

REC'D & FILED
Nancy A. Desjardin

STATE OF MAINE

NOV 15 2000

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR-99-153

KENNEBEC, ss.

Clerk of Courts
Kennebec County

STATE OF MAINE

v.

MATHIEU O'ROURKE

Defendant

ORDER ON DEFENDANT'S
MOTION FOR A NEW TRIAL
DONALD L. ROBERTS
LAW LIBRARY

DEC 4 2000

This matter is before the court on defendant's motion for new trial. Defendant was found guilty after a jury verdict of Solicitation to Commit Murder, under the provisions of 17-A M.R.S.A. § 153. Sentence has been imposed. Prior to sentence, and pursuant to M.R. Crim. P. 33, defendant moved for a new trial on the grounds that inappropriate and unfairly prejudicial evidence was admitted over the objection of the defense.

The evidence in question is as described in defendant's motion, two letters handwritten by a prison inmate which were turned over to the State by the family of one of the State's witnesses which contained threats to a State's witness. It was the State's contention that while the letters were not written by the defendant, the letters were written at the direction of the defendant. At trial, the author of the letters so testified and the letters were acknowledged by the defendant.

The defense argues that the letters were irrelevant and unfairly prejudicial per M.R. Evid. 403. Defendant argues that the letters were written after the crime was committed, were irrelevant to the subjective intent of the defendant under those circumstances, and bore no relationship to the required elements that the

defendant have intent to cause the commission of the murder and that it was reasonable to believe that the defendant considered it probable that the murder would take place. Defendant asserts that the letters are inflammatory and were unnecessary as part of the State's case.

The State argues that the letters were relevant on the issue of whether the defendant's actions were not intentional but rather were a mistake or just words. The State argues that the letters constituted an admission by the defendant that he did commit the crime and further were an explanation of the words used by the defendant in the solicitation and the reason for such solicitation.

The court examines three cases for guidance in this area. In *State v. Nye*, 516 A.2d 560 (Me. 1986), the court examined evidence admitted regarding the defendant's alleged efforts in causing the victim to be absent on the date set for trial. The court admitted the evidence on the basis that it was relevant "regarding the defendant's consciousness of guilt." That ruling was challenged by the defendant as being a violation of M.R. Evid. 404(b) as evidence of other crimes or wrongs in order to prove character of a person showing that he acted in conformity therewith. The court ruled, citing *Pierce v. State*, 463 A.2d 756 (Me. 1983), that the evidence was probative of the defendant's consciousness of guilt, not for the purpose of showing his "bad character" under Rule 404(b). The court goes on to say:

Because the court found that the evidence was offered for a relevant purpose other than to show that the defendant's bad character, the order . . . did not prevent admission of evidence of the collateral misconduct.

In *State v. Pierce*, 474 A.2d 182, the court had admitted evidence of threats made by the accused to witnesses testifying against him. The argument was that they were not admissible to show the defendant's bad character. The court decided:

If, however, the presiding justice determines that such evidence is relevant and more probative than prejudicial, confusing, misleading, or cumulative, and that the evidence is offered for a purpose other than establishing character, he may, in his discretion, admit the testimony regarding threats.

The court recognized that evidence of threats made by a defendant to witnesses against him may be admitted to show the defendant's consciousness of guilt and further found that the threats related to the purpose of also showing identity where it was the ultimate issue for resolution at trial.

In *State v. McEachern*, 431 A.2d 39, the trial court admitted in evidence a letter written from jail by the defendant to a witness. The letter contained threats against the witness and expressed the defendant's expectation that he would be convicted and spend a substantial period of time in jail. The defense objected on the grounds that the letter was not relevant and unduly prejudicial. The decision reasons:

In general, threats against witnesses, like the destruction of evidence, are properly received in evidence on the theory that such activity constitutes admission by conduct. See McCormick, *Handbook of the Law of Evidence*, 660 (2d ed., 1972).

The court goes on to approve cases in other jurisdictions and concludes that:

The probative value of such evidence arises from the inference that an innocent person would not undertake to intimidate witnesses and that such intimidation is therefore an admission by the defendant of his guilt.

Clearly, as described by *McEachern*, the responsibility of this court was to balance the probative value of these letters with the prejudicial effect as required by M.R. Evid. 403. Inasmuch as the nature of the evidence in this case was for the jury to decide whether the activities by the defendant were simply jail-house bravado or constituted a more serious effort to effectuate the crime of murder of a witness, the letters were quite relevant in providing some description of the seriousness of thought entertained by the defendant as expressed in his relationship with the author of the letters. Accordingly, while the letters were highly prejudicial, their relevancy was strong enough to overcome any sense of unreasonableness in the level of prejudicial value which would cause the court to deny their admission.

For reasons stated above, the entry will be:

Defendant's motion for new trial is DENIED.

Dated: November 15, 2000



Donald H. Marden
Justice, Superior Court

STATE OF MAINE
vs
MATHIEU O'ROURKE
56 JONES CREEK DRIVE
BARBOROUGH ME 04070

SUPERIOR COURT
KENNEBEC, ss.
Docket No AUGSC-CR-1999-00153

DOCKET RECORD

DOB: 02/13/1978
Attorney: GREGG BERNSTEIN

State's Attorney: DAVID CROOK

Filing Document: INDICTMENT
Filing Date: 05/13/1999

Major Case Type: FELONY (CLASS A,B,C)

Charge(s)

1 SOLICITATION TO COMMIT MURDER
17-A 153(1) Class A

08/27/1998 AUGUSTA

MACMASTER

/ MSP

Docket Events:

05/13/1999 FILING DOCUMENT - INDICTMENT FILED ON 05/13/1999

05/14/1999 SUMMONS - SUMMONS TO APPEAR FOR ARRAIGN ISSUED FOR 05/19/1999 @ 8:30

05/17/1999 HEARING - ARRAIGNMENT SCHEDULED FOR 05/19/1999 @ 8:30

05/17/1999 WRIT - HABEAS CORPUS TO TESTIFY ISSUED ON 05/19/1999 @ 8:30

05/21/1999 HEARING - ARRAIGNMENT HELD ON 05/19/1999

JOHN R ATWOOD , JUSTICE

Attorney: GREGG BERNSTEIN

DA: ALAN KELLEY

Reporter: CASE ENOCH

Defendant Present in Court

05/21/1999 Charge(s): 1

PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 05/19/1999

MOTIONS TO BE FILED IN 21 DAYS.

05/21/1999 BAIL BOND - SET ENTERED BY COURT ON 05/19/1999

BAIL SET AT \$50,000.00SURETY OR \$25,000.00 CASH.

05/21/1999 OTHER FILING - OTHER DOCUMENT FILED ON 05/19/1999

CONDITIONS OF RELEASE.

NO CONTACT WITH

RAMONA DAVILA, BRENT MCSWEYN AND SHERRY DAIGLE.

05/24/1999 MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 05/19/1999

WITH FINANCIAL AFFIDAVIT.

05/24/1999 MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 05/19/1999

JOHN R ATWOOD , JUSTICE

COPY TO ATTY. BERNSTEIN.

05/24/1999 TRANSFER - BAIL AND PLEADING REQUESTED ON 05/13/1999

05/24/1999 TRANSFER - BAIL AND PLEADING GRANTED ON 05/13/1999

S KIRK STUDSTRUP , JUSTICE

COPY TO AUGUSTA & WATERVILLE DISTRICT COURT.

06/01/1999 WRIT - HABEAS CORPUS TO TESTIFY EXECUTED ON 05/20/1999

06/01/1999 WRIT - HABEAS CORPUS TO TESTIFY RETURNED ON 06/01/1999

06/08/1999 MOTION - MOTION FOR ENLARGEMENT OF TIME FILED BY DEFENDANT ON 06/07/1999

IN WHICH TO FILE PRE-TRIAL MOTIONS FILED.

06/08/1999 MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 06/08/1999

S KIRK STUDSTRUP , JUSTICE

IN WHICH TO FILE PRE-TRIAL MOTIONS. TIME FOR MOTIONS ENLARGED TO 6/28/99. COPIES TO
ATTYS.

06/28/1999 MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 06/28/1999

06/28/1999 MOTION - OTHER MOTION FILED BY DEFENDANT ON 06/28/1999

MOTION FOR BILL OF PARTICULARS.

06/28/1999 MOTION - MOTION FOR DISCOVERY FILED BY DEFENDANT ON 06/28/1999

08/03/1999 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 09/17/1999 @ 9:00

08/03/1999 NOTICE - NOTICE OF HEARING SENT ON 08/03/1999

09/15/1999 MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 09/15/1999

09/16/1999 OTHER FILING - COURT ORDER FILED ON 09/16/1999

S KIRK STUDSTRUP , JUSTICE

ORDER ON MOTION TO CONTINUE FILED. COPIES TO ATTYS.

09/16/1999 MOTION - MOTION TO CONTINUE GRANTED ON 09/16/1999

S KIRK STUDSTRUP , JUSTICE

HEARING ON DEFT.'S MOTIONS, SCHEDULED ON 9/17/99, ARE HEREBY CONTINUED TO THE NEXT
CRIMINAL MOTION DATE IN NOVEMBER, 1999.

09/16/1999 HEARING - MOTION TO SUPPRESS CONTINUED ON 09/16/1999

TO NOVEMBER LIST.

10/12/1999 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 11/03/1999 @ 9:00

10/29/1999 OTHER FILING - OTHER DOCUMENT FILED ON 10/29/1999

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO SUPPRESS.

10/29/1999 WRIT - HABEAS CORPUS TO TESTIFY ISSUED ON 11/01/1999

11/04/1999 HEARING - MOTION FOR DISCOVERY HELD ON 11/03/1999

DONALD H MARDEN , JUSTICE

Attorney: GREGG BERNSTEIN

DA: ALAN KELLEY

Reporter: JANETTE COOK

Defendant Present in Court

11/04/1999 HEARING - OTHER MOTION HELD ON 11/03/1999

DONALD H MARDEN , JUSTICE

Attorney: GREGG BERNSTEIN

DA: ALAN KELLEY

Reporter: JANETTE COOK

Defendant Present in Court

MOTION FOR BILL OF PARTICULARS.

11/04/1999 MOTION - OTHER MOTION DENIED ON 11/03/1999

ON THE RECORD. COPIES TO ATTYS.

11/04/1999 MOTION - MOTION FOR DISCOVERY GRANTED ON 11/03/1999

IN PART, ON THE RECORD. COPIES TO ATTYS.

11/04/1999 MOTION - MOTION FOR DISCOVERY DENIED ON 11/03/1999

IN PART, ON THE RECORD. COPIES TO ATTYS.

11/15/1999 MOTION - OTHER MOTION FILED BY DEFENDANT ON 11/15/1999

MOTION TO WITHDRAW DEFT.'S REQUEST FOR PSYCHOLOGICAL EVALUATION, EX PARTE.

11/16/1999 MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 11/16/1999

AND REQUEST FOR PERMISSION FOR LATE FILING

11/16/1999 MOTION - OTHER MOTION FILED BY DEFENDANT ON 11/16/1999

MOTION TO AMEND PLEADING (FIRST MOTION TO SUPPRESS THAT WAS FILED.)

12/17/1999 MOTION - MOTION TO RECONSIDER FINDING FILED BY DEFENDANT ON 12/10/1999

EX PARTE MOTION TO RECONSIDER DEFT.'S REQUEST FOR FUNDS TO HIRE PSYCHOLOGIST.

12/17/1999 MOTION - MOTION TO IMPOUND FILED BY DEFENDANT ON 12/10/1999

DEFT.'S REQUEST FOR FUNDS TO HIRE PSYCHOLOGIST.

12/17/1999 MOTION - MOTION TO RECONSIDER FINDING DENIED ON 12/14/1999

S KIRK STUDSTRUP , JUSTICE

COPY TO ATTY. BERNSTEIN.

12/17/1999 MOTION - MOTION TO IMPOUND GRANTED ON 12/14/1999

S KIRK STUDSTRUP , JUSTICE

ORDER FILED. DEFT.'S MOTION TO RECONSIDER DEFT.'S REQUEST FOR FUNDS TO HIRE PSYCHOLOGIST
AND ITS CONTENTS ARE IMPOUNDED. COPY TO ATTY. BERNSTEIN.

12/20/1999 MOTION - OTHER MOTION GRANTED ON 12/17/1999

S KIRK STUDSTRUP , JUSTICE

ORDER FILED. UPON MOTION BEING SUBMITTED EX PARTE, IT IS HEREBY ORDERED: THIS COURT'S
ORDER REQUIRING A TITLE 15 EVALUATION OF DEFENDANT IS VACATED. COPY TO ATTY. BERNSTEIN.

12/20/1999 HEARING - OTHER MOTION SCHEDULED FOR 01/03/2000 @ 9:00

MOTION TO AMEND PLEADING (FIRST MOTION TO SUPPRESS).

12/20/1999 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 01/03/2000 @ 9:00

NOTICE TO PARTIES/COUNSEL

12/20/1999 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 01/03/2000 @ 9:00

NOTICE TO PARTIES/COUNSEL

12/29/1999 MOTION - MOTION TO CONTINUE FILED BY STATE ON 12/29/1999

01/04/2000 MOTION - MOTION TO CONTINUE GRANTED ON 12/29/1999

DONALD H MARDEN , JUSTICE

COPY TO PARTIES/COUNSEL

01/04/2000 HEARING - MOTION TO SUPPRESS CONTINUED ON 12/29/1999

01/04/2000 HEARING - MOTION TO SUPPRESS CONTINUED ON 12/29/1999

04/2000 HEARING - OTHER MOTION CONTINUED ON 12/29/1999

01/04/2000 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 02/07/2000 @ 1:00

NOTICE TO PARTIES/COUNSEL

01/04/2000 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 02/08/2000 @ 1:00

NOTICE TO PARTIES/COUNSEL

01/04/2000 NOTICE - NOTICE OF HEARING SENT ON 01/04/2000

01/04/2000 HEARING - MOTION TO SUPPRESS CONTINUED ON 11/03/1999

01/07/2000 TRIAL - JURY SCHEDULED FOR 02/07/2000 @ 9:00

NOTICE TO PARTIES/COUNSEL

01/11/2000 MOTION - MOTION FOR FUNDS FILED BY DEFENDANT ON 01/11/2000

SECOND MOTION EX PARTE. FUNDS FOR AN INVESTIGATOR.

01/12/2000 MOTION - MOTION FOR FUNDS GRANTED ON 01/12/2000

S KIRK STUDSTRUP , JUSTICE

01/14/2000 OTHER FILING - OTHER DOCUMENT FILED ON 01/14/2000

MEMORANDUM IN OPPOSITION TO DEFT.'S MOTION TO SUPPRESS.

02/04/2000 WRIT - HABEAS CORPUS TO TESTIFY ISSUED ON 02/08/2000 @ 13:00

CERTIFIED COPY TO SHERIFF DEPT.

02/24/2000 OTHER FILING - TRANSCRIPT ORDER FILED ON 02/24/2000

DONALD H MARDEN , JUSTICE

COPY TO COURT REPORTER, CASE ENOCH, ON 3/7/00.

02/24/2000 HEARING - MOTION TO SUPPRESS HELD ON 02/09/2000

DONALD H MARDEN , JUSTICE

Attorney: GREGG BERNSTEIN

DA: ALAN KELLEY Reporter: CASE ENOCH

Defendant Present in Court

PARTIES PRESENT OPENING STATEMENTS TO THE COURT AND WITNESSES. PARTIES CLOSE AND COURT TAKES THIS UNDER ADVISEMENT.

02/24/2000 HEARING - OTHER MOTION HELD ON 02/09/2000

02/24/2000 HEARING - MOTION TO SUPPRESS HELD ON 02/09/2000

02/24/2000 JUDICIAL - JUDGMENT DETERMINATION UNDER ADVISEMENT ON 02/09/2000

MOTIONS TO SUPPRESS AND OTHER MOTION UNDER ADVISEMENT.

02/25/2000 MOTION - MOTION TO SEQUESTER WITNESSES MADE ORALLY BY DEF ON 02/09/2000

02/25/2000 MOTION - MOTION TO SEQUESTER WITNESSES GRANTED ON 02/09/2000

03/01/2000 MOTION - MOTION TO RECONSIDER FINDING FILED BY DEFENDANT ON 03/01/2000

OF DEFT.'S MOTION FOR TRANSCRIPT AT STATE EXPENSE FILED.

07/2000 MOTION - MOTION TO RECONSIDER FINDING GRANTED ON 03/07/2000

DONALD H MARDEN , JUSTICE
ORDER FILED. THE SUPPRESSION HEARING TRANSCRIPT IN THIS CASE SHALL BE PREPARED AT STATE
EXPENSE, WITH A COPY PROVIDED TO THE STATE. COPIES TO ATTYS.
03/07/2000 MOTION - MOTION TO PREPARE TRANSCRIPT FILED BY DEFENDANT ON 02/24/2000
03/07/2000 MOTION - MOTION TO PREPARE TRANSCRIPT DENIED ON 02/25/2000
COPY TO PARTIES/COUNSEL
03/07/2000 MOTION - MOTION TO PREPARE TRANSCRIPT GRANTED ON 03/07/2000
COPY TO PARTIES/COUNSEL
03/15/2000 TRIAL - JURY NOT REACHED ON 03/15/2000
04/14/2000 OTHER FILING - COURT ORDER FILED ON 04/13/2000
DONALD H MARDEN , JUSTICE
ORDER ON MOTIONS TO SUPPRESS FILED. COPIES TO ATTYS., DEBORAH FIRESTONE, GARBRECHT LAW
LIBRARY AND DONALD GOSS.
04/14/2000 MOTION - MOTION TO SUPPRESS DENIED ON 04/13/2000
DONALD H MARDEN , JUSTICE
COPY TO PARTIES/COUNSEL
04/14/2000 MOTION - MOTION TO SUPPRESS DENIED ON 04/13/2000
DONALD H MARDEN , JUSTICE
COPY TO PARTIES/COUNSEL
05/11/2000 TRIAL - JURY SCHEDULED FOR 06/08/2000 @ 9:00
NOTICE TO PARTIES/COUNSEL
06/19/2000 WRIT - HABEAS CORPUS TO TESTIFY ORDERED ON 06/16/2000
DONALD H MARDEN , JUSTICE
TO BRING ANTHONY DOROTHY FROM FEDERAL PRISON IN FAIRTON, N.J.
06/19/2000 WRIT - HABEAS CORPUS TO TESTIFY ISSUED ON 06/16/2000
CERTIFIED COPY TO SHERIFF DEPT.
06/19/2000 OTHER FILING - OTHER DOCUMENT FILED ON 06/16/2000
STATE OF MAINE'S REQUEST FOR THE ISSUANCE OF A WRIT OF HABEAS CORPUS AD TESTIFICANDUM.
06/22/2000 MOTION - MOTION IN LIMINE FILED BY DEFENDANT ON 06/21/2000
DEFENDANT'S PAST CRIMINAL RECORD OR PAST CONVICTIONS; LETTERS WRITTEN BY DEFENDANT TO
RAMON DAVILA
06/22/2000 MOTION - MOTION IN LIMINE FILED BY DEFENDANT ON 06/21/2000
TESTIMONY OF STATE WITNESSES OF ROBERT GOULD, FRED GORGONE AND SHERRY DAIGLE.
06/22/2000 MOTION - MOTION IN LIMINE FILED BY DEFENDANT ON 06/21/2000
TESTIMONY OF BLAIR JONES, ESQ., DEFENDANT'S PRIOR ATTORNEY.
06/22/2000 TRIAL - JURY CONTINUED ON 06/08/2000
CRIMINAL CALENDAR CALL HAD AND TRIAL SET FOR 6/26/00
06/22/2000 TRIAL - JURY SCHEDULED FOR 06/26/2000
NOTICE TO PARTIES/COUNSEL
06/22/2000 WRIT - HABEAS CORPUS TO TESTIFY ISSUED ON 06/22/2000

CERTIFIED COPY TO SHERIFF DEPT.

06/23/2000 HEARING - MOTION IN LIMINE HELD ON 06/22/2000
DONALD H MARDEN , JUSTICE
Attorney: GREGG BERNSTEIN

DA: JAMES MITCHELL Reporter: JANETTE COOK
ALL THREE MOTIONS IN LIMINE HEARD BEFORE THE COURT. COURT TO FILE ORDER.

06/23/2000 MOTION - MOTION IN LIMINE GRANTED ON 06/23/2000

COPY TO PARTIES/COUNSEL GRANTED AS TO
PREVIOUS CONVICTIONS AS IT RELATES TO CRIMINAL THREATENING AND TERRORIZING BUT PROOF OF
OTHER CONVICTIONS WITHIN THE RULE SHALL BE ALLOWED.

06/23/2000 MOTION - MOTION IN LIMINE DENIED ON 06/23/2000

COPY TO PARTIES/COUNSEL DENIED AS TO
PAST INCARCERATIONS WHICH INCLUDES TESTIMONY OF ANTHONY DOROTHY WHICH IS LIMITED TO THE
PROBATIVE ISSUE OF RELATIONSHIP BETWEEN DEFENDANT AND WITNESS: DENIED AS TO LETTERS
WRITTEN TO CHARLES DAVILA AND LETTERS WILL NOT BE REDACTED. S/MARDEN, J.

06/23/2000 MOTION - MOTION IN LIMINE DENIED ON 06/23/2000

COPY TO PARTIES/COUNSEL DEFENDANT
WITHDREW OBJECTION TO FRED GORGONE; TESTIMONY OF ROBERT GOULD AND SHERRY DAIGLE WILL NOT
BE EXCLUDED. S/MARDEN, J.

06/23/2000 MOTION - MOTION IN LIMINE UNDER ADVISEMENT ON 06/23/2000

DEFENDANT WISHES PRESENT PRIOR ATTORNEY, STATE OBJECTS, COURT CANNOT MAKE A RULING IN THIS
MATTER WITHOUT OFFER OF PROOF AT THE APPROPRIATE TIME TO DETERMINE WHETHER THE ATTORNEY
HAS INFORMATION ADMISSIBLE AND RELEVANT. COURT DEFERS RULING. S/MARDEN, J.

07/05/2000 MOTION - MOTION IN LIMINE FILED BY DEFENDANT ON 06/27/2000

07/05/2000 MOTION - MOTION IN LIMINE DENIED ON 06/27/2000

DONALD H MARDEN , JUSTICE

COPY TO PARTIES/COUNSEL

07/06/2000 MOTION - MOTION IN LIMINE GRANTED ON 06/23/2000

COPY TO PARTIES/COUNSEL

07/06/2000 TRIAL - JURY HELD ON 06/27/2000

DONALD H MARDEN , JUSTICE

Attorney: GREGG BERNSTEIN

DA: JAMES MITCHELL Reporter: CASE ENOCH

Defendant Present in Court

JURY IN. DAY 1. CASE OPENED BEFORE DRAWN AND SWORN JURY.

DEFENSE PRESENTS ITS OPENING ARGUMENTS.

CHIEF.

STATE AND
STATE BEGINS ITS CASE-IN-
COURT RECESSES UNTIL 9:00 A. M. ON

6/28/2000.

07/06/2000 MOTION - MOTION TO SEQUESTER WITNESSES MADE ORALLY BY STATE ON 06/27/2000

07/06/2000 MOTION - MOTION TO SEQUESTER WITNESSES GRANTED ON 06/27/2000

COPY TO PARTIES/COUNSEL

07/06/2000 Charge(s): 1

TRIAL - JURY HELD ON 06/28/2000

JURY IN. DAY 2. STATE CONTINUES ITS-CASE-IN-CHIEF.
FOR THE DAY. TRIAL TO COMMENCE AT 9:00 A. M. ON

6/29/00.

CASE RECESSED

07/06/2000 Charge(s): 1

TRIAL - JURY HELD ON 06/29/2000

JURY IN. DAY 3.

STATE RESTS.

DEFENSE BEGINS ITS CASE.

CASE RECESSED UNTIL 8:30 A. M. ON 6/30/00.

07/06/2000 Charge(s): 1

MOTION - MOTION FOR JDGMT OF ACQUITTAL MADE ORALLY BY DEF ON 06/29/2000

07/06/2000 Charge(s): 1

MOTION - MOTION FOR JDGMT OF ACQUITTAL DENIED ON 06/29/2000

DONALD H MARDEN , JUSTICE

COPY TO PARTIES/COUNSEL

07/06/2000 Charge(s): 1

TRIAL - JURY HELD ON 06/30/2000

JURY IN. DAY 4. DEFENSE CONTINUES ITS CASE.

DEFENSE RESTS.

STATE RESTS FINALLY.

STATE & DEFENSE PRESENTS CLOSING ARGUMENTS.

JURY CHARGED BY THE COURT. JURY RETIRES TO DELIBERATE. JURY RETURNS VERDICT. JURY
DISCHARGED.

07/06/2000 Charge(s): 1

VERDICT - GUILTY RETURNED ON 06/30/2000 @ 5:00

JURY POLLED.

JURY

DISCHARGED.

07/06/2000 Charge(s): 1

FINDING - GUILTY ENTERED BY COURT ON 06/30/2000

DONALD H MARDEN , JUSTICE

07/06/2000 Charge(s): 1

FINDING - GUILTY CONT FOR SENTENCING ON 06/30/2000

07/06/2000 PSI - BY PROBATION OFFICER ORDERED ON 06/30/2000

DONALD H MARDEN , JUSTICE

ATTESTED COPY OF PSI ORDER MAILED TO PROBATION AND PAROLE ALONG WITH
OF INDICTMENT.

ATTESTED COPY

07/18/2000 OTHER FILING - TRANSCRIPT ORDER FILED ON 07/17/2000

COPY TO COURT REPORTER CASE ENOCH -

REQUEST

RECEIVED FROM U S ATTORNEY'S OFFICE.

07/18/2000 MOTION - MOTION FOR ADDITIONAL FUNDS FILED BY DEFENDANT ON 07/17/2000

FOR INVESTIGATIVE EXPERT - THOMAS CUMLER

08/25/2000 MOTION - MOTION FOR NEW TRIAL FILED BY DEFENDANT ON 07/10/2000

08/25/2000 MOTION - MOTION FOR FUNDS FILED BY DEFENDANT ON 08/25/2000

FOR ADDITIONAL INVESTIGATOR SERVICES, EX PARTE. - RICHARD ROBBINS

08/28/2000 MOTION - MOTION FOR ADDITIONAL FUNDS GRANTED ON 08/28/2000

DONALD H MARDEN , JUSTICE

COPIES TO PARTIES/COUNSEL

08/28/2000 MOTION - MOTION FOR FUNDS GRANTED ON 08/28/2000

COPIES TO PARTIES/COUNSEL

AN ADDITIONAL

\$750 IS APPROVED FOR DEFENDANT TO HIRE A PI TO ASSIST DEFENSE COUNSEL IN PREPARATION FOR SENTENCING.

09/12/2000 HEARING - SENTENCE HEARING SCHEDULED FOR 09/21/2000 @ 9:00

NOTICE TO PARTIES/COUNSEL

09/12/2000 MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 09/12/2000

NO OBJECTION BY ASST. DA JAMES MITCHELL COPY FAXED TO J. MARDEN

09/15/2000 MOTION - MOTION TO CONTINUE GRANTED ON 09/12/2000

DONALD H MARDEN , JUSTICE

COPIES TO PARTIES/COUNSEL

09/26/2000 MOTION - MOTION FOR NEW TRIAL UNDER ADVISEMENT ON 09/21/2000

DONALD H MARDEN , JUSTICE

COURT TO ISSUE A WRITTEN DECISION

09/26/2000 HEARING - MOTION FOR NEW TRIAL HELD ON 09/21/2000

DONALD H MARDEN , JUSTICE

Attorney: GREGG BERNSTEIN

DA: JAMES MITCHELL

Reporter: PEGGY STOCKFORD

Defendant Present in Court

10/05/2000 OTHER FILING - NOTICE OF APPEAL FILED ON 09/28/2000

10/05/2000 OTHER FILING - TRANSCRIPT ORDER FILED ON 09/28/2000

11/14/00 ATTESTED COPY SENT TO LAW COURT AND CASE ENOCH.

10/31/2000 PSI - BY PROBATION OFFICER FILED ON 10/31/2000

11/02/2000 OTHER FILING - SENTENCING MEMORANDUM FILED BY DEFENDANT ON 11/01/2000

WITH SUPPORTING ATTACHMENTS IN BLACK NOTEBOOK.

11/06/2000 OTHER FILING - SENTENCING MEMORANDUM FILED BY STATE ON 11/06/2000

11/07/2000 MOTION - MOTION FOR FUNDS FILED BY DEFENDANT ON 11/07/2000

11/14/2000 HEARING - SENTENCE HEARING NOT HELD ON 09/21/2000

11/14/2000 HEARING - SENTENCE HEARING HELD ON 11/08/2000

DONALD H MARDEN , JUSTICE

Attorney: GREGG BERNSTEIN

DA: JAMES MITCHELL

Reporter: CASE ENOCH

Defendant Present in Court

JILLIAN BOLDUC, CINDY O'ROURKE AND MATTHIEU O'ROURKE SPOKE AT THE HEARING.

11/14/2000 Charge(s): 1

RULING - ORIGINAL ORDERED ON 11/08/2000

It is adjudged that the defendant is guilty of 1 SOLICITATION TO COMMIT MURDER 17-A 153(1)
Class A as charged and convicted.

The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 20 year(s).

It is ordered that all but 8 year(s) of the sentence as it relates to confinement be suspended.

It is ordered that the defendant be placed on a period of probation for a term of 6 year(s) upon conditions attached hereto and incorporated by reference herein.

Said Probation to commence after completion of the unsuspended term of imprisonment.

Defendant to receive credit for time served.

\$ 25 VICTIMS COMPENSATION FUND

TOTAL DUE:\$ 25.00.

Special Conditions of Probation:

Refrain from possession and use of any unlawful drugs and the possession or use of intoxicating liquor.

Pay to the Department of Corrections a supervision fee of \$10 per month.

Submit to random search and testing for alcohol, drugs upon reasonable suspicion of use or possession.

Undergo counseling treatment / evaluation, program as directed by the probation officer; consent to the release of any counseling/treatment information to your probation officer, the district attorney and the court. You shall contribute to the cost of any counseling treatment based on your financial ability as determined by the probation officer.

Othr: AND NEUROLOGICAL EXAM. DEFT. IS ALSO TO UNDERGO A PSYCHOLOGICAL COUNSELING.

If the defendant has been convicted of an applicable offense listed in 25 MRSA sec 1574(4), the defendant shall submit to having a DNA sample drawn.

Report to probation officer forthwith and as thereafter directed.

Other: IF ANY MEDICATION IS DEEMED NECESSARY, PROBATION DEPT. IS TO MONITOR THE TAKING OF MEDICATION.

Have no contact of any kind with SHERRIE DAIGLE and the family of said person.
OR BE WITHIN ONE (1) MILE OF HER HOME.

11/14/2000 Charge(s): 1
RULING - ORIGINAL ISSUED ON 11/08/2000

DEFENDANT ACKNOWLEDGES RECEIPT

11/14/2000 OTHER FILING - OTHER DOCUMENT FILED ON 11/08/2000

NOTICE OF RIGHT TO APPEAL AND NOTICE OF RIGHT TO APPLY FOR PERMISSION TO APPEAL GIVEN TO DEFT. IN OPEN COURT.

11/14/2000 OTHER FILING - NOTICE OF APPEAL SENT TO APPLNT COURT ON 11/14/2000

"LAW"

11/14/2000 Charge(s): 1
ABSTRACT - SBI EDI ON 11/14/2000

11/15/2000 OTHER FILING - COURT ORDER FILED ON 11/15/2000

ON DEFT.'S MOTION FOR NEW TRIAL. COPIES TO ATTYS.

11/15/2000 MOTION - MOTION FOR NEW TRIAL DENIED ON 11/15/2000

DONALD H MARDEN , JUSTICE

COPIES TO PARTIES/COUNSEL

Exhibits

02/09/2000 STATE, Exhibit#001, TRANSCRIPT OF TELEPHONE CALL OF 2/3/99., Adm over obj on 02/09/2000.

02/09/2000 STATE, Exhibit#002, TRANSCRIPT OF TELEPHONE CALL OF 2/4/99., Adm w/o obj on 02/09/2000.

02/09/2000 STATE, Exhibit#003, TRANSCRIPT OF TELEPHONE CALL OF 2/7/99., Adm w/o obj on 02/09/2000.

02/09/2000 STATE, Exhibit#4, SEARCH WARRANT - KCCF OF 2/12/99, Adm w/o obj on 02/09/2000.

02/09/2000 STATE, Exhibit#005, SEARCH WARRANT 2/12/99., Adm w/o obj on 02/09/2000.

02/09/2000 STATE, Exhibit#007, INTAKE LOG FOR 2/12/99 FROM 2ND FLOOR, Adm w/o obj on 02/09/2000.

02/09/2000 STATE, Exhibit#008, INTAKE LOG FOR 2/12/99, 1ST FLOOR, Adm w/o obj on 02/09/2000.

02/09/2000 STATE, Exhibit#009, INMATE PERSONAL PROPERTY RECORD, Adm w/o obj on 02/09/2000.

02/09/2000 STATE, Exhibit#10, HANDWRITTEN NOTE, Adm w/o obj on 02/09/2000.

02/09/2000 STATE, Exhibit#11, GANG SYMBOLS, Adm w/o obj on 02/09/2000.

02/09/2000 DEFENDANT, Exhibit#001, LOG BOOK COPY, Adm w/o obj on 02/09/2000.

02/09/2000 DEFENDANT, Exhibit#002, MAIL LOGS, Adm w/o obj on 02/09/2000.

06/28/2000 STATE, Exhibit#1, LETTER WITH ENVELOPE ADDRESSED TO SHERRY DAIGLE, Adm w/o obj on 06/28/2000.

06/27/2000 STATE, Exhibit#2A, LETTER WRITTEN BY DEFENDANT TO RAMONE DAVILA (IN CODE), Adm over obj on 06/27/2000.

06/27/2000 STATE, Exhibit#2B, TRANSLATION OF LETTER WRITTEN IN CODE BY THE DEF. TO RAMONE DAVILA, Adm w/o obj on 06/27/2000.

06/27/2000 STATE, Exhibit#3A, SECOND LETTER FROM DEF. TO RAMONE DAVILA, Adm w/o obj on 06/27/2000.

06/27/2000 STATE, Exhibit#4A, THIRD LETTER FROM DEF. TO RAMONE DAVILA, Adm w/o obj on 06/27/2000.

06/27/2000 STATE, Exhibit#5, LETTER BY RAMONE DAVILA TO DEF., Adm w/o obj on 06/27/2000.

06/27/2000 STATE, Exhibit#6, LETTER BY RAMONE DAVILA TO DEF., Adm w/o obj on 06/27/2000.

06/28/2000 STATE, Exhibit#7, STRIP OF PAPER WITH SHERRY DAIGLE'S DESCRIPTION, WRITTEN BY DEF., Adm w/o obj on 06/28/2000.

06/28/2000 STATE, Exhibit#8, ORIGINAL OF GANG ALPHABET, Adm w/o obj on 06/28/2000.

06/28/2000 STATE, Exhibit#9, DAT AND CASSETTE TAPE OF CONVERSATION BETWEEN AGENT MCSWEENEY AND DEF. ON 2/3/2000., Adm over obj on 06/28/2000.

06/28/2000 STATE, Exhibit#9A, TRANSLATION OF STATE'S EXHIBIT #9 SHOWN TO JURY AS AN AIDE., Adm over obj on 06/28/2000.

06/28/2000 STATE, Exhibit#10, DAT AND CASSETTE TAPE AAND CONVERSATION BETWEEN AGENT MCSWEENEY AND DEF. ON 2/5/2000., Adm over obj on 06/28/2000.

06/28/2000 STATE, Exhibit#10A, TRANSCRIPTION OF STATE'S # 10 SHOWN TO JURY AS AN AIDE., Adm over obj on 06/28/2000.

06/28/2000 STATE, Exhibit#11, DAT AND CASSETTE TAPE OF CONVERSATION BETWEEN AGENT MCSWEENEY AND DEF. ON 2/7/2000., Adm over obj on 06/28/2000.

06/29/2000 STATE, Exhibit#12, LETTER WRITTEN BY RICHARD MARKS FOR DEF., Adm over obj on 06/29/2000.

06/29/2000 STATE, Exhibit#13, LETTER WRITTEN BY RICHARD MARKS FOR DEF., Adm over obj on 06/29/2000.

06/29/2000.
06/29/2000 STATE, Exhibit#14, AFFIDAVIT OF SEARCH WARRANT, Adm over obj on 06/29/2000.
06/29/2000 STATE, Exhibit#15-AOO, JUDGMENT AND COMMITMENT DATED 1995, Adm over obj on
06/29/2000.
06/29/2000 STATE, Exhibit#16, JUDGMENT AND COMMITMENT OF THE YEAR 1999, Adm over obj on
06/29/2000.
06/29/2000 STATE, Exhibit#18, PHOTO COPY OF COMMISSARY ACCOUNT, Adm w/o obj on 06/29/2000.
06/27/2000 DEFENDANT, Exhibit#6, NOT ALLOWED, Offered on 06/27/2000.
06/30/2000 DEFENDANT, Exhibit#13, WAIVER OF ADVICE AS TO THE TESTIMONY OF BLAIR JONES, ESQ.,
Adm over obj on 06/30/2000.

A TRUE COPY

ATTEST: _____
Clerk