generally, and again we can listen to it to find out specifically what it says; but does that generally meet with your recollection of what you said?

A Yes.

Q Okay. And that's Exhibit 2, correct?

A Yes.

Q All right. Again, it is what it is. Let's put Exhibit 2 on here so we can keep track of these things. Okay.

Now --

MR. MAST: Oh, I didn't put this on the record. I'd like to put this on the record. I don't have answers today of interrogatories, nor I don't think this response is to my production request. Let me just see. No, this response to the production request is to codefendants' response. So I don't have that discovery, nor answers to interrogatories to my discovery. I'm assuming nothing is going to be crazy or different than what went over today but to the extent it does, I'm going to reserve my right to the extent I need to, but let's just mark this as Exhibit 3.

BY MR. MAST:

Q And what Exhibit 3 is, is what I was given today right before the deposition are, Mr. Gagnon, your answers to codefendants' interrogatories and response to production request. Nothing that you need

to concern yourself to other than I will ask you Exhibit 3, is this your signed answers to interrogatories that you're giving in this case?

A Yes, I received this in the mail and answered those questions as they are printed.

Q And you signed it verifying these are your true and correct answers, correct?

A Yes.

MR. BARCH: Do you have a signed version? I don't have a signed one.

MR. MAST: Yeah, it's signed.

BY MR. MAST:

Q All right. Has -- I think defense counsel already answered this, but I just want to make sure that you haven't heard anything that your defense counsel hasn't heard -- has your homeowners insurance rejected or reserved their right for coverage in this case at all, to your knowledge?

MR. CALLAHAN: I'd just object, it may call for privileged conversation and I object as to it may call for conversations with insurance company but -- and I can answer as far as I know, there's been no rejection of anything, and I'll make that stipulation --

MR. MAST: I'll accept your answer then; that's

fine. All right. Let me just look through your answers to interrogatories, the ones that I've got. Hold on one minute.

BY MR. MAST:

Q Have you talked to your mother -- Or strike that.

Have you talked to your parents at all about this incident with regard to whether they saw anything?

A No.

Q Okay. Do you know if they saw anything regarding the incident?

A I know they didn't see how it went down.

Q Did they -- Do you know if they saw the process of what you and Paul were doing in cutting these branches down?

A No.

Q Okay. Do you know if they knew about the incident before you left the property that day?

A Yeah, they knew that something had happened --

Q Okay.

A -- bad.

Q Okay. Since you only met or spoke with Paul

on a few various occasions after the incident, I'm assuming you're not really up-to-date on the nature and extent of his recovery and/or his medical injury; fair enough?

A No, I'm not.

Q Is that fair enough?

A That's fair.

Q Okay. So what limitations or the severity of the injury and what it's turned out to be, you don't know about; fair enough?

A I don't know.

Q Okay. And the work you were doing was at the request of your parents, correct?

A It was at the submitting of my parents for my suggestion that it was a good time to do this.

Q It was for purposes of your parents. It was their property and it was --

A Yes.

Q -- work doing --

A It was for purposes of my --

Q Hold on.

A Okay.

Q It was for their purpose, your parents' purpose to do it. You weren't benefiting yourself in

doing it, were you, other than getting money for it?

MR. BARCH: I object to the form of that question. It calls for legal opinions.

MR. MAST: I don't --

BY MR. MAST:

Q Go ahead. Do you want me to ask the question again?

A Yeah.

Q All right. The work you were doing in cutting the tree on your parents' property when this injury occurred was to benefit your parents, correct?

A Yes.

MR. BARCH: Same objection.

BY MR. MAST:

Q Okay. And you were getting paid to do it, correct?

A Yes.

Q Okay.

MR. MAST: Go ahead. I'll let you go and see if I have anything else here.

EXAMINATION

BY MR. BARCH:

Q Hopefully don't have to cover everything over again, but I do want to back up a little bit. Mike McArdle?

A Mike Mcartor.

Q Mcartor?

A Yeah, Mcartor.

Q He was a friend of yours for a long time as well?

A Yes.

Q And what's the connection between him and Mr. Dulberg? I mean ...

Paul owned House Not Mother

A They both live together in Paul's mother's home.

Q They've been living together for years?

A Ten years. — 4 YRS. NOT 10

Q Ten years?

And it's a sensitive question, but are they a couple?

A A lot of people wonder. ← WHO? WHY? — is David homophobic?

Q Okay. Well, do you know?

A I don't know.

Q You've known them both for years.

A I don't know. I mean, I don't know either way so I just don't know. I'm not being facetious; I just don't know. - if your a close FRiend why not? LOL

Q Have you ever talked to Mr. Mcartor about what happened?

A No. There was a Conversation at my Home but my mom, Mike and I think my Brother TOM were there. David stopped over and started talking about Himself, but angry when I Tried TO UPDATE Him about my injury — Back side

Q No?

A No.

Q They -- There was one conversation --

(Short interruption.)

BY MR. BARCH:

Q There was one conversation I think you had with Mr. Dulberg and Mr. Mcartor was present?

A Yes.

Q And let me see if I can remember which one that was. Do you remember of the four that we talked about earlier --

A Yes, it's the one in the kitchen where Mike was present and Paul had commented that he thought that this was a blessing and the best thing that could have happened because he won't have to work another day of his life. Won't have to retrain for a job, blah-blah-blah, on and on. - Wow! Where Did This Come from?

Q Okay. Do you recall Mr. Mcartor making any

statements?

A No. No, Mike is a listener.

Q Okay.

A He stays out of things.

Q And I may be confused but was that the same conversation where he -- where you basically said you wouldn't tell something that wasn't true?

A No, that was a separate conversation. I was leaving his house and he kind of just blurted out across the kitchen where Mike was witness to him saying it.

Q The one that Mike was there, there wasn't any discussion about money or --

A No.

Q -- testifying any certain way?

A No.

Q Okay. All right. I guess going back to this whole situation, what brought you out to your -- I guess to this -- to do this work at your mom and dad's place. That's your mom, right?

A Yes.

Q Carolyn is your mom, and Bill's been your stepfather for years?

A For years, yeah.

Q And you were there -- If I understand what you're saying, you were there, there was a discussion as to what to do with these trees now that the shed was down?

A Correct.

Q And it was just a -- if I heard your testimony, a good opportunity to take down these overhanging trees?

A Yes. —Evergreens are Pyramidal + Don't Overhang

Q Was there plans to put up a new shed?

A No. —Yes Actually, we installed the same size shed on the same platform in the same spot after the trees came down.

Q Okay.

A As I said, it was opportune because it was absent now.

Q Okay. But was there -- the long-range plan was to put a new shed back in the same spot?

A Yes.

Q A replacement?

A Yes.

Q All right. So before doing that, it was -- your thought is let's get rid of this overhanging tree?

A Yes.

Q All right. And I -- I -- This whole notion as to whether you were paid or not paid, did they end up giving you cash for doing work out there?

A I did a multitude of things; but yes, for that job --

Q Okay.

A -- there was many upgrades done on the property, so ...

Q Did you consider yourself to be their employee or were you just doing a favor for them for money, what?

A No, I was -- I was doing a favor and because of the times, I was getting money where I could and my mom wanted to supply me with some kind of means of income because I couldn't find it anywhere else and I provided a service for her.

Q You called it at one point a chore --

A A chore.

Q -- that you were doing for them?

A Yeah.

Q All right. Now, with respect to the tree trimming and then ultimately whether they were removed, did either Bill or Carolyn come out there and

tell you how they wanted this done?

A No. — Lie - They wanted the Tree Dropped in a specific Place + Bill wanted to Burn the Branches, But Dana insisted to keep them for FIRE WOOD.

Q Prior to you undertaking that job, did you sit down with them and have them tell you what they wanted done, what their expectations were, or anything like that?

A No. — odd

Q Have you ever actually seen either one of them use a chain saw?

A No. — Why Did they own an ELECTRIC in the Basement? - Carolyns Def.

Q Would you agree that you were free to cut those limbs, take down the branches, to do that in any way you saw fit?

A Yes. — ?

Q And you didn't have an invoice or a written contract with them --

A No.

Q -- or anything like that? — verbal contract?

A No.

Q And then this whole concept as to whether David was there -- I'm sorry -- as to why Paul was there, he was there -- you invited him over?

A I did.

Q And Mr. and Mrs. McGuire may have known he

was coming over?

A Yes.

Q You told them that?

A Yes.

Q Did you tell them that he was coming over to help you?

A I said that I asked Paul to help me today and they didn't say anything because we worked together before and they're friends, so ...

Q And at that point, if I heard your testimony, there was no discussion between you and your parents about them paying for Paul's time?

A No.

Q And that wasn't something that you and Paul even talked about?

A No.

Q Even up until the point of injury, that was not a subject of conversation?

A No, it was not.

Q Do you know if he was planning on taking some of the trimmed-up branches for firewood?

A I was assuming in my mind that that would suffice him initially, yes, because he had already taken some before from the front yard. He has a

fireplace at his home that he burns --

Q Okay.

A -- where we don't -- or she doesn't here.

Q That was an assumption but was it actually a subject of conversation between you and he?

A No, we did not discuss it.

Q So in terms of what, if anything, Paul might get out of it, as you sit here today, you don't recall any discussions with Paul about what he would get in return for helping you?

A No, he just agreed to help a friend take down some trees.

Q And I -- if I'm understanding your testimony too, Paul wasn't trying to override anything you were doing; he wasn't telling you what to do either?

A No.

Q There was a lot of unspoken things happen between the two of you?

A Yes.

Q The branch that you and Mr. Dulberg were working on -- I'm sorry -- the limb that you and he were working on, that one you mentioned as you were cutting that fourth branch as turning, that one flexed?

A Yes.

Q And you used the word flexed, at one point also bowed, you used that word? Means Bend

A Yes.

Q If I'm understanding what you're saying, the actual limb itself bent? > Thought Dave said The Chainsaw Checked + Bounced UP?

A Yes.

Q All right. Did you have that happen on any of the other 24 to 29 branches that you were cutting? ~25-30 ; IN 20 MIN. LOL

A No.

Q That was the first time that happened?

A Yes. - It Didn't Happen

Q All right. And the -- at the point in time you described, and I don't want to go through in detail what you and Mr. Mast just went over, but you described how you were moving for that -- at the second attempt to get that fourth branch; and if I understood your testimony, simultaneously Mr. Gagnon is coming in with his right arm to grab the limb --

A Mr. Dulberg, yes.

Q -- and the saw and his arm converged simultaneously?

A Yes. - B.S. - This guy should Be Doing 20 YRS. IN A Cell

Q Okay. Had Mr. Dulberg gotten his hand

anywhere near the chain saw any closer than 12 to 18 inches anytime prior to that?

A No. (TRY 5' AWAY)

Q At any point in time did you perceive or fear that he was getting his arm too close or hand or whatever, any part of his body too close to the blade of the chain saw that you were operating?

A No. No.

Q Right up until the very end?

A No.

Q Did you ex- -- As you were cutting, having down 24 to 29 branches, because this happened you're estimating on the twenty-fifth or thirtieth branch, correct?

A Yeah, somewhere around there.

Q Limb. Did you expect him to be putting his arm in there to help with the flex?

A No, because none of them flexed previous to that. I didn't foresee it at all.

Then why earlier did Dave say he saw it + thought it would be OK? what happened to that ESP we share? LOL

Q All right. And would you agree that prior to June 28, 2011, indeed right up until the point where Mr. -- where the saw came in contact with Mr. Dulberg's arm, you knew that a chain saw could cut somebody?

A Yes.
Q You didn't have to be told that --
A No.
Q -- by anybody else?
A Did not have to be told that.
Q And would you also agree that you knew that it would be important if you were using a chain saw to keep it clear of somebody else's arm and hands and body for that matter?
A Yes.
Q You didn't have to be told that by anybody?
A No.
Q And you talked about a certain position you took with the chain saw, you called it a lock --
A Locked elbow.
Q Locked elbow?
A Yeah.
Q Is that where one hand's on there -- there's like a bar that you can hold the chain saw with?
A Yes.
Q Then there's another part where there's a trigger?
A Yes.
Q You actually have to pull the trigger to get

NEED TO LOOK THIS UP - Its USED IN Archery and That's It!

the chain to move?

A Yes.

Q And which elbow are you talking about being locked, both of them?

A Right elbow locked into my ribs so that my strokes were short.

Q Okay. So that was some -- that was a technique that you were using to maintain control over that chain saw?

A Yes.

Q Is that something that you learned just in practice or something you heard before?

A No, I witnessed people doing it when they're in close quarters because sometimes you'll have to do that. You know, I have a friend who does tree trimming and I'd just seen it performed before.

Q Okay.

A It's also less fatiguing on the worker.

Q And it may be elementary but correct me if I'm wrong, you were -- as you were using the saw to cut those branches off the limbs, part of what you were doing is removing these limbs, correct?

A Yes.

Q The branches from the limbs?

A Yeah.

Q And part of what you're doing is trying to not hurt yourself --

A Correct.

Q -- in the process?

A Yeah.

Q Were you also endeavoring to not hurt Mr. Dulberg?

A Yes. I had no intentions of hurting anyone.

Q At any point in time prior -- right up until the point where the chain blade came into contact with Mr. Dulberg's arm, did you feel there was a -- did you feel compelled or was there anything causing you to feel compelled to tell him to keep his hands or arms out of the way?

A No, they were not in the way.

Q He was doing that all the way up until that point in time?

A Yes.

Q And if I heard you, you don't know all the injuries -- the extent of any injuries or complications Mr. Dulberg had as a result of that car accident that he had?

A Nerve damage is all I was aware of.

Q Okay. Whether he broke his neck or had any residuals with the elbow, rehab or surgeries, none of that you don't know?

A Yeah, I don't know.

MR. BARCH: All right. That's all I have.

MR. CALLAHAN: I just have one -- two quick questions that you may want to have some follow-up on if I can just go?

MR. MAST: Okay.

EXAMINATION

BY MR. CALLAHAN:

Q Mr. Gagnon, are you aware of any other work that Mr. Dulberg has done in addition to helping you tear off a roof after the date of the incident?

A He tends a garden which is his whole front yard this summer, the last summer. He did some -- He did some renovation and tear-out work for a -- kind of strange you asked that, but a homosexual that lives in Twin Lakes and he just freely gave up, he's like, Yeah, I met your friend Paul. You know, he helped me tear out the dry wall in my basement and stuff and then I was like, oh, really? And I asked him if he would testify and he said, I don't want to get involved. So maybe he'd

want to get involved now, I don't know, but that was the one example; and then of course on my home, my roofing.

Q So he did some demolition work for some other people?

A Yeah.

Q And that was referred to in your statement that you gave Mr. Mast before this deposition?

A Yes.

MR. CALLAHAN: Okay. That's all I have.

MR. MAST: Yeah, I want to follow up on that.

FURTHER EXAMINATION

BY MR. MAST:

Q He tends a garden. Do you ever watch him tend the garden?

A I've seen him tend to his garden.

Q Since the accident?

A Physically walking in his garden and picking vegetables, yeah. I mean, as far as tilling and that, no, I have not seen him labor as far as tilling, although he did borrow my tiller to till it.

Did I see -- Did I see him? No.

Q Okay. Have you ever seen him till his garden?

A No.

Q The only thing you've seen him do since his accident as far as his garden is to pick vegetables?

A Yeah.

Q Okay. And that's just by when you drive by you see him doing that?

A He's -- He told me at those times when I was there, you know, look at all the produce I have.

Q He told you when? What are we talking about?

A When I was there.

Q After the accident?

A Yeah. On those -- On those occasions that I mentioned, he's got all his, you know, vegetables and stuff lined up at his house.

Q You're going too fast. On what occasions? These conversations we talked about at the beginning of this deposition weren't all at his house.

A No, the one where I was in the kitchen.

Q Right. That's the one time. You said --

A Such as -- Such as that, you know, and --

Q Wait. Wait.

A His brother doesn't tend the garden.

Q Hold on. Hold on. Stop. After the accident how many times have you been to his house?

A As I had said.

Q How many?

A As I had said.

Q What is as I had said? What answer -- How many is that?

A You've got it written down right there.

Q How many? I don't know what you're talking about. How many?

A I told you the one time in the kitchen.

Q Right.

A And there you go.

Q So one time?

A Yeah.

Q Okay. Just say one then; that's the answer. So the question is, how many times have you been to Paul's house since his accident? It's one time, right?

A Yeah.

Q Is that a yes?

A Yes.

Q Okay. So the times that you've seen anything that he's done with his garden, have you ever visited him to see what he does in the garden?

A No, I didn't witness him working in the

garden. — Thought I was out Tending + Picking FRUIT + veg.?

Q Okay. So what you're saying is the testimony you just gave about him tending the garden is what you have had that one conversation when you were at his house that one time after the accident, right?

A Yeah. — in October?

Q And that was a conversation you had with him and he said, Hey, look at what I do when I tend my garden? Dave Hates my Dog, Dog caught Dave stealing supplies FRM my Shop.

A Yeah. I was figuring maybe the dog helped him, you know. ~~=~~ German Shepherd Dog is obviously Smarter than YOU DAVE!

Q You know, I'm not trying to be funny. I'm just trying to get the facts, okay? Because what you say might -- you might not understand but it leaves a lot of inferences. — Everythin Dave says is a lie, thought, Inference. etc... anything But the TRUTH! I'm trying to finish -- find out exactly what you mean as far as so I don't have to infer what you mean, okay?

A Okay.

Q So I'm not trying to be funny about it. You were there at his house one time after the accident, right?

A Yes. — NO a few times

Q And that was the time four months after the accident? — FALL/winter? what garden is left?

A Yes.

Q Okay. And that's the information then that you got about him tending his garden, correct?

A Yes.

Q Okay. You've never seen him tend his garden since the accident, have you?

A Picking fruit, tending? Yeah. I mean, are you talking about tilling soil? Are you talking about walking in the garden in the sense --

Q Have you seen --

A What are you saying is tending?

Q All right.

A I don't understand.

Q Okay. I understand that.

A Okay.

Q How many times have you seen him in his garden since the accident?

A We'll say ten times driving by his house, going into the neighborhood that I used to live in, no conversations, not stopping by, not talking to him.

Q I got the answer, ten times.

A But I'd usually seen him in his garden.

Q During those ten times you've seen him in his garden since the accident, what things have you seen

him do?

A Harvesting vegetables.

Q Picking vegetables?

A Yes.

Q Okay. With his hands?

A Yes.

Q Putting them in some type of basket or something?

A Yes.

Q Okay. And you would see him just by passing by so it'd be a matter of a couple seconds you would see him, right?

A Yes.

Q For each of those ten times, right?

A Yes.

Q And those are ten separate dates?

A Yes.

Q Over a course of a summer?

A Over the course of since this occurrence.

Q Okay. So that would be two summers?

A So two summers, right.

Q Okay. Very good. Let's talk about that renovation work then. The renovation work that you're talking about isn't something you saw him do, it's

something that somebody else told you that he has done, right?

A Yes. - Hearsay ? Paul - NEVER Did Renovation Work at Mike Thomases Residence.

Q And who is the individual, what's his name?

A Mike Thomas.

Q Mike Thomas?

A Yeah.

Q He's the homosexual you were talking about?

A Yes.

Q And he lives in where?

A He lives in Twin Lakes.

Q Okay. Are you friends with him?

A No.

Q Okay. So you don't know personally what Paul did, if anything, at Mike Thomas's house, you just know what Mike Thomas told you, correct?

A Correct.

Q Okay. So whether he actually did renovation work, meaning Paul, you don't know; fair enough?

A His basement was renovated. — By who, and Did you see it Before + After? Friend?

Q Whether Paul did the work or not, you don't know; fair enough?

A I was told that he did the work. — Lie

Q Right, and so now I'm asking do you know if

Paul did the work or just through what you were told?

A I was informed that Paul had done the work inadvertently without asking for me to be revealed that someone -- someone had told me that I know this person.

Q All right. Here, let me say it a different way.

A I know, you're trying to work it your way.

Q I'm not trying to work -- I'm just trying to get the basis of what you're saying and you didn't see him do the work, right?

A No, I didn't see him do the work.

Q So you don't know if he really did the work, do you, other than what somebody told you, correct?

A That's a fair assumption.

Q And Mike is the only person that told you he did the renovation work, right?

A That is correct.

Q And what part of the renovation work you don't know; fair enough?

A That's a fair assumption.

Q Okay.

MR. MAST: That's all I have. Thanks.

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.

MR. MAST: All right.

MR. CALLAHAN: Signature reserved.

(Witness excused.)

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.	)	

I, DAVID A. GAGNON, state that I have read the foregoing transcript of the testimony given by me at my deposition on February 4, 2013, and that said transcript constitutes a true and correct record of the testimony given by me at the said deposition except as I have so indicated on the errata sheets provided herein.

_____
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

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Margaret Maggie Orton, Certified Shorthand Reporter and Registered Professional Reporter, do hereby certify that on February 4, 2013, the deposition of the witness, DAVID A. GAGNON, called by the Plaintiff, was taken before me, reported stenographically, and was thereafter reduced to typewriting under my direction.

The said deposition was taken at the offices of Thomas J. Popovich, 3421 West Elm Street, McHenry, Illinois; and there were present counsel as previously set forth.

The said witness, DAVID A. GAGNON, was first duly sworn to tell the truth, the whole truth, and nothing but the truth, and was then examined upon oral interrogatories.

I further certify that the foregoing is a true, accurate, and complete record of the questions asked of and answers made by the said witness, DAVID A. GAGNON, at the time and place hereinabove referred to.

The signature of the witness, DAVID A. GAGNON, was reserved by agreement of counsel.

The undersigned is not interested in the within case, nor of kin or counsel to any of the parties.

Witness my official signature on this 9th day of December, 2013.

MARGARET MAGGIE ORTON, CSR, RPR

CSR No. 084-004046

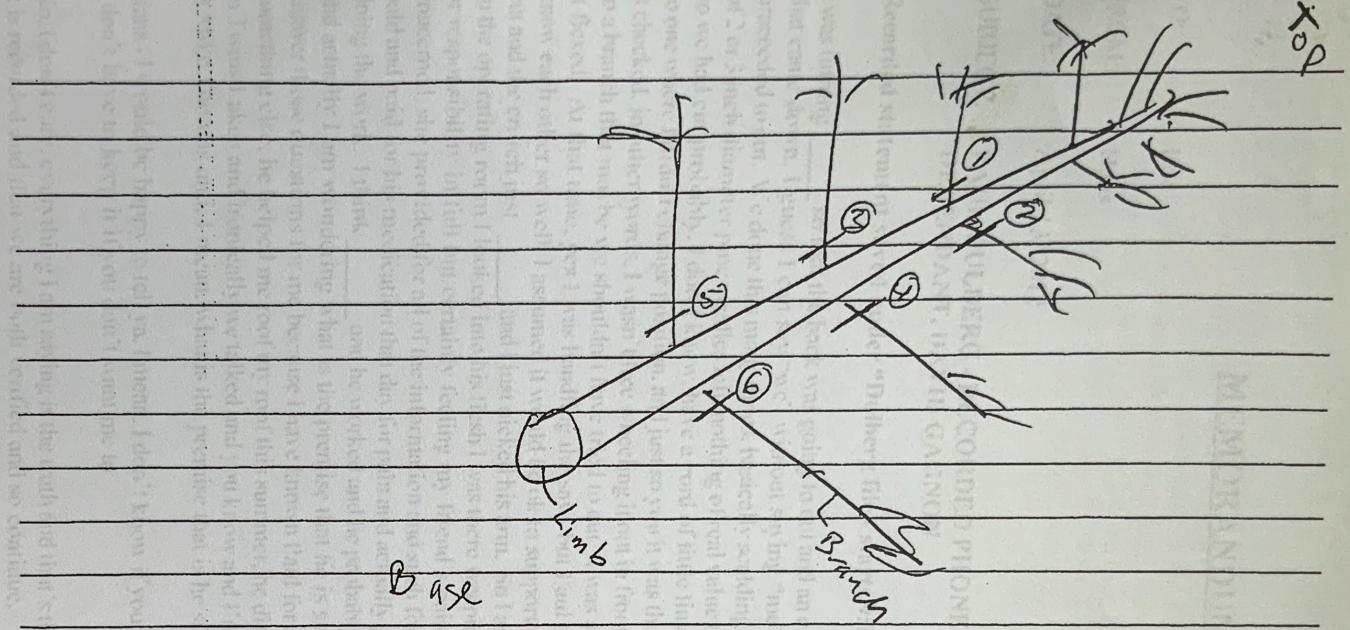


EXHIBIT
Cayuga 1
MMD
PENGAD 800-631-6989

MEMORANDUM

TO: File

FROM: Hans

DATE: April 13, 2012

SUBJECT: PAUL DULBERG - RECORDED PHONE STATEMENT FROM DEFENDANT, DAVID GAGNON

Recorded statement saved under "Dulberg file - starts 9:16 to 6:03.

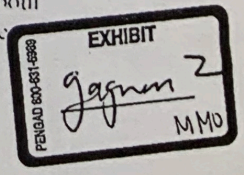
I was turning _____ so that the back was going to cut and an easier go at it. Therefore, the branches that came down, I guess I can say "we" without saying "me" opted to stand the branches up and proceeded to cut. We done this many times, basically scalding off the small branches to make in size of 2 or 3 inch diameter pine needles left, nothing of real value to something to clean up. So, in doing so we had cut probably, I don't know, have a cord of little tiny pieces and had some left and we got to one where I didn't change position, and just so you it was the way that I was operating the saw and it checked, in other words, I wasn't free wheeling it out in front of me, always in position and we got to a branch that maybe we shouldn't have tried to cut, it was a little flimsy, so when I hit the crotch it flexed. At that time, yes I was handling the saw, but Paul at the same time and just because we know each other so well, I assumed it would be ok to support it. In doing so, I was already into the cut and the crotch just _____ and I just nicked his arm. So I am wondering at this point, I was there in the operating room I looked into his flesh I was there weeping with him not accepting negligence or responsibility in full but certainly feeling my friend's pain, calling my mother of course she is concerned, she provided for all of the information and such for his medical bills and whatever to be paid and paid for his medication that day for pain and actually gave him some money for, you know, doing the work. I think _____ and he worked and he probably had intentions of getting something and actually I am wondering what is the premise that he is suing on and to what extent if you can answer those questions for me because I have known Paul for a long time, ok, I am going to tell you something else, he helped me roof my roof this summer, he did renovation work for a guy over here in Twins Lakes and ironically we talked and you know and I'm like yeah I know that guy, his name is Mike Thomas and, I mean, what is the premise that is he suing on?

Hans - I would be happy to tell ya, I mean, I don't know if you know this, our lines are recorded, but I don't have to keep it if you don't want me to.

No, I don't care, everything I am saying is the truth and that's the way that I operate and I'm glad that it is recorded and that we are both verified and so continue.

Hans - I don't expect you to tell me anything but the truth anyway, so as long as that is a good deal then fine.

What he said, you know, is that, we can make a lot of money in this, and I said we? I said Paul, I'm still thinking about your arm and getting home and getting your meds and he say ah, we'll talk about it later. So, once again, per law I understand that he is entitled to something but there should be



need why it should be hyped, pumped, exaggerated it and what I just told you was the truth, ok, as far as his injury my face was right in there. I mean he was all... and got pain medication and their____ filing away at his flesh, but when it came down to it, I'm not a doctor, but I can tell ya the facia is a white membrane underneath your, separates your muscle from your fatty tissue of your epidermis, that is how deep it went. Now, we are not to judge or to say how bad it is, but as far as I'm concerned and anyone there, he had 7 stitches I think, 2 inside and then 6 outside, it was a deep superficial gouge and cutting the nerves, tendons, muscle.

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SCOTT A. HIERA, LLC

Scott A. Hiera
Bryan D. Sullivan

Jenny Hay - Office Manager/Paralegal
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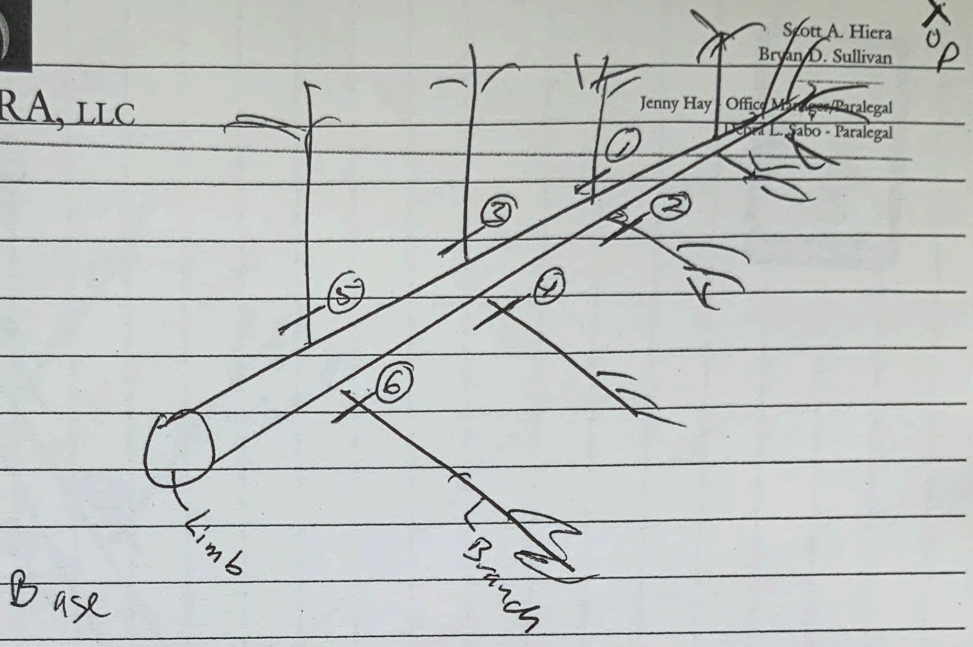

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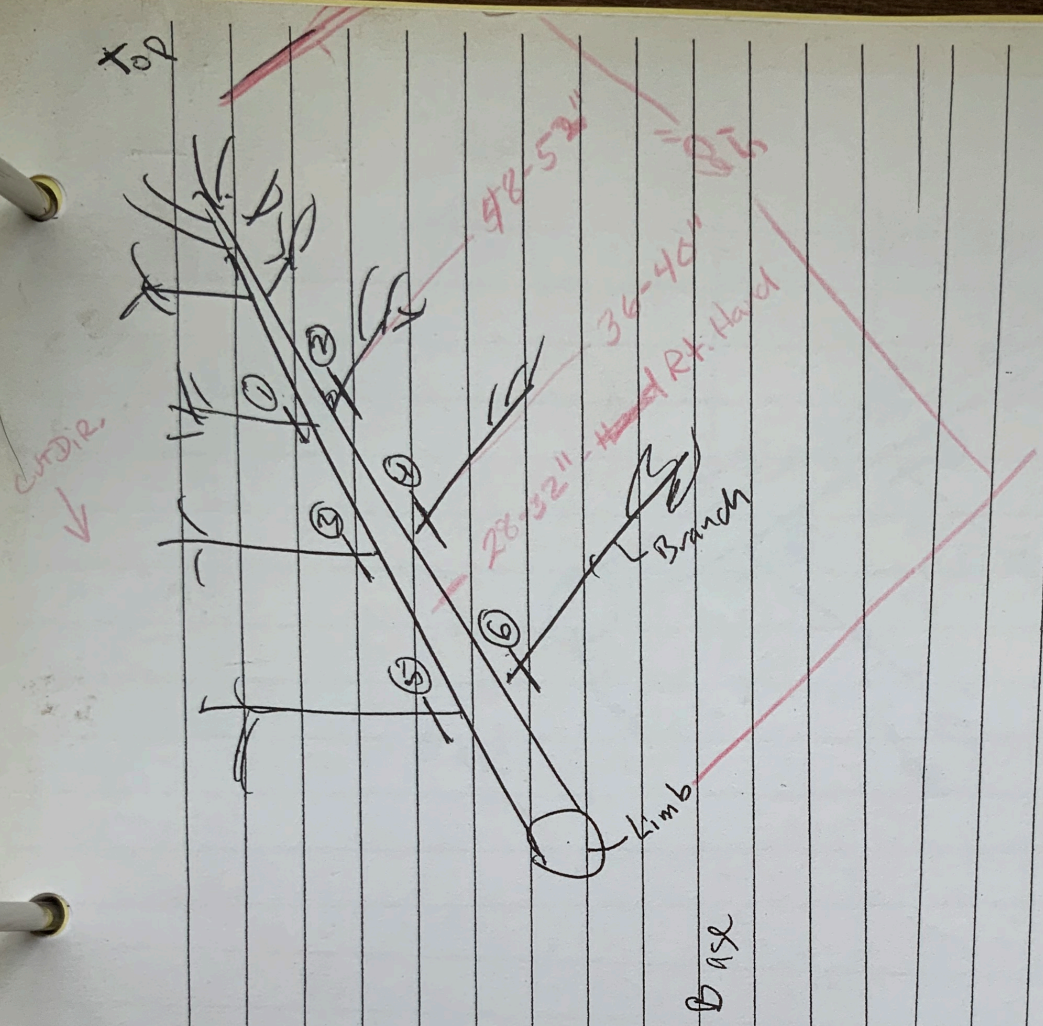

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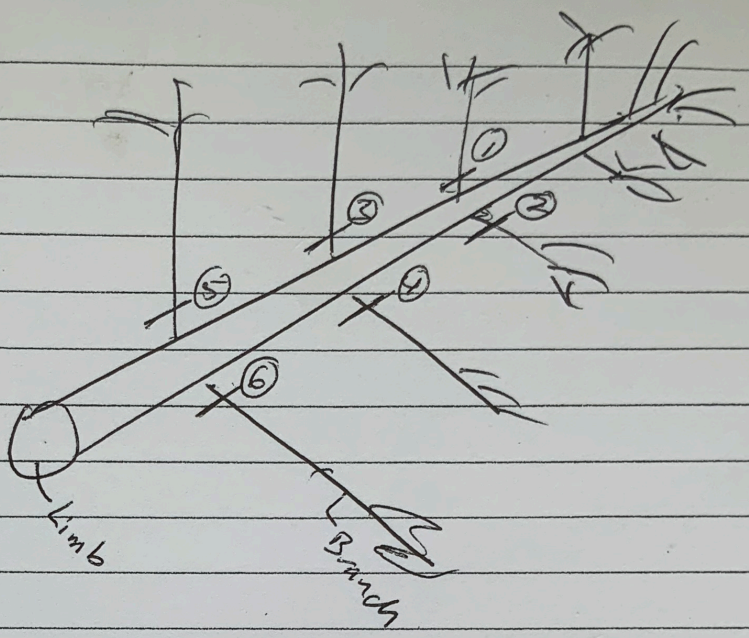

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