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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JOHN DOUGLAS GRANGE, )  
 )  
 Defendant. )

No. 20138-4-III

(Stevens County  
No. 00-1-00199-2)

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CLERK OF COURT OF APPEALS  
STATE OF WASHINGTON III

File No. \_\_\_\_\_

DATES OF TRIAL: February 7, 8, 9, 12, 13, 14, 15,  
16 and 17, 2001

BEFORE: Hon. REBECCA M. BAKER, Judge.

APPEARANCES:

For the Plaintiff:

JOHN G. WETLE  
Prosecuting Attorney  
Stevens County  
215 South Oak St.  
Colville, WA. 99114

For the Defendant:

ROBERT A. SIMEONE  
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VOLUME 2 of 17  
February 7, 2001  
(Pages 94 through 214)

Transcript prepared by:  
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**WITNESS IS SWORN**

THE COURT: Give us your full name, please, and your current--  
and your spelling on your last name, we'll start with.

MR. CUMMINGS: Sean Patrick Cummings, C-U-M-M-I-N-G-S.

THE COURT: Thank you. I guess we probably better, for the  
record, have you spell your first name too.

MR. CUMMINGS: Sean is S-E-A-N.

THE COURT: Okay, and your current business address?

MR. CUMMINGS: 1124 West Riverside, and that's Suite L-33,  
Spokane, Washington.

THE COURT: Thank you, and Mr. Wetle?

MR. WETLE: Thank you, your Honor.

**SEAN PATRICK CUMMINGS**

**Being first duly sworn, on  
oath testified as follows:**

**DIRECT EXAMINATION**

**BY MR. WETLE:**

Q.Mr. Cummings, could you please give your current occupation?

A.I'm a special agent with the Department of Justice Drug  
Enforcement Administration.

Q.And how long have you been so employed?

A.Since July of 1999.

Q.And could you give the court a little bit of background in  
terms of what you've done working narcotics cases?

A.Well, my primary responsibility with the Department of Justice

Drug Enforcement Administration is to investigate violations of the Controlled Substance Act.

Q. And so that's what you're currently doing right now?

A. Correct.

Q. And in terms of background, were you-- Did you work in Humboldt County?

A. Correct. Prior to working with the Drug Enforcement Administration, I worked with the Bureau of Narcotic Enforcement, Humboldt County Drug Task Force, assigned from the City of Eureka Police Department as a special agent. My job there was also to investigate controlled substance violations as a detective or special agent.

Q. And how long did you do that?

A. It was approximately a year and a half. Almost two years.

Q. And prior to your work as a special agent in Humboldt County, what were you doing?

A. I worked as a City Police officer with the City of Eureka Police.

Q. And how long have you been in law enforcement overall?

A. I started working with the police department in 1992, and was hired as a police officer in 1995.

Q. Any special training in the narcotics investigation?

A. I've had several different types of training regarding controlled substances, specifically. More recently was the 16 week Academy at the Justice Training Center in Quantico, Virginia.

I've been identified as a drug recognition expert with the International Association of Chiefs of Police, as well as several other week-long courses regarding controlled substances.

Q.And have you taught any classes?

A.I've taught and assisted in teaching at the College of the Redwoods Police Academy in Eureka, California.

Q.And what's your education background?

A.I have a bachelor of science degree in behavioral science and criminal justice; associate of science degree in administration of justice.

Q.And have you testified as an expert in narcotics investigations in the past?

A.Yes, I have. In the Superior Municipal Court of the State of California in the County of Humboldt.

Q.On October 18th, year 2000, did you interview Dane Williams?

A.Yes, I did.

Q.And was that interview about homicides involving Nick Kaiser and Josh Schaefer?

A.Yes, it was.

Q.Who was present for those interviews?

A.Present during the interview was Special Agent Phil Hart with the DEA out of Spokane resident office; Detective Dave Baskin and Sergeant Jim Caruso with Stevens County Sheriff's

Department.

Q. Did you file a report on that particular interview?

A. Yes, I did.

Q. And at that time did Dane Williams tell you about his marijuana activities?

A. Yes, he did.

Q. And what did he say?

A. He had indicated that he was selling marijuana at the barter fairs here in Stevens County.

Q. Did he-- Did he tell you where he met Jeff Cunningham?

A. Yes. He'd indicated that he had met Jeff Cunningham at one of the barter fairs here in Stevens County, I believe.

Q. And then did he tell you who Cunningham introduced him to?

A. Yes. Jeff Cunningham introduced Dane Williams to an individual by the name of Rob Schultz in the Portland, Oregon, area.

Q. Did Mr. Williams say what Cunningham was doing for Schultz?

A. Dane Williams had indicated during that interview that Jeffrey Cunningham was selling LSD, or acid, for Rob Schultz out of Portland.

Q. And did he give you any dates in which he was doing that?

A. I believe it was fall of 1999 to July of 2000, specifically at the barter fairs.

Q. Could you describe, according to Williams, his business

relationship with Rob Schultz?

A.Dane Williams had indicated that he would sell marijuana to Rob Schultz for approximately \$3600 a pound, and I think the estimate was about eleven pounds in total was sold between Dane Williams and Rob Schultz.

Q.Did Dane Williams identify to you a group that sells and uses drugs?

A.Dane Williams indicated that he knew of an organization, in fact a drug organization, that he would call The Family.

Q.Did he talk about how they referred to each other individually?

A.Yes. He indicated that those individuals that are involved in the Family, and specifically those individuals who are higher up in the hierarchy of the Family, would have nicknames rather than go by their-- their true given names.

Q.Did Williams say where Rob Schultz got his LSD from?

A.I'm sorry. Could you repeat the question?

Q.Did Dane Williams say where Rob Schultz got his LSD?

A.Dane Williams had indicated during that interview that he believed Rob Schultz received LSD from Nicholas Kaiser, who lived in the Seattle area.

Q.And what was Kaiser's nickname? Do you know?

A.It was Echo or Echo \_\_\_\_\_.

Q.And do you know where Kaiser-- Did Williams say where Kaiser got his LSD?

A.Dane Williams had indicated that he believed that Nicholas Kaiser received his LSD or his source of supply from this organization, from San Francisco.

Q.Did Dane--

THE COURT: Is this organization being--

MR. CUMMINGS: Referring to the Family.

THE COURT: Okay.

Q.Did Dane Williams say who Schultz worked with?

A.Dane Williams knew one specific individual that was related to the Family. His nickname was Shadow. And also believed that his last name was Hill.

Q.Did Dane Williams say what happened to the marijuana that he gave Rob Schultz?

A.If I recall from the interview, Dane Williams believed that Shadow and Rob Schultz would split the marijuana.

Q.Did Williams tell you that he met another Family member in February at-- of 2000 in Schultz's apartment in Portland?

A.Yes. Dane Williams indicated to me that he met one of the Family members with a nickname as well, by the name of Chewy.

Q.And what did he say-- What did Dane Williams say about Chewy?

A.Dane Williams' understanding of Chewy's specific job within this organization was to collect drug debts, as well as find people for the Family, this organization.

THE COURT: You said find, or fine?

MR. CUMMINS: Find. Locate them and find them.

THE COURT: Okay.

Q.And that was all for the Family?

A.Yes, it was.

Q.Did Williams share with you what the hierarchy was, in his mind, in this Family?

A.Dane Williams had indicated to me during this interview that the hierarchy consisted of several runners who would sell LSD, specifically Jeffrey Cunningham was an example. The next in line would be Rob Schultz, who was one of the organizers of the Family, and specifically, I believe, he was the one that was involved in the distribution of the actual drugs. The next individual, who was approximately the same in hierarchy, would be this Shadow individual, by the last name of Hill. I believe he was the one that was responsible for the money.

Q.Did he talk about the roles or the hierarchy between Shadow and Schultz?

THE COURT: I'm sorry. What was your question again?

Q.Did he talk about the roles or the hierarchy between Shadow and Schultz?

A.If I remember correctly, the hierarchy was Shadow was actually seen as being higher than Rob Schultz.



Q. Did Williams know how far the Family stretched geographically?

A. The understanding that Dane Williams had regarding the Family or this drug organization was it stretched from Seattle to the San Francisco Bay area.

Q. And the reason he knew it went to the Bay area?

A. His understanding was that Nicholas Kaiser would receive his LSD from the Bay area in San Francisco.

Q. Do you have any independent information about Nick Kaiser and Josh Schaefer's involvement in this organization we're calling the Family?

A. After reviewing several DEA investigator reports, as well as intelligence gathered by DEA, I've been able to establish this organization, this drug organization, otherwise known as the Family, as being a nation-wide organization.

Q. And do you know where they fit in this organization? Were they part of it or not?

THE COURT: I'm sorry. Rephrase your question about who's they and--

MR. WETLE: Sorry, your Honor.

Q. Do you know where Kaiser and Schaefer fit in this organization?

THE COURT: Kaiser and Schaefer?

MR. WETLE: Schaefer, yes. Was the other victim.

THE COURT: I know he was the other victim, but you want to clarify on the record the first name as well?

Q.Were Nicholas Kaiser and Josh Schaefer, where they were--  
if they were involved in this organization, and how?

A.After reviewing DEA reports, as well as the investigation and intelligence gathered by DEA, both Nicholas Kaiser and Joshua Schaefer were involved in this Family or national drug organization.

Q.Now, in April of 2000, did Williams tell you what Schultz told him, at Schultz-- at Rob Schultz's apartment?

A.Dane Williams had indicated to me during that conversation at Rob Schultz's apartment in Portland that something had to be done with Nick, and gave other information regarding that.

Q.Did he say anything about breathing?

A.Yes. He'd indicated that he would not be breathing anymore and--

Q.Meaning-- Who is he now?

A.Referring to Nicholas Kaiser.

Q.And did Schultz tell Williams what the Family planned to do in that respect?

A.I believe from the interview, Dane Williams indicated that Rob Schultz had said that he was dead, referring to Nicholas Kaiser.

Q.And did he stress-- Did Dane-- Did Schultz stress to Williams not to worry about that?

A. Yes, he did.

Q. And why shouldn't he worry about it?

A. Because the Family would take care of him.

THE COURT: The him is?

MR. WETLE: Nicholas--

MR. CUMMINGS: Referring to Nicholas Kaiser.

Q. Also, in April of 2000, at a party up at the Crown Creek cabin here, what did Williams learn about Schultz's activity in the LSD area?

A. If I remember correctly, this-- The Crown Creek cabin that Dane Williams was referring to was his actual cabin or his residence. During that party Dane Williams had indicated that he was aware that Nicholas Kaiser was the individual who was responsible for this national drug organization for the Seattle based group, the people that would sell LSD out of the Seattle area, and that Rob Schultz was responsible for the distribution of LSD for this organization in the Portland area.

Q. And did Dane Williams tell you where this Family was based?

A. I believe, from my recollection, that Dane Williams believed the Family was based out of the San Francisco Bay area, with offshoots in northern-- or northwestern Washington and Oregon.

Q. After that party, did Dane Williams tell you that Rob Schultz

called him and told him about the impact of what Kaiser had done?

A.Dane Williams had indicated during that interview that Rob Schultz had told him that several people from Seattle and San Francisco were taken down, due to Nicholas Kaiser's involvement with law enforcement.

Q.Referring to the June, 2000 barter fair up in Northport, did Williams say whether he saw Kaiser at the barter fair?

A.I recall Dane Williams indicating to me that yes, he did see Nicholas Kaiser at the barter fair with another individual.  
Yes.

Q.Was he able to identify that other individual?

A.I believe he identified his-- Nicholas Kaiser's friend, his first name is Josh.

Q.Did he mention anything about the fact that John Grange, or Chewy, had some concerns after seeing Kaiser, Nick Kaiser, at the barter fair?

A.Dane Williams had indicated to me that Chewy was worried that Jeffrey Cunningham, who knows Nicholas Kaiser, would tell Nicholas Kaiser to leave the barter fair. And I remember Dane Williams indicating that Chewy was attempting to contact the Family, or Rob Schultz, when this information was available to him at the barter fair.

Q.And why was John Grange, or Chewy, trying to contact the Family?

Did he say why?

A. I don't recall him specifically saying why he was trying to, but he recalled Chewy attempting to contact Rob Schultz.

Q. Then I'll direct your attention to Dane Williams' statements.

What was said when John Grange, or Chewy, was giving Dane Williams a ride from the barter fair back to the Crown Creek cabin on Sunday, June 11th?

A. During that conversation with Chewy, during that ride back to the Crown Creek cabin, Dane Williams indicated to me that Chewy said that shit was going to happen, and that Jeff Cunningham was setting up a mushroom deal between he, Jeff Cunningham, Josh, and Nicholas Kaiser.

Q. Where?

A. This was at the Crown Creek cabin.

Q. Did Williams tell you what Grange said he was going to do?

A. If I recall correctly, he'd indicated that they were going to scare them with guns.

Q. And did Williams say why Grange said that he was going to scare them?

A. Williams said that he believed that Nick was a nark.

Q. I mean-- He believed. You mean Grange believed?

A. That Grange believed that Nick Kaiser was a nark.

Q. What did Williams say happened on the afternoon of June 11th when he and Cunningham went down to the creek?

A.Dane Williams had indicated on that date, in the afternoon, that he had saw Nicholas Kaiser, as well as his friend Josh, standing by the fire at the Crown Creek cabin. They went down-- Referring to he and Jeffrey Cunningham, went down to the river. They heard some gunshots, and they-- when they returned they found that Nicholas Kaiser, as well as his friend Josh, were dead by the fire.

MR. SIMEONE: Your Honor, I'm going to object at this point.

I don't know how this is germane to anything that we're talking about here regarding conspiracy. This sounds more to me like testimony that the Prosecutor's going to want to get out with regard to the incident itself. I don't see where its res gestae, I don't see where it's past acts, I don't see where it's conspiracy at all. All this is hearsay, and I don't see that it pertains at all.

THE COURT: I think you're right. You know, we're getting into the actual-- Obviously, this statement that Mr. Williams is making is not indicating that he himself was a co-conspirator in anything at that point, is it? In the furtherance of the conspiracy?

MR. WETLE: Well, there's other evidence that he was asked to be a co-conspirator.

THE COURT: Well, why are we-- Why are we launching in-- Let me just ask you this way.

MR. WETLE: It was just a sequence of events, your Honor.  
The next issue is where they went, and then I think we're  
through with Mr. Cunningham. Mr. Cummings.

MR. SIMEONE: I would then request that the--

THE COURT: The objection will be--

MR. SIMEONE: --any of that testimony would be stricken.

THE COURT: The objection will be sustained. Let me just  
rule on that. So let's go ahead with your next question.  
I'm sorry.

Q. On June 12th, did Dane Williams tell you what-- where they  
went after this event?

THE COURT: Excuse me. The interview was on June 12th?

MR. WETLE: No, this is the day-- The murder was on the 11th.  
This would be the next day.

THE COURT: What I'm asking is, is your question is what--

MR. WETLE: What did Dane Williams--

THE COURT: What did Dane Williams tell him on June 12th?  
I don't think he said he met him until October 18th.

MR. WETLE: It was on June 12th, what did Dane Williams say  
that they did? They being Cunningham and Williams.

THE COURT: What did Dane Williams say they did on June 12th?

MR. WETLE: Yes.

THE COURT: Okay.

MR. WETLE: Thank you. \_\_\_\_\_ such a way with words.

Q.What did Dane Williams--

A.Dane--

Q.--say they did, Jeff Cunningham, John Grange, and himself,  
on Monday, June 12th?

A.During the interview, Dane Williams indicated on June 12th  
he, Chewy, and Jeff Cunningham all drove to Portland, Oregon,  
to Rob Schultz's apartment.

MR. SIMEONE: Same objection.

THE COURT: I'm going to overrule the objection, provisionally.  
Go ahead with any other questions on that vein. I'm assuming  
that that's leading somewhere.

Q.Did-- When they got to Schultz's, did Williams tell you what  
they-- what he said to Schultz?

A.If I remember correctly, Dane Williams indicated to me that  
he let Rob Schultz know that Nick Kaiser and his friend,  
Josh, were dead.

THE COURT: Mr. Williams let Mr. Schultz know that?

MR. CUMMINGS: Correct, your Honor.

THE COURT: Okay.

Q.Based on your experience in the field, can you tell the court  
how the organizations involved in trafficking of drugs control  
members within their-- within their ranks?

A.From my training experience, as well as speaking with other  
DEA agents and other law enforcement agencies, and also



receiving training from the various law enforcement agencies, large drug organizations utilize several different tactics to instill their members to do what they request. Some of those tactics would involve fear, some of them would involve money, some of them would involve controlled substances themselves, and even blackmail.

MR. WETLE: Thank you. I have no further questions at this time, your Honor.

THE COURT: All right, Mr. Simeone, any cross examination?

SEAN PATRICK CUMMINGS

CROSS EXAMINATION

BY MR. SIMEONE:

Q. Did you ever interview Mr. Grange, Mr. Cummings?

A. Yes, I was present after his arrest.

Q. Did you interview him then?

A. I did speak with him for a short period of time, yes.

Q. And where was that, sir?

A. This was the Portland Police Bureau, I believe.

Q. I'm curious to know where you-- where you find it, or where you would find it, and maybe you can direct me to it, where you would find in Dane Williams' testimony that he introduced Jeff to Rob Schultz in Portland. Where Jeff introduced Dane to Rob Schultz in Portland. Do you have that in your notes anywhere?

A. If I may refer to my report, I can check and see.

Q. Okay, good.

THE COURT: I'm sorry. Where it is-- The question--

MR. SIMEONE: I'm interested in--

THE COURT: While he's looking--

MR. SIMEONE: Yeah. Where it is that Dane Williams introduced Jeff to Rob Schultz in Portland. Where it is that Jeff-- I'm sorry. Jeff Williams-- Jeff Cunningham introduced Dane Williams to Rob in Portland.

Q. Which report are you looking at, Officer?

A. This is the report of investigation that was written by me, and it was entitled Interview of Dane Williams on October 18, 2000, by SA Sean Cummings and Phil Hart.

MR. SIMEONE: Do you have the Bates page reference to that, Mr. Wetle?

MR. WETLE: I don't know what he's looking at.

THE COURT: I'm sorry?

MR. SIMEONE: I was wondering if Mr. Wetle-- I'm sorry to talk out of turn, your Honor.

THE COURT: That's okay.

MR. SIMEONE: I was wondering if Mr. Wetle--

THE COURT: I'm--

MR. SIMEONE: --knew the Bates page reference to the report that Mr. Cummings refers to.

THE COURT: Okay. And I'm not sure. You found the reference there to where you--

MR. CUMMINGS: I'm still looking for it right now, your Honor.

THE COURT: You're still looking? Okay. Did you find it?

MR. CUMMINGS: Yes, I did, your Honor.

THE COURT: Okay. So what page is it on your report, if you have your pages numbered?

MR. CUMMINGS: This would be on page 3, and it's the end of paragraph 8. Would you like me to read it from the report?

THE COURT: Well, let's see if-- Mr. Simeone, did you still need to know?

MR. SIMEONE: I'd like to take a look at that.

THE COURT: Why don't you take a look, and maybe you can match it up with what you've got.

MR. SIMEONE: I don't believe I have this information.

THE COURT: Do you have a copy of Agent Cummings' report?

MR. WETLE: I do. It's page 3000 of 11 on your index.

MR. SIMEONE: Is that a re-- something that you recently gave me?

MR. WETLE: No, no.

MR. SIMEONE: Could I see the reference again, please?

THE COURT: How far do the page numbers go?

MR. WETLE: You don't want to know.

THE COURT: I'm sure I don't.

MR. CUMMINGS: It may be easier to find this on the bottom of the page, if you're looking--

MR. SIMEONE: Now, 50-- I've got the interview, I just don't have this.

Q. Where here are we looking at the date? I know, but where does it show in time when that-- when the introduction occurred?

A. On paragraph 8 of page 3, at the very end. There is no indication as to the actual time of when the introduction occurred.

Only that it did occur.

Q.How about the date, or the time of the year or anything like that?

A.I don't recall specifically.

Q.\_\_\_\_\_ don't have that in your notes \_\_\_\_\_?

A.I don't have that in my report, no. And I don't have that in my notes that I'm aware of, no.

Q.So that date might be wrong?

A.Which date are you referring to?

Q.Or the location might be wrong. Isn't that right?

A.I don't believe--

THE COURT: Location of-- of--

MR. SIMEONE: Where the introduction occurred.

THE COURT: Okay.

Q.That is an introduction that Jeff made of Dane to Rob.

A.In Portland.

Q.You say it occurred in Portland?

A.I did not testify to a date as to when it occurred or where it actually occurred.

Q.Okay, so that could have occurred at the barter fair here in Stevens County, couldn't it?

A.I don't know where it occurred, and I did not get that information from Dane Williams at that time.

Q.You didn't say in your testimony that this occurred in Portland?

That that introduction occurred in Portland? Did I hear you incorrectly?

A.No, because I don't know when-- I don't recall when or where this introduction had occurred.

Q.Okay. Do you have any specific-- Now, you've investigated into the Rainbow Family in the course of your work as a law enforcement officer, haven't you?

A.I've not specifically targeted the Rainbow Family, no.

Q.So you don't have any training as to-- You've never taken classes specifically educating you as to the Rainbow Family, its ways or anything such as that?

A.No, I don't have any specific training regarding the Rainbow Family, no.

Q.Then is it fair to say that you don't know of any specific instances where the Rainbow Family had targeted anyone for a death penalty, or to kill them, for any kind of a perfidy, any kind of disloyalty, do you?

A.No, I do not.

Q.Now, all members, as far as you know, have nicknames in this organization, is that correct?

A.No, I wouldn't say that all members, no.

Q.Higher up people do or don't?

A.My statement was that Dane Williams indicated people that were higher up in the organization often had nicknames, yes.

Q. Well, where in your transcript of the interview with Dane Williams did it say that Rob and Shadow supposedly split this marijuana up that Dane brought over to Portland? Do you have that notated anywhere?

A. There is no transcript of my interview, and if I may refer to my report, I can look for the specific reference.

Q. You have some specific reference in any of the transcript of your interview with Dane Williams to that effect?

A. There is no transcript of the interview with Dane Williams.

Q. There's none?

A. I have no transcript of the interview between me, Phil Hart and Dane Williams. No.

THE COURT: Are you meaning a verbatim transcript?

MR. SIMEONE: That's right, your Honor. That's what I was wondering about.

THE COURT: Okay.

Q. So there was an interview that would have happened there with Phil Hart that you didn't-- You didn't participate in that interview?

A. Myself, Phil Hart interviewed Dane Williams, but there was no tape recording so there is no transcript of that interview.

Q. But was-- Was that in between an interview that Mr. Hart had with Dane Williams?

A.No, he--

Q.That wasn't transcribed?

A.When Dane Williams was being interviewed by Phil Hart, I was present during that interview and participated.

Q.Was there another one then when you weren't available or you weren't par-- you didn't participate with Phil Hart?

A.My understanding is that there were several interviews with Dane Williams. I was only present for one interview, and Phil Hart was only present for one interview that I'm aware of.

Q.Okay, Phil Hart was only present for one, and that was the one that occurred with you?

A.Correct.

Q.And that occurred on October 18th?

A.Correct.

Q.And you don't think there's a transcript of that interview?

A.I know there's no transcript of the interview between myself, Phil Hart and Dane Williams.

Q.Then what is it that I have transcribed here that apparently occurred on 1948 hours on October 18th with Phil Hart and Sean Cummings?

MR. SIMEONE: May I approach the witness, your Honor?

THE COURT: Sure.

A.I'm sorry. That was--



Q.Can you identify that transcript there? Maybe that refreshes your memory somewhat?

A.I do recall an interview with Dane Williams where Detective Dave Baskin was present, and he was the one that tape recorded the interview with Dane Williams. And I was present during that. That was my error.

Q.That's the one with Phil Hart?

A.Correct.

Q.So it is a transcribed interview after all?

A.Correct. Yes, it is.

Q.Thank you. In that case, are you able to refer to a page or a specific spot in the interview where you could show me that this marijuana that Dane Williams allegedly brought over there was split up between Rob and Shadow? Proceed from here, Officer.

A.In the transcribed interview or in my report?

Q.Transcribed interview.

THE COURT: Well, let's ask him first if he's seen a transcript of it. Of the interview.

MR. CUMMINGS: I've seen it today in court, your Honor, but I have not read it, no.

THE COURT: Okay, just now when Mr. Simeone reminded you of it is when you have seen it? It's the first time you've seen it?

MR. CUMMINGS: Yes.

Q.You've seen it today in court. You mean just now when I provided you with a copy?

A.Correct. This is the first time that I've seen the actual interview.

Q.Well, would it surprise you then to learn that there's no mention of splitting up the marijuana between Rob and Shadow in that transcription?

A.I don't recall any testimony by Dane Williams during that transcribed interview, no.

Q.Was there any other interview you had with him that wasn't transcribed, Detective?

A.There were only two interviews. Or there was only one interview. The one that Phil Hart and I, and I wrote a report regarding that interview. The second one was an interview by Detective Baskin, and he did tape record that interview.

Q.That was--

A.We were present.

Q.That was-- You were present for that one or not?

A.Yes, and that's the transcribed interview that you have there, yes.

Q.So there actually were two interviews then that you had, right?

A.Well, it was during the same time period. In fact, the interview with Phil Hart and I ended, and Detective Baskin then entered

the room and recorded the conversation, or the interview, that they had with Dane Williams. So--

Q.Just-- Just so--

A.--is it two separate interviews? You could look at it that way, yes.

Q.Just so it's clear in my mind, there was some question and answer between you and Dane Williams that wasn't recorded and wasn't transcribed.

A.Yes, there was an interview that was not recorded and was not transcribed.

Q.Now, you referred in your testimony to a conversation that occurred. That was a conversation that took place about Rob saying that Nick was not going to be around any more. Do you recall that in your direct examination?

A.Yes, I do.

Q.Now, you don't have any indication, or you don't know of Dane saying anywhere that John Grange was present during that conversation, do you?

A.I do not recall Dane Williams ever indicating that John Grange, or Chewy, was involved in that, no.

Q.And when we say John Grange and Chewy, we're talking about one and the same?

A.Yes.

Q.Okay. Now, in your prior investigations, and up to the point

of this investigation, did you ever come across Mr. Grange's name in connection with the Rainbow Family?

A.No, I did not.

Q.Did you ever come across any information that specifically linked John Grange to Rob Schultz or Shadow, last name unknown, particularly?

A.And this is prior to the--

Q.Prior to--

A.Prior to the--

Q.Prior to this investigation regarding these murders.

A.No.

Q.You talked about the phone calls that Mr. Williams discussed. You remember that part of your testimony?

A.Yes.

Q.Mr. Williams, I think, if I'm recalling your testimony correctly, said that there was an attempt to contact Rob Schultz.

A.Correct.

Q.Review that for me again. Could you do that, please?

A.My understanding from interviewing Dane Williams is that during that time, Chewy is what-- who he indicated was attempting to contact Rob Schultz.

Q.Okay. Have you come across in your investigation-- Now we're talking about your investigation in this case. Have you come across any information proving that such a phone call

was made?

A.No, I have no independent information, no.

Q.You also mentioned that-- Strike that. There was a-- The latter part of your testimony, when Mr. Wetle talked about the journey back to Portland and arriving at the apartment of Rob Schultz, remember that part of your testimony?

A.Yes, I do.

Q.In your testimony I think you said that Nick had disclosed to Rob Schultz that-- I'm sorry. Dane Williams had disclosed to Rob Schultz that Nick was dead. Had been killed.

A.Correct.

Q.Now, isn't it true that in your notes you have it that John had left the apartment just as soon as he arrived that night?

A.I don't recall specifically, but I can look in my report, if you'd like me to.

Q.That would be good.

A.Do you have a specific reference to a paragraph or--

Q.You don't have the report, I don't think. I'm talking about the interview that took place and that's apparently not transcribed for you.

THE COURT: The tape recorded interview? The tape--

MR. SIMEONE: That's right.

THE COURT: --recorded interview?

MR. SIMEONE: That's right. Tape recorded, untranscribed.

A.I believe I found it for you, sir.

Q.What do you have?

A.This would be paragraph 25 on page 9 of my report.

Q.Okay.

A.And it indicates that Williams was dropped off at Schultz's  
apartment.

Q.So the implication being that John then left?

A.My understanding from the conversation is that yes, Mr. Grange  
dropped off Williams at the apartment of Rob Schultz.

Q.And the follow-up to that would be that the disclosure by Williams  
to Schultz took place when Mr. Grange was probably gone then?

A.I didn't ask any specific questions regarding that, but that  
was my understanding, yes.

Q.Good.

MR. SIMEONE: No further questions. Thank you.

THE COURT: Okay, Mr. Wetle, let me just jump in with a couple  
of questions to save a third round after the redirect and  
recross.

**SEAN PATRICK CUMMINGS**

**EXAMINATION BY THE COURT**

Q.I missed where it was that Mr. Williams told you that Nick Kaiser-- Excuse me. Mr. Williams told you that Nick Kaiser, he understood, lived in what area? The Seattle area, was it?

A.You'll have to--

Q.Okay.

A.--repeat the question.

Q.Dane Williams said Rob Schultz received LSD from Nick Kaiser, Echo, who lived in the blank area. I didn't get it down fast enough. Nick Kaiser lived in the--

A.Seattle area.

Q.Seattle area. Okay, and then I wanted to clarify what you said about-- That Dane Williams said that he met another Family member by the nickname of Chewy, whose job was to collect drug debts, as well as find people for the Family. That was pretty much my notes from your testimony. Maybe not verbatim, but that-- Is that about what you said?

A.Correct, your Honor.

Q.Okay. When you-- When you were talking to Mr. Williams about this, did-- In the context of your talking to him, how did you understand he meant find. Recruit people to the Family to do various tasks, or to find people who had run off or

disappeared with money or drugs or something like that?

A. My interpretation of that conversation was both recruit and find those people that were attempting to elude the Family.

Q. Okay. Was it specified by Mr. Williams what he meant, or was that pretty much his terminology? He was to collect-- Mr.-- That Mr. Grange was-- One of his functions within the family was to collect drug debts and to find people. He used that word find, as far as you recall?

A. My recollection is yes, that's the terms that he used, and my interpretation of that was what I had testified to.

Q. Okay. All right.

THE COURT: Okay, Mr. Wetle, redirect?

MR. WETLE: Thank you, your Honor.



SEAN PATRICK CUMMINGS

REDIRECT EXAMINATION

BY MR. WETLE:

Q. Just to clarify the sharing of the marijuana, if you could look at the last line in paragraph 10, read that to the court.

A. Yes, sir.

Q. Could you read that to the court?

A. It appeared to Williams that Schultz and Shadow would share the marijuana that Williams provided Schultz.

THE COURT: While you're looking, Mr. Wetle, let me jump in with one other question.

MR. WETLE: Thank you.

SEAN PATRICK CUMMINGS

EXAMINATION BY THE COURT

Q. You indicated that Mr. Williams told you that he had sold marijuana to Rob Schultz for \$3600 a pound, and he estimated that he had delivered about 11 pounds total over some time period.

Is that-- Do you recall saying that?

A. Yes, your Honor.

Q. In your testimony? What I was wondering is in this context, did Mr. Williams consider himself a member of the Family?

A. If I recall, during the interview-- I believe that he was accepted by the individuals that were a part of the Family or this organization, although he was not accepted quite as readily as other individuals. This is due to his short hair, his, I believe, family ties in the Stevens County area, and other reasons. But I don't recall any specifics.

Q. Okay.

THE COURT: All right, thank you. Mr. Wetle, anything further?

MR. WETLE: Thank you, your Honor.

SEAN PATRICK CUMMINGS

CONTINUATION OF REDIRECT EXAMINATION

BY MR. WETLE:

Q. Just to clarify the court's question, if you could look at the middle of paragraph 11. It begins with Williams.

A. Yes, sir.

Q. And read that to the court, in response to the court's question.

A. Starting with Williams spoke, sir?

Q. Yes.

A. William spoke of the Family as an organization which included non-Family members such as himself.

THE COURT: Thank you.

MR. WETLE: I have no further questions.

**SEAN PATRICK CUMMINGS**

**RE CROSS EXAMINATION**

**BY MR. SIMEONE:**

Q. Just to make it clear--

MR. SIMEONE: May I, your Honor?

THE COURT: Yes.

Q. Then Williams is a part of the Family?

A. During his statement he had indicated that no, he was not a part of the Family.

Q. Notwithstanding what Mr. Wetle brings to your attention here, in your paragraph?

A. The information--

THE COURT: It's a little bit--

A. --which I read--

THE COURT: It's a little bit contradictory statement, but it includes non-Family members such as himself. The Family includes non-Family members.

MR. SIMEONE: That was my observation, too.

A. Correct. My understanding from speaking with him is that yes, he was accepted, but was not-- was not readily accepted by the Family as being a specific portion of that. Do you understand?

Q. I'm trying to. It could be that he underplayed his involvement, is that what you're saying?

A.It was his perception of how the Family accepted him.

Q.And he may have been--

A.That yes, he was a part of the Family, but he was not accepted as a part of the Family.

Q.Okay. Now, you said in your notes that it appeared-- they appeared to share. You're saying based upon what Mr. Williams told you that it appeared that Rob Schultz and Shadow shared the marijuana Dane brought over there, is that right?

A.Correct. I believe so, yes.

Q.But you-- you agree that it wouldn't surprise you that in his transcript there's no such mention of that?

A.No such mention of--

Q.Sharing the pot between them.

A.I don't believe there's any independent information to show that they actually did share it. That was his impression--

Q.Okay.

A.--of the--

Q.Okay.

A.Of the deal.

Q.Okay. Lastly, I think it was your testimony that there was an introduction in February of this year. Is that correct? Between-- That he'd met Rob at a barter fair in February? I mean in Portland?

MR. WETLE: I'm sorry. Who met who?

Q. That Dane had met Mr. Grange in February? Was that your testimony?

A. My understanding from the interview with Dane Williams is that he met Chewy in February of 2000. Not this year.

Q. Okay, and is it possible that that could have been at the spring barter fair in April of 2000?

A. I-- I don't know, because I was not there.

Q. And if he had anything in his transcribed testimony to that effect, would you-- would that have an effect on whether or not that's the truth?

A. I don't-- I don't understand the question.

Q. Well, have you-- Did you have an opportunity to review any of his tape recorded and transcribed interviews prior to the time you interviewed him on the 18th?

A. As I previously testified, no, I have not read those.

Q. No. Well, I'd like to--

MR. SIMEONE: May I approach the witness, your Honor?

THE COURT: Yes.

Q. If you will, you can refer to Bates pages 910 through 912 and follow along. I'm showing you what I represent to be a transcript of an interview with Dane Williams-- I'm sorry, that occurred October 13th of the year 2000, with-- interviewed by Detective Baskin. Are you looking at that document with me?

A.Yes, I am.

Q.I'm sorry about that. If I might address your attention, then, to page 16 of that interview. We have some dialogue between Detective Baskin and Dane Williams regarding when it was that he met Rob. Dane-- Detective Baskin specifically, on the bottom of that page, asked the question,

Where did you meet Rob?

Do you see that there, sir?

A.Yes, I do.

Q.And the answer to that question was?

A.Would you like me to read it, sir?

Q.Yes, please.

A.I met Rob at a barter fair about a year previous to this.  
Was introduced by Jeff.

Q.Okay, and if you'll follow along with me then, and go to the next page, he clarifies when in time that was. Can you mention where it is in this transcript that he talks about the date and where it was? Does Detective Baskin ask him:

Would that be the spring of...

He says,

I believe it's '99.

Does he later say that it's the same spring, the year 2000?

A.On page 17 of the transcribed interview it does indicate that, but I don't know in which reference the dates are corresponding

with--

Q.The last page?

A.Which-- Correct.

Q.Here, I'll give you a minute. It won't take you long to review that. Any help there?

A.Yes, sir.

Q.Now what do you have then as a result of having read those two pages, is your understanding?

A.My understanding from reading the transcribed interview between Detective Baskin and Dane Williams, on page 16 and 17, is that Dane Williams appeared to be confused as to the exact year this actual meeting took place.

Q.It was actually April-- or spring of 2000, probably April, 2000, if you read further down? 'Cause that's when the barter fair takes place?

A.That's what's indicated in the transcript, yes.

Q.Okay, finally, then, does Detective Baskin then ask Mr. Williams when it was that he met John Grange? I'm looking on page 18 of that interview. In particular, Detective Baskin when was-- Was Chewy there?

A.Yes. Did you me to read something specific, or--

Q.Does he then ask him,  
The first time you met Chewy was...  
That's when I first met him, as well.



A.The transcribed interview, on page 18, for Dane Williams, was that was the first-- that was when I first met Chewy, as well.

Q.And that's probably then we're talking about the April barter fair, 2000?

A.My understanding of the transcribed interview is yes.

MR. SIMEONE: That's all I have for you. Thank you.

THE COURT: All right, Mr. Wetle, anything else of this witness?

MR. WETLE: No, your Honor.

WITNESS STEPS DOWN

THE COURT: Mr. Wetle, you may call your next witness. We'll get a little more under our belt before we take a recess here.

MR. WETLE: We would call Loren Erdman.

THE COURT: All right.

MR. WETLE: But I did think we would take a recess, so I haven't--

THE COURT: Oh, okay, maybe we will take a recess.  
COURT REQUESTS COUNSEL TO MEET HER IN CHAMBERS  
TO DISCUSS SCHEDULING

**COURT RECESSED**

1 Q. Did Williams say anything that-- as to what Chewy said he  
2 did for the Family?

3 A. Dane Williams said that John Grange told him that he had  
4 collected for the Family. People that ripped off the  
5 Family he dealt with, got rid of some people. As far as  
6 that, got rid of people that ripped off the Family.  
7 Basically a collector and stuff like that, as far as he  
8 was good at finding people. This is-- That was his  
9 statement.

10 Q. Did Williams say Chewy said why-- why he was doing this?

11 A. For the Family.

12 Q. Did Williams say anything before the June barter fair  
13 about what Rob Schultz had told him?

14 A. He had said that Rob Schultz told him that Nick wasn't  
15 going to be around any more, that he was going to make  
16 sure he was not breathing any more, and that he was going  
17 to get taken care of through the Family.

18 Q. After the bodies were taken up to the top of the hill and  
19 left in the vehicle, but before they got burned, when  
20 Williams and Cunningham were walking back to the cabin,  
21 did Cunningham say anything about Chewy?

22 A. Jeff Cunningham told Dane Williams that Chewy had done  
23 this before, and that-- He didn't specifically say what  
24 had happened, just that he had taken care of people and it  
25 wasn't his first time.

1 Q. Did Dane Williams say anything about the manner in which  
2 the victims were killed, according to Chewy?  
3 A. As far as--  
4 Q. How they were killed.  
5 A. Shot 'em in the head. Is that what you're referring to?  
6 I'm sorry.  
7 Q. Uh-huh. That's exactly-- Yes.  
8 A. Okay.  
9 Q. Is that the manner-- Is that what they were-- Is that  
10 what Williams said that they said on the way back to  
11 Portland? That Chewy said on the way back to Portland?  
12 A. Chewy-- Yeah, Chewy said that-- He was describing on his  
13 way back from Portland, and said that he just aimed for  
14 the head. Shot Josh first.  
15 Q. Did Williams say how Chewy felt about that?  
16 A. He-- He-- Dane Williams said that John made a comment  
17 about he just keeps getting colder and colder.  
18 Q. Can you say specifically what the comment was?  
19 A. Yeah, I just got to find it. Yeah. He said that John  
20 told him:  
21 I feel like I'm getting colder and colder  
22 each time.  
23 Q. Did Williams say what happened when they got-- the three  
24 of them got to Portland?  
25 A. They went to Rob Schultz's house, went in and basically

1 they told him that it was done, and that Rob Schultz acted  
2 surprised, but it didn't seem like he was seriously  
3 concerned, like he'd already known.

4 Q. Did Williams say anything about compensation?

5 A. He said he believed that Jeff and Chewy had mentioned it.  
6 Said he didn't know which one did, and they said that they  
7 would be compensated by the Family, that they would be  
8 taken care of.

9 Q. Did Williams--

10 A. They also-- Go ahead.

11 Q. Did Williams say why he believed Josh Schaefer got killed?

12 A. Not specifically. He said that-- He pretty much said he  
13 got killed because he was there with Nick.

14 Q. And what was--

15 A. And that Nick was a nark and that's-- Josh Schaefer got  
16 killed 'cause Nick was a nark.

17 Q. And then--

18 A. Then if Nick was a nark, then Josh was too. I think his  
19 comment here, if I-- I'll read it.

20 Q. Okay.

21 A. I said-- I asked him,

22 Did Chewy ever say why Josh was killed?

23 He said:

24 Not that I recall. Not specifically. If  
25 he had, I've forgotten. I pretty much-- I

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think we all pretty much knew kinda why he  
did get killed.

And what was that?

And he said:

That he was with Nick and Nick was believed to  
be a nark and turning people in, and that if he  
was with Nick he was a nark as well.

MR. WETLE: Thank you. I have no further questions,  
your Honor.

THE COURT: All right, cross examination, Mr. Simeone?

MR. SIMEONE: Thank you, your Honor.

1 LOREN ERDMAN

2 RE-CROSS EXAMINATION

3 BY MR. SIMEONE:

4 Q. Now, originally in your testimony you said that it was  
5 Jeff Cunningham's statement to you that he moved to the  
6 area to grow pot. Is that right, Detective?

7 A. Yes, I did.

8 Q. Isn't it true, though, that in his statement, when he  
9 first discussed this with you, that the real reason he ran  
10 a-- he-- John came to Portland was because he wanted to  
11 get out of the-- or John came to Stevens County was  
12 because he wanted to get out of the city and move to the  
13 country?

14 A. Like Jeff or John did?

15 Q. John did.

16 A. He mentioned something about getting out of the city for  
17 awhile.

18 Q. Can I address your attention to page 2 of your report?

19 A. Yeah, he said--

20 Q. Of January 4th.

21 A. The reason--

22 Q. Did you ask him--

23 A. --he came up there, he said:

24 I don't know, he just wanted to move out of  
25 the city for awhile, I guess.

Loren Erdman - Recross (by Mr. Simeone)

159.

1 Q. Okay, so that really was his first answer, wasn't it?  
2 No-- No--  
3 A. At the time of the taped statement.  
4 Q. Right, and there's no mention at that time of growing  
5 marijuana in answer to your question, was there?  
6 A. Previously, during our interview, there was.  
7 Q. Now, you actually had to ask him the question again,  
8 though, didn't you, to get the answer out of him that you  
9 wanted, that he was up here to grow marijuana, and you  
10 asked him that on the next page of your--  
11 A. Right.  
12 Q. --of the transcript.  
13 A. Right. Because he had told me that earlier in the-- in  
14 our interview throughout the day.  
15 Q. So you didn't want to just leave that answer lie there,  
16 did you? That the reason he moved up here was to just get  
17 out of the city.  
18 A. He had told me something previously that I wanted to  
19 include.  
20 Q. Now, both Cunningham and Williams, whose hearsay state-  
21 ments you've related to the court today, both of them have  
22 deals with the State for lenient treatment in connection  
23 with their involvement in this matter, don't they?  
24 A. I-- As far as lenient treatment? I mean they got-- They  
25 pled to the charge that they were charged with.

1 Q. But they weren't charged with murder though, were they?  
2 A. No.  
3 Q. And you charged them with rendering criminal assistance,  
4 or the State did?  
5 A. Yes.  
6 Q. And those are deals that they got in connection with their  
7 agreement to testify in behalf of the State against Mr.  
8 Grange?  
9 A. Yes.  
10 Q. And you took how many statements from Dane Williams? Six?  
11 A. Myself?  
12 Q. Yeah.  
13 A. I think I was only present for two of them.  
14 Q. And how many were actually taken and transcribed?  
15 A. We have five or six. Somewhere in there.  
16 Q. And there were some others, then, interviews that weren't  
17 transcribed?  
18 A. Ah--  
19 Q. You were just talking about one you had yourself?  
20 A. With Dane Williams? I believe they were all transcribed  
21 with Dane Williams. I'm not--  
22 Q. I thought your testimony just immediately was--  
23 A. No, Jeff Cunningham.  
24 Q. Jeff Cunningham?  
25 A. Right. Or we-- Yes, Jeff Cunningham was at page 2.



- 1 Q. Now, we're talking about-- Okay. Now, talking about what  
2 happened there at the barter fair when Nick and Jeff met.  
3 That would have been Saturday.
- 4 A. Saturday, the 10th of June.
- 5 Q. Now, was it your testimony, did I understand you to say  
6 that John was present then when Jeff ran into Nick?
- 7 A. No.
- 8 Q. Okay.
- 9 A. No, he was at the barter fair, according to Jeff Cunning-  
10 ham.
- 11 Q. But he didn't actually--
- 12 A. But he was not with Jeff Cunningham.
- 13 Q. He didn't actually see John then, did he?
- 14 A. He didn't actually see John when he met Nick?
- 15 Q. Right.
- 16 A. Not to my knowledge. Not \_\_\_\_\_ the information he  
17 relayed to us.
- 18 Q. Now, you mentioned that there was a phone call made from  
19 a booth, Cunningham talks about. That would have been on  
20 Saturday night?
- 21 A. According to Jeff Cunningham.
- 22 Q. Has any of your investigation shown that there was a phone  
23 call made to any number connected with Jeff Cunningham  
24 from a phone booth there in Northport that night?
- 25 A. We've not been able to verify that that took place.

- 1 Q. Okay, so he's lying about that?
- 2 A. I-- I can't say that. The information doesn't show that  
3 it didn't take place. It just doesn't show that it  
4 actually has.
- 5 Q. But you'd be able to determine that if it was made from  
6 that booth, wouldn't you?
- 7 A. No. According to the people at the phone company, Qwest,  
8 they stated that the process that they go to get the phone  
9 records from a phone booth, it's called an AMA dump, and  
10 they said those are a very inaccurate process. They may  
11 pick up some of the phone calls, but may not pick up all  
12 of them.
- 13 Q. But it did prove positive for a lot of phone calls, didn't  
14 it?
- 15 A. There was many phone calls on the list.
- 16 Q. But none that Mr. Cunningham alleges he made?
- 17 A. Not that-- to the phone call-- to the phone number that  
18 he initially alleged.
- 19 Q. How about in-- You also subpoenaed or-- Yeah, you  
20 subpoenaed phone records from Mr. Schultz's phone too,  
21 didn't you?
- 22 A. Right.
- 23 Q. Do we have a phone call showing up on Mr. Schultz's phone  
24 records?
- 25 A. There's several incoming phone calls in that time period.

1 They don't show which number it came from.

2 Q. So he could have got phone calls from almost anybody. It

3 doesn't really link it to--

4 A. Right. It doesn't prove--

5 Q. --this phone?

6 A. --but it doesn't disprove.

7 Q. But the two of those things put together though, that

8 there's not a call from Northport and there's not really

9 a call on Rob's phone showing what number it comes from,

10 doesn't that lead to a belief that that phone call wasn't

11 made?

12 A. Not necessarily.

13 Q. But it's not good-- You don't have good proof that it was

14 made, do you?

15 A. The only information we had from Jeff Cunningham initially

16 was that he had called his mother's 1-800 number and we

17 searched for that 1-800 number and we did not find those

18 records.

19 Q. Right, that's the way he made calls, isn't that right?

20 A. Normally. I believe he has since believed-- said a

21 comment that he may have used a calling card that he'd

22 gotten at the Northport gas station. Of course, we just

23 got this information; we haven't been able to do any

24 verification of--

25 Q. But didn't you actually--

1 A. --track-- tracing that.

2 Q. I'm sorry. Didn't you actually go through a long discus-  
3 sion with him about how the phone calls were made, and he  
4 said--

5 A. Right.

6 Q. --he called his mother--

7 A. Yes, that's what he--

8 Q. And he was pretty clear--

9 A. --told me on this date.

10 Q. He was pretty clear about that. He called his mother as  
11 an 800 number, and then she would put him on hold, and  
12 then she would teleconference in to another number.

13 A. Right. That's-- He said-- He said that was his normal  
14 process for--

15 Q. He never said anything about a calling card at that time,  
16 did he?

17 A. Not at that date.

18 Q. Did Jeff's mother's phone records show a call to any other  
19 number in this area, from this number-- from this area on  
20 that date, and if so, from where?

21 A. From any other number?

22 Q. From any other number in the Northport area, yeah.

23 A. No. On that date. It just showed the number as-- Oh, I  
24 think what you're referring-- There was a cell phone call  
25 that came in--

1 Q. From Wenatchee?

2 A. --that they used the 1-800 number. Well, I think that's  
3 where it was routed down through on the trunk number, but  
4 it was Nick Kaiser's telephone.

5 Q. Okay, so it's--

6 A. That made the call,

7 Q. --Nick Kaiser's telephone? So that's-- But that's  
8 distinct from what Mr. Cunningham told you about the phone  
9 booth, 'cause he was very clear about the phone booth,  
10 wasn't he?

11 A. He-- He was on the day when he said that, yes.

12 Q. So that-- That too would weigh against his statement to  
13 you that he made the call from the phone booth, probably?

14 A. All I can say is I could not prove that that phone call--

15 Q. We couldn't prove it.

16 A. --took place.

17 Q. We don't have good proof to that effect.

18 A. Correct.

19 Q. Do you recall what time Jeff said-- or Jeff told you that  
20 John was at the fair that Saturday?

21 A. He said he wasn't sure, but he believed he was there the  
22 whole day.

23 Q. What time did he say that he-- He talked about being with  
24 Kaiser during the day, didn't he?

25 A. Correct. From like approximately noon till 5:00 or 6:00.

1 Q. And if I'm remembering correctly, stayed in his car for  
2 hours.  
3 A. That's right.  
4 Q. Was breathing the-- the gas.  
5 A. Right.  
6 Q. And he said that he got there at about 11:00 o'clock,  
7 didn't he? In the morning?  
8 A. That he got to the barter fair? Well, no, that he got to  
9 Nick's--  
10 Q. Or that he saw Nick.  
11 A. Yeah, 11:00, noon, somewhere in that area, I think he  
12 said.  
13 Q. Stayed there five or six hours?  
14 A. About noon.  
15 Q. Stayed there five or six hours?  
16 A. Right.  
17 Q. But then the bottom line is that you-- I think you just  
18 said it to me. He said that he saw John around 5:00 or  
19 6:00.  
20 A. After 5:00 or 6:00 he went and told John that Nick Kaiser  
21 was there and that he wanted to talk to Rob Schultz.  
22 Q. Right, and then that's-- After that point is when they  
23 supposedly made the phone call.  
24 A. Supposedly right after that.  
25 Q. But the phone call records that we have show that the call

1 was made--if you have any record at all about this call  
2 routed through Wenatchee--at about 4:00 o'clock in the  
3 afternoon or something, isn't that right?  
4 A. There was two phone calls. One at about 11:53, I'm  
5 guessing, and the other one at 4:32, I think.  
6 Q. Both consistent with a call, then, that would have  
7 occurred after Jeff admits he saw John at 6:00 o'clock.  
8 A. Right. They wouldn't be consistent with that.  
9 Q. Finally, there's an-- This is an alleged connection  
10 between John and Rob Schultz that we're talking about took  
11 place in the phone call, right? Is that what we're trying  
12 to establish?  
13 A. Which phone call were you referring to? The one--  
14 Q. I think there's just one, but I don't know.  
15 A. Well, other than the one with Dane Williams back at his  
16 residence at 7:30.  
17 Q. Okay, but let's talk about this one here with Jeff.  
18 A. Okay.  
19 Q. Supposedly took place when they left the fair, went to  
20 Northport.  
21 A. Okay.  
22 Q. That we just discussed here. There was conversation after  
23 the fact, right, that they asked Nick to leave?  
24 A. Right. They--  
25 Q. He said Nick said no.

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A. Said no, I have no reason to go. I didn't do anything.

MR. SIMEONE: Okay, I've got no further questions.

THE COURT: All right, Mr. Wetle, any redirect?

MR. WETLE: No, your Honor.

THE COURT: Okay.



1 LOREN ERDMAN

2 EXAMINATION BY THE COURT

3 Q. When you spoke with Mr. Williams about driving down to  
4 Portland after the barter fair--

5 A. Yes.

6 Q. Who all was in the car together?

7 A. There was--

8 Q. According to Mr. Williams.

9 A. According to Williams, it was himself, John Grange and  
10 Jeff Cunningham.

11 Q. Okay, and then I believe you said they went in to Rob  
12 Schultz's house and told him it was done.

13 A. Right.

14 Q. Okay, what-- Who were the they, according to Mr. Wil-  
15 liams?

16 A. The same three that were in the vehicle. They got out of  
17 the vehicle, went in and, according to Williams, spoke  
18 with Rob.

19 Q. And was this the same occasion where there was a discus-  
20 sion about monetary compensation for the job that was  
21 done?

22 A. I'm not clear if it was at that particular moment, or if  
23 it was the following day when they were all talking.

24 Q. Okay.

25 A. It was-- It was some time within that first day or so of

1 arriving from Northport.

2 Q. Okay. Did-- It's all running together to me. In your  
3 interviews, your eight hours worth of interviews with Mr.  
4 Cunningham, did he mention a similar--

5 A. Right. He specifically stated it was the following day.  
6 He said he was pretty out of it, he'd been drinking a lot  
7 and taking Valium that previous night. Pretty much just  
8 went to sleep. The next day they went into the bedroom  
9 with Rob Schultz, and the three of them, meaning John  
10 Grange, Jeff Cunningham and Dane Williams, and possibly  
11 Shadow was present, I wasn't real clear. He had mentioned  
12 him later, but he didn't mention at first, but saying that  
13 there was a conversation just like that as far as Dane  
14 Williams wanted to know when and how much he was going to  
15 be compensated. And Rob Schultz replied it'll take a  
16 couple of weeks.

17 THE COURT: I see that in my notes now. Okay, thank  
18 you. That's all I have. Mr. Wetle, anything further?

19 MR. WETLE: No, your Honor.

20 THE COURT: Mr. Simeone?

21 MR. SIMEONE: Nothing further.

22 WITNESS STEPS DOWN

23 THE COURT: And, Mr. Wetle, any further witnesses at  
24 this time?

25 MR. WETLE: No, your Honor.

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THE COURT: All right, Mr. Simeone?

MR. SIMEONE: Douglas Grange, please, your Honor.

DETECTIVE ERDMAN IS REQUESTED TO GET  
MR. GRANGE FROM THE HALL

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**DEFENDANT'S CASE IN CHIEF**

**WITNESS IS SWORN**

**ADJUSTMENTS TO MICROPHONE**

THE COURT: Give us your name, please, your full name.

MR. GRANGE: My name is Douglas John Grange.

THE COURT: Okay, and your current address, sir?

MR. GRANGE: 25746 Jean's Road, Veneta.

THE COURT: I'm sorry, Jean's Road, in what city?

MR. GRANGE: Veneta.

THE COURT: V?

MR. GRANGE: V-E-N-E-T-A.

THE COURT: Okay.

MR. GRANGE: Oregon.

THE COURT: All right, and the Zip?

MR. GRANGE: 97487.

THE COURT: Thank you. All right, Mr. Simeone, you may inquire.

**DOUGLAS JOHN GRANGE** **Being first duly sworn, on oath testified as follows:**

**DIRECT EXAMINATION**

**BY MR. SIMEONE:**

Q. Hi, Mr. Grange. How are you?

A. Fine.

Q. Now, you're John Grange's dad? Is that correct?

A. Yes, I am.

Douglas John Grange - Direct (by Mr. Simeone)

173.

1 Q. And you've had an occasion to talk to police officers in  
2 your house in Portland last year, is that correct?  
3 A. No, it was the one in Veneta. I didn't talk to them in  
4 Portland.  
5 Q. I'm sorry. How close is that to Portland anyway?  
6 A. About 120 miles.  
7 Q. Okay, so it's far away. In your home in Oregon, there in  
8 Veneta.  
9 A. Yeah.  
10 Q. And that was pursuant to a search warrant that they were  
11 executing on your house--  
12 A. Yes.  
13 Q. --right at that time? Is that right?  
14 A. Yes.  
15 Q. You came home that day and you found them in your house?  
16 A. Yes.  
17 Q. Okay, and then they began to ask you questions about your  
18 son, John, and his connection with Northport, Washington?  
19 A. Right.  
20 Q. And there was a great deal of discussion that pertained to  
21 the homicides that occurred up here of two individuals,  
22 right?  
23 A. Yes.  
24 Q. Okay. Did you have any chance then to prepare your  
25 statement to the police officers that day before that time?

Douglas John Grange - Direct (by Mr. Simeone)

174.

1 A. No. I didn't know they were coming.

2 Q. Okay. There's been some discussion about the point in  
3 time that you were referring to some detail, some details  
4 or some involvement John had with people who are connected  
5 with a, for want of a better phrase, the Rainbow Family.  
6 Do you remember having some discussion with the police  
7 about that?

8 A. Yes, I do.

9 Q. Okay. And you mentioned to them at that time that you had  
10 actually traveled to Northport around the time of your  
11 50th birthday, isn't that right?

12 A. Yes.

13 Q. And that would have been around the time of the barter  
14 fair that was happening?

15 A. Yes.

16 Q. In Northport? Okay. The police officers then began to  
17 ask you some questions about whether or not there was any  
18 discussion about somebody being a, in their word, nark, or  
19 somebody placing a hit on somebody. Do you remember that?

20 A. I-- I remember them talking--

21 Q. First of all, do you remember them talking to you about  
22 that?

23 A. Not about that up there, no.

24 Q. Okay, but do you remember some discussion they had with  
25 you about those subjects generally?

Douglas John Grange - Direct (by Mr. Simeone)

175.

1 A. Well, the one subject might show up, but there was no talk  
2 about the hit or anything like that up there.

3 Q. Okay, now, let's take this one step at a time. I'm trying  
4 to, first of all, establish when they talked to you there  
5 in Veneta.

6 A. Right.

7 Q. The detectives. There was some discussion about both  
8 things, whether or not there was this informant that was  
9 going to be present at a barter fair--

10 A. Right.

11 Q. --whether or not you knew anything about that or-- Is  
12 that right?

13 A. Right.

14 Q. Whether or not there was any discussion about maybe  
15 somebody plotting his demise?

16 A. Right.

17 Q. That kind of thing. Now, particularly, your recollection  
18 of this, notwithstanding anything that may have been said  
19 in your statement, or even with something you said in your  
20 statement, did you talk to the police officers about when  
21 in time these alleged discussions about, first of all,  
22 somebody being present at the barter fair may have  
23 occurred, who was an informant?

24 THE COURT: Could you--

25 A. I didn't--

1 THE COURT: Excuse me a second.

2 MR. SIMEONE: I'm sorry.

3 THE COURT: I need to understand your question. Could  
4 you restate it for me?

5 MR. SIMEONE: Okay.

6 Q. Did you talk to the police officers about the fact that  
7 there was somebody-- You did. About somebody who was an  
8 informant who was going to be at the barter fair, who was  
9 at the barter fair, or something like that. Isn't that  
10 correct?

11 A. Yes, I did.

12 Q. Okay, do you remember when in time you would have known  
13 that that was the case, or that that was happening, that  
14 there was somebody who was going to be at the barter  
15 fair--

16 A. Ah--

17 Q. --who was an informant.

18 A. I knew-- While I was up there, I had heard that he might  
19 show up, and then when John-- I met John like a week  
20 later when he came back to Portland, he mentioned that  
21 this guy had showed up.

22 Q. Okay, let's take it one step at a time. You said you knew  
23 when you were up there. That means you knew when you were  
24 up here in Northport area?

25 A. Yeah. Yeah, they were warning people that this guy might

Douglas John Grange - Direct (by Mr. Simeone)

177.



1 show up and to keep him off the lot up there.

2 Q. Okay, tell the court when it was that you came up here, so

3 that we can--

4 A. I drove up the-- arrived June 2nd.

5 Q. June 2nd?

6 A. Yeah.

7 Q. And you stayed that week?

8 A. Yeah, and stayed the week, till next Friday.

9 Q. And it was during that period of time-- And where did you

10 stay?

11 A. On the first night I stayed at Dane's house, and then--

12 Q. At Dane's cabin.

13 A. And then the following nights I stayed over with John and

14 Jeff.

15 Q. John's cabin?

16 A. Yeah.

17 Q. And Jeff's cabin. Okay, and at that time, I think you

18 just stated to the court that you heard some discussion

19 about somebody who is going to be at the barter fair. Is

20 that right?

21 A. Yeah, several people.

22 Q. Okay, now, there was also some discussion in your-- in

23 your question and answer with the police officers about

24 somebody placing a hit on somebody. Do you remember the

25 police officers asking you that particular question that--

1 when they interviewed you? I mean first of all I'm  
2 asking, do you remember them talking about that at all?

3 A. Oh, yeah, they did. Yeah.

4 Q. Okay. And do you remember when it was then that you told  
5 them that there would have been some discussion about this  
6 hit? When it was that you'd first heard that there was  
7 going to be some discussion-- or that there was some  
8 discussion about this hit being placed on an informant?

9 A. This was like April or so that they were talking about it,  
10 I think. You know. It'd been-- They talked about it  
11 several times, but they-- the way they talked about it  
12 was like they weren't going to do nothing, somebody else  
13 was going to take care of this.

14 Q. Okay. I remember-- Do you remember reviewing this with  
15 me yesterday when you came to my office?

16 A. Right.

17 Q. Okay, I'll--

18 MR. SIMEONE: May I approach the witness, your Honor?

19 THE COURT: All right.

20 Q. I'll address your attention to an interview that you had  
21 with the police officer that day. Did he ask you:

22 While you were at the cabin was there some  
23 discussion about a nark or somebody placing  
a hit on somebody?

24 Do you remember that question?

25 A. Yeah, I remember that question.

1 Q. And what was your answer to him at that time?  
2 A. No, not while I was at the cabin.  
3 Q. So when is it that you heard about that discussion? Tell  
4 the court when it was that you were--  
5 A. Well, like I guess it said, you know, previous months  
6 before even going up there.  
7 Q. Didn't you say in that-- in your interview that that was  
8 at a later time?  
9 Not while I was at the cabin.  
10 A. Oh, they-- They still talked about it afterwards, yeah.  
11 When John had came back to Portland.  
12 Q. Yeah.  
13 A. When I was up there they were still talking about it.  
14 Q. And that he was-- That there-- Now, what was that  
15 discussion, that this person was a nark or that there was  
16 a hit on him?  
17 A. That there was a hit out on him.  
18 Q. And when did that take place though?  
19 A. It-- It'd been out since he started turning people up in  
20 the Seattle area, from what I understood.  
21 Q. So is it incorrect, then, in your testimony in this  
22 transcription that you said:  
23 Not while I was at the cabin.  
24 A. Oh, no--  
25 Q. This is at a later time? Is that incorrect?

Douglas John Grange - Direct (by Mr. Simeone)

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1 A. Well, it was before I went up to the cabin, and after John  
2 got back. The Portland people talked about it, and John  
3 was the only one up there, basically, from Portland, and  
4 nobody else talked about it up there.

5 Q. I didn't--

6 A. About a-- About a hit or a contract or anything.

7 Q. I guess I'm-- I'm failing to understand what your  
8 testimony is. Could you explain that answer for me?

9 A. All the people that I was in contact with up in Northport  
10 area--

11 Q. Yeah.

12 A. --didn't talk about a hit or a contract or anything.

13 Q. Did not?

14 A. Did not.

15 Q. Okay. Did you ever in your interview mention anything  
16 about that discussion taking place at an earlier time,  
17 that there was a hit out on anybody?

18 A. I don't know if I did or not.

19 Q. Well, what was the discussion that you heard at the cabin  
20 then, if at all?

21 A. Really, it wasn't at the cabin. It was at the barter fair  
22 itself.

23 Q. Okay, and what was that conversation?

24 A. They were warning people that this guy might show up, and  
25 that there were three guys in a car that might show up, to

1 watch out for them, and then three undercover agents that  
2 might show up.

3 Q. Okay, was there any discussion there about plotting their  
4 demise or anything like that?

5 A. No, just keeping this guy off the lot.

6 Q. Okay. Now, do you remember when you actually went to the  
7 barter fair, or when you-- when you-- I should say when  
8 you left Northport?

9 A. It was the 9th. The morning of the 9th. Friday.

10 Q. Morning of the 9th? Okay.

11 THE COURT: I'm sorry. Your question was when did you  
12 leave or when did you come? I'm sorry, I missed that.

13 MR. SIMEONE: When did he leave the barter fair.

14 THE COURT: Leave the barter fair. Was that June 9th?

15 MR. GRANGE: Yeah.

16 Q. And had John actually asked you to stay to go to the fair  
17 when it commenced? Do you remember?

18 A. Yeah, he-- he was really, you know, trying to beg me to  
19 stay, but I get really tired and wore out traveling. I  
20 just wanted to be rested up to-- So I could go back to  
21 work.

22 Q. So you never really saw the fair then when it was actually  
23 under way, did you?

24 A. No, just people setting up and getting ready.

25 Q. Now, there was some discussion that you had with the

1 police officer about an intention to beat this guy up--  
2 Isn't that right--who was an informant?

3 A. Yes.

4 Q. Now, is it correct that in your testimony you said that  
5 that was after this fair?

6 A. Yes.

7 Q. When was that?

8 A. About a week after the barter fair when I came up to  
9 Portland to get some items I had given John. And he  
10 mentioned that-- I said beat up, John said hit. But if  
11 this guy showed up in Portland, he was going to hit him  
12 and make him understand that he wasn't welcome in Portland  
13 and to not come back to Portland.

14 Q. Okay, and that would have been a weekend after these  
15 killings actually took place, wouldn't it?

16 A. Yes.

17 Q. Could you explain the-- your understanding of what the  
18 Irish Mafia tattoo is on your-- on your son's shoulder?

19 A. That's a family thing. My personal family. We used to  
20 have summer-- or Christmas get-togethers, and we don't  
21 have them anymore 'cause we got in a big ole fight over  
22 the British being in Ireland or being out of Ireland,  
23 and-- and then we have summer get-togethers, and the  
24 following summer, that's when John showed up with that  
25 tattoo.

1 Q. Okay, that has nothing to do with any kind of an affilia-  
2 tion with a mob or a gang or anything like that?

3 A. No, it's just a personal family thing.

4 Q. Now, with regard to your last comments to the police  
5 officers about this-- or an alleged plan to beat somebody  
6 up in Portland, do you remember talking to the police at  
7 the very end of your interview about that?

8 A. Yes.

9 Q. Do you know who was present during the time that that  
10 conversation occurred?

11 A. The detective from up here, one from Gresham.

12 Q. Right, and do you remember when you're talking about that  
13 plan to beat somebody up, who it was who actually talked  
14 about beating somebody up?

15 A. No, just-- It was just talk in the house, because this  
16 guy was so big and he used to go out and physically beat  
17 up people, and they were just getting tired of it. And  
18 John and his two friends were going to, you know, confront  
19 the guy, get him to stop this.

20 Q. You don't remember who was actually saying those things  
21 though, do you?

22 A. No, I don't.

23 MR. SIMEONE: I've got no further questions.

24 THE COURT: All right, Mr. Wetle?

25 MR. WETLE: I think, Mr. Grange, you did a good job of

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clarifying a question for the court. Thank you very much.

THE COURT: No questions?

MR. WETLE: No questions.

THE COURT: All right, thank you, Mr. Grange. Oh, wait, I did have one question.



1 DOUGLAS JOHN GRANGE

2 EXAMINATION BY THE COURT

3 Q. The alleged plan to beat someone up, would you tell me a  
4 little bit more about that? What the-- What the details  
5 were of the-- Who it was they were going to beat up and  
6 what-- what the concern was? Why, in other words. Why  
7 they were going to beat him up.

8 A. Well, he's, I guess, a pretty big guy, and he always was  
9 going down to the park and-- and beating other kids up,  
10 and they just didn't like seeing the kids get beat up down  
11 at the park. And they-- They were planning on doing  
12 this, and they knew it'd probably take all three of them  
13 to confront this guy, but the week he got out, he end--  
14 ended up beating some guy up pretty bad and just went back  
15 in the jail for quite a while. So they didn't have to  
16 worry about that.

17 Q. Okay, now who were the-- You said John and his two  
18 friends--

19 A. Yeah.

20 Q. --were going to have to-- It would take all three of  
21 them--

22 A. Right.

23 Q. --because he was so big. Who were the two friends?

24 A. Rob and Shadow.

25 Q. Okay. Okay, now, there was something in-- And I've got

1 a copy of the transcript of your--  
2 A. Right.  
3 Q. --of your interview, and I thought I read something in  
4 there about-- about there being some large black guy in  
5 the park that was dealing drugs in the park.  
6 A. Well, yeah, so-- Yeah, this is--  
7 Q. Is that what this guy was doing?  
8 A. Yeah.  
9 Q. Okay, and so was that part of the reason they were going  
10 to go beat him up?  
11 A. No, it was just that, you know, he just beat kids up down  
12 there.  
13 Q. Okay.  
14 A. No, it had nothing to do with the--  
15 Q. It wasn't a turf issue then, was it?  
16 A. No.  
17 Q. Okay.

18 THE COURT: All right, thank you. Mr. Simeone, any  
19 further questions?

20 MR. SIMEONE: No further questions.

21 THE COURT: Mr. Wetle?

22 MR. WETLE: Oh, just to follow up on that.  
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1 DOUGLAS JOHN GRANGE

2 CROSS EXAMINATION

3 BY MR. WETLE:

4 Q. Do you remember telling the officer at that-- I guess  
5 it's Waterside Park is where this guy was hanging out?

6 A. Right.

7 Q. You stated that, I guess, the competition down at the  
8 Waterside Park, a big black guy, and they were talking  
9 about when he got out they were going to gang up and beat  
10 him up.

11 A. No, it wasn't competition, it was just the-- the way he,  
12 I guess, his business, or whatever. He just ended up-- He  
13 beat kids up all the time, and they just didn't like him  
14 beating the, you know, kids up down there.

15 MR. WETLE: Okay, no further questions.

16 THE COURT: Mr. Simeone, anything further?

17 MR. SIMEONE: No, your Honor.

18 WITNESS STEPS DOWN

19 THE COURT: All right, now, Mr. Simeone, any further  
20 testimony from your side?

21 MR. SIMEONE: No, that would be the end of our testimo-  
22 ny, your Honor.

23 THE COURT: Apparently we haven't gotten a call from  
24 Detective Nehring, and are you ready to proceed now with  
25 argument on this, or did you want to see about whether he

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had returned a call to your office or anything, Mr. Wetle?

MR. WETLE: If we could take about a five minute recess I could check that,

THE COURT: Okay, let's make it just five minutes.

COURT RECESSED

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COURT RECONVENED

THE COURT: All right, Mr. Wetle, any news to report?

MR. WETLE: I found out he's got even a super-faster pager than the one I've got, but the secretary probably isn't going to get to him in time to make any difference, and I asked him to call me at 5:30 tonight.

THE COURT: Okay, any further witnesses then at this hearing, at this time? I mean period. In other words, before we have argument on it and a ruling.

MR. WETLE: No, your Honor.

THE COURT: Okay, then, let me hear from you in argument-- Mr. Simeone, was there something preliminary--

MR. SIMEONE: No.

THE COURT: --for why you're standing up?

MR. SIMEONE: No, no.

THE COURT: Just stretching your legs? Okay. Mr. Wetle, I'll hear from you in argument.

MR. WETLE: Thank you, your Honor. We would submit that the evidence presented to the court today is ample and overwhelming that there is a drug organization functioning, for sure, on the West Coast, and from Sean Cummings' testimony the-- nationwide, dealing with LSD manufacture and distribution; that certainly Nick Kaiser was involved in that activity. It's clear that the contacts went from Seattle to Portland to San Francisco; that Nick Kaiser's contacts were in

1 San Francisco. That's where he got his LSD. That in the  
2 process of being arrested that he, in hopes of getting a  
3 sentence reduced to possibly seven years, was cooperating with  
4 the federal agents. In the course of that he did a reverse,  
5 which gave up somebody that he sold to, and he also gave up a  
6 supplier to him, who happened to have connections in San  
7 Francisco. And that shortly after the arrest and agreement to  
8 cooperate, word got out that he'd been arrested by the feds in  
9 Seattle and that he had rolled. The court can consider  
10 circumstantial evidence, and given the fact that the timing  
11 was such that in the month of April word got out that he was  
12 a nark, would be consistent with the fact that on April 25th  
13 he was arrested and gave up an individual on April 27th, as  
14 well as his supplier at some other time.

15 So certainly the facts of the motive for why he would have  
16 to be killed or put out of commission are clear. He worked  
17 his way up and was an LSD distributor in the organization, and  
18 that he knew too many people. And as a result, too many  
19 people were being turned in, and that was going to hurt the  
20 Family. So the motive is there to clearly get rid of him.  
21 And whether or not Mr. Schaefer is a by-product or a fellow  
22 nark is left to speculation at this point.

23 Mr. Cummings stated that Kaiser and Schaefer were involved  
24 in the national LSD distribution organization, and given that  
25 information and the circumstances of the death, and the

1 connections between Seattle, Portland and San Francisco, we  
2 would say that there is an over-arching criminal conspiracy  
3 that affects all of these individuals.

4 Next issue for the court to consider are the-- whether  
5 Mr. John Grange is a member of this conspiracy, and it's clear  
6 from the testimony that-- including his dad, that he is a  
7 member of the Family, that he sells drugs for the Family, and  
8 that he is absolutely involved in close relationships with Mr.  
9 Schultz, who's the boss of the Family. He lived with Mr.  
10 Schultz. That's how his father gained information about the  
11 Family, by overhearing conversations. His role in intimidat-  
12 ing or beating up people with Shadow and Rob Schultz would,  
13 you know, stretch the court's mind to not associate him with  
14 this group of people. Mr. Grange has changed a little bit  
15 from getting rid of competition in the park to beating up--

16 THE COURT: When you say Mr. Grange--

17 MR. WETLE: Senior, has changed a little bit from getting  
18 rid of competition in the park to getting rid of a bully, but  
19 the facts of the matter are that the three of them, as a  
20 group, with what we know to be a common interest, were getting  
21 rid of competition, at least according to the first statement.

22 The issues of-- Once the court makes the findings as to  
23 conspiracy and that Mr. Grange, i.e. a/k/a Chewy, is involved,  
24 then, of course, the court makes the consideration of whether  
25 these statements are made during the course and furtherance of

1 the conspiracy, and the court has, in the briefs, the opportu-  
2 nity to look at examples of statements made in furtherance.  
3 Certainly, the most important one is the-- any statement  
4 seeking to control damage to an ongoing conspiracy. That is  
5 abundantly clear that there's an ongoing conspiracy and that,  
6 certainly, when people roll on their sources and their  
7 customers, they need to control the damage. And so those  
8 would be statements seeking to control damage. The statements  
9 of the co-conspirators, this is the people in the drug  
10 industry, are keeping each other informed as to the progress  
11 of what's going on.

12 I think you heard Mr. Grange, Sr. say that they were  
13 warning people that he may show up at the barter fair. That's  
14 part of that network, that information system, that he may be  
15 here, and what to do if he is there or-- Certainly all these  
16 statements go to further the overall conspiracy, and the fact  
17 that Chewy's going to intimidate or scare them with guns  
18 absolutely came to be true.

19 The next issue would be the comparison of-- or doing a  
20 404 (b) analysis. Had the State charged conspiracy, that  
21 would not be necessary, but since the State has not charged  
22 conspiracy, the court needs to do the 404 (b) analysis  
23 weighing the probative value versus the prejudicial value, and  
24 I would state to the court that these statements are prejudi-  
25 cial, but the probative value behind these statement greatly



1 overshadows the prejudice, because the crux of the State's  
2 case is the motive for the killing, the premeditation involved  
3 in the killing, the intent for the killing, the res gestae,  
4 the opportunity. All of the crucial issues to why this  
5 happened are hinging upon the motive, which is to protect the  
6 overall drug family.

7 So once the court makes those comparisons, the State would  
8 submit that the statements made in the course of and further-  
9 ance would come into-- before the jury.

10 Thank you.

11 THE COURT: Okay. What about-- Before I hear from Mr.  
12 Simeone, do you have anything you want to say about Mr.  
13 Simeone's corpus delicti argument about the statements made  
14 about the criminal-- the prior alleged, you know, murders.

15 MR. WETLE: We're not going to use the prior alleged  
16 murders, your Honor.

17 THE COURT: Okay. So you're not going to have Mr.  
18 Cunningham or Mr. Williams say: Gee, he bragged on the way  
19 home about how it gets easier every time?

20 MR. WETLE: I would like to say how it gets easier every  
21 time, because there's a broader picture here of collection,  
22 intimidation. But in terms of the murders get easier every  
23 time, I'm not going to go that far. I just want to be able to  
24 say he's getting-- I'm getting colder and colder. And I  
25 think that as they recount their testimony, he was not

1 remorseful, according to the two witnesses that are there, and  
2 I think that will-- sort of completes the picture about what  
3 happened to the two victims. But I'm not going to say that I  
4 have independent or sufficient grounds to attach him to prior  
5 murders.

6 THE COURT: Okay, so you concede you don't have any  
7 evidence at all of any prior murders, but is there some other  
8 basis on which you're trying to get it in? In other words,  
9 you're not offering it to prove the prior murders, but you're  
10 trying to prove what? Braggadocio or something, or what?

11 MR. WETLE: Yes, and that he-- It gets easier and easier,  
12 whether he's collecting or he's assaulting people or he's  
13 being the enforcer. It's--

14 THE COURT: And what about the 404 (a) problem? The  
15 unfair character-- the improper character evidence? He did  
16 it then, he'll do it again. And he did it then, he did it  
17 now.

18 MR. WETLE: Well, we can't--

19 THE COURT: Improper use by the jury.

20 MR. WETLE: Yeah, we-- I don't want to get there. I  
21 don't want to risk it.

22 THE COURT: Okay, so how does the "It gets colder and  
23 colder--" "I get colder and colder with it every time"  
24 [quotations supplied] not an admission that he did it before  
25 and now he's doing it again?

1 THE COURT: Following the Family's wishes to intimidate  
2 ne'er-do-wells or people that have run afoul of the-- of the  
3 Family. I think he is-- he-- I don't believe he necessarily  
4 does it on his own. I think he has incentive from other  
5 people to act.

6 THE COURT: Okay, but I guess what I'm asking you, though,  
7 is how is that not going to be taken by the jury to be-- to  
8 be proof that he acted in conformity with prior behavior,  
9 which is an improper purpose for it to come in. What is the  
10 proper purpose--

11 MR. WETLE: Proper--

12 THE COURT: --that you're saying is-- that's probative of  
13 that I should let it in for?

14 MR. WETLE: It's-- It goes to motive to control people  
15 that turn state's evidence, and that's something that the  
16 Family asks him to do, and he is-- if people don't pay or  
17 they rip the Family off, he has to go out and enforce that.  
18 And in this case they-- people turned against the Family and  
19 he had to enforce that. So my feeling is that he is acting  
20 in conformity with being an agent for the overall drug  
21 conspiracy to get rid of people that talk.

22 THE COURT: Okay. I think we're going to have to go  
23 through your offer of proof line by line here shortly, but--  
24 Maybe tomorrow morning.

25 Let me hear from Mr. Simeone at this point.

1 MR. SIMEONE: Thank you, your Honor. On the last point,  
2 I don't know where the Prosecutor gleans all that additional  
3 inference from the statement he gets colder and colder every  
4 time. First of all, it's not easier and easier, it's colder  
5 and colder. And there's no way of-- There's no way of  
6 getting around the conclusion that by saying easier and easier  
7 every time, we're talking about another act. And we can try  
8 to dress this up in terms of 404 (b) if you want, but it's  
9 clearly the kind of evidence that's impermissible under 404  
10 (a). Even if you want to say that it's a motive use, or  
11 whatever laundry list of excuses they give you under 404 (b)  
12 for using character evidence, it's still-- you can't get to  
13 the point where you're saying the prejudicial value doesn't  
14 outweigh the probative value.

15 Your Honor, my position on this is that even if you're  
16 talking about an alleged conspiracy, you're not-- you're  
17 talking about a Rainbow Family. You're talking about a big  
18 organization. You're talking about a faction within an  
19 organization here, and you can't even call it one organization  
20 because all of the experts testified that there are numerous  
21 branches of it. Officer Cummings said that there are differ-  
22 ent names that it goes by in different parts of the country,  
23 and he couldn't even say that they were necessarily affiliat-  
24 ed. You've got an organization that I think that he said was  
25 basically a benevolent organization. It comes out of the

1 sixties. They had, I think, good intents in their origins,  
2 and probably good intent now. The barter fairs aren't only  
3 for purposes of selling drugs. The Rainbow gathering isn't,  
4 certainly, for the purpose of selling drugs. They have peace  
5 and good will in mind. Is there a faction of the organization  
6 that may be involved in drug trading? Probably, yes. I mean  
7 that's what we're hearing testimony about. But just because  
8 there's a Rainbow Family, I don't think that you can jump to  
9 the conclusion that that means that there's a conspiracy here  
10 to sell drugs because somebody's involved in it. I don't--  
11 I don't think that's necessarily anybody's-- any one of the  
12 members' purposes for being in the organization. So therefore  
13 I think you still have to have the proof of a conspiracy,  
14 which I-- I don't think you have. Just because one person  
15 says he's in an organization called the Rainbow Family, his  
16 purposes aren't necessarily what another person's purposes for  
17 being in that. Distinct from a gambling ring. Distinct from  
18 an organized crime group that's only means or only purpose for  
19 existence is to engage in criminal conduct and profit thereby.  
20 Clearly, a different kind of a thing. It's like saying the  
21 Elks or the Rotary Club, just because you have certain members  
22 within that who may be engaging in clandestine activity, that  
23 you've got a conspiracy afoot. Or let's even go higher.  
24 Let's go into a presidential cabinet. You might have certain  
25 members of the presidential cabinet who engage in certain

1 crimes, and you might find that there's behavior among some of  
2 them with one another that's for the purpose of engaging in  
3 clandestine, illegal activity. That doesn't mean-- that  
4 doesn't get us to the point where you're saying that the  
5 entire organization is then a conspiracy. So I don't think  
6 you have that just by virtue of the fact that some of the  
7 Rainbow Family here, some members engage in it.

8 First of all, I think more important than that, really, is  
9 even if you get to the point where there's a conspiracy, if  
10 you want to use the analysis of why you're using all of this  
11 hearsay that just gets shoveled in with bulldozer loads of  
12 evidence, you have to have a purpose of why it's admitted.  
13 The only reason they can possibly adduce here for trying to  
14 use the various hearsay that they'll use--what Rob Schultz  
15 said, what Shadow said, what goes on elsewhere, he's going to  
16 disappear--is to prove premeditation. I submit that they have  
17 a vast amount of evidence that they have in their arsenal to  
18 show that if they want to use it for the purpose, because they  
19 can't-- the purpose of showing a motive or premeditation,  
20 because they can't-- they can't really present another reason  
21 for using it. So what is the purpose that the rule requires  
22 they have before we're going to use it? Premeditation,  
23 motive. They have testimony from Dane Williams that will say  
24 in an alleged ride with him and Grange that Grange would say  
25 shit is going to go down. That John-- this is also Dane

1 Williams. John says he's going to scare the crap out of him.

2 Another--

3 THE COURT: That would be admissible in any event, if  
4 Mr.--

5 MR. SIMEONE: Right.

6 THE COURT: --Cunningham or Mr. Williams says that they  
7 personally witnessed that from Mr. Grange. Right?

8 MR. SIMEONE: That's right. But we're still-- We're  
9 still to the point where we have to analyze what the purpose  
10 of their use of this evidence is. And the only thing they can  
11 possibly be using it for is motive or intent. He's trying to  
12 prove premeditation by all the hearsay he's got. There was a  
13 conspiracy afoot, these people were informants, these people  
14 were doing other members of the Family wrong, they had to go.  
15 They can prove premeditation with a number of other things.  
16 Stop by-- He wants them to stop by the cabin and get gun--  
17 get the gun, Dane Williams' alleged testimony of what John  
18 said. He's underneath the house and it's going to happen  
19 right now. That's proof of premeditation, if we're going to  
20 believe that. This is going to happen right now. Another  
21 Jeff Cunningham statement. I believe that John would threaten  
22 them or kill them. Another statement that Jeff Cunningham  
23 made in his statements. We're going to threaten them. A Dane  
24 Williams statement. Yes, he did mention a gun. A Dane  
25 Williams statement. They've got ample-- They've got ample

1 evidence to prove premeditation without having to have the  
2 very prejudicial effect. And that gets us to the third prong  
3 of the test. Does the relevance outweigh-- or does the--  
4 Yeah, the prejudicial effect. Is it prejudicial? Boy, is it  
5 ever. Is it so prejudicial that the court shouldn't use it?  
6 And I believe it is, because-- Yeah, is it relevant? I know  
7 it's relevant, but the fact is that all of the conspirators'  
8 statements are going to be nothing but-- It's going to be ways  
9 for the jury to get unnecessarily inflamed and impassioned at  
10 what happened here when they have ample evidence to prove  
11 their case if they want to.

12 And proof by a preponderance is necessary, and I think we  
13 need to, at this point, maybe go through the entire list of  
14 what they have, because I have thrown in everything that  
15 they've said, in addition to my list in my motion in limine,  
16 and first, before we go through their list, reference to the  
17 previous charge brought against the defendant for malicious  
18 mischief. I would assume that the State would grant that part  
19 of an order.

20 THE COURT: Let me get to your motion here. I didn't get  
21 a bench copy of your motion, only your brief.

22 MR. SIMEONE: I'm sorry, your Honor.

23 THE COURT: That's all right.

24 MR. SIMEONE: That was filed February 6th.

25 MR. WETLE: (Inaudible)



1 THE COURT: Okay, Mr. Wetle, any objection to exclusion of  
2 the previous charge brought against the defendant for mali-  
3 cious mischief?

4 MR. WETLE: I thought it was reckless endangerment.

5 THE COURT: Okay.

6 MR. SIMEONE: Okay, if it's that-- Whatever the--

7 MR. GRANGE: Yes.

8 MR. SIMEONE: Reckless endangerment? Okay. I mistook  
9 that.

10 THE COURT: And any objection to that?

11 MR. WETLE: No.

12 THE COURT: Being excluded?

13 MR. SIMEONE: And Number 2, that-- that pertains--

14 THE COURT: Wait, let me just-- I'll just say for the  
15 record that motion, of course, is granted then.

16 MR. SIMEONE: Okay. Number 2, your Honor, notwithstanding  
17 whatever ruling the court gives on the use of the conspiracy  
18 hearsay, that would be any-- any allegations as to what  
19 another person not testifying-- Basically I'm talking about  
20 hearsay there. I'm talking about things that would have been  
21 post "conspiratorial" statements by the individuals when they  
22 got to Portland, after a conspiracy is completed, apparently,  
23 that would-- any-- any other hearsay such as that.

24 THE COURT: Well, you're not talking about the co-conspir-  
25 ator-- alleged co-conspirator statements? You're talking

1 about something else?

2 MR. SIMEONE: Right. Any hearsay that's not co-conspira-  
3 torial which this court's going to rule on now.

4 THE COURT: Okay. Well, let's pass that for now and we'll  
5 come back to it.

6 MR. SIMEONE: The alleged jail break in Stevens County?

7 THE COURT: Okay, any objection to the exclusion of that?

8 MR. WETLE: No, your Honor.

9 THE COURT: Okay. That will be granted.

10 MR. SIMEONE: Four goes to your ruling today.

11 THE COURT: Okay. We'll pass that for now. Five?

12 MR. SIMEONE: The same.

13 THE COURT: Let's see.

14 MR. SIMEONE: Same with five and six. That's all depen-  
15 dent upon your ruling.

16 THE COURT: Right.

17 MR. SIMEONE: \_\_\_\_\_ seven is--

18 THE COURT: Okay, that's the back and forth thing of Mr.  
19 Williams and Mr. Cunningham.

20 MR. SIMEONE: That's right.

21 THE COURT: Quoting one another's statements.

22 MR. SIMEONE: Right.

23 THE COURT: Okay.

24 MR. SIMEONE: But I'm saying that any of those that are  
25 not what we're calling conspiratorial--

1 THE COURT: Right.

2 MR. SIMEONE: --would be excluded.

3 THE COURT: Okay, well, let's pass that for now.

4 MR. SIMEONE: Seven would be--

5 THE COURT: We're going to go down one paragraph at a time  
6 on the various--

7 MR. SIMEONE: Okay, seven, the discovery of drugs in his  
8 truck in Portland.

9 THE COURT: Okay, were you going to try to introduce that,  
10 Mr. Wetle? Any drugs located in his truck at the time of some  
11 search down there?

12 MR. WETLE: We were, your Honor.

13 THE COURT: Okay, well, do we need a 3.6 hearing then?

14 MR. SIMEONE: Well, that's basically what it amounts to.

15 MR. WETLE: All it did was show that he's in the-- in the  
16 drug industry.

17 THE COURT: Well, but if you're going to try to use it,  
18 and Mr. Simeone's moving to suppress it, don't we need a 3.6  
19 hearing?

20 MR. WETLE: Depends on what we were going to use it for.  
21 As I said, part of it was to prove the conspiracy, and if  
22 you're proving the conspiracy you can prove it by verbal acts  
23 without--

24 THE COURT: So you get out of the Fourth Amendment? How  
25 do you get-- You get out of the Fourth Amendment if it's part

1 of a conspiracy?

2 MR. WETLE: That'd be nice, wouldn't it?

3 THE COURT: It would be.

4 MR. SIMEONE: It's kind of a reverse of a-- I think it's  
5 the reverse of a verbal act is what he's talking about here.  
6 This is an act.

7 MR. WETLE: I don't think--

8 THE COURT: I think--

9 MR. WETLE: I don't think we're going to--

10 THE COURT: I think we would need a 3.6.

11 MR. WETLE: I don't think we're going to go to the drugs  
12 in Portland.

13 THE COURT: Okay, so you'll agree to exclude that then?

14 MR. WETLE: Yes.

15 THE COURT: Okay. Not necessarily on the basis of illegal  
16 search and seizure, but you'll agree that that should be  
17 excluded?

18 MR. WETLE: Right.

19 THE COURT: All right, Number 7 is granted then in your  
20 motion, Mr. Simeone.

21 MR. SIMEONE: And Number 8, of course, is the catchall  
22 objection that I've raised, which is to all the items of  
23 proof that they've offered in their offer of proof and their  
24 additional offer of proof, your Honor.

25 THE COURT: Right, which we are going to get to. So

1 Numbers 2, 4, 5 and 6 and 8 are all related to the initial  
2 determination of whether a conspiracy has been proven by a  
3 preponderance of the evidence, and whether or not Mr. Grange's  
4 connection with a conspiracy or participation in a conspiracy  
5 has been proven by a preponderance of the evidence.

6 MR. SIMEONE: That's right.

7 THE COURT: Okay. So anything you want to say about that  
8 at this point, Mr. Simeone?

9 MR. SIMEONE: That's all the items-- Yes, your Honor.

10 THE COURT: No, not about all the items, but as to the  
11 issue of whether or not a conspiracy has been shown by the  
12 evidence introduced at this hearing. A conspiracy has been  
13 shown by a preponderance of the evidence.

14 MR. SIMEONE: Well, I think I already stated that I don't  
15 think there's a conspiracy just because you get individuals,  
16 a member of the Family, the Rainbow Family, doesn't show a  
17 conspiracy. And for that reason I don't think there is one,  
18 but even if we-- Even if we get to that point, we still have  
19 to go through the rest of the analysis, I think, after that as  
20 to the purpose-- you're at preponderance now. Whether or not  
21 there's sufficient proof of that, and the prejudicial versus  
22 probative value, and that's where I-- I don't know that  
23 there's any shortcut way of doing that except to item-by-item  
24 go through what it is that they're proposing in their--

25 THE COURT: Sure. Well, let me make some initial find-

1 ings, and I think what we'll do then is save the item-by-item  
2 until tomorrow morning when all of us are a little bit  
3 fresher.

4 MR. SIMEONE: Okay.

5 THE COURT: So let me just say that I think that the  
6 evidence that this-- at this hearing has established by a  
7 preponderance, and again, without the ben-- or without having  
8 to follow the rules of evidence in terms of the hearsay rule,  
9 and also looking at the detectives' testimony as to what Mr.  
10 Williams told them and what Mr. Cunningham told them as an  
11 offer of proof, essentially, as to what they will be testify-  
12 ing to at trial, there is ample evidence, and I do find by a  
13 preponderance of the evidence that the-- that there was a  
14 sub-group of the Rainbow Family that was involved in--  
15 seriously involved and very much immersed in the-- a  
16 conspiracy to distribute, to manufacture and to purchase  
17 controlled substances of various kinds; and that the evidence,  
18 in particular, was the statements that Mr. Cunningham and Mr.  
19 Williams are evidently going to testify to on the witness  
20 stand; that the Family has a hierarchy that Rob Schultz is,  
21 along with a gentleman by the name of Shadow Hills or Hiller--  
22 I didn't get the last name for sure--are the co-leaders,  
23 essentially, of this conspiracy and Portland branch; that the  
24 Portland branch is in regular contact with the San Francisco  
25 and Seattle branches; that Mr. Nick Kaiser was a member of the

1 Family, someone who was closely involved with dealing LSD and  
2 manufacturing LSD, and that he was arrested for the manufac-  
3 ture of LSD when one of his customers turned State's evidence  
4 against him; and that he was in the process of giving and had  
5 given state's evidence to detectives, including Detective  
6 Dogeagle of the Pierce County Sheriff's Department, about a  
7 person up in the hierarchy, further up the line than he, to  
8 whom he-- with-- from whom he purchased LSD materials, and  
9 that he was-- made a controlled buy with one of his customer--  
10 or sell-- a controlled sell, I guess you'd call it, a  
11 reverse, with one of his customers, and that the word got out  
12 to the Rainbow Family.

13 Now, the testimony of Doug Grange, Douglas Grange, is  
14 significant in that regard in that there was evidence that  
15 knowledge of a nark, circumstantially being Mr. Kaiser, was  
16 very common knowledge in the Family circles in Portland, and  
17 that there was common knowledge that the San Francisco branch  
18 was very upset about his turning state's evidence, which  
19 resulted in an arrest or-- one arrest or more of members of  
20 the San Francisco Family.

21 So coupling that with the testimony of Mr. Williams and  
22 Mr. Grange-- excuse me, Mr. Williams and Mr. Cunningham that  
23 is expected, given the statements that they have made to the  
24 police, there is clear evidence of a drug conspiracy and of  
25 Mr. Grange's involvement of it. So that's my second finding,

1 that by a preponderance of the evidence there is a clear  
2 showing of Mr. Grange's, John Douglas Grange's, involvement in  
3 the Family by virtue, especially, of Mr. Cunningham's informa-  
4 tion and close association with both him and Mr. Schultz, and  
5 also coupling that with what Mr. Williams had to say about Mr.  
6 Grange and his own relationship with Mr. Schultz, their own  
7 statements against interest, and their own testimony about Mr.  
8 Grange himself and the comments that he made are clear  
9 evidence that he was involved in the drug distribution  
10 conspiracy, drug trafficking conspiracy, of the portion of the  
11 Rainbow Family, heavily involved in that.

12 And so now, that means that certain statements, I'm going  
13 to get to which ones, would ordinarily be admissible as non-  
14 hearsay that are statements of co-conspirators that are not  
15 going to be here testifying, and so we'll have to go down the  
16 line here under the offers of proof, and I do appreciate, Mr.  
17 Wetle, that you went through that in such a detailed way,  
18 provided that. I also appreciated that Mr. Simeone numbered  
19 the paragraphs, so that we could refer to them on the record,  
20 although I see that the actual record doesn't show that, so  
21 maybe we'll file an additional copy of that some time with the  
22 court file so that the record will show what paragraphs we're  
23 referring to. Some of these paragraphs do not have-- are not  
24 objected to by Mr. Simeone. The ones that he does not object  
25 to on the basis of anything other than that they're not true,



1 then those will be allowed to come in. And we'll skip over  
2 those tomorrow. But the ones that he does object to we'll go  
3 through and hear any additional argument that the parties want  
4 to make on that first thing in the morning.

5 But the overall finding is that the threshold has been  
6 established of the two things. One, a conspiracy existed.  
7 Number 2, that Mr. Grange was a member of the conspiracy.

8 The question still remains whether or not the specific  
9 items are more probative than prejudicial on balancing under  
10 ER 404 (b) or otherwise, and whether they might be of such  
11 limited relevance under other evidence rules as to be unneces-  
12 sary to admit, or unfair to admit. That's another-- That's  
13 another issue too, 403 balancing test on other reasons-- for  
14 other reasons.

15 But suffice it to say that I do make a finding that under  
16 ER 404 (b) this kind of evidence, based upon what has come out  
17 on the witness stand today, appears clearly relevant to the  
18 issue of premeditation, to the issue of motive, to the issue  
19 of intent, all of which are relevant to the particular charges  
20 in the Amended Information, First Amended Information, of  
21 murder in the first degree, the elements that have to be shown  
22 by the State, they're very relevant to the issue of-- to the  
23 State's theory of the case of why this occurred, and as a way  
24 of giving the trier of fact, the jury, a full picture of the--  
25 of the act in its context.

1 And so with that said, we do need to weigh, though, on  
2 each individual one that Mr. Simeone has an objection on,  
3 there are some of them that may need to be kept out because of  
4 their limited relevance, their limited help, in other words,  
5 in proving a fact of consequence in this trial, as compared to  
6 their danger of unfair prejudice being used improperly by the  
7 jury. So we'll launch into that first thing in the morning.

8 Now, a couple of other housekeeping matters.

9 COMMENTS BY THE COURT REGARDING HOUSING OF JURY PANEL  
10 AT CITY HALL FOR ORIENTATION, KEEPING THEM SEPARATE  
FROM POTENTIAL WITNESSES

11 ADDITIONAL COMMENTS BY THE COURT REGARDING SCHEDULE,  
12 VOIR DIRE, PRE-TRIAL PUBLICITY, ETC.

13 MR. SIMEONE: Your Honor, you know what we didn't add to  
14 my list, and it's a bookkeeping matter, the Irish Mafia issue  
15 and the scruff of the neck. That's in my shorthand.

16 THE COURT: Oh, yeah, right.

17 MR. SIMEONE: Were those two things.

18 THE COURT: That was in your memo. The Irish Mafia  
19 tattoo, Mr. Wetle? Your argument on that one?

20 MR. WETLE: I did not come up with any significant other  
21 information to tie that to this organization, except that on  
22 the-- on the tattoo it does say Chewy, which is his Family  
23 name, and so it wasn't just the Irish Mafia but it included  
the nickname Chewy.

24 THE COURT: Okay. Well, I'm going to grant that motion.  
25

1 I would assume you can get the name-- nickname Chewy in there  
2 many other ways, so the Irish Mafia tattoo would be more  
3 prejudicial, I think, than probative under ER 403, so I'll  
4 exclude that.

5 And the tenth one was the scruff of the neck incident.  
6 Mr. Wetle, what's your offer of proof on that?

7 MR. WETLE: Your Honor, it's a prior act that came about  
8 through the defense interview where, as I recall, the question  
9 was,

10 Have you ever seen John Grange assault  
11 anybody with your own eyes?

12 And the answer was he had seen that, but the facts were not  
13 developed at that time, and subsequent to Mr. Simeone leaving  
14 the room, Mr. Baskin was with me and we asked him what the  
15 circumstances were and, as I recall, he was collecting a  
16 personal debt and it wasn't clear whether it was a Family  
17 debt. I think it was a personal debt. And he grabbed him by  
18 the neck and turned him upside down, threatening to drop him  
19 if he didn't pay.

20 THE COURT: Okay. I think that that is-- Particularly  
21 since it was a personal debt, if you're saying that that's  
22 what your offer of proof is, I think that that is more  
23 prejudicial than it is probative because it is simply offered  
24 to show his propensity to use that method, as opposed to  
25 showing some kind of furtherance of a conspiracy, or some

1 other purpose that you might want to offer it for. But I--  
2 You know, yes, using those tactics to collect debts might have  
3 some-- some bearing on whether-- whether those tactics are  
4 effective and whether Mr. Grange has learned that that is so,  
5 but I think that it is clearly 404 (a) character-- improper  
6 character evidence in the form that you've offered it as  
7 proof, so I would have to sustain the objection, or, that is  
8 to say, grant the motion in limine to exclude that, unless Mr.  
9 Simeone opens the door.

10 MR. SIMEONE: Right. I understand that rule.

11 MR. WETLE: Your Honor, would it make a difference in the  
12 court's thinking if, as Mr. Baskin reminds me, that it was a  
13 drug deal, but it was Mr. Grange's personal drugs that he was  
14 collecting for?

15 THE COURT: You know, I think it still is too far on the  
16 prejudicial side more than probative. I'd just as soon stay  
17 away from it, Mr. Wetle. So I'll go ahead and grant that  
18 motion in limine, Mr. Simeone, unless the door is opened by  
19 other questioning by you.

20 Okay, now, one other housekeeping matter. We wanted to  
21 have the argument about whether Mr. Cunningham or Mr. Grange  
22 gets to stay in the Stevens County Jail over the weekend.  
23 Shall we deal with that now? Try to resolve that now?

24 MR. SIMEONE: Yes. Thank you, your Honor.

25 THE COURT: Okay, Mr. Simeone.

1 MR. SIMEONE: I have had a very difficult time trying to  
2 communicate with Mr. Grange by having to go to Spokane. It's  
3 not only a time matter getting down there, but it's the  
4 logistics of actually checking in, going up the elevator,  
5 getting into the cubicle, and then not being able to be  
6 immediately in contact with him. It's been very difficult.

7 Mr. Wetle has Mr. Cunningham here. I understand his need  
8 to talk to him, but then again, he's had him here for the past  
9 month or so, and he's had an ability, I think, to prepare his  
10 testimony during the course of that month. I have not had the  
11 same luxury, so if it comes down to a question of whether or  
12 not this weekend should be split up one-on-one, I would have  
13 to suggest to the court that I-- I need the entire weekend to  
14 prepare my case or his defense with him, personal contact, and  
15 that Mr. Wetle, if necessary, can see Mr. Cunningham where he  
16 will be housed, which will be elsewhere, I guess.

17 THE COURT: All right, Mr. Wetle?

18 MR. WETLE: Your Honor, I'm-- For my personal reasons,  
19 I will go-- or he will be transported, so I have no prefer-  
20 ence as to where Mr. Cunningham is. It's solely a jail issue.  
21 And if you would like to have the Sheriff or the jailor or  
22 somebody talk about that, that is-- I'm-- Whatever you do on  
23 that--

24 THE COURT: Okay, so it's not a contact with preparation  
25 with Mr. Cunningham at this point.

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MR. WETLE: I will deal with Mr. Cunningham.

THE COURT: Okay.

MR. WETLE: That's not an issue.

THE COURT: Solely a jail issue. Okay. Well, I remember last time one of the reasons that Mr. Grange was transported was-- Well, there were two reasons. One was the fact of Mr. Cunningham's presence here and-- or, let's see, Mr. Williams is out of custody, as I recall. But Mr. Cunningham's presence here. The other was-- and wanting to keep the two of them separated, for obvious reasons. Numerous reasons. Second was the jail security issue, and do you know-- I mean I just took a tour of the jail myself here recently and I understand there's a solitary unit there, and is-- That is the most secure unit?

MR. WETLE: They had somebody in the solitary unit, and I don't know if that person has been transported out.

THE COURT: You're talking about Mr. Torres?

MR. WETLE: It could have been Mr. Torres. All I knew is they had somebody down there. You know, these are--

THE COURT: As of my tour yesterday, Mr. Torres was going to be there, but Mr. Torres' testimony was completed yesterday and he was to be transported back to Ferry County, was my understanding. He was to be housed over there because of some co-people of his over here, whatever else. They had him housed in Ferry County, didn't want him to have to spend the

1 night here unnecessarily.

2 MR. WETLE: I think it's Mr. Winger, Your Honor, so it's  
3 a different individual.

4 THE COURT: Oh, Mr. Winger?

5 MR. WETLE: Yes. Now, the most important thing, and I--  
6 I guess I want to emphasize it to the court, is there was an  
7 attempted jail break, and the jail has said we are not really  
8 set up to deal with Mr. Grange in those circumstances, and so  
9 we have another issue.

10 THE COURT: Okay.

11 MR. WETLE: Mr. Cunningham is a side issue. The solitary  
12 cell is a side issue. The main thing was there's been one  
13 attempt and there's an issue there that needs to be addressed.

14 THE COURT: Okay. What I'd like to do, then, is some time  
15 tomorrow I'd like to hear from your chief jailer in regard to  
16 that so that I can make a determination on that. I'm going to  
17 put that off, then, because my thinking was that part of the  
18 reason for the problem, security problem, was that Mr.  
19 Marchand was still around, and Mr. Marchand and Mr. Grange  
20 were alleged co-conspirators, so to speak, on that issue, and  
21 Mr. Marchand is off to the Department of Corrections now, as  
22 I recall. And-- Or is he in Spokane or something?

23 MR. SIMEONE: He's still in Spokane.

24 THE COURT: Okay. And then-- But--

25 MR. WETLE: I never did--

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1 THE COURT: --there were some independent security issues  
2 down there, although I couldn't tell them from looking at them  
3 yesterday.

4 MR. WETLE: Were you-- Were you on the bench when that  
5 came up, or was it Judge Kristianson?

6 THE COURT: No, I was the one.

7 MR. WETLE: And you heard Becky Dobbs and--

8 THE COURT: Yes.

9 MR. WETLE: I mean-- I'm just saying as long as the  
10 court's aware--

11 THE COURT: Yes.

12 MR. WETLE: --and factor that into your consideration.  
13 That's all I can ask.

14 THE COURT: Okay. And then my thought is that I know  
15 there's been chronic understaffing, et cetera, but I think  
16 that that probably-- I assume that the Sheriff will deal with  
17 that while-- while needed.

18 So my leaning at this point, Mr. Wetle, if you want to  
19 inform the jail of this, is that Mr. Grange will probably be  
20 housed in-- in Stevens County over the weekend, or at least  
21 part of, a big chunk of, so if they wanted to take him down to  
22 Spokane-- One way I might think about doing it is taking  
23 him-- having him go to Spokane tonight, tomorrow night,  
24 Friday night. Mr. Simeone, I assume, would be worn out enough  
25 that he could use part of Saturday morning to catch up on some

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1 sleep, and then have him come back Saturday afternoon and be  
2 here Saturday night and Sunday, and Sunday night, if need be.  
3 Something like that.

4 MR. WETLE: As I said, Judge, I just think it's something  
5 that the jail needs to be contacted about.

6 THE COURT: Yeah. Okay, well, you can take care of  
7 contacting them and letting them know to be here tomorrow  
8 morning, then, if they have anything more to add.

9 MR. WETLE: Okay. Otherwise, you expect him to be here?

10 THE COURT: Right. For-- I think that's kind of the way  
11 I'm leaning, is having him go down, back down, back down, and  
12 back, but that on-- on Saturday, noon-ish, that he would be  
13 here for the duration of the weekend, and then starting on  
14 Monday night he'd down and back, down and back.

15 MR. SIMEONE: Your Honor, that-- that is going to be  
16 totally unworkable. I mean he's-- You're talking about a  
17 two-hour drive each way, especially with the roads that we  
18 have--

19 THE COURT: Well, is he being housed here tonight? Is  
20 that the plan?

21 MR. SIMEONE: I'm talking about for the trial. We're  
22 talking about during the trial week itself he's going to go  
23 back and forth?

24 THE COURT: Well, that's what I thought the plan was. I  
25 don't know what--

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1 MR. SIMEONE: I need to have--

2 THE COURT: Do you know?

3 MR. SIMEONE: I need to have him here.

4 MR. WETLE: I believe he's supposed to be here tonight,  
5 and was going to be taken back Friday and brought back Monday.  
6 But--

7 THE COURT: Oh, that's right. You said that he was just  
8 going to be transported down for the weekend, and not for  
9 during the trial.

10 MR. WETLE: And then the question was bring him back  
11 Sunday. He's gone Saturday and he comes back Sunday, and that  
12 was fine with me.

13 THE COURT: Oh, I see.

14 MR. WETLE: Subject to the jail being able to get some  
15 input to the court.

16 MR. SIMEONE: And I need this weekend too. I mean--

17 THE COURT: So you're wanting him here for--

18 MR. SIMEONE: I'm wanting him here for the duration,  
19 basically. From now until the trial's over.

20 THE COURT: Right.

21 MR. SIMEONE: That's what I'm requesting.

22 THE COURT: So that you can meet with him in the evening.

23 MR. SIMEONE: Yeah. It wears him out and it's going to  
24 wear me out too if I have to go down there at night, and I  
25 just can't do it.

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1 THE COURT: Well, that's true, I'm sure. So we can-- All  
2 right, I see what you're saying. The jail's already planning  
3 to have him here tonight and tomorrow night.

4 MR. WETLE: Yes.

5 THE COURT: They were planning on taking him back Friday  
6 night, having him be there Saturday night, bringing him back  
7 Sunday night. So we're just talking about Friday night and  
8 Saturday night.

9 MR. SIMEONE: I know, but those are crucial days for me to  
10 be able to do something.

11 THE COURT: I know. So in other words, the only thing the  
12 jail wasn't already planning on was Friday and Saturday  
13 nights.

14 MR. SIMEONE: The weekend. That's right. The only thing  
15 they haven't anticipated already is the weekend.

16 THE COURT: All right. Okay, any other matters, house-  
17 keeping or otherwise? Mr. Wetle, from you?

18 MR. WETLE: No, your Honor.

19 THE COURT: Mr. Simeone?

20 MR. SIMEONE: I can't think of anything right now, your  
21 Honor.

22 THE COURT: All right, court will be adjourned then for  
23 today, and we'll see you at 8:30 in the morning.

24 COURT ADJOURNED FOR THE DAY  
25

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