

STATE OF NEW YORK

TOWN OF NEW HARTFORD

COUNTY OF ONEIDA

\* \* \* \* \*

THE PEOPLE OF THE STATE  
OF NEW YORK,

Plaintiffs,

-vs-

SEBESTIANO PAGANO,

Defendant.

\* \* \* \* \*

H E L D B E F O R E: Honorable James VanSlyke

H E L D A T: New Hartford Town Court  
New Hartford, New York  
September 27th, 2005

A P P E A R A N C E S:

MICHAEL ARCURI, ESQ.  
District Attorney's Office  
Attorney for Plaintiffs  
800 Park Ave  
Utica, New York 13501  
BY: MICHAEL COLUZZA, ESQ.

CARL G. SCALISE, ESQ.  
Attorney for Defendant  
P.O. Box 209  
319 North Main Street  
Herkimer, New York 13350

Cynthia Belmonte,  
Court Reporter.

BELMONTE  
Reporting Services  
(315) 738-0565

I N D E X T O W I T N E S S E S

	<u>D</u>	<u>C</u>	<u>RD</u>	<u>RC</u>
<u>For the People:</u>				
Christina Gillette	6	15	19	21
Paula Cummings	23	29		
<u>For the Defendant:</u>				
Cathy Pagano	34	40		
Jacqueline Mishlanie	43	50	53, 57,	55
Sandra Alama	58	63	71	77
Sebestiano Pagano	79	87	98	

\* \* \* \* \*

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For the Defendant:

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1 JUDGE VANSLYKE: We'll come to order in  
2 the matter of the People verses Pagano.

3 MR. SCALISE: Wait just a minute.

4 JUDGE VANSLYKE: Are the people ready?

5 MR. COLUZZA: People are ready, your  
6 Honor.

7 JUDGE VANSLYKE: Mr. Scalise, are you  
8 ready?

9 MR. SCALISE: Yes, your Honor.

10 JUDGE VANSLYKE: Let the record show  
11 that the defendant Mr. Pagano is present  
12 with his attorney Mr. Scalise. Do you wish  
13 to make a statement?

14 MR. COLUZZA: Your Honor, just as a  
15 preliminary matter here. I want to just  
16 note that the general public is welcomed,  
17 but if any of these individuals seated  
18 behind Mr. Pagano is a witness, I would ask  
19 that they be excused from the courtroom  
20 until they testify.

21 MR. SCALISE: Okay. Go out and you'll  
22 be called in.

23 MR. COLUZZA: Just very briefly, your

1 Honor, the defendant was charged with  
2 harassment in the second degree. It is  
3 alleged that on the 1st day of August of  
4 2005 at approximately at 6:20 in the  
5 afternoon that he did unlawfully,  
6 intentionally threatened to strike the  
7 complainant Christina Gillette with a rake.  
8 Thereby causing her annoyance and alarm  
9 while at 105 Washington Drive in the town of  
10 New Hartford. The People intend to call two  
11 witnesses, Ms. Gillette as well as the  
12 neighbor from across the street who  
13 witnessed a portion of this confrontation.  
14 The People intend to prove that Mr -- during  
15 the course of the incident, Mr. Pagano made  
16 certain threats to Ms. Gillette while  
17 wielding a rake in close proximity to her  
18 person putting her in fear of physical  
19 contact with the rake, and saying things  
20 such as "I'm going to get you." And various  
21 other forms as well as name calling. The  
22 People argue and believe that the name  
23 calling and the threats in conjunction with

1 the wielding of the rake in close physical  
2 proximity to the complainant does establish  
3 the element to the crime of harassment in  
4 the second degree under 240 subdivision 1.

5 JUDGE VANSLYKE: Mr. Scalise?

6 MR. SCALISE: Your Honor, I have several  
7 witnesses out there who witnessed the whole  
8 event. This woman has harassed my client on  
9 more than one occasion. He has a swimming  
10 pool. He doesn't have any large trees on  
11 his property and her leaves are constantly  
12 coming in to his yard in to the pool, and  
13 he's constantly raking them. And on this  
14 particular day he claims that he was out  
15 there raking the leaves, and she came over.  
16 She came over to him. He didn't go to her.  
17 She came over to him and harassed him.  
18 Telling him "I'm on your property. I'm on  
19 your property. Why don't you have me  
20 arrested? Why don't you have me arrested?  
21 You're always complaining about my leaves."  
22 And I believe the witnesses will all confirm  
23 he never raised the rake at the woman. He

1 never threatened her or anything. He just  
2 told her to leave him alone or words to that  
3 effect. He might have used a little  
4 stronger language than that, and that's  
5 about it. We are ready to proceed.

6 JUDGE VANSLYKE: All right. Mr.  
7 Coluzza?

8 MR. COLUZZA: We'll call Christina  
9 Gillette.

10 JUDGE VANSLYKE: Have a seat, and I'll  
11 swear you in.

12 C H R I S T I N A G I L L E T T E  
13 having been called as a Witness, being  
14 duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. COLUZZA:

17 Q. Good morning. Can you please give us your  
18 full name for the record?

19 A. Christina Gillette.

20 Q. And, Ms. Gillette, can you tell me where  
21 you live?

22 A. 105 Washington Drive, New Hartford.

23 Q. And how long have you lived there?

1 A. Almost thirty years.

2 Q. And who do you live there with?

3 A. My three children.

4 Q. Okay. And can you tell me are you aware of  
5 who lives next door to you?

6 A. Yes, I know who lives next door.

7 Q. And who lives next door?

8 A. Mr. and Mrs. Pagano, and the DeMartin's  
9 live on the other side.

10 Q. And as you face your house can you tell me  
11 which side of your house Mr. Pagano lives on?

12 A. As you're facing it?

13 Q. Yes.

14 A. The left.

15 Q. And can you tell me how long has he been  
16 your next door neighbor?

17 A. Maybe fifteen years or so.

18 Q. Okay. Ms. Gillette, I want to turn your  
19 attention now to the 1st day of August of 2005, and  
20 ask you if you happened to be out in the late  
21 afternoon hours of that day?

22 A. Um-hmm. Yes, sir.

23 Q. And who did you leave at home when you went

1 out that day?

2 A. My son.

3 Q. And which son would that be?

4 A. William.

5 Q. What's his last name?

6 A. William Potoczny, P-O-T-O-C-Z-N-Y.

7 Q. And can you tell me approximately what time  
8 you arrived home that day?

9 A. Around 4:30.

10 Q. And at the time that you arrived home did  
11 you happen to see William?

12 A. Yes, I did.

13 Q. Did you have a conversation with him?

14 A. Yes, I did.

15 Q. And did that conversation concern Mr.  
16 Pagano?

17 A. Yes, it did.

18 Q. Okay. I'm going to turn your attention to  
19 a little bit later during the day at about 6:20  
20 p.m., and ask you if you had occasion to walk  
21 outside of your house?

22 A. Yes, I did.

23 Q. And for what purpose did you walk outside

1 of your house?

2 A. Actually it was raining out, so I went to  
3 put the windows up in my car.

4 Q. And you were outside?

5 A. Yes, I was.

6 Q. In your driveway area?

7 A. Yes.

8 Q. Could you see Mr. Pagano's property?

9 A. Yes.

10 Q. Could you see Mr. Pagano?

11 A. Yes.

12 Q. And what was Mr. Pagano doing at the time  
13 that you saw him?

14 A. Raking his leaves.

15 Q. And did you in some way address Mr. Pagano  
16 at that time?

17 A. Yes, I did.

18 Q. How did you go about doing that?

19 A. I went over to the fence -- there's a  
20 fence, I went over to the fence, and I leaned over  
21 my property, and I told him to stay off my  
22 property.

23 Q. And why did you tell him that?

1           A.     Because he was on my property earlier in  
2 the day, and he had been told by the district  
3 attorney's office and the police department to stay  
4 off of it.

5           Q.     You got this information from your --

6           A.     My son.

7           Q.     Ms. Gillette, do you remember the exact  
8 words that you used with Mr. Pagano?

9           A.     Yes. I told him to stay off my property.  
10 "I've told you a hundred times and the district  
11 attorney's office told you and the police  
12 department has told you to stay off my property."

13          Q.     Would it be fair to say that you've had  
14 prior problems with Mr. Pagano?

15          A.     Yes, I have.

16          Q.     And I want to talk a little bit about where  
17 you were and where he was when you said this. Can  
18 you describe -- are the driveways next to each  
19 other?

20          A.     Yes.

21          Q.     What, if anything, separates the two  
22 driveways?

23          A.     A fence.

1 Q. And how tall is the fence?

2 A. Right now it's eight foot.

3 Q. Okay. So this is something you had to look  
4 around the end of --

5 A. Yes.

6 Q. -- or stand at the end of?

7 A. Yes, I stood at the end.

8 Q. Okay. And the fence is situated between  
9 the two driveways?

10 A. Yes.

11 Q. And when you said this to Mr. Pagano, where  
12 he was, and what, if anything, did he have in his  
13 hands?

14 A. He had a rake in his hands. He was at the  
15 upper end of his driveway.

16 Q. Near the garage area?

17 A. Yes, around there, middle of the driveway.

18 Q. And when you said --

19 A. Toward the farther end of the driveway.

20 Q. And when you said this to Mr. Pagano, what,  
21 if anything, was his reaction?

22 A. He called me a dog, a rag and all kinds of  
23 names. And he came at me with the rake like this

1 (indicating).

2 Q. Now, you're indicating holding the rake.

3 A. Right.

4 Q. Was the rake over him?

5 A. Yeah, over the shoulder. The head of the  
6 rake was over the shoulder. And he said "I'm going  
7 to get you you rag," or you dog.

8 Q. Okay.

9 A. And --

10 Q. And he came after you?

11 A. Yes.

12 Q. How would you describe how he approached  
13 you?

14 A. I was scared. I was actually terrified.  
15 He came after me with a look in his eyes like he  
16 was going to kill me. And he ran down the driveway  
17 with the rake like that, and I ran in the house to  
18 call the police.

19 Q. And he said that in conjunction with saying  
20 I'm going to get you?

21 A. Um-hmm.

22 Q. How close did he get to you before you  
23 turned and ran?

1 A. Probably from me to a little bit after him  
2 (indicating).

3 Q. You're indicating the distance between you  
4 and the judge or maybe a little farther?

5 A. Yes.

6 Q. Six feet at least?

7 A. Yes.

8 MR. SCALISE: Can we get that distance.  
9 At least about four feet?

10 MR. COLUZZA: I'm just trying to get a  
11 number right now.

12 MR. SCALISE: Okay.

13 Q. Would you say it was less than six feet or  
14 more than six feet?

15 A. Less.

16 Q. Less?

17 A. Yes.

18 Q. And that's when you turned and ran?

19 A. Yes. I was terrified. I was absolutely  
20 terrified.

21 Q. And what did you do?

22 A. I ran and called the police.

23 Q. You ran in the house and called the police?

1 A. Yes.

2 Q. And did the police respond?

3 A. Yes, they did.

4 Q. And did they interview you?

5 A. Yes, they did.

6 Q. Did they interview Mr. Pagano?

7 A. Yes, they did.

8 Q. Okay. As you look around the courtroom  
9 today do you see the individual as Sebastiano  
10 Pagano?

11 A. Yes.

12 Q. Could you please point him out and describe  
13 what's he's wearing for the record?

14 A. He's right there with the gray shirt  
15 (indicating).

16 MR. COLUZZA: Let the record reflect  
17 that the witness has identified the  
18 Defendant Sebastiano Pagano.

19 JUDGE VANSLYKE: So noted.

20 MR. COLUZZA: No further questions.

21 JUDGE VANSLYKE: Cross?

22 MR. SCALISE: Yes.

23 **CROSS EXAMINATION**

1 BY MR. SCALISE:

2 Q. Did you go on the Pagano property on this  
3 occasion?

4 A. No, I did not.

5 Q. In no way at no time at all?

6 A. No, I did not.

7 Q. And is your son here today?

8 A. No, he isn't.

9 Q. Is there any reason why he is not?

10 MR. COLUZZA: Objection. Relevance.

11 JUDGE VANSLYKE: Sustained.

12 MR. SCALISE: She's claiming the fact  
13 that the reason that she went there was  
14 because her son --

15 JUDGE VANSLYKE: I sustained the  
16 objection.

17 MR. SCALISE: And I'm trying to explain  
18 why I think it is important that he be here,  
19 because she says the reason why she went  
20 there -- which is all heresy because we  
21 don't have him here.

22 JUDGE VANSLYKE: I said, Mr. Scalise, I  
23 sustained the objection.

1 MR. SCALISE: Objection.

2 Q. Did you ever call the Pagano residence?

3 A. Did I ever call them?

4 Q. Yes.

5 A. No.

6 Q. Is there some reason why your cell -- or  
7 your phone number would appear on his phone?

8 A. No.

9 Q. Do you know if your son has called his  
10 residence?

11 A. No.

12 Q. You don't know or you know that he hasn't?

13 A. He hasn't called his residence.

14 MR. COLUZZA: Objection. I don't  
15 think -- I object to the question and the  
16 answer. I don't think this witness can  
17 testify whether or not somebody else has  
18 ever called somewhere else.

19 Q. Well, has your son ever told you that he  
20 called?

21 A. No.

22 Q. You know that Mr. Pagano called you and  
23 said that someone from your house called him?

1 A. Mr. Pagano never called me.

2 Q. Never called you?

3 A. No, never called me.

4 Q. Now, there's a fence separating your  
5 properties, correct?

6 A. Um-hmm.

7 Q. Now, if I was in the street looking at the  
8 properties, where would this incident alleged have  
9 taken place, near the street end of the fence or  
10 the back part?

11 A. Near the street.

12 Q. Near the street?

13 A. Yes.

14 Q. And there was a fence between the two of  
15 you?

16 A. Yes.

17 Q. And this fence is -- I'm five-nine. The  
18 fence is a little higher than me, correct?

19 A. Yes.

20 Q. And you were on one side of the fence, and  
21 he was on the other side of the fence?

22 A. Yes.

23 Q. Did you ever come on -- where the fence

1 ends towards the front did you ever come there?

2 A. No, I would never step on his property.

3 Q. No. No. I'm asking you did you ever come  
4 to the part where the fence -- where there is no  
5 fence between the fence and the street?

6 A. Yeah. Um-hmm.

7 Q. And what were you doing there?

8 A. I was getting away from him because he was  
9 coming after me with the rake.

10 Q. Well, I thought you said there was a fence  
11 separating you?

12 A. There is but it ends.

13 Q. Yes.

14 A. And I was at the end of the fence.

15 Q. Well, that's what I asked you earlier.

16 Were you behind the fence or were you in the front,  
17 and you said you were behind the fence.

18 A. Well, there's the fence and then the end of  
19 the fence. I was peeking over the fence telling  
20 him to stay off my property.

21 Q. Yes.

22 A. And at the end of the fence. I was at the  
23 end of the fence basically, but there's a fence

1 there. So I could be behind it, or I could be  
2 peeking over it.

3 Q. Okay. And he was on one side of the fence  
4 and you were on the other side?

5 A. Um-hmm.

6 MR. SCALISE: Nothing further.

7 MR. COLUZZA: I just have a couple of  
8 questions just to clarify.

9 **FURTHER DIRECT EXAMINATION**

10 **BY MR. COLUZZA:**

11 Q. Is the fence basically on the property  
12 line?

13 A. Yes, it is.

14 Q. Okay. And who owns the fence?

15 A. He owns the fence.

16 Q. He owns the fence. Okay. And how far  
17 is -- are there sidewalks in front of your house?

18 A. No, there are no sidewalks.

19 Q. Just grass?

20 A. Just grass, yes.

21 Q. And does the fence end before your property  
22 ends at the street?

23 A. Yes, it does.

1 Q. Okay. So there's about four feet between  
2 the end of the fence and the street?

3 A. Yes.

4 Q. Now, in order to address Mr. Pagano where  
5 did you have to stand so that you could -- the  
6 fence is taller than you are, correct?

7 A. Yes.

8 Q. So in order to address Mr. Pagano where did  
9 you have to stand?

10 A. I stood at the edge of the fence, four feet  
11 from street.

12 Q. So you stood just beyond where the fence  
13 ends?

14 A. Yeah.

15 Q. More or less?

16 A. Yeah.

17 Q. And that afforded you a view of Mr. Pagano  
18 up near the garage area of his house?

19 A. Um-hmm.

20 Q. Okay.

21 MR. COLUZZA: Nothing further -- one  
22 more question actually.

23 Q. (Continuing) Did Mr. Pagano -- when Mr.

1 Pagano -- as you previously testified you said the  
2 things he said and held up the rake and came at  
3 you, did he come at you at your position at the end  
4 of the fence? Did he run to where you were  
5 standing?

6 A. Oh, yes.

7 MR. COLUZZA: Nothing further, judge.

8 JUDGE VANSLYKE: Mr. Scalise?

9 MR. SCALISE: Yes.

10 **FURTHER CROSS EXAMINATION**

11 **BY MR. SCALISE:**

12 Q. When he ran to you, he went on your  
13 property?

14 A. I don't know because I was scared, and I  
15 ran back in to my house. I don't know how far he  
16 got up and if he was on my property or not. I  
17 don't know. I was -- he was running, and he didn't  
18 stop, and I ran.

19 Q. Well, how far was it from the fence when  
20 you were talking? How far was it? Was it from me  
21 to you?

22 A. When it first started?

23 Q. Yeah.

1           A.    No, a little bit farther than that.  He  
2 just came after me.  He ran after me.

3           Q.    And was there someone else there that saw  
4 this?

5           A.    There was no one outside that saw it.

6           Q.    What was that?

7           A.    There was no one outside that saw it.  
8 There was no one outside with me.

9           Q.    No one outside that saw it?

10          A.    No.

11          Q.    Who else saw it?

12          A.    My neighbor saw it.

13                   MR. COLUZZA:  That's going to call for  
14 heresy responses.  You will hear from the  
15 neighbor on that.

16                   JUDGE VANSLYKE:  Okay.  Mr. Scalise?

17                   MR. SCALISE:  Nothing further.

18                   JUDGE VANSLYKE:  You can step down.  
19 Thank you.

20                               (WHEREUPON, the Witness was excused.)

21                   MR. COLUZZA:  We're going to call Paula  
22 Cummings to the stand.

23                   JUDGE VANSLYKE:  Okay.  I will swear you

1 in at this time.

2 P A U L A C U M M I N G S

3 having been called as a Witness, being

4 duly sworn, testified as follows:

5 CROSS EXAMINATION

6 BY MR. COLUZZA:

7 Q. Good morning. Would you please tell us  
8 your full name for the record?

9 A. Paula Cummings.

10 Q. Mrs. Cummings, would you tell us where you  
11 live?

12 A. 102 Washington Drive.

13 Q. And who do you live there with?

14 A. My husband.

15 Q. And how long have you lived at 102  
16 Washington Drive?

17 A. Forty-two years.

18 Q. Forty-two years?

19 A. Yes.

20 Q. And that's here in the town of New  
21 Hartford?

22 A. Yes.

23 Q. And can you tell me who lives directly

1 across the street from you if you know?

2 A. Mr. Pagano.

3 Q. And that would be Sebastiano Pagano?

4 A. Yes.

5 Q. And who also lives across the street from  
6 you next to Mr. Pagano?

7 A. Tina. Christina.

8 Q. And that would be Christina Gillette?

9 A. Yes.

10 Q. Okay. I would like to talk about  
11 August 1st of 2005 the early evening hours. Were  
12 you home on that occasion?

13 A. Yes, I was.

14 Q. Okay. I want to talk about the time period  
15 of approximately 6:20, 6:25 p.m. and ask you if you  
16 had occasion to be looking out through the front  
17 door or window of your house?

18 A. Well, I wasn't looking out. I wanted to  
19 push my pots of my flowers. I wanted to kick them  
20 out to get some rain. And I looked up because it  
21 was raining in the house. It was starting to rain.  
22 So I went in to the other room, and when I was  
23 locking the door I saw -- I heard Tina scream.

1 Q. You heard Tina's voice?

2 A. Yes.

3 Q. And have you known Tina for a number of  
4 years?

5 A. Yes.

6 Q. Okay. So you're familiar with her voice?

7 A. Yes.

8 Q. And that sounded like her voice?

9 A. Yes, it was. It was worse. It was a  
10 screaming voice.

11 Q. Okay. Do you remember what she was saying?

12 A. I couldn't hear what either party was  
13 saying, no.

14 Q. Did that cause you to look out through the  
15 front window?

16 A. Well, yes. I called my husband. He was in  
17 the kitchen, and I asked him to come to the window  
18 because something was going on, and he did. And  
19 Tina was running home. So I didn't hear too much.  
20 I didn't hear any swearing or threats or anything  
21 like that.

22 Q. Can you tell me -- I'm going to back up a  
23 little bit in time.

1 A. Okay.

2 Q. Can you tell me what you did see when you  
3 looked out the window?

4 A. I saw Tina running, and I saw Mr. Pagano  
5 with the rake.

6 Q. And where was --

7 A. It all took place in a hurry.

8 Q. Let me just back you up a little bit.

9 A. Sure.

10 Q. When you heard the screams, did that cause  
11 you to look across the street?

12 A. Yes, I had to undo the lock so that I could  
13 see.

14 Q. And did you actually open the door so that  
15 you could see?

16 A. A little bit, yes.

17 Q. Okay. And when you looked out, could you  
18 see the front of Mr. Pagano's house, his front  
19 yard?

20 A. Yes.

21 Q. And tell me what you saw when you first  
22 looked out? Where was Mr. Pagano, and what was he  
23 doing?

1 A. He was in the driveway.

2 Q. And did he have something in his hands?

3 A. Yes.

4 Q. What did he have in his hands?

5 A. A big green rake.

6 Q. And what was he doing with it?

7 A. Well, he was chasing Tina.

8 Q. And where was Tina?

9 A. She was running to her home.

10 Q. And did you see -- when you saw Mr. Pagano  
11 with the rake, where was he standing in relations  
12 to the fence between the two houses?

13 A. Well, there's a short fence there, and then  
14 there's a full fence, and he was pretty much close  
15 to that.

16 Q. And he was -- was he closer to the street  
17 or closer to his house at the time you saw him?

18 A. Closer to the street.

19 MR. SCALISE: I can't hear you. I'm  
20 having a hard time hearing her.

21 Q. I'm sorry. Would you just repeat your last  
22 answer?

23 A. Sure.

1 Q. Was he closer to the street or to the  
2 house?

3 A. Closer to the street.

4 Q. Okay. And when you saw him in the front,  
5 where was Tina? Tina being Ms. Gillette. Where  
6 was she when you saw him?

7 A. She was running up to her house. She was  
8 screaming.

9 Q. Okay. And what did you do when all of this  
10 happened?

11 A. I got nervous, and I called my husband, and  
12 went in and called the police.

13 Q. Okay.

14 A. I was going to call the police. That's all  
15 I know.

16 Q. Did you stay in your house?

17 A. Oh, yes.

18 Q. Did the police come and interview you that  
19 day?

20 A. Yes.

21 Q. And did you give them a statement?

22 A. Yes.

23 Q. As you look around the courtroom today do

1 you see the individual that you've been referring  
2 to as Mr. Pagano?

3 A. Yes.

4 Q. Could you just point him out for the record  
5 and tell us what he's wearing?

6 A. Green pants and a gray shirt.

7 MR. COLUZZA: Let the record reflect the  
8 witness has identified the defendant  
9 Sebastiano Pagano.

10 JUDGE VANSLYKE: Yes.

11 MR. COLUZZA: Those are all the  
12 questions I have, sir.

13 JUDGE VANSLYKE: Mr. Scalise?

14 MR. SCALISE: Just a minute while I read  
15 her statement.

16 **CROSS EXAMINATION**

17 **BY MR. SCALISE:**

18 Q. Was there a time when you first saw Mr.  
19 Pagano that you told him to be careful of Christina  
20 Gillette because she was a problem?

21 A. Never.

22 Q. You never said that?

23 A. Never.

1 Q. Did you ever call his home?

2 A. Never.

3 Q. Did he call you at one time and say that  
4 your phone number appeared on his telephone?

5 A. Yes. And that was because my daughter was  
6 going to go out with her girlfriends, and she got  
7 the wrong cell number. It was as simple as that.  
8 I never called him. Never.

9 Q. So that's why your phone number appeared on  
10 his --

11 A. That's correct.

12 Q. All right.

13 MR. SCALISE: Nothing further.

14 JUDGE VANSLYKE: Thank you. You're all  
15 set.

16 (WHEREUPON, the Witness was excused.)

17 MR. COLUZZA: Your Honor, at this time  
18 the people rest.

19 JUDGE VANSLYKE: Mr. Scalise?

20 MR. SCALISE: I make a motion to  
21 dismiss, your Honor, upon the grounds that  
22 in my opinion a case hasn't been made out.  
23 What we have here is two people separated by

1 a fence. And she says she was towards the  
2 end of the fence. Now, this witness comes  
3 on and she says she saw Gillette screaming  
4 and running toward her house. A woman  
5 screaming and running toward her house.  
6 That's the extent. And this man is being  
7 charge in other words with a crime that he  
8 turned around and harassed this woman. And  
9 we have her testimony that he's on his own  
10 property. He's raking leaves. At no time  
11 did he step over to her property or anything  
12 like that. And there's a fence separating  
13 them. That's it. I'm basing my motion on  
14 that. Thank you.

15 MR. COLUZZA: Your Honor, I think we  
16 have made a prima facia case. And with all  
17 respect to counsel, he's over simplifying  
18 the testimony that was presented here. I  
19 think it was pretty clear. There was  
20 extensive questioning of the complainant Ms.  
21 Gillette about where she was positioned. It  
22 was clear, your Honor, that she was  
23 positioned behind the fence on her property.

1 It was an area where she could clearly see  
2 the defendant who was running at her and at  
3 her position at the end of that fence and  
4 that put her in imminent fear in terms of  
5 physical contact because there was wielding  
6 of the rake combined with him advancing on  
7 her and saying, "I'm going to get you." I  
8 think those words combined with other name  
9 calling -- I think those words combined with  
10 that contact would certainly put a  
11 reasonable person in fear of being -- of  
12 offensive physical contact. As it's been  
13 testified to she turned and ran in to her  
14 house. That is further testified by the  
15 statement of the other witness the People  
16 called, Mrs. Cummings. And apparently  
17 doesn't appear to be an interest to the  
18 witness, but she testified that she heard  
19 screaming. And when she looked out after  
20 she heard the screaming, which sounded like  
21 the complainant's voice, she saw the  
22 defendant standing closer to the roadway at  
23 the end of the fence wielding a rake and the

1 complainant running in to her house. And  
2 that further and fully corroborates with  
3 what the complainant testified to. And all  
4 those factors taken together clearly make  
5 out a case of harassment in the second  
6 degree.

7 MR. SCALISE: Counsel is overlooking the  
8 fact that this witness --

9 JUDGE VANSLYKE: Hold it.

10 MR. SCALISE: What was that? I'm  
11 rebutting his statement.

12 JUDGE VANSLYKE: Go ahead.

13 MR. SCALISE: This last witness never  
14 said she saw him trying to hit her with a  
15 rake. She never said anything about that.  
16 All she said was that she looked out and saw  
17 this woman yelling. That's what caused her  
18 to look out. She heard the woman yelling  
19 and running toward her house. That's the  
20 extent of her testimony.

21 JUDGE VANSLYKE: Is that it?

22 MR. SCALISE: Yes, sir.

23 JUDGE VANSLYKE: Your motion is denied.

1 MR. SCALISE: Okay. We'll call our  
2 first witness. We will call Mrs. Pagano.

3 JUDGE VANSLYKE: Okay.

4 C A T H Y P A G A N O

5 having been called as a Witness, being  
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SCALISE:

9 Q. Mrs. Pagano, your first name is?

10 A. Cathy.

11 Q. And you're the wife of the defendant here  
12 Sam Pagano?

13 A. Yes, I am.

14 Q. Right?

15 A. Yes.

16 Q. And on the date of this alleged incident,  
17 August 1st of '05, this incident happened around  
18 6:20 or thereabouts?

19 A. Yes.

20 Q. Where were you?

21 A. In the kitchen of my house.

22 Q. And is the kitchen in the front or the back  
23 of the house?

1 A. It's in the front, kind of on the side.

2 Q. And this woman Christina Gillette is your  
3 neighbor?

4 A. Yes.

5 Q. And tell us what you observed on this  
6 particular day on this occasion?

7 A. Okay. Well, my sister and Ms. Mishlanie  
8 were in the kitchen talking. And I was in the  
9 kitchen getting things ready because I was going to  
10 make dinner for everybody. I'm at the kitchen  
11 sink, and I hear all this screeching outside, so I  
12 look out the window and I saw Ms. Potoczny. That's  
13 what I have always called her.

14 Q. What do you call her?

15 A. I've always known her as Ms. Potoczny.  
16 This is the first that I've known her as Ms.  
17 Gillette. That must be her maiden name. I saw her  
18 in the driveway yelling at Sam. So my first  
19 thought was "what now?" So I rushed to the doorway  
20 on the side of our house, which faces the driveway.  
21 I opened the door, and she's standing there in the  
22 driveway.

23 Q. Whose driveway?

1           A.    Our driveway.  And she's literally jumping  
2 up and down screaming.  And I don't know if I  
3 should say the exact words.

4           Q.    Go ahead.

5           A.    "I'm in your fucking driveway.  I'm in your  
6 fucking driveway.  What are you going to do about  
7 it?  What are you going to do about it?"  And she's  
8 screaming at my husband.  My husband is raking  
9 leaves.  There were dead leaves in the driveway,  
10 and he's raking them.  My husband said something to  
11 her like go home you rag or something like that.  
12 He never stopped raking.  He never even slowed  
13 down.  He never even turned around to look at her.  
14 He just kept raking.

15          Q.    And are these your leaves that Sam is  
16 raking?

17          A.    No.  We don't have a tree on our property.  
18 It's her tree.  She's got a big dead old tree  
19 that's right besides our driveway and the leaves  
20 from that were falling.  It was very windy.  A  
21 storm was coming in.  It was very windy.  And Sam  
22 is very meticulous about the lawn and everything,  
23 so he's raking the leaves out toward the road.

1 After the jumping up and down about being in the  
2 driveway and Sam telling her to go home you rag,  
3 she goes, "you threatening me? Are you threatening  
4 me?" And I'm thinking "he's telling you to go  
5 home." Then she said a few words, and then she  
6 went home. She didn't run home. She just kind of  
7 stomped home. She wasn't in fear of her life or  
8 anything else. Sam continued to rake even after  
9 she left. I went out in the driveway --

10 MR. COLUZZA: Objection. Your Honor,  
11 this is just a running narrative of a lot of  
12 opinions and -- I'm objecting to this. I  
13 mean if he wants to asks questions, that's  
14 fine, but this continuing narrative of a lot  
15 of personal opinions about what she thought  
16 and --

17 Q. What did you actually see? Tell me what  
18 you actual saw.

19 A. I saw my neighbor come in to the driveway,  
20 jump up and down. I heard her yelling and  
21 screaming.

22 MR. COLUZZA: Objection again, your  
23 Honor. That's been asked and answered.

1 JUDGE VANSLYKE: Sustained.

2 Q. After that you went outside to talk to Sam?

3 A. To talk to my husband, yes.

4 Q. And what did you say to him?

5 A. I said, "what was all that about? What's  
6 her problem now?" We talked for a few minutes.  
7 And then we looked across the street and the  
8 neighbor across the street a man was standing under  
9 his tree just glaring at us. Just glaring at us.  
10 And I said "what's his problem?" Then we went  
11 inside. Sam was getting cleaned up.

12 Q. All right. Wait a minute. At any time did  
13 you see Sam -- was he in your view all the while  
14 when she was there?

15 A. Yes.

16 Q. And did you see at any time see him raise  
17 the rake?

18 A. He never stopped raking. He did not raise  
19 the rake. He didn't even slow down raking. It was  
20 as if she wasn't even there. He just continued  
21 doing what he was doing before she even got there.

22 Q. But you he did hear him tell her --

23 A. To get lost and go home.

1 Q. All right. And he did say a rag or  
2 something?

3 A. Something like that. She was screaming so  
4 loud you could barely hear him.

5 Q. And you don't know why she was screaming?

6 A. No, I don't. I don't know what her problem  
7 was.

8 Q. Okay. And did you see him go on her  
9 property?

10 A. No. He was in his own driveway raking  
11 leaves on his own driveway. At no time was he on  
12 her property. He was on our driveway.

13 Q. When you first saw her, was she behind --  
14 was she on your property when you first saw her?

15 A. She was in the driveway, yes.

16 Q. Did you ever see her behind the fence  
17 yelling at him?

18 A. No, I did not see that. No.

19 Q. And have you had problems with her ever  
20 before?

21 A. Yes.

22 Q. Like what?

23 A. I've had quite a few problems with her

1 children. Her oldest daughter used to log crab  
2 apples in to our yard with a racket, and several  
3 times I asked them to stop. He son used to throw  
4 snowballs at our garage. And her oldest daughter  
5 took a hose and sprayed it in to our garage window.  
6 It's just been an ongoing battle of petty little  
7 things just to annoy us.

8 Q. And did she turn the hose at Sam at one  
9 point?

10 A. Sam was putting waterproofing on to our  
11 fence and she sprayed --

12 MR. COLUZZA: Your Honor, I'm going to  
13 object to this. How is any of this  
14 relevant?

15 JUDGE VANSLYKE: Sustained.

16 MR. SCALISE: Nothing further.

17 JUDGE VANSLYKE: Mr. Coluzza, cross.

18 **CROSS EXAMINATION**

19 **BY MR. COLUZZA:**

20 Q. Mrs. Pagano, how long have you been married  
21 to the defendant?

22 A. Thirty-five years.

23 Q. And how long have you lived at the house on

1 Washington Drive?

2 A. I would say probably seventeen years,  
3 maybe.

4 Q. Did you ever see your husband -- has your  
5 husband ever in your recollection gone on the  
6 property of Christina Gillette?

7 A. No.

8 Q. Never, ever?

9 A. Not that I have seen, no.

10 Q. Not that day at all?

11 A. No.

12 Q. Never once?

13 A. No.

14 Q. And can you tell me at any time did you  
15 ever see your husband raise the head of the rake,  
16 the lower part of the rake, not the handle, but the  
17 business end of rake?

18 A. No.

19 Q. Okay. Did he ever raise it up to his  
20 shoulder?

21 A. No, never.

22 Q. And you're saying at no time during this  
23 entire incident?

1 A. No.

2 Q. When Ms. Gillette went home -- ran home or  
3 walked fast -- however she got home, what did Mr.  
4 Pagano do?

5 A. He continued raking.

6 Q. He continued raking?

7 A. Yes, even after she left.

8 Q. And where did this confrontation take  
9 place?

10 A. In our driveway.

11 Q. Where in your driveway? Was it closer to  
12 your house or closer to the street?

13 A. No, it was closer to the street than the  
14 house I would say, maybe three quarters of the way  
15 down the driveway.

16 Q. Okay.

17 A. But definitely on the blacktop of the  
18 driveway.

19 Q. Okay.

20 MR. COLUZZA: Those are all the  
21 questions that I have.

22 JUDGE VANSLYKE: Mr. Scalise, anything  
23 further?

1 MR. SCALISE: Nothing further.

2 JUDGE VANSLYKE: Step down.

3 (WHEREUPON, the Witness was excused.)

4 MR. SCALISE: We'll call our next  
5 witness.

6 JUDGE VANSLYKE: I'll swear you in at  
7 this time.

8 J A C Q U E L I N E M I S H L A N I E  
9 having been called as a Witness, being  
10 duly sworn, testified as follows:

11 CROSS EXAMINATION

12 BY MR. SCALISE:

13 Q. What's your full name?

14 A. Jacqueline Mishlanie, M-I-S-H-L-A-N-I-E.

15 Q. Now, you were at the Pagano house on this  
16 day in question, August 1st of '05?

17 A. Yes.

18 Q. Okay. And was it about 6:30? Was that the  
19 time?

20 A. It was between 6:00 and 6:30. It was  
21 around there.

22 Q. All right. Where were you in the house at  
23 the time?

1           A.    Well, I was -- if you go in to his house,  
2 there's like a patio kitchen -- a garage patio and  
3 there's the kitchen and there's like a little  
4 dining room.

5           Q.    Okay.

6           A.    And there are windows there. And I was  
7 sitting there. I was sitting at like the dining  
8 room table and I was -- she was -- Cathy was in the  
9 kitchen making us -- she was cooking for us. And  
10 her sister-in-law Sandy, which I had just met  
11 there, she was there also. We were sitting at the  
12 dining room table just talking about things in  
13 general. We were just sitting at the dining room  
14 table.

15          Q.    What did you hear or see?

16          A.    Well, first of all there was a lot of  
17 noise. There was some yelling going on. So  
18 naturally I got up and looked. And there's a  
19 kitchen window there -- like a picture window, and  
20 I see this lady yelling, "I'm in your f'ing  
21 driveway. I'm in our f'ing driveway. What are you  
22 going to do about it?" And Sam's --

23          Q.    Wait. Wait. "I'm in your f'ing driveway?"

1           A.    Yeah.  Yeah.  I didn't want to say the  
2 whole word.

3           Q.    Did she say the whole word?

4           A.    Yes, to the best of my --

5           Q.    You heard it?

6           A.    Well, yeah, but I don't want to say it  
7 here.

8           Q.    That's okay.  Now, where was Sam when you  
9 saw this?

10          A.    Just raking in the driveway.  There's a  
11 driveway going like this toward the house  
12 (indicating).  There's a property line here  
13 (indicating).

14          Q.    Okay.

15          A.    And he was just raking because he didn't  
16 want the dead leaves in the driveway and  
17 everything.  He's very meticulous and likes to keep  
18 things clean, so he was just raking them up.  And  
19 he told her something like "get the hell out of  
20 here."  He said something like that.  Like "get the  
21 hell out of here you rag.  Go away."  And that was  
22 it.  I mean he didn't -- after that --

23          Q.    Okay.  Did you see him raise the rake at

1 her?

2 A. No, he was just raking.

3 Q. Well, did you see him threaten her in any  
4 way?

5 A. Not to my -- not when I was looking, no.

6 Q. But you heard her yelling?

7 A. Yeah, because I wanted to see what they  
8 were yelling about. We were obviously sitting  
9 there.

10 Q. Was Sam yelling?

11 A. No, he wasn't doing anything at the time.  
12 He was just raking the leaves when she came over  
13 and started jumping up and down in his driveway,  
14 and doing all that.

15 MR. COLUZZA: Objection. I don't think  
16 she ever testified that she saw her come  
17 over.

18 Q. Well, did you see her come over, or did  
19 you --

20 A. I saw her in the driveway.

21 Q. All right. But you didn't see her walk  
22 over?

23 A. When I looked out there, she was in the

1 driveway. I did not see her come over, but I saw  
2 her in the driveway.

3 Q. And that's Sam Pagano's and Cathy Pagano's  
4 driveway?

5 A. As far as I know, yes.

6 Q. Now, there's a fence?

7 A. Right.

8 Q. Is there grass between the driveway and the  
9 fence?

10 A. There's some, but not a lot.

11 Q. All right. How far away was he from her  
12 would you say?

13 A. I don't know. Probably five or six -- less  
14 than that maybe. The driveway is here, and she was  
15 here (indicating). She was in the driveway. I  
16 don't know how many feet that is. I couldn't tell  
17 you for sure.

18 Q. Well, was it from you to me? Was it that  
19 close?

20 A. Yeah, about that.

21 Q. Or closer?

22 A. No. Not any closer than that, no.

23 Q. Okay.

1 A. I don't know how many feet it is.

2 Q. Wait just a minute. My foot is about a  
3 foot. Okay. So I'm going to go -- if I do it in  
4 steps here's three, six, nine. And I'm going to do  
5 it another way one, two --

6 MR. COLUZZA: Objection, your Honor.

7 Q. -- three, four --

8 JUDGE VANSLYKE: Mr. Scalise. Mr.  
9 Scalise.

10 MR. SCALISE: Yes.

11 JUDGE VANSLYKE: He's objecting. Wait a  
12 minute. Step back from the witness. Away  
13 from the witness. Now, what's your  
14 objection?

15 MR. COLUZZA: I object to the form of  
16 the question. This is kind of a running  
17 narrative. If she can estimate the  
18 distance, then let her do so. If she can't  
19 estimate the distance, then that's her  
20 answer.

21 JUDGE VANSLYKE: All right. Let her  
22 estimate the distance.

23 MR. SCALISE: May I step up between her

1 so that the record would show that I stepped  
2 so many of my feet?

3 JUDGE VANSLYKE: No, it's not necessary,  
4 Mr. Scalise.

5 THE WITNESS: I was --

6 JUDGE VANSLYKE: Ma'am, just answer the  
7 questions.

8 MR. SCALISE: Wait a minute.

9 Q. (Continuing) In other words from where I'm  
10 standing behind this table to you would that be the  
11 distance between them?

12 A. Yes, roughly.

13 MR. SCALISE: And I understand the court  
14 is objecting to my stepping off in feet?

15 JUDGE VANSLYKE: You understand  
16 correctly.

17 MR. SCALISE: Objection.

18 Q. Okay. Did you see at any time Sam raise  
19 the rake towards this woman?

20 A. No.

21 Q. Did you hear him threaten her, other than  
22 the words you said about get off my property? Did  
23 he threaten her in any way?

1 A. No.

2 MR. SCALISE: Nothing further.

3 CROSS EXAMINATION

4 BY MR. COLUZZA:

5 Q. Ms. Mishlanie, did the police show up that  
6 day after this incident?

7 A. Yes.

8 Q. Did you talk to the police?

9 A. No.

10 Q. How come?

11 A. No one came in the house. And the only  
12 thing that I heard one of the police officers say  
13 was that --

14 Q. I don't want to know what you heard the  
15 police say. I want to know what you --

16 A. No.

17 Q. Did you ever approach the police and tell  
18 them what you saw?

19 A. No.

20 Q. And yet you saw the entire confrontation,  
21 correct?

22 A. Yes, from the time when she was in the  
23 driveway.

1 Q. And you never saw Mr. Pagano chase her with  
2 a rake, correct?

3 A. No.

4 Q. And you never saw Mr. Pagano go on her  
5 property, correct?

6 A. No, I did not.

7 Q. And you never saw Mr. Pagano threaten her,  
8 correct?

9 A. No.

10 Q. The police responded, correct?

11 A. They were there.

12 Q. And you did not tell the police anything  
13 about what you saw?

14 A. No.

15 Q. All right. And do you know whether or not  
16 Mrs. Pagano told the police about anything that she  
17 saw?

18 A. Not that I know of, no.

19 Q. Okay. And can you tell me when was the  
20 first time that you were asked to recall this  
21 incident?

22 A. What do you -- can you rephrase that? I  
23 don't understand.

1 Q. Well, when was the first time that anybody  
2 approached you and asked you to recall and relate  
3 to them what you had seen that day and heard that  
4 day?

5 A. Probably -- let's see, it happened on a  
6 Monday. So it was probably three or four days  
7 later.

8 Q. And who was it that asked you to recall  
9 that incident?

10 A. Who asked me?

11 Q. Yes. Who did you talk to about this  
12 incident?

13 A. You mean like a police officer or -- I  
14 don't really understand what you're asking.

15 Q. I mean anybody. I mean any other person,  
16 Mrs. Pagano, Mr. Pagano or anybody else who was  
17 present that day.

18 A. Yeah. I did talk to them after it  
19 happened.

20 Q. Besides today have you talked to them more  
21 than once about this incident, about what you were  
22 going to testify to today?

23 A. Yes.

1 Q. And you came together did you not?

2 A. Yes.

3 Q. Okay.

4 MR. COLUZZA: Nothing further, your  
5 Honor.

6 JUDGE VANSLYKE: Mr. Scalise, do you  
7 have anything else?

8 MR. SCALISE: Yes.

9 **FURTHER DIRECT EXAMINATION**

10 **BY MR. SCALISE:**

11 Q. Ms. Mishlanie, did anybody tell you what to  
12 say here?

13 A. No.

14 Q. And you've only testified as to what you  
15 saw?

16 A. Yes.

17 Q. And nobody has paid you to come here and  
18 testify?

19 A. No.

20 Q. You've come here voluntarily?

21 MR. COLUZZA: Objection. He's leading  
22 the witness, your Honor.

23 JUDGE VANSLYKE: Sustained.

1 Q. (Continuing) Now, when the police came  
2 there, they said they were going to come back in  
3 two hours?

4 A. I don't know.

5 Q. Did they come back?

6 A. Not while I was there, no.

7 MR. COLUZZA: Objection.

8 JUDGE VANSLYKE: Sustained.

9 MR. SCALISE: She was asked about the  
10 police coming there. And I'm asking --

11 JUDGE VANSLYKE: I've sustained the  
12 objection.

13 MR. SCALISE: I will rephrase it.

14 Q. How long did you stay there after this  
15 incident?

16 A. It had to be after 7:30.

17 Q. And did the police come back to talk to  
18 you?

19 A. Not while I was there.

20 Q. Did the police ask you any questions at  
21 all?

22 A. No. I never talked to no cop or no police  
23 officers whatsoever.

1 MR. SCALISE: Nothing further.

2 JUDGE VANSLYKE: Anything further?

3 MR. COLUZZA: Yes.

4 **FURTHER CROSS EXAMINATION**

5 **BY MR. COLUZZA:**

6 Q. This happened on August 1st, correct?

7 A. Yes.

8 Q. And can you tell me that all during the  
9 entire month of August did you ever make an attempt  
10 to come contact the New Hartford Police to give  
11 them your side of the story?

12 A. No.

13 Q. How about during the month of September and  
14 up to and through to today did you ever contact any  
15 member of the police and ask them to give your side  
16 of the story?

17 A. No.

18 Q. Okay. Even though you saw the entire  
19 incident?

20 A. Right.

21 Q. And you saw no threatening of the rake or  
22 raising of the rake?

23 A. Right. I did not.

1 Q. Thank you.

2 MR. COLUZZA: Nothing further.

3 MR. SCALISE: Your Honor, I'm going to  
4 object to that. I mean there's nothing --

5 JUDGE VANSLYKE: Your objection is  
6 noted.

7 MR. SCALISE: I would like to put my  
8 objection on the record. Counsel has seem  
9 to indicate that this woman had an  
10 obligation to go forward to go to the police  
11 department to report something she knew  
12 nothing about.

13 MR. COLUZZA: Your Honor, this  
14 individual has come here to testify and put  
15 her creditability on the line concerning  
16 what she saw. I think it's relevant to  
17 bring out the fact that there was never an  
18 attempt before today to notify the  
19 authorities about potentially exonerating  
20 evidence.

21 THE WITNESS: I didn't --

22 JUDGE VANSLYKE: You haven't been asked  
23 a question. Tell your witness to respond to

1 questions. You don't respond to me unless  
2 I've asked you to. You're overruled. Do  
3 you have anything further?

4 MR. COLUZZA: Nothing further.

5 MR. SCALISE: I do.

6 **FURTHER DIRECT EXAMINATION**

7 **BY MR. SCALISE:**

8 Q. All right. Ma'am, all I'm asking you is  
9 this when the police came there to the house, were  
10 you there?

11 A. Yes.

12 Q. Okay. And did they ask to speak to anyone  
13 there?

14 A. Well, they told -- they went to the door  
15 and said that they were going to go talk to the  
16 neighbor. That they had gotten a call regarding  
17 some trouble.

18 MR. COLUZZA: Objection, your Honor.

19 Heresy.

20 Q. And that's all?

21 JUDGE VANSLYKE: Sustained.

22 Q. (Continuing) And that's all?

23 A. Yes.

1 Q. And did you see the policemen come there?

2 A. Yes.

3 Q. Okay.

4 MR. SCALISE: Nothing further.

5 MR. COLUZZA: Nothing further.

6 JUDGE VANSLYKE: You can step down.

7 (WHEREUPON, the Witness was excused.)

8 MR. SCALISE: We'll call our next  
9 witness.

10 JUDGE VANSLYKE: I will place you under  
11 oath.

12 S A N D R A A L A M A

13 having been called as a Witness, being

14 duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SCALISE:

17 Q. Your name again?

18 A. My name is Sandy Alama, A-L-A-M-A.

19 Q. A-L-A-M-A?

20 A. Yes.

21 Q. Now, were you at the Pagano house on  
22 August 1st of 2005?

23 A. Yes, I was.

1 Q. And it says something here about 6 o'clock,  
2 6:20 or somewhere between 6:00 and 6:30 or  
3 something like that?

4 A. I came there after 5:00. Cathy picked me  
5 up.

6 Q. All right. And what happened that called  
7 your attention to an incident outside? You tell  
8 me.

9 A. Well, I heard this noise outside. I was  
10 sitting at a window facing directly outside. And I  
11 saw this woman jumping up and down in Sammy's  
12 driveway screaming. All right. And it was quite  
13 obvious. She was quite loud, and she was  
14 screaming.

15 Q. What was she screaming?

16 A. She was screaming "I'm on your fucking  
17 property. I'm on your fucking property. What are  
18 you going to do about it? What are you going to do  
19 about it?" She was -- I mean she was jumping up  
20 and down. All right. It was quite different type  
21 of thing.

22 Q. Well, did you see her right there on the  
23 property?

1 A. Yes.

2 Q. Did you see her come there?

3 A. I saw her on the property.

4 Q. No. No. That's not the question.

5 A. When I looked out, I saw her on the  
6 property.

7 Q. Did you see her walk over on to the  
8 property?

9 A. I heard the noise, and I looked out the  
10 window.

11 Q. Was Sam screaming?

12 A. No. No, he was raking the leaves off the  
13 driveway.

14 Q. And did he -- at any time that you saw him  
15 did he scream back at her?

16 A. No.

17 Q. Did you hear him say anything?

18 A. Well, I heard one time that he told her to  
19 just to go home, and that was it. That's what he  
20 said. He said go home, and then he continued  
21 raking.

22 Q. Okay. And did you see Sam go on her  
23 property?

1           A.    No.  At no time -- he never stopped raking  
2 the leaves out of the driveway.  He at no time  
3 stopped doing what he was doing, so he never moved  
4 over.

5           Q.    And that was as far as you could see?

6           A.    I was watching the whole incident.  There  
7 was no way he left what he was doing.  He never  
8 went anywhere, other than what he was doing raking  
9 the leaves.

10          Q.    I know, but this woman claims he raised the  
11 rake.

12          A.    He didn't raise the rake.  He wasn't even  
13 near her.

14          Q.    How far was he from her?

15          A.    I would say a good thirty feet away from  
16 her.

17          Q.    You say he was thirty feet?

18          A.    I mean if you're asking distance and  
19 measuring, I would say -- if you laid bodies down,  
20 I would say three bodies to four bodies down on the  
21 ground away from her in length.

22          Q.    When you saw it?

23          A.    Yes.

1 Q. Did you ever see her as close -- in other  
2 words as close from you to me?

3 A. No, never.

4 Q. You never saw her that close?

5 A. No.

6 Q. I mean him that close to her?

7 A. No, at no time.

8 Q. Okay. Now, were you there when the police  
9 came?

10 A. I saw him pull up, and he came to the door,  
11 yes. I was there.

12 Q. And did he ask to question you?

13 A. No. He never came farther than the door.  
14 He never even asked if there was anybody inside the  
15 house.

16 Q. Did you hear the policemen talk?

17 A. I just heard him say he was going next  
18 door, and he asked if Sam was going to be there,  
19 and they said yes.

20 Q. Fine. How long did you stay there?

21 A. I was there overnight.

22 Q. Did the police ever come back?

23 A. No.

1 MR. SCALISE: I have nothing further.

2 JUDGE VANSLYKE: Mr. Coluzza?

3 CROSS EXAMINATION

4 BY MR. COLUZZA:

5 Q. I'm sorry. Can you give me your name  
6 again?

7 A. My name is Sandra Alama.

8 Q. Okay. Can you tell me, Ms. Alama, how long  
9 have you known the Pagano family?

10 THE WITNESS: Well, how old are you,  
11 Cathy?

12 A. Forty plus years. Cathy -- she's my  
13 sister.

14 Q. Okay. A long time?

15 A. A long time, yes.

16 Q. And can you tell me, Ms. Alama, are you  
17 relatives or just close friends?

18 A. Sammy is my brother-in-law.

19 Q. Okay. So you're related?

20 A. I'm related.

21 Q. And you were an overnight guest from August  
22 1st to August 2nd at the Pagano residence?

23 A. Yes.

1 Q. And can you tell me approximately what time  
2 you noticed a commotion outside?

3 A. Around six o'clock it had to be.

4 Q. Around six o'clock?

5 A. Yes.

6 Q. All right. And where were you in the house  
7 when you first noticed or heard the commotion  
8 outside?

9 A. I was in the dining room, sitting at the  
10 dining room table.

11 Q. And who were you there with?

12 A. Well, Cathy was with us at first and then  
13 Jackie was there and myself.

14 Q. Jackie would be Ms. Mishlanie?

15 A. Yes. Right.

16 Q. And what did you hear that first drew your  
17 attention outside?

18 A. I heard a noise. I heard somebody yelling,  
19 you know, screaming.

20 Q. Where did you go in the house so that you  
21 could look outside?

22 A. Okay. Well, the way the table is set it's  
23 like in front of a picture window. All right. So

1 it was right there, and it over looks the front  
2 yard and you could see -- you could see where the  
3 fence ends. So I was sitting -- the table is  
4 round --

5 Q. Does the house have a kitchen and a dining  
6 room?

7 A. Yes. It's like a kitchen and a dining  
8 room.

9 Q. And which room were you in?

10 A. I was in the dining room.

11 Q. You were in the dining room not the  
12 kitchen?

13 A. Not the kitchen. I was in the dining room.  
14 The kitchen doesn't have any type of chairs in it.  
15 It's like a walk-in type of kitchen.

16 Q. So you didn't have to get up to look out,  
17 or did you get up?

18 A. No, I didn't have to get up, but as it  
19 continued I got up.

20 Q. And you indicated I think on direct  
21 examination that the distance -- that the closest  
22 Mr. Pagano got -- or the closest that the two  
23 parties outside, the female and Mr. Pagano, was the

1 distance of thirty feet?

2 A. I would say -- if you put two people on the  
3 ground, it would be that much distance between the  
4 two of them.

5 Q. I think you said three or four?

6 A. Right.

7 Q. Was it the distance from you to me or  
8 further?

9 A. I would say that distance.

10 Q. That's the closest you saw them?

11 A. That's the closest I saw anybody get.

12 Q. And can you tell me before coming here  
13 today have you talked to Sam or Mrs. Pagano or Ms.  
14 Mishlanie about that incident?

15 A. No, other than that night. No, because I  
16 live in Colorado. And I just got here yesterday,  
17 so no, I haven't.

18 Q. And how did you come to be here today?

19 A. I got a ride down with Cathy yesterday from  
20 Syracuse.

21 Q. Did you talk about it yesterday?

22 A. No, we didn't. We talked about something  
23 else.

1 Q. You haven't talked about it since the day  
2 of the incident?

3 A. Other than what we talked about with the  
4 lawyer, and that he would be talking to us. We  
5 tried not to talk about it also.

6 Q. You tried not to talk about it?

7 A. Yes. Right. And I haven't had time to  
8 really be --

9 Q. Let me ask you this question did you ever  
10 make any effort -- the police responded; is that  
11 correct?

12 A. Yes.

13 Q. Did you make any effort when the police  
14 responded to tell the police what you saw?

15 A. They didn't come back. They never came  
16 back. I didn't even have a chance.

17 Q. Did you ever make any effort to talk to the  
18 police at any time after the day of the incident  
19 about what you saw?

20 A. Like I said, I live in Colorado.

21 MR. SCALISE: I object to that on this  
22 ground -- if I may be heard? Counsel is  
23 making it seem as though this woman has an

1 obligation to go to the police after a  
2 charge is laid not before the charge is  
3 laid, but after a charge is laid. And what  
4 was the police going to do withdraw the  
5 charge, your Honor? In my opinion that is  
6 highly improper.

7 MR. COLUZZA: Your Honor, it cites no  
8 authority for that. It is simply standard  
9 cross examination to test the creditable of  
10 the witness and ask the witness when was the  
11 first time, if ever, that she came forward  
12 to any authorities with this information.  
13 It's standard cross examination. You can  
14 either accept it as evidence to the court or  
15 you can reject it. This is a bench trial.  
16 I'm not charging a jury. This is cross  
17 examination.

18 JUDGE VANSLYKE: Hold it.

19 MR. SCALISE: Your Honor, may I --

20 JUDGE VANSLYKE: Just a minute, Mr.  
21 Scalise. That is the defense table. I want  
22 you to step back over there. I will address  
23 one thing at a time, so don't be talking to

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a prior witness.

MR. SCALISE: I have no control over a woman who comes to talk to me.

JUDGE VANSLYKE: You can ask for a recess.

MR. SCALISE: I know that, but I have no control over someone coming to talk to me.

(WHEREUPON, the Members were interjecting one another.)

JUDGE VANSLYKE: Tell your client to be quiet also. Your objection is overruled.

MR. PAGANO: This is a show.

JUDGE VANSLYKE: Now, Mr. Pagano, we can continue this trial without your presences.

MR. PAGANO: I would like that.

JUDGE VANSLYKE: You keep it up and that's exactly what's going to happen.

MR. SCALISE: Sam, please.

JUDGE VANSLYKE: Now, continue.

**FURTHER CROSS EXAMINATION**

**BY MR. COLUZZA:**

Q. Okay.

A. Let me see if I have your question right.

1 You want to know why I didn't go to the police?

2 Q. I'm just asking you if you ever came  
3 forward with this information that you had prior to  
4 today?

5 A. No, because -- can I explain?

6 Q. Yes.

7 A. The police didn't come back. I guess they  
8 didn't get the paperwork until I left to Colorado,  
9 and I just got back from Colorado.

10 Q. And how is it that you come to be in Oneida  
11 County? Why did you come back?

12 A. This is my family. My family all live  
13 here. All my sisters live here.

14 Q. So you came specifically to testify in this  
15 case?

16 A. I came here for this today, yes, I did not  
17 from Colorado though. I came back from Colorado.  
18 I'm just up in North Syracuse.

19 Q. Okay. When did you come back from  
20 Colorado?

21 A. I came back -- it was on the 6th.

22 Q. The 6th of September?

23 A. Right.

1 Q. So you're actually coming here from North  
2 Syracuse.

3 A. No, actually Tully. I live in Tully. I  
4 don't have a car.

5 Q. The Syracuse area though?

6 A. Yes.

7 Q. All right. But prior to today how many  
8 times would you say that you've discussed this case  
9 with either Sam Pagano or Mrs. Pagano or Ms.  
10 Mishlanie?

11 A. I haven't talked at all to Sam about it,  
12 and Cathy just asked me -- since I was here that  
13 day if I could come, you know, and I said yes that  
14 I would be available. I would make it a point.

15 Q. And to the best of your recollection it was  
16 probably the distance between you and me was the  
17 closest that those two parties got outside the  
18 house, right?

19 A. Yes.

20 MR. COLUZZA: No further questions.

21 **FURTHER DIRECT EXAMINATION**

22 **BY MR. SCALISE:**

23 Q. Are you a school teacher?

1           A.     I'm a retired teacher and now I teach at  
2 risk kids in North Syracuse.

3           Q.     How long did you teach?

4           A.     Thirty-five years, and I worked in rehab  
5 teaching kids for another five years, and now I do  
6 special risk kids.

7           Q.     All right. Thank you.

8           MR. SCALISE: Nothing further.

9           JUDGE VANSLYKE: Mike?

10          MR. COLUZZA: Nothing further.

11          MR. PAGANO: I have to use the bathroom.

12          MR. SCALISE: Can we just have a short  
13 recess?

14          JUDGE VANSLYKE: Okay.

15                   (WHEREUPON, a brief recess was  
16 taken.)

17          JUDGE VANSLYKE: We'll resume.

18          MR. SCALISE: I have to recall my last  
19 witness. I should have taken a recess to  
20 talk to her. I've got to recall her.

21          JUDGE VANSLYKE: That's fine. Sit down.  
22 You're still under oath.

23          THE WITNESS: Yes, sir.

1 MR. SCALISE: I'm sorry.

2 FURTHER DIRECT EXAMINATION

3 BY MR. SCALISE:

4 Q. I didn't get to talk to you before the  
5 trial began.

6 A. That's okay.

7 Q. But counsel asked you a question about the  
8 police?

9 A. Right.

10 Q. And when I stepped outside, you mentioned  
11 something about that you did talk to the police,  
12 correct?

13 A. I did talk to the police. Yes, I did it  
14 was --

15 Q. Tell us what happened. That's what the  
16 court wants to know. Counsel has been making a  
17 point of you talking to the police.

18 MR. COLUZZA: Objection.

19 JUDGE VANSLYKE: Mr. Scalise, you're an  
20 attorney. You're not a witness. Do you  
21 understand that?

22 MR. SCALISE: I'm not testifying to  
23 nothing.

1 JUDGE VANSLYKE: Do you understand the  
2 difference? Don't try to testify. Just ask  
3 the questions of the witness that I've  
4 allowed you to recall.

5 MR. SCALISE: What have I testified to?

6 JUDGE VANSLYKE: I'm not going to argue  
7 with you.

8 MR. SCALISE: And I'm not going to argue  
9 with you either.

10 JUDGE VANSLYKE: That's right you're  
11 not.

12 MR. SCALISE: You're being very  
13 argumentative, and I want that on the  
14 record.

15 JUDGE VANSLYKE: You are very close to  
16 being in contempt. Do you understand that,  
17 Mr. Scalise?

18 MR. SCALISE: Yeah, I understand that.

19 JUDGE VANSLYKE: No more of that because  
20 the next time you get that contentious  
21 you're going to be found in contempt.

22 MR. SCALISE: Okay.

23 JUDGE VANSLYKE: Now, go ahead.

1 Q. (Continuing) On the day in question did  
2 you talk to the police?

3 A. Are you talking about the incident? Was it  
4 the first incident or the second incident?

5 Q. I'm talking about this incident here.

6 A. Not on the day with the lady. No, I did  
7 not speak to the police that day.

8 Q. When did you talk to the police?

9 A. I talked to the police -- and I'm trying to  
10 figure out the date, it had to be around the 11th  
11 of September. I'm confused about the dates that I  
12 was down there. But I got back from Colorado and  
13 went down to visit with my sisters. I was at the  
14 Pagano's house.

15 Q. Yes.

16 A. And we had to call the police. There was  
17 an incident with what this lady was doing. She was  
18 spraying water over the top of the fence of Cathy's  
19 and Sammy's house on to Sammy with a hose. Okay.  
20 She kept doing it. And I told Cathy to call the  
21 police about this. I told her we should call the  
22 police about this. And then take some picture.  
23 All right. So that was that incident. The police

1 come to defuse the situation, and I went out to  
2 talk the police.

3 MR. COLUZZA: I'm going to object. If  
4 he wants to ask direct questions as a proper  
5 examination, that's fine.

6 JUDGE VANSLYKE: Sustained.

7 Q. Just tell us what happened when the police  
8 came.

9 A. When the police came, I told them what  
10 happened. And apparently the same officer that had  
11 been there that day and the other was the same and  
12 I told them I was here on the other incident, and I  
13 told them that they never came in the house to talk  
14 to any of us. And so we talked about the other  
15 incident. We did talk about the other incident.

16 Q. And you told him what happened?

17 A. I told him about the other incident. I  
18 told him about both of them. I explained that I  
19 was here for the other one.

20 Q. And what did the officer tell you?

21 A. He said he wasn't interested in that.  
22 That's what he said.

23 Q. That's all I wanted to know.

1 MR. SCALISE: If I may be heard for a  
2 moment?

3 JUDGE VANSLYKE: Mr. Scalise, I allowed  
4 you to recall your witness after you said  
5 you were finished with her. We need to go  
6 no further. Mr. Coluzza, do you want to ask  
7 her any further questions?

8 MR. COLUZZA: Yes.

9 **FURTHER CROSS EXAMINATION**

10 **BY MR. COLUZZA:**

11 Q. Ms. Alama, you testified under direct  
12 examination that you never talked to the police?

13 A. About the other incident, yes.

14 Q. Okay. Ma'am, then there was a break,  
15 correct?

16 A. Yes.

17 Q. Okay. And who did you talk to in the  
18 hallway before you came back?

19 A. I was talking to all of them.

20 Q. All of the Pagano's, correct?

21 A. Right.

22 Q. And now you're coming back in and telling  
23 us that you did talk to the police?

1           A.     It was after that incident.  It was well  
2 after that fact.  It was over a month.

3           MR. PAGANO:  I did not talk to --

4           JUDGE VANSLYKE:  Mr. Pagano, go outside.  
5 You're interrupting the trial.  Go outside.

6           MR. PAGANO:  I swear I will be proud to  
7 go outside.

8           THE WITNESS:  I did not speak to Sam.  
9 He was in the bathroom.

10           (WHEREUPON, the Defendant was excused  
11 from the proceedings.)

12           JUDGE VANSLYKE:  Go ahead.

13           Q.     A couple other questions I have for you.  
14 Did you have a car that day that you drove to the  
15 house?

16           A.     No, I did not.  I have not had a car for  
17 over a month, almost two months.  I'm in the  
18 process of buying another one.

19           MR. COLUZZA:  Those are all the  
20 questions that I have for this witness.

21           MR. SCALISE:  Nothing further.

22           (WHEREUPON, the Witness was excused.)

23           MR. SCALISE:  I'll call Mr. Pagano.

1 JUDGE VANSLYKE: I will swear you in at  
2 this time.

3 MR. PAGANO: I swear to God because  
4 that's the only one --

5 JUDGE VANSLYKE: Sit down.

6 S E B E S T I A N O P A G A N O  
7 having been called as a Defendant, being  
8 duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. SCALISE:

11 Q. Mr. Pagano, your full name?

12 A. Sebestiano Pagano, P-A-G-A-N-O.

13 Q. Now, because of your talking back and forth  
14 to me in court you were ordered to leave the  
15 courtroom, correct?

16 A. Yes.

17 MR. COLUZZA: Objection. Was that a  
18 relative question?

19 JUDGE VANSLYKE: Your objection is  
20 sustained.

21 Q. On the day in question can you tell us what  
22 happened?

23 A. On the day in question I was raking leaves

1 that do not belong to me. They belong to next door  
2 neighbor, but they fall on my property, and I clean  
3 all the time. I saw a lady, kind of stocky,  
4 jumping in my driveway saying, "I'm in your  
5 driveway, and what the fuck are you going to do  
6 about it?" I said, "lady, get out of here. I got  
7 raking to do." Meanwhile at the time maybe sixteen  
8 feet I went -- I was maybe eight feet away from  
9 her, and I'm still raking. And she says, "oh, are  
10 you threatening me? I'm going to call the police."  
11 And she go to her house and call the police. And  
12 the next thing the police came and went to her  
13 house.

14 Q. Wait a minute. Before that did you at any  
15 time when she was jumping in your driveway, did you  
16 ever at any time go toward her?

17 A. I moved about eight feet because I says to  
18 her to get off my property. I had raking to do.

19 Q. When you first saw her, about how far was  
20 she from you?

21 A. I think she was about sixteen feet away  
22 from me.

23 Q. And then you went closer to her?

1 A. And then I moved about eight feet with the  
2 rake.

3 Q. And what did you tell her?

4 A. I told her to get off my property that I  
5 got raking to do you rag.

6 Q. Okay. How many times did she jump up and  
7 down?

8 A. Maybe three times at least.

9 Q. And she was screaming?

10 A. Yes. And then she was on my property. She  
11 wanted me to do something about it.

12 Q. When she --

13 A. The family Gillette are known to be --

14 MR. COLUZZA: Objection.

15 JUDGE VANSLYKE: Sustained.

16 Q. Just answer my questions. Okay?

17 A. Okay.

18 Q. Please.

19 A. Yes.

20 Q. When you saw her walking away, did she walk  
21 or run?

22 A. She walked.

23 Q. And she was yelling to you "you're

1 threatening me"?

2 A. She told me that before she even turned  
3 around. "Are you threatening me? I'm going to  
4 call the police."

5 Q. How many times did she say she was going to  
6 call the police?

7 A. Once or twice, really.

8 Q. Did you see her run at all?

9 A. She never ran. As far as I could see up to  
10 my fence because I was behind the fence. She  
11 walked away, and then I don't know what she done  
12 after that. I can't see her.

13 Q. How much grass is there between your  
14 driveway and the fence?

15 A. There's no grass. I've got stones. There  
16 are stones that she's been digging. The police  
17 brought back to me my stones. I got told by the  
18 Utica Police -- a policeman, that my stones walk.  
19 They move. I never saw a stone move in my life. I  
20 come from a country where the stones don't move.

21 Q. Hold on.

22 A. That's true. You can yell to the other  
23 side --

1 Q. Please. Excuse me. Mr. Pagano, you've got  
2 to answer my questions. This woman can't take it  
3 down.

4 A. Okay.

5 Q. You have a fence on the line, right?

6 A. It's about two or three inches in from the  
7 line. I've got markers that I paid for before I  
8 purchased the property.

9 Q. And, now, from the fence to the driveway  
10 how many feet?

11 A. One foot of stones. It's about sixty feet  
12 long. It's exactly sixty feet. Go over with a  
13 ruler.

14 Q. All right. Then comes the blacktop  
15 driveway, correct?

16 A. One foot of stones and the driveway,  
17 correct.

18 Q. How wide is the driveway?

19 A. I never measure how long.

20 Q. Approximately?

21 A. I would say --

22 Q. One car width or two?

23 A. Well, a little more than two car width.

1 Q. A little more than two car width?

2 A. Right. Maybe three car width.

3 Q. All right. Where were you raking the  
4 leaves?

5 A. I was from the fence about sixteen feet  
6 up -- from the fence. I was farther than when she  
7 came.

8 Q. In other words you were on those stones or  
9 on the blacktop?

10 A. I got it besides the driveway where the  
11 garage is. Okay. There is another car there. You  
12 can park between the driveway and the fence and  
13 there's space left.

14 Q. And you say the closest that you ever came  
15 to this woman was about eight feet?

16 A. That's it.

17 Q. Did you ever stop raking when she was  
18 yelling?

19 A. No, I never did. I was raking right along.  
20 When I saw her jump up and down, I maybe stopped  
21 for a second.

22 Q. Do you know why she came there?

23 A. To just get me going all the time. That's

1 what it is. She's always trying to do something to  
2 Mr. Pagano. Get him mad or whatever. Sometimes I  
3 don't even look at her. I don't even pay attention  
4 to her.

5 Q. All right. And did you ever raise the rack  
6 toward her?

7 A. No, never. I know better than that. I'm  
8 fifty-seven years old. I had a personal friend of  
9 me -- the chief of police is a personal friend of  
10 mine. I know better than that. I'm not a kid  
11 especially a woman. Wake up, America.

12 Q. When the police came to your house --

13 A. Yes, sir.

14 Q. -- what did they say?

15 A. They said, "are you okay?" And they ask if  
16 I had some incident with the neighbor. I says,  
17 yes, I did. He says, "are you going to be here?"  
18 I say "yes, I be here." And he told me to wait a  
19 minute that they be back. The police officer says  
20 he be right back, and I says "I'll be here waiting  
21 for you."

22 Q. Did he come back?

23 A. The man was there for two hours, finished

1 raking, cleaned up, I had my dinner. I talked to  
2 my sister-in-law and the other one, and nobody ever  
3 showed up. I finally got up and says, "I'm going  
4 to have my espresso, which I do everyday. I went  
5 to my side of town that I have been there  
6 thirty-nine years to go have espresso. And two  
7 days later somebody shows up at my house with the  
8 papers that I have to go to court. I've been  
9 charged with harassment. I was shocked out of my  
10 shoes. It wasn't the same day. The police says to  
11 me, "I did not make the paper." That Judge  
12 Vanslyke made this decision.

13 Q. The policeman told you that?

14 A. Yes. That's what I was told. I asked who  
15 made this decision? How come it wasn't done by the  
16 policeman at the time?

17 Q. So the policeman never came back to your  
18 house?

19 A. No, never came back.

20 Q. Again, to ask you anything?

21 A. No. He was supposed to come back.

22 Q. Just answer my questions.

23 A. He never came back.

1 Q. And you went down to the police station to  
2 complain, and they told you what you said earlier,  
3 right?

4 A. No. This -- I never went to the police  
5 station. I complained to the policeman who served  
6 me with the papers two days later.

7 Q. Okay. That's when you told him?

8 A. Yes. I says, "why this now? I don't  
9 understand."

10 MR. SCALISE: Nothing further.

11 JUDGE VANSLYKE: Mr. Coluzza?

12 MR. COLUZZA: Yes.

13 **CROSS EXAMINATION**

14 **BY MR. COLUZZA:**

15 Q. Mr. Pagano, is it fair to say that you've  
16 had conflicts or a running conflict with your next  
17 door neighbor Ms. Gillette for a long period of  
18 time?

19 A. I would say from day one.

20 Q. Fifteen years of problems with her?

21 A. Since 1989.

22 Q. How about the neighbor across the street,  
23 Mrs. Cummings?

1           A.     Mrs. Cummings were very nice people when I  
2 moved there. They took wood because my fireplace  
3 didn't work. He was going to pay and I says, "I  
4 don't need it. You can have it."

5           Q.     Let me stop you there.

6           A.     I was told by them --

7           Q.     Is it fair to say that the last three to  
8 four years you've had problems with the Cummings  
9 too?

10          A.     No, never.

11          Q.     Never?

12          A.     The only problem I had with the Cummings  
13 was that they call my house three times. Her  
14 neighbor was registered to my phone that I got  
15 identification. If you call me and your number is  
16 not --

17          Q.     Why would that have been disturbing to you  
18 if they called your house?

19          A.     No, it didn't disturb me. When I seen the  
20 phone number three times, I called back and I says  
21 "hello, who is this?" I told them somebody called  
22 me. "It registered on my machine that somebody  
23 from your home called me." She says I know who you

1 are, Mr. Pagano." Because of my accent. I know  
2 who you are she says. "I haven't called your  
3 house. I never call your house." I says, "ma'am,  
4 your number is on my phone."

5 Q. So it's a misunderstanding. How does that  
6 create a problem with you and your across the  
7 street neighbors?

8 A. There's no problem there. Across the  
9 street before the neighbors -- before they told me  
10 how the Potoczny were. How the Gillette were and  
11 to watch out for them.

12 Q. How does that translate in to having a  
13 problem with the neighbors across the street?

14 A. Because one time there was -- they stick me  
15 out with the Gillette. The Gillette they have no  
16 pool. Okay. Somehow their pool broke. The  
17 Gillettes were -- in my opinion it was there  
18 daughter that called because I used to get  
19 phonecalls in to my home and hung up. When I  
20 got --

21 Q. Why do you think you're the victim of all  
22 these problems?

23 A. I could prove. I could show you pictures

1 that I'm a victim. A picture is a thousand words.  
2 If you see the pictures --

3 Q. Isn't it true, Mr. Pagano, that you're  
4 always on the offensive? Not just with your  
5 neighbors but with the general public. You're  
6 constantly getting in to personal conflicts aren't  
7 you?

8 A. No.

9 Q. No?

10 A. No.

11 Q. You ever been arrested before?

12 A. No.

13 Q. Convicted before, sent to jail before?

14 A. Yes, by this court.

15 Q. By this very court?

16 A. Yes, that's correct.

17 Q. For personal conflicts that you have with  
18 other people?

19 A. For personal conflicts that I have with  
20 other people for discriminating against my  
21 heritage, which I'm Italian, because I speak broken  
22 English, and because of this court right here. So  
23 because I speak broken English we are stomped all

1 over the place. It's a shame that in America the  
2 Italian race are kicked right, left and every which  
3 way --

4 Q. And isn't it true that because you hold  
5 those beliefs, Mr. Pagano, you're constantly  
6 getting in to conflicts with your neighbors all the  
7 time?

8 MR. SCALISE: Objection.

9 A. I got letters that I --

10 Q. Isn't it true, Mr. Pagano, that --

11 MR. SCALISE: May I have a ruling from  
12 the court?

13 JUDGE VANSLYKE: What's your basis for  
14 the objection?

15 MR. SCALISE: I think he's going outside  
16 the scope of this matter and this incident.

17 MR. COLUZZA: Your Honor, I'm trying --  
18 he's indicated that for no reason at all his  
19 neighbor came over and started jumping and  
20 screaming in his driveway. I'm trying to  
21 explore possible reasons why -- a possible  
22 bias he has against his neighbor and to show  
23 a pattern of conflict he has had with his

1 neighbor because I feel it tends to impeach  
2 his creditability.

3 JUDGE VANSLYKE: It's overruled.

4 Q. (Continuing) Mr. Pagano, didn't you go so  
5 far as to go to the employer of your neighbor's  
6 daughter at one point trying to get her fired from  
7 her job with child protective services?

8 A. I did go there. I had an incident on James  
9 Street, which I got a -- with Mr. Ruggerio  
10 (phonetic) with the Utica Police Department,  
11 father, wife and son which is a lie going up on  
12 Genesee Street and by Ms. Gillette or Potoczny,  
13 whatever, waving the finger as I go by. And I stay  
14 maybe two cars behind and Mr. Ruggerio was a  
15 witness. He saw the whole thing. He called the  
16 police of New Hartford and called the police of  
17 Utica and nothing was done. So me on my own behalf  
18 I went to talk to her boss at work about the  
19 incident and what happened. I told them I got a  
20 witness that also could talk, Mr. Ruggerio. If I  
21 asked him to come testify, he would come, and it's  
22 nothing but the truth so help you God.

23 Q. But the point is that you didn't stop with

1 your complaint to the police. You actually went to  
2 her daughter's employer to try and get her daughter  
3 fired from her job?

4 A. I tried to say to her what kind of daughter  
5 do you have? What kind of person who works for the  
6 county?

7 Q. Mr. Pagano, let's talk a little bit about  
8 the actual incident on that day. First of all,  
9 sir, had you at any point earlier that day gone on  
10 to the property of Ms. Gillette?

11 A. I wouldn't go on to the property of Ms.  
12 Gillette if all the money in the world was given to  
13 me. They are the dirtiest, piggiest. And that was  
14 before I went to -- Mr. Pagano on the property? No  
15 way. That's why I put the six foot fence. I  
16 understand the change. I was told I was going to  
17 be sued when I put the fence that's only six foot  
18 and not eight foot fence.

19 Q. Mr. Pagano, I'm just asking for a simple  
20 yes or no. Did you go at any point on to the  
21 property of --

22 A. Never. Never.

23 Q. Listen to the question. At any time on

1 August 1st did you go on to the property of  
2 Christina Gillette?

3 A. Never.

4 Q. You never went on the other side of that  
5 fence?

6 A. Never. Never.

7 Q. Okay. All right. Do you have any reason  
8 why you can think of why she would be standing in  
9 your driveway for no apparent reason jumping up and  
10 down and cursing at you?

11 A. I've got two reasons one the son was found  
12 with a gun on his hand at the fire. Her husband  
13 was with another lady who was playing around. They  
14 got divorced by the husband and something else.  
15 The lady is gone. Also I got a book from the  
16 graduation that my daughter went to school with one  
17 of the daughters and if you were to read --

18 Q. Hold on, Mr. Pagano. When did all these  
19 things happen in relation to August 1st?

20 A. When did this happen?

21 Q. Yes.

22 A. When my daughter graduated a couple of  
23 years ago and now --

1 Q. So you're talking about incidents that  
2 happened a couple of years ago, correct?

3 A. I'm talking. How far do you want to go  
4 back?

5 Q. Mr. Pagano?

6 A. Yes.

7 Q. Can you think of any specific reason why on  
8 August 1st she was standing in your driveway  
9 jumping up and down and cursing at you?

10 A. I don't know. She's gone. The lady is  
11 gone.

12 Q. And yet you maintain that you never entered  
13 her property?

14 A. Never. No. Maybe we could go there  
15 together. I show you.

16 Q. Okay. Mr. Pagano, let me just ask you a  
17 couple of other general background questions.  
18 First of all, how many automobiles do you have at  
19 your residence?

20 A. Two.

21 Q. Where were those automobiles on the day  
22 that this incident happened?

23 A. I don't know. Where were they?

1 Q. Yes. Where were they parked?

2 A. I don't remember. It could be on the  
3 driveway. It could have been parked out front.  
4 Why should I remember where the cars were?

5 Q. And where were they typically stored? In  
6 the garage?

7 A. No. I got one stall garage, and I got a  
8 car port up in the front.

9 Q. Okay. Can you tell me were there any  
10 cars -- tell me were there cars in your driveway  
11 that day?

12 A. Yes, my wife's and mine.

13 Q. Don't look at your wife.

14 A. No. My wife and mine. Those were the only  
15 cars in my driveway.

16 Q. You had two visitors at your house that  
17 day. How did they get to your house that day?

18 A. My sister-in-law came with my wife. She  
19 picked her up for dinner.

20 Q. And your sister-in-law is who?

21 A. Alama. Actually she already testified to  
22 what she saw.

23 Q. What about Ms. Mishlanie how did she get

1 there?

2 A. She's a friend of the family. Her son  
3 is --

4 MR. SCALISE: Just answer the question.

5 Q. How did Ms. Mishlanie get to your house  
6 that day?

7 A. Her son dropped her off.

8 Q. Her son. Okay. And, Mr. Pagano, what is  
9 the -- how far were you away from the road at the  
10 time that you had this confrontation with your  
11 neighbor?

12 A. From the road, the beginning of the road or  
13 the side of the road?

14 Q. From the beginning of the road.

15 A. Okay. From the beginning of the road we  
16 got -- I would say about sixteen -- more than forty  
17 feet.

18 Q. More than forty feet?

19 A. Yes.

20 Q. Did you ever at any point during the  
21 incident approach the end of the fence near the  
22 road?

23 A. No.

1 Q. Never?

2 A. No, never.

3 MR. COLUZZA: Those are all the  
4 questions I have for this witness.

5 JUDGE VANSLYKE: Mr. Scalise?

6 MR. SCALISE: Yes.

7 **FURTHER DIRECT EXAMINATION**

8 **BY MR. SCALISE:**

9 Q. I will ask you -- you were asked by counsel  
10 if you had any problems with this neighbor,  
11 Cummings?

12 A. Yes.

13 Q. And you said that Mrs. Cummings told you to  
14 stay away from Gillette?

15 A. Well, when I first bought the property, and  
16 I gave them the wood that I had for my fireplace,  
17 that's what they say.

18 Q. Sammy, just answer the question.

19 A. Yes.

20 Q. Don't give me a long story.

21 A. Yes. Her and her husband told me to watch  
22 out for the Potoczny.

23 Q. You're calling her Potoczny, but she's

1 referred to as Gillette.

2 A. I don't know. She's been divorced so now  
3 it's Gillette. Her name was Potoczny. Her name  
4 was Potoczny since I lived there, and now she  
5 changed her name to Gillette. It must have been  
6 her name before she got married. That's what I  
7 know. Her kids are Potoczny as far as I know. I  
8 don't know.

9 Q. But what reason did the Cummings give you  
10 to stay away from this woman?

11 A. The reason was because I just moved there,  
12 and they welcomed me to the neighborhood. And I  
13 had people that lived across from the Potoczny,  
14 which she died now. I have a neighbor right next  
15 to me now that -- a young guy named Danny. I don't  
16 know his last name, American name. He bought it  
17 from a guy at a funeral parlor. And the guy from  
18 the funeral parlor --

19 JUDGE VANSLYKE: Mr. Pagano, just answer  
20 the question.

21 A. (Continuing) -- and he told me to watch  
22 out.

23 MR. COLUZZA: Objection. What are you

1 talking about?

2 JUDGE VANSLYKE: Sustained.

3 MR. SCALISE: I have nothing further.

4 JUDGE VANSLYKE: Mr. Coluzza?

5 MR. COLUZZA: Nothing further.

6 JUDGE VANSLYKE: Mr. Pagano, you can  
7 step down.

8 (WHEREUPON, the Witness was excused.)

9 MR. SCALISE: Can Mr. Pagano sit here?

10 JUDGE VANSLYKE: If he keeps his mouth  
11 quiet.

12 MR. PAGANO: I rather go outside.

13 MR. SCALISE: Sit down, please. Again,  
14 your, Honor, now based on all of the  
15 testimony --

16 JUDGE VANSLYKE: Wait. Do you rest?

17 MR. SCALISE: Yes, I rest. I'm sorry.

18 JUDGE VANSLYKE: Go ahead.

19 MR. SCALISE: Based on all of the  
20 testimony I don't believe -- I do not  
21 believe that a case has been made out. As a  
22 matter of fact a case has been made out for  
23 such reasonable doubt that it appears from

1 what has been testified to here. That this  
2 man has had a continuing problem with this  
3 neighbor, and why, we don't know. But it  
4 appears that there's such a reasonable doubt  
5 here that there's no way. As a matter of  
6 fact, I go back to Paula Cumming's testimony  
7 where she says Tina was running or, you  
8 know, going back to her home. And she  
9 recalls the incident that basically that she  
10 heard all this yelling, but no yelling from  
11 Mr. Pagano. All the yelling is coming from  
12 this Christine Gillette. And like I say the  
13 people have not proven -- and why wasn't the  
14 son brought here. Here's a boy who  
15 allegedly was there. He knew that something  
16 had happened, but he's not here. And the  
17 people say that my people have an obligation  
18 to go to the police and tell them "hey,  
19 you've made a bad arrest." The police have  
20 no right to withdraw a complaint. That's  
21 all I have to say, your, Honor.

22 MR. COLUZZA: Your, Honor, this is  
23 clearly a case of -- I think we have to

1 examine not quantity, but quality. The  
2 people called two witnesses. The witnesses  
3 were consistent with each other. They  
4 answered questions directly and  
5 forthrightly. They were not evasive. And  
6 in the people's estimation they were  
7 creditable. The complainant clearly made  
8 out a case of harassment in the second  
9 degree when she was put in fear by Mr.  
10 Pagano advancing upon her with a rake held  
11 up. And that she ran in her house and she  
12 reported the incident promptly. That is  
13 further corroborated by the other witness  
14 who lives across the street. The court can  
15 judge her own credibility. She didn't try  
16 to testify to more than she saw. She  
17 indicated that she heard elevated voices, I  
18 believe, one of which she recognized to be  
19 Ms. Gillette. And that when she got a  
20 chance to look out the front of the house,  
21 she clearly saw Mr. Pagano close to the road  
22 by the end of the fence holding up the rake,  
23 and she saw the victim retreating. Now, you

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1 compare that to the testimony of Mr. Pagano.  
2 All who were family members and close  
3 associations. There were inconsistencies in  
4 terms of whether or not they talked to one  
5 other another about the incident, whether or  
6 not talked together about the incident.  
7 There are even inconsistencies about  
8 distances in terms of how close the victim  
9 was, and where the victim was in relation to  
10 the defendant when they allegedly saw this  
11 incident. You also have the further problem  
12 that not one of them ever came forward with  
13 what was potentially exonerating --  
14 exculpatory, and I dare say exonerating  
15 information on behalf of Mr. Pagano in any  
16 way prior to coming in to court today. You  
17 have the further -- the court has to take in  
18 to account the behavior of these witnesses.  
19 Do they show any evidence to violence?  
20 Well, certainly there's a personal  
21 relationship. Are they interested  
22 witnesses? Your, Honor, I think if you  
23 examine the manner in which they testified,

1 it fairly screams that they are witnesses --  
2 it fairly screams that there is bias. You  
3 have to look at not only what a witness  
4 testifies to but their demeanor. The way  
5 they answer questions. Are they forthright?  
6 Are they evasive? Are they hostile? I  
7 think lastly you have to look at not only  
8 the testimony, but the behavior of Mr.  
9 Pagano in court. To believe Mr. Pagano's --  
10 rendition of events you have to believe that  
11 a man who has shown through his own words  
12 and actions today, he has given us an inside  
13 of his general disposition, would stand  
14 there and continue patiently raking while a  
15 woman, which he has had a long-standing  
16 personal conflict with is on his property  
17 jumping up and down cursing at him, taunting  
18 him. And I submit given Mr. Pagano's own  
19 demeanor that he showed in court today that  
20 that is entirely incorrect. The people feel  
21 that based on the quality of the testimony  
22 of the two witnesses that testified today  
23 that they have made out a charge of

1 harassment in the second degree.

2 MR. SCALISE: Your, Honor, if I may be  
3 heard once more?

4 JUDGE VANSLYKE: No, you're done.

5 MR. SCALISE: What?

6 JUDGE VANSLYKE: You're done.

7 MR. SCALISE: I want it on the record.  
8 This has nothing to do with arguing the  
9 case. This has to do with a question of  
10 ethics. It is wrong for the prosecutor to  
11 inject his own personal --

12 JUDGE VANSLYKE: Wait a minute, Mr.  
13 Scalise. If you have a problem with the  
14 demeanor of the prosecutor, you bring it up  
15 in another form. Not today, not here.

16 MR. SCALISE: Okay. I just want it on  
17 the record.

18 JUDGE VANSLYKE: You know, I want to see  
19 you after we're finished here. All right?

20 MR. SCALISE: I have a right to make a  
21 record.

22 JUDGE VANSLYKE: I want to talk to you.

23 MR. SCALISE: I have a right to make a

1 record.

2 JUDGE VANSLYKE: Mr. Scalise, that last  
3 remark just cost you fifty dollars, a fifty  
4 dollar fine.

5 MR. PAGANO: I'll pay for it.

6 JUDGE VANSLYKE: You're starting to get  
7 very close to being contentious again.

8 MR. PAGANO: Can I go out?

9 JUDGE VANSLYKE: Don't you want to hear  
10 the verdict?

11 MR. PAGANO: No, I want to go outside.

12 JUDGE VANSLYKE: Sit down. I'm telling  
13 you to sit down.

14 MR. SCALISE: Sit down.

15 MR. PAGANO: I'm guilty, and you can put  
16 that on the record.

17 JUDGE VANSLYKE: And you're in contempt  
18 fifty dollars. I find you guilty of  
19 harassment. You're fined \$200, and a  
20 hundred dollar surcharge.

21 MR. COLUZZA: Your, Honor, if I may be  
22 heard for a moment.

23 JUDGE VANSLYKE: Go ahead.

1 MR. COLUZZA: The victim is requesting  
2 an order of protection.

3 JUDGE VANSLYKE: All right. There will  
4 be an order of protection. When are you  
5 going to pay -- wait a minute. We're not  
6 done. When are you going to pay the fine,  
7 Mr. Pagano? It's a \$200 fine and a \$100  
8 surcharge, plus the \$50 for contempt.

9 MR. PAGANO: God bless you.

10 MR. SCALISE: Two weeks.

11 MR. PAGANO: How about thirty days?

12 JUDGE VANSLYKE: All right. You say one  
13 more word and you'll be in contempt and that  
14 will be raised, and that won't be monetary.

15 MR. SCALISE: Okay.

16 JUDGE VANSLYKE: Now, Mr. Pagano, you do  
17 have a right to appeal. If you're going to  
18 appeal, your appeal has to be initiated  
19 within thirty days. We're adjourned.

20 (WHEREUPON, the Trial was concluded.)

21 \* \* \* \* \*

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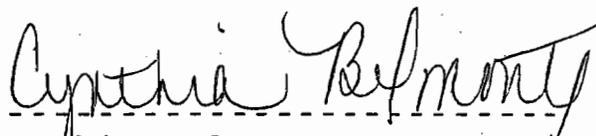
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C E R T I F I C A T E

I, Cynthia Belmonte, a Court Reporter  
and Notary Public in and for the State of  
New York, DO HEREBY CERTIFY that the foregoing  
is a true and accurate transcript of my  
stenographic notes in the above-entitled  
matter.

Date: March 25th, 2006

  
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Cynthia Belmonte

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Reporting Services  
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