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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. 00-1-00190-2)

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STATE OF WASHINGTON III

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

BEFORE: Hon. REBECCA M. BAKER, Judge.

APPEARANCES:

For the Plaintiff:  
  
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Stevens County  
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For the Defendant:  
  
ROBERT A. SIMEONE  
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VOLUME 6 of 17  
February 9, 2001  
(Pages 629 through 765)

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TABLE OF CONTENTS

February 9, 2001

PROCEEDINGS

	<u>Page No.</u>
Continuation of Individual Jury Voir Dire	629
Juror No. 29, Ms. Burley, Excused by the Court	692
Jurors Approved by Counsel	703
Colloquy re Offers of Proof on Information to be Used in Opening Statements	703
Argument re Juvenile Conviction of Witness	708
Court Reserves Ruling re Juvenile Conviction of Witness	712
Plaintiff's Offer of Proof on Victim's Agreement to Turn State's Evidence	713
Court Reserves Ruling	715
Court's Preliminary Instructions are Read to the Jury	717
Plaintiff's Opening Statement	724
Defendant's Opening Statement	746

1  
2  
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February 9, 2001

INDIVIDUAL JURY VOIR DIRE

	<u>Page</u>
<b>MS. GARRINGER</b>	
Examination by Mr. Wetle	630
Examination by Mr. Simeone	637
<b>MR. McBRIDE</b>	
Examination by Mr. Wetle	646
Examination by Mr. Simeone	652
<b>MS. SUPITA</b>	
Examination by Mr. Wetle	660
Examination by Mr. Simeone	665
<b>MS. WISE</b>	
Examination by Mr. Wetle	676
Examination by Mr. Simeone	681
<b>MS. BURLEY</b>	
Examination by Mr. Wetle	691
<b>JUROR IS EXCUSED BY THE COURT</b>	692
<b>MR. McLEAN</b>	
Examination by Mr. Wetle	694
Examination by Mr. Simeone	699

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COURT RECONVENED

THE COURT: All right, we'll have Juror Number 24, please.

COLLOQUY REGARDING CORRECT JUROR NUMBER

JUROR NUMBER 24 IS ESCORTED INTO COURTROOM

THE COURT: Good afternoon, Ms. Garringer, is it?

MS. GARRINGER: Yes.

THE COURT: All right. Ms. Garringer, thank you for all of your waiting. We hope that we're getting to the tail end of things here soon.

I had just a couple of things before we have some questions from each of the attorneys for you in the jury selection process. The first is whether when you checked in as a juror if you noticed a gentleman sitting on the bench near the check-in, sign-in stand, and if so, whether you had any conversation with him?

MS. GARRINGER: I don't recall anyone.

THE COURT: Okay, that's fine. And secondly, I just wanted to remind you that the questions and answers in here are subject to the same non-discussion rule that we talked about before with your fellow jurors or with anyone. Okay?

MS. GARRINGER: That's fine.

THE COURT: Thank you. Mr. Wetle will have a few questions for you.

ADJUSTMENTS TO MICROPHONE

MS. GARRINGER

EXAMINATION BY MR. WETLE

Q. Good afternoon, Ms. Garringer.

A. Good afternoon.

Q. Let me see. You have heard of the case.

A. Yes.

Q. And could you tell us where you heard of it and what recollection you have, or memory of what you heard?

A. Yes. I believe I read some in the paper. Primarily I remember they were looking for three individuals originally, and I remember that there were flyers out in town looking-- with photos and such. And I remember that it was quite a period of time, and then that some, you know, gentleman was apprehended. I presume that would be this gentleman here. And that there was bodies that were found in a car, and it was burned. And maybe there was a cabin there. I don't recall that.

Q. Okay, do you understand that you have a fair amount of information that you received from the media and outside sources, and that for the purposes of being a juror that you would have to extricate that from your memory and say I'm only going to decide the case on the facts that I hear in the courtroom?

A. Yes.

Juror #24 (Ms. Garringer) - Examination by Mr. Wetle 630.

- 1 Q. Could you do that?
- 2 A. I think I could.
- 3 Q. Just remember that what you hear here is what the trial is  
4 based on, not what they may have written about it in the  
5 paper or what you'd heard on the news.
- 6 A. Uh-huh.
- 7 Q. You also mentioned that you knew Mr. Simeone, I believe,  
8 in terms of knowing various parties?
- 9 A. Oh, yes. Just I know he's a lawyer. He's called-- I  
10 work in Garringer Insurance, so he's called on various  
11 items for people's insurance. I know I've spoke with him  
12 on the phone.
- 13 Q. So mainly a business relationship?
- 14 A. Yes.
- 15 Q. Is there anything about your relationship with him, either  
16 business-wise or otherwise that would cause you any  
17 uncomfortableness being a juror and having to decide the  
18 guilt or innocence of his client?
- 19 A. No.
- 20 Q. This is your first time to ever be a juror?
- 21 A. Yes.
- 22 Q. Have-- Before you ever got notice, you're out in the  
23 public, what were your perceptions, wishes, fears of being  
24 a juror? Did you have any preconceived thoughts about it  
25 before you got your notice? Is being a juror a good

Juror #24 (Ms. Garringer) - Examination by Mr. Wetle 631.

1 thing, a bad thing--

2 A. Oh, okay.

3 Q. Something you looked forward to? Is it something you

4 dreaded? How did-- Where do you fit in the picture?

5 A. Oh, I felt like it was my duty. I hadn't done it and I

6 knew other people had done it several times, or a number

7 of times, and I had kind of wondered about that, so I

8 guess I felt like maybe it was my turn.

9 Q. Okay, did you look forward to that, or hoping it would

10 never come, or if it came you would be kind of interested

11 in being a juror?

12 A. Probably interested. Yeah.

13 Q. Do you have any problems being a juror deciding the guilt

14 or innocence of a party?

15 A. I would like to say no, but I think when it comes down to

16 the point, it's a big decision and I can't say what I

17 would decide, or how I'd feel about, you know--

18 Q. That's fair.

19 A. One would have to make one's decision and live with it at

20 that time.

21 Q. Well, either way, a decision will be made. The fact of

22 the matter would be based on the evidence, but could you,

23 you know, feel like you can make the decision, either

24 guilty or not guilty is the issue, and you're saying you

25 think you can, is what I hear.

Juror #24 (Ms. Garringer) - Examination by Mr. Wetle 632.

1 A. Yes.

2 Q. Do you have any problem following the instructions of the  
3 court in terms of the law that would be applied to this  
4 case?

5 A. No.

6 Q. What do you think of the idea of a co-defendant maybe  
7 getting a less of a sentence because the co-defendant  
8 cooperated and gave a statement against the other crimi-  
9 nal? Do you think that's an acceptable thing or unaccept-  
10 able thing?

11 A. Does that pertain to what we're doing? I mean this--

12 Q. Yeah, there's a couple--

13 A. I'm not following--

14 Q. There's three--

15 A. --forward.

16 Q. Three people involved, and a couple of them give state-  
17 ments, and in return they may get a recommendation for a  
18 less of a sentence. And do you think that that is an  
19 appropriate thing to do, or should there be no break, and  
20 maybe only the first one or two that get caught get held  
21 accountable?

22 A. (No response)

23 Q. Still a difficult-- I just haven't expressed it very  
24 well.

25 A. I guess I don't know the whole story, so--

Juror #24 (Ms. Garringer) - Examination by Mr. Wetle 633.



1 Q. I understand.

2 A. I'm-- I don't feel good about that, but then I don't know

3 what the whole story is. I don't--

4 Q. Right, to be able to make a decision.

5 A. I don't think I could decide it.

6 Q. Thank you. If the witness comes before you and has a

7 different lifestyle or a different-- was from a different

8 walk of life, but they happen to be a witness in this--

9 the facts of this case, would you listen to their testimo-

10 ny without any problem with their background or their

11 particular choice of lifestyles?

12 A. I think I could.

13 Q. The court will give you instructions that say that the

14 case must be proved by the State beyond a reasonable

15 doubt. Do you have any problem, or do you think the State

16 should have to prove the case beyond all doubt? The

17 difference between beyond a reasonable doubt and beyond

18 all doubt.

19 A. I guess I feel like that's the way the law's been for

20 years.

21 Q. It would be beyond a reasonable doubt?

22 A. Yeah.

23 Q. That the State wouldn't be required to prove it beyond all

24 doubt? You wouldn't hold-- Would you hold the State to

25 that burden, to prove it beyond all doubt?

Juror #24 (Ms. Garringer) - Examination by Mr. Wetle 634.

- 1 A. I don't think I would, 'cause-- If it were reasonable.
- 2 Q. Especially if the judge's instructions said only had to be
- 3 proven beyond a reasonable doubt. You'd follow the
- 4 court's instruction?
- 5 A. If I felt it was reasonable. Yeah, if I agreed with you
- 6 what reasonable was.
- 7 Q. Absolutely, absolutely. But just in terms of the standard
- 8 for the--
- 9 A. I guess yes.
- 10 Q. Do you-- Have you ever fired a gun?
- 11 A. Yes.
- 12 Q. A .22?
- 13 A. Yes.
- 14 Q. Semi-automatic?
- 15 A. No.
- 16 Q. But you are familiar with firearms?
- 17 A. Yes.
- 18 Q. Have you ever been to the Northport Barter Fair?
- 19 A. I've been to one of the barter fairs. I don't recall
- 20 which one it was.
- 21 Q. How long ago was that?
- 22 A. A number of years.
- 23 Q. Five, ten?
- 24 A. Three to five.
- 25 Q. What was your impression of the barter fair?

Juror #24 (Ms. Garringer) - Examination by Mr. Wetle 635.

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A. Not much.

MR. WETLE: Thank you very much. We pass for cause,  
your Honor.

THE COURT: Hold on. We need to have you have some  
questions, perhaps, from Mr. Simeone.

MR. SIMEONE: Thank you, your Honor.

1 MS. GARRINGER

2 EXAMINATION BY MR. SIMEONE

3 Q. Good afternoon, Ms. Garringer.

4 A. Good afternoon.

5 Q. How you doing?

6 A. Good.

7 Q. Okay. And did you answer yes to any of the other ques-  
8 tions asked by the judge preliminarily when you were in  
9 the gallery? I think you mentioned that you knew Mr.  
10 Wetle, too?

11 A. Yes.

12 Q. And what is the nature of your acquaintance with him?

13 A. He buys insurance from us.

14 Q. Okay. And is it strictly--

15 A. I guess I-- I know his wife, also.

16 Q. As-- On a social level?

17 A. When we were kids, we went to school together. We rode  
18 the same school bus.

19 Q. Okay, do you still have social interaction with the  
20 Wetles?

21 A. Not really social, just maybe run into each other downtown  
22 type things.

23 Q. I see.

24 A. Say hi.

25 Q. Okay. Is your friendship so close that you think it will

Juror #24 (Ms. Garringer) - Examination by Mr. Simeone 637.

1           cause you to maybe want to err on the side of the State's  
2           case here in the event it's a close call?

3   A.   I think the decision would be mine.

4   Q.   Okay, but it's not going to be influenced by any acquaint-  
5           tance you have with them one way or the other, probably?

6   A.   No.

7   Q.   Okay. Now, Mr. Grange, as seated next to me, is charged  
8           with a very serious crime, as you understand.

9   A.   Uh-huh.

10   Q.   I'm wondering if your previous familiarity with the case,  
11           having read about it in the newspaper, have you formed any  
12           opinions about this case?

13   A.   Obviously, someone was killed, but I don't know the  
14           details of why and those kind of things.

15   Q.   Yeah. I recall you mention-- you mentioned a fact that  
16           it took some time for them to apprehend one of the  
17           individuals, and I'm wondering if that has left any kind  
18           of an impression on your mind as to right or wrong or  
19           guilt or innocence here?

20   A.   I don't think so.

21   Q.   No? Good. Overall, what I'm trying to find out is  
22           whether or not anything prior to the time you came in the  
23           courtroom today is going to influence your decision here,  
24           just because of what you've heard or what you've seen or  
25           \_\_\_ then. Do you think so?

Juror #24 (Ms. Garringer) - Examination by Mr. Simeone 638.

- 1 A. I don't think so.
- 2 Q. Okay. It's probably human nature for you to have some  
3 suspicion that something wrong occurred here, simply  
4 because of the fact that Mr. Grange is on trial, and  
5 that's human nature and I understand that. But do you  
6 agree that there's a difference between being suspicious  
7 that something happened and believing, having a well-  
8 founded belief that something happened?
- 9 A. Yes.
- 10 Q. Okay, and you agree that the difference between the one  
11 and the other is proving to you, if they're able to do so,  
12 that something happened?
- 13 A. You're referring to beyond a reasonable doubt?
- 14 Q. Yeah. In other words, you've got a suspicion, and  
15 that's--
- 16 A. Right.
- 17 Q. I understand that. That's human nature.
- 18 A. I would admit that.
- 19 Q. Understood. But before you get to a point where you  
20 believe that, a well-founded belief, what do you think has  
21 to happen?
- 22 A. The details have to add up that beyond a reasonable doubt  
23 this is what occurred.
- 24 Q. Proof.
- 25 A. Proof.

Juror #24 (Ms. Garringer) - Examination by Mr. Simeone 639.

1 Q. Evidence. Okay. Does the fact that he's charged with a  
2 murder, does that in itself cause you some discomfort or  
3 uneasiness that you'll be presiding over such a weighty  
4 subject matter?

5 A. It would be a big decision.

6 Q. Big decision. Do you think it's one you're able to handle  
7 though?

8 A. I think so.

9 Q. You would assign to it the appropriate amount of impor-  
10 tance then, I presume, in making your decision.

11 A. Yes.

12 Q. Okay. There are going to be-- There's going to be  
13 testimony here that's different from one witness to the  
14 other, and it's going to be your place as a juror, if  
15 you're selected here, to make a decision whose testimony  
16 you're going to believe. And I wanted to ask you how you  
17 go about trying to make a determination in your own life,  
18 try to relate it to other occasions in your common every-  
19 day life experiences, how you go about trying to make a  
20 decision about whether somebody's being truthful with you.  
21 Maybe I can throw some ideas out for your consideration.  
22 What about if stories are inconsistent from one to the  
23 next? Do you think that would have a bearing or play some  
24 part in your decision about whether or not a person's  
25 being truthful to you?

Juror #24 (Ms. Garringer) - Examination by Mr. Simeone 640.

1 A. Yes.

2 Q. Okay. What about if a person's relating an event to you,  
3 and at a time when that person, while experiencing that  
4 event, was under the influence of hallucinogenic drugs,  
5 marijuana or LSD? Would that have some bearing on your  
6 appreciation or your regard for that person's testimony?

7 A. It could.

8 Q. Could. It's one of the factors, probably? How about any  
9 other things like demeanor, the way they look at you, the  
10 way they act, body language, that kind of thing?

11 A. There's a possibility.

12 Q. All of those things are-- Do they go into like the  
13 formula you use to make a decision about whether or not  
14 somebody's being on the level with you?

15 A. Yes.

16 Q. Okay. Do you have any negative impression of the barter  
17 fair?

18 A. When I was there, it was almost over. I think we'd been  
19 camping or something, so kind of went through. Seemed  
20 like a combination of-- Some were local farmers. I think  
21 we bought some honey. And others, you know, maybe they  
22 were possibly, you know, looking for trouble or whatever.  
23 We kind of went through--

24 Q. Overall, no major impression upon you, I take it?

25 A. Not really.

Juror #24 (Ms. Garringer) - Examination by Mr. Simeone 641.



1 Q. Either good or bad.  
2 A. Not extreme.  
3 Q. Okay, because a lot of testimony you hear over the course  
4 of the trial, if you're selected as a juror, would be  
5 about events that took place in or around the barter fair  
6 in Northport, so that's why I ask whether or not that in  
7 itself is going to throw you. I gather no?  
8 A. I don't think so.  
9 Q. Okay. And the Rainbow Family? Had you heard of it at  
10 all?  
11 A. No.  
12 Q. Negative? Okay. Now, you work at the agency, I under-  
13 stand that because we've had some conversation, and on a  
14 day to day basis it's pretty easy for you to probably  
15 account for the hours of your day. Is that correct?  
16 A. Yes.  
17 Q. Because somebody, an office co-worker or somebody else, or  
18 Mr. Garringer, can say yeah, Theresa was at the office at  
19 a given time, that kind of thing? We have a schedule and  
20 that's an easier thing to do, to account for one's hours.  
21 But what about in a situation where a person doesn't have  
22 a schedule, or is on a vacation, or no job? Do you think  
23 it might be a little more difficult for that person to  
24 account for some hours of his day than a person who's on  
25 a schedule?

Juror #24 (Ms. Garringer) - Examination by Mr. Simeone 642.

- 1 A. Probably depend how many hours.
- 2 Q. But it might be a little more-- All-- All other things  
3 being equal, let's say it's the same amount of hours from  
4 the one person to the other, do you think it would be more  
5 difficult for a person who's not on a schedule to prove  
6 that he's in a given place than a person who's not on a  
7 schedule?
- 8 A. Sure.
- 9 Q. Do you-- Do you want to be a juror here, do you think,  
10 overall?
- 11 A. Kind of mixed emotions.
- 12 Q. Mixed emotions.
- 13 A. Yeah.
- 14 Q. That was a very honest--
- 15 A. It's rather interesting on one hand, but on the other hand  
16 I'd kind of like to be done.
- 17 Q. That's a very honest revelation. Do you think that you'll  
18 have any difficulty adjusting at the office for it if  
19 you're called to be a juror?
- 20 A. I'll have a workload waiting.
- 21 Q. Is it-- Well, would it be-- Do you think it might force  
22 you or cause you to want to rush along just to get out of  
23 here, is what I'm wondering.
- 24 A. No, I'm not going to make a quick decision for that.
- 25 Q. Okay. Okay, that's what-- That's what I was getting at.

Juror #24 (Ms. Garringer) - Examination by Mr. Simeone 643.

1 MR. SIMEONE: Well, I don't have any further questions  
2 for you then. Thank you very much. No challenge for  
3 cause, your Honor.

4 MS. GARRINGER IS ESCORTED OUT OF THE COURTROOM

5 THE COURT: We'll have Juror Number 25 stand by for a  
6 minute.

7 CHALLENGE FORMS ARE PASSED TO COUNSEL

8 THE COURT: Okay, bring in Juror Number 25.

9 JUROR NUMBER 25 IS ESCORTED INTO THE COURTROOM

10 THE COURT: All right, Mr. McBride, good afternoon.

11 MR. McBRIDE: Afternoon.

12 THE COURT: Thank you so much for your patience. Have  
13 a seat in that chair there, and just a couple of things.  
14 One, you're still under oath from the other day morning  
15 when we swore you in.

16 MR. McBRIDE: Right.

17 THE COURT: And two, a quick question about when you  
18 checked in as a juror, did you happen to notice or speak  
19 to a gentleman that was sitting on the bench near where  
20 the check-in point was, the sign-in point?

21 MR. McBRIDE: No.

22 THE COURT: Okay, and finally, just a reminder on the  
23 instruction that the questions and answers in here are  
24 still subject to the same rule about not discussing with  
25 your fellow jurors or with anyone else.

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MR. McBRIDE: Right.

THE COURT: All right, and Mr. Wetle is going to have some questions for you, and then Mr. Simeone will. Mr. Wetle?

MR. WETLE: Thank you, your Honor.

1 MR. McBRIDE

2 EXAMINATION BY MR. WETLE

3 Q. Good afternoon, Mr. McBride.

4 A. Good afternoon.

5 Q. I was just checking through here quickly to see if you  
6 answered any questions from the court, and it looks like  
7 you did not.

8 A. Nope.

9 Q. Okay, that means you've probably never been a juror  
10 before.

11 A. No, I haven't.

12 Q. So before you got your summons and notice from the court  
13 to be a juror, you were just a private citizen out there,  
14 what did you think about jury duty?

15 A. I always figured it was part of my responsibility as an  
16 American.

17 Q. Okay, so it was something you kind of were interested in  
18 or looked forward to, or didn't really kind of want to do  
19 it, or just neutral?

20 A. I really never thought about it. I figured if I was  
21 called, I would come.

22 Q. And you're here.

23 A. And I'm here.

24 Q. Okay. And it's just what you thought. You wait.

25 A. Yes, sir.

1 Q. How do you feel about being a juror and sitting in  
2 judgment and making a decision whether the person is  
3 guilty or not guilty?

4 A. I feel I have the ability to do that.

5 Q. Do you think that if the-- At the end of the trial, when  
6 the court gives you a little packet of jury instructions,  
7 what the law of the case is, would you be able to follow  
8 the law that the court gives, or do you have any reserva-  
9 tions about doing that?

10 A. I think I could follow it.

11 Q. Good. What do you think about the idea if we've got a  
12 couple of people involved in a crime, and one of them  
13 gives some evidence in return for a lesser recommendation  
14 for jail time, agrees to cooperate and testify against the  
15 other one, do you think that's a good idea or a bad idea?

16 A. Well, I think it's part of our justice system. I think  
17 the evidence that he gives ought to be considered as  
18 evidence.

19 Q. Okay, thank you. Sometimes we have a crime. Different  
20 people from different walks of life observe that crime and  
21 become witnesses. The fact that some of these people have  
22 maybe different lifestyles than your lifestyle, would that  
23 affect your listening to their testimony and weighing it  
24 with respect to this particular case?

25 A. Not at all.

1 Q. You understand that at the end of the case the judge will  
2 give you an instruction that says the State must prove  
3 this case beyond a reasonable doubt.  
4 A. Yes, sir.  
5 Q. You agree with that?  
6 A. I agree with that.  
7 Q. Do you understand that you would not require the State to  
8 prove the case beyond all doubt?  
9 A. I-- I believe the State has the responsibility to prove  
10 the case beyond a reasonable doubt.  
11 Q. Not beyond all doubt?  
12 A. Not beyond all doubt.  
13 Q. I see that you are a pit manager?  
14 A. Yes, sir.  
15 Q. At the casino?  
16 A. Uh-huh.  
17 Q. And is that down here at Chewelah?  
18 A. Yes, sir.  
19 Q. There have been a few people, I think, that are working in  
20 the casinos that are on the jury pool this time.  
21 A. Uh-huh.  
22 Q. And some of the hours are from 8:00 o'clock until 3:00  
23 o'clock or 4:00 o'clock in the morning.  
24 A. Yes, sir.  
25 Q. How about your hours?

Juror #25 (Mr. McBride) - Examination by Mr. Wetle

648.

1 A. My hours run from 4:00 o'clock to 3:00 o'clock in the  
2 morning, but I have plenty of leave if I was to be chosen.  
3 Q. Okay, so it's not a problem for you to be--  
4 A. It's not a hardship, no.  
5 Q. Great. Okay, and I guess I'd ask whether or not when  
6 you're on jury duty, if you would not be working, that you  
7 would just go home and get a good night's rest and come  
8 back and--  
9 A. Yes, sir.  
10 Q. Okay, because I think there was-- Strike that. Thank  
11 you. Have you ever fired a semi-automatic .22?  
12 A. A rifle.  
13 Q. Okay, so you know what a semi-automatic is, how it works?  
14 A. Yes.  
15 Q. Have you ever been to the Northport Barter Fair?  
16 A. No, sir.  
17 Q. Have you ever been to any barter fairs or hempfests?  
18 A. No, sir.  
19 Q. Have you or a family member or close friend ever been  
20 charged with a felony crime?  
21 A. I believe so, sir.  
22 Q. Okay. Has that been a recent event? Is it something  
23 ongoing, or is it something in the past?  
24 A. It's something in the past.  
25 Q. Five years, ten years?

Juror #25 (Mr. McBride) - Examination by Mr. Wetle

649.



1 A. At least five years.

2 Q. Okay, is it here in Stevens County?

3 A. Actually, I think it was Ferry County.

4 Q. Good. How close are you to-- Is it a member of your  
5 family or a friend or--

6 A. Yes. It was my brother.

7 Q. Okay, and could I ask what the charge was?

8 A. Manufacturing.

9 Q. Of marijuana?

10 A. Of marijuana, yes.

11 Q. Okay. How did that situation get resolved?

12 A. I believe he spent some jail time.

13 Q. Did it go to trial or did he plead guilty?

14 A. I believe he pled guilty.

15 Q. Is there anything about the way that was handled, either  
16 from the defense side or from the prosecution's side,  
17 that irritated you, would kind of linger over in your mind  
18 to the whole system? I mean what has happened?

19 A. No, sir.

20 Q. It's a separate thing?

21 A. That's-- That's a separate thing. That's my brother's  
22 life, not mine.

23 Q. And would that go, in terms of conviction, to-- He was  
24 the only close friend, family member, that had ever been  
25 convicted of a felony?

Juror #25 (Mr. McBride) - Examination by Mr. Wetle

650.

1 A. Yes, sir. That I'm aware of.

2 Q. If, assuming there were more than one person involved in  
3 this activity, and so I've got some co-defendants, and one  
4 of them or two of them had some inconsistent statements  
5 and some consistent statements, would you be able to weigh  
6 those consistent statements and the inconsistent state-  
7 ments and decide which ones you were going to rely on and  
8 which ones you were going to disregard?

9 A. I believe I could.

10 Q. Anything that you can think of that would cause you a  
11 problem being a juror in this case?

12 A. No, sir.

13 MR. WETLE: Thank you very much. Pass for cause, your  
14 Honor.

15 THE COURT: All right, Mr. Simeone, questions of Mr.  
16 McBride?

17 MR. SIMEONE: Thank you.  
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1 MR. McBRIDE

2 EXAMINATION BY MR. SIMEONE

3 Q. Good afternoon, Mr. McBride.

4 A. Good afternoon.

5 Q. How are you doing?

6 A. Just fine.

7 Q. Okay. You had no answers to Judge Baker's general  
8 questions then when you were in the gallery, did you?

9 A. No.

10 Q. Okay. She instructed you and gave you a preview into the  
11 case and let you know that Mr. Grange is charged with a  
12 very serious crime.

13 A. Yes.

14 Q. You know that.

15 A. Uh-huh.

16 Q. So it's a weighty kind of a subject matter. I'm looking  
17 at you and I'm wondering whether or not that's the kind of  
18 thing that causes you any discomfort, uneasiness, about  
19 having to weigh evidence when it comes to such an impor-  
20 tant kind of a consideration.

21 A. I do consider that what I-- my actions could-- could  
22 rely on somebody-- in the outcome of somebody's life, but  
23 I do believe I have the ability to do that.

24 Q. You've got the strength to do it?

25 A. Yes.

Juror #25 (Mr. McBride) - Examination by Mr. Simeone 652.

1 Q. Okay, and the mental wherewithal there to stay focused on  
2 just the pure issues, rather than the emotional aspects  
3 here of things?

4 A. Yes.

5 Q. Okay. Mr. Wetle touched briefly on the State's burden of  
6 proof, which you very eloquently, I think, recited what  
7 that burden is. I was very impressed with that, that you  
8 know it's proof beyond a reasonable doubt and not proof  
9 beyond all doubt. But that in itself, you will agree, is  
10 a fairly high standard of proof, wouldn't you?

11 A. Yes, I would.

12 Q. Okay, and you think it's fair to impose that upon the  
13 State, that they have to prove beyond a reasonable doubt  
14 before they convict somebody of a serious crime?

15 A. I do believe that.

16 Q. Okay, and that's a fair kind of a responsibility for the  
17 State. Yeah. Now, if the State went through several days  
18 of trial here, and they weren't able to meet that burden  
19 of proof, to your satisfaction, anyway, do you feel like  
20 you'd have any responsibility to help the State here, or  
21 to feel sorry for them because they've tried hard and they  
22 just haven't been able to do it?

23 A. No, sir.

24 Q. Okay.

25 A. I believe my responsibilities would be--

1 Q. Okay, and do you agree that once all the evidence is in  
2 and after you've gone through your deliberation process,  
3 as a juror it would be as much your responsibility, if you  
4 found this to be the case, as much your responsibility to  
5 find him not guilty? That is, Mr. Grange not guilty, if  
6 you didn't believe that they'd proved their case, as it is  
7 to find him guilty if they proved their case?

8 A. Yes.

9 Q. Equal. Equally-- It's an equal responsibility you have?

10 A. I believe that if the evidence pointed to his innocence,  
11 I would be able to come to that decision.

12 Q. Okay. Another thing that was touched on in the earlier  
13 questioning is whether or not you thought it was right  
14 that a person might testify here in exchange for a lesser  
15 sentence, and I think your answer was that's just the way  
16 it goes these days, or words-- I don't want to put words  
17 in your mouth, but I think you said something similar to  
18 that. Yeah, it happens and you accept that. Am I right  
19 about that?

20 A. Yes.

21 Q. But at the same time, I want to-- I want to discuss  
22 briefly, there's going to be different stories that are  
23 told here, different versions of the incident that  
24 occurred. Drastically.

25 A. Uh-huh.

Juror #25 (Mr. McBride) - Examination by Mr. Simeone 654.

1 Q. And you'll have to use your faculties and your past life  
2 experiences to decide what's right. But I'm wondering  
3 would that fact that a person is up there where you're  
4 seated right now, testifying to you in the jury box, the  
5 fact that that person is receiving a less serious kind of  
6 a punishment or is getting more lenient treatment, would  
7 that enter into your calculation about whether or not that  
8 person has a bias or a motive to testify like he is?

9 A. I think it would depend on the evidence he was getting--  
10 giving, and how I perceived that evidence--

11 Q. True, but--

12 A. --coming from him.

13 Q. And it might be something that weighs into your decision-  
14 making process about whether or not he's being truthful  
15 with you?

16 A. Yes.

17 Q. I'm not saying it's the sole criterium, but it's something  
18 that might weigh in your decision?

19 A. It might weigh, yes.

20 Q. Okay. How about some other things? Let me toss out a few  
21 other ideas here for your consideration. Let's say the  
22 person were previously convicted of a crime of dishonesty.  
23 You're instructed about that. Do you think that might  
24 have some bearing on whether or not his testimony is very  
25 believable? Again, I'm not saying that's the sole

Juror #25 (Mr. McBride) - Examination by Mr. Simeone 655.

1 criterium, but do you think it might have some bearing on  
2 your--

3 A. It may have some bearing.

4 Q. Okay, and what about if the person is trying to give you  
5 an account of events that took place at one time, and  
6 while those events were taking place that he's telling you  
7 about, he was under the influence of hallucinogenic drugs  
8 like LSD or marijuana at the same time, do you think that  
9 might have some bearing on the accuracy of his recollec-  
10 tion?

11 A. Oh, I think if he was on hallucinogenics, it very well  
12 could have. If he was smoking marijuana or something, I  
13 think he would have enough facility--

14 Q. But all of those things can enter--

15 A. --of mind.

16 Q. All of these kind of enter into your calculation on  
17 whether--

18 A. Right.

19 Q. Because we're in this decision-making process here.

20 A. Right.

21 Q. Okay.

22 A. You'd have to weigh everything.

23 Q. Yeah, right. The Rainbow Family, have you-- have you  
24 heard of it?

25 A. No.

Juror #25 (Mr. McBride) - Examination by Mr. Simeone 656.

1 Q. And the barter fairs, do you have any kind of an impres-  
2 sion as a result of anything you've heard or any experi-  
3 ence you have had with it?

4 A. No, I've never been to one. I know it's basically a place  
5 where people go to trade.

6 Q. So it's a neutral kind of a concept in your mind then?

7 A. Right.

8 Q. Okay, good. Do you-- Can you arrange down there to--  
9 Could you put somebody else in your slot here for the time  
10 that you're serving as a juror?

11 A. Yes.

12 Q. Yesterday and today. You're probably going to go through,  
13 you know, several days of next week, if not the whole  
14 week. Are you able to cover?

15 A. Well, see, I have Tuesdays, Wednesdays and Thursdays off.

16 Q. Oh, good. That helps.

17 A. So them days I wouldn't have to have anybody cover.

18 Q. That helps, so then you can cover for Monday and Friday--

19 A. And Friday, yes.

20 Q. And the weekend, we won't be here anyway.

21 A. Right.

22 Q. Okay, good. Are there any other things-- Any other  
23 things in the real world out there for you that are going  
24 to maybe interfere with your ability to serve here as a  
25 juror if you're chosen?

Juror #25 (Mr. McBride) - Examination by Mr. Simeone 657.



1 A. No.

2 Q. And finally, if you go through several days of trial, and  
3 you go through a day of deliberation, or even more, and  
4 you've weighed all the evidence and you've listened to all  
5 your other jurors, as you're supposed to and you've been  
6 instructed to do, and you've reconsidered opinions and  
7 you've finally come to a position that you feel is well  
8 founded--you know, your well founded belief--and it's  
9 different than another juror's opinion, or any other  
10 jurors, what do you do?

11 A. I stick by my beliefs.

12 Q. And I thought that would be your answer.

13 MR. SIMEONE: Thanks. I have no further questions for  
14 you. No challenge for cause.

15 THE COURT: All right, thank you, Mr. McBride.

16 MR. McBRIDE IS ESCORTED OUT OF THE COURTROOM

17 CHALLENGE FORMS ARE HANDED TO COUNSEL

18 THE COURT: All right, we'll have Number 27.

19 JUROR NUMBER 27 IS ESCORTED INTO COURTROOM

20 THE COURT: All right. Let's see, Ms. Supita?

21 MS. SUPITA: Yes.

22 THE COURT: Have a seat there, if you would. Am I  
23 pronouncing your name correctly?

24 MS. SUPITA: Supita.

25 THE COURT: Supita. Okay, Ms. Supita, a couple of

Juror #25 (Mr. McBride) - Examination by Mr. Simeone 658.

1 things. Number 1, you're still under oath from early in  
2 the day yesterday.

3 And secondly, any recollection of any gentleman that  
4 was sitting on a bench out here on the-- in the hall when  
5 you checked in for jury duty yesterday morning, and if so,  
6 did you have any conversation?

7 MS. SUPITA: No.

8 THE COURT: Okay, and finally, just to remind you that  
9 you are still under the instruction that anything that is  
10 questioned here is not to be discussed with your fellow  
11 jurors or with anyone else. Okay?

12 MS. SUPITA: Okay. Yes.

13 THE COURT: Thank you. And Mr. Wetle will have some  
14 questions, and then Mr. Simeone.

15 MS. SUPITA: Okay.

16 THE COURT: Mr. Wetle?  
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1 MS. SUPITA

2 EXAMINATION BY MR. WETLE

3 Q. Good afternoon, Ms. Supita.

4 A. Hello.

5 Q. Let's see. I don't think you've ever been a juror before.

6 A. Yes, I have.

7 Q. Prior juror. Yes.

8 A. Yes.

9 Q. When was that?

10 A. In-- I think it was in '92. I'm not positive.

11 Q. And was that here in Stevens County?

12 A. No, that was in Wisconsin.

13 Q. Is that where you're from or--

14 A. Yes.

15 Q. And how long have you been in Stevens County?

16 A. Two and a half years.

17 Q. The jury duty in Wisconsin, was that a criminal case or a  
18 civil case?

19 A. It was-- The one was an assault case and the other one  
20 was a personal injury case.

21 Q. So you had a little of both?

22 A. Uh-huh.

23 Q. So they had a panel where you came in and stayed for  
24 awhile?

25 A. Yes.

Juror #27 (Ms. Supita) - Examination by Mr. Wetle

660.

1 Q. And did you get to sit in the jury box on two trials?  
2 A. Yes.  
3 Q. Was there anything about being a juror on either of those  
4 trials that gives you any lasting impression of not  
5 wanting to be a juror?  
6 A. No.  
7 Q. So the service was okay?  
8 A. Yes.  
9 Q. I saw your note to the court.  
10 A. Yes.  
11 Q. Talking about winter time travel in Stevens County.  
12 A. As long as it's not ice, I'm okay.  
13 Q. That's important. The good thing about it is 395 is well-  
14 maintained in terms of--  
15 A. Yes, it is.  
16 Q. --travel, because everybody's doing it every day.  
17 A. Uh-huh.  
18 Q. So given-- With that in mind, and the hardship of the 65  
19 miles, do you think that you can in good conscience be a  
20 juror in this case?  
21 A. Yes.  
22 Q. Okay, so I don't need to worry about the fact that you  
23 wanted to get off.  
24 A. Well, I was a little concerned about the weather. I'm not  
25 real familiar with this-- You know, I've never been up

1 here. Well, I drove through Colville once, I think last  
2 summer or something, but I was a little concerned about  
3 the highway if it was snowing and icy.

4 Q. It's snowing real hard in Spokane today.

5 A. Is it?

6 Q. But if you'll notice, we have sunshine.

7 A. I'm north of Spokane, so I may be okay.

8 Q. Okay. And if you're chosen, then if there's any problem  
9 I'm sure that if you let the court know it'll be taken  
10 care of.

11 A. Okay.

12 Q. Since you were a juror, you understand the responsibility  
13 of deciding the guilt or innocence. You've obviously been  
14 able to work toward those decisions.

15 A. Yes.

16 Q. So that has not been a problem. And you've been able to  
17 follow the instructions of the court, so that's-- You  
18 understand that.

19 A. Yes.

20 Q. Just the concept of-- There's more than one. A couple  
21 people involved in this crime, and in order to get-- find  
22 out exactly what happened, if one person gets a recommen-  
23 dation for a lesser sentence if they agree to testify  
24 against the other person, do you think that giving that  
25 person a lesser sentence to get the testimony is a bad

1 deal or okay?

2 A. It'd be okay. Uh-huh.

3 Q. Depending on the circumstances?

4 A. Yes.

5 Q. Because there are different people that witness crimes,  
6 sometimes the witnesses come from different walks of life  
7 than what you would ordinarily be associated with or used  
8 to. Could you disregard any stereotypes for lifestyles or  
9 customs and listen to their testimony in terms of deciding  
10 the facts of this case?

11 A. Yes.

12 Q. Have you-- Do you own firearms?

13 A. No.

14 Q. Have you ever fired a .22 rifle?

15 A. No.

16 Q. Have you ever fired a gun?

17 A. Maybe a BB gun when I was younger, a kid. I don't-- I  
18 don't recall though.

19 Q. Have you ever attended the Northport Barter Fair?

20 A. No.

21 Q. Have you ever been to any barter fairs or hempfest type  
22 gatherings?

23 A. No.

24 Q. Have you ever had a member of the family or a close friend  
25 charged with a felony crime or a serious crime, not a DUI

Juror #27 (Ms. Supita) - Examination by Mr. Wetle

663.

1 or a reckless or a speeding, but some serious crime?

2 A. No.

3 Q. If the testimony of the co-defendants in this case were  
4 sometimes consistent and sometimes inconsistent, you'd be  
5 able to weigh the importance of those statements in  
6 determining a result?

7 A. I think so.

8 MR. WETLE: Thank you very much, Ms. Supita.

9 MS. SUPITA: You're welcome.

10 MR. WETLE: We'd have no further questions. Pass for  
11 cause.

12 THE COURT: All right, Mr. Simeone, any questions?

13 MR. SIMEONE: Thank you, your Honor.  
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1 MS. SUPITA

2 EXAMINATION BY MR. SIMEONE

3 Q. Good afternoon, Ms. Supita.

4 A. Good afternoon.

5 Q. How are you?

6 A. Good.

7 Q. Good. Did you answer a question that Judge Baker asked  
8 yes when she asked if you were related to any lawyers?

9 A. My nephew's a lawyer in Wisconsin.

10 Q. All right. In which city?

11 A. I'm sorry?

12 Q. In which city there?

13 A. In Greenbay.

14 Q. Do you know what kind of law he practices?

15 A. General. I think he does, you know, a little bit of  
16 everything.

17 Q. Does he--

18 A. I don't think he gets into criminal law.

19 Q. Doesn't get into criminal law?

20 A. Huh-uh.

21 Q. Okay. And so is that your prior residence then, the State  
22 of Wisconsin?

23 A. Yes.

24 Q. Did you live there most of your life?

25 A. Yes.



1 Q. You've been already advised, and you got a little preview  
2 into the case when Judge Baker told you that Mr. Grange,  
3 my client, is charged with murder.  
4 A. Uh-huh.  
5 Q. You understand that?  
6 A. Yes.  
7 Q. And you understand the seriousness of the crime with which  
8 he's charged?  
9 A. Yes.  
10 Q. Now, I ask you that because I want to know whether or not  
11 that causes you any kind of uneasiness about presiding  
12 over such a weighty subject matter.  
13 A. No, I don't think so.  
14 Q. You could be neutral about-- about the subject matter and  
15 just look at the facts?  
16 A. Yes.  
17 Q. Okay. Now, one of the things that you've discussed  
18 already when questioned by Mr. Wetle, was how the proof  
19 standard, the beyond a reasonable doubt kind of standard.  
20 A. Uh-huh.  
21 Q. And it seems like you've already got a familiarity with  
22 that concept.  
23 A. Uh-huh.  
24 Q. Now, even though the State doesn't have to prove guilt  
25 beyond all doubt, you understand they have to prove beyond

Juror #27 (Ms. Supita) - Examination by Mr. Simeone 666.

1 a reasonable doubt?

2 A. Yes.

3 Q. And that's still a pretty high standard of proof, would  
4 you agree?

5 A. Yes.

6 Q. Okay, you think that's fair for-- to make the State have  
7 to prove beyond a reasonable doubt before they can convict  
8 somebody of a serious crime?

9 A. Yes.

10 Q. Okay, that's-- And you think that that's a good part of  
11 our criminal justice system?

12 A. Yes, I do.

13 Q. Okay. And do you think there's anything wrong with a  
14 person exercising his right to a trial before jurors to  
15 determine whether--

16 A. No.

17 Q. Okay, good. One of the things you'll do, in fact the main  
18 thing you do as a juror, is decide what the truth is, what  
19 the facts are. And you'll be hearing testimony from  
20 witnesses who sit right there where you are right now for  
21 several days.

22 A. Uh-huh.

23 Q. You'll be hearing, however, accounts of the incident that  
24 are very different from one another, and you, then, will  
25 have to rely upon your prior experience and whatever other

Juror #27 (Ms. Supita) - Examination by Mr. Simeone 667.

1 techniques you use to determine who's telling the truth.  
2 And I-- I wanted to ask you how you go about trying to  
3 make determinations of whether or not a person's telling  
4 the truth on a given occasion, and just let me throw out  
5 some ideas so I can speed things up, maybe. What about if  
6 a person tells you-- You're a claims processor, you  
7 probably have to do this on regular occasions. Inconsis-  
8 tent versions of an incident from one account to the next.  
9 Do you think that has a bearing on whether or not a  
10 person's being truthful with you?

11 A. If there are inconsistencies, yes, I--

12 Q. One of the things that you would consider about whether or  
13 not they're being truthful with you.

14 A. What would-- I'm--

15 Q. It's one of the things that you would--

16 A. Yes.

17 Q. --factor into your consideration, I gather.

18 A. Yes.

19 Q. How about if that person is-- in his life prior to this  
20 time has been convicted of a crime of dishonesty? Do you  
21 think that might also bear on whether or not the testimony  
22 they're giving you is believable?

23 A. Possibly.

24 Q. Possibly.

25 A. If that were brought out in the trial.

Juror #27 (Ms. Supita) - Examination by Mr. Simeone 668.

1 Q. It's another-- It's another factor.

2 A. Uh-huh. Yes.

3 Q. What about if the person is relating events of an incident  
4 that occurred at a time when that person who's testifying  
5 and telling you the story was under the influence of a  
6 hallucinogenic drug like LSD? Would that have some  
7 bearing on whether or not that testimony is believable, in  
8 your opinion?

9 A. Yes.

10 Q. Okay. And I guess you use some other--

11 A. Uh-huh.

12 Q. --techniques to determine that, and that's-- we all have  
13 our own techniques and you have yours, I gather.

14 A. Uh-huh.

15 Q. Do you believe a person might own a gun without intending  
16 to use that gun on a human being?

17 A. Do I believe they can own one without using it on--

18 Q. Yeah. Without intending to use it on a human being.

19 A. Yes, I believe you can own a gun without using it on a  
20 human.

21 Q. I know you don't own a gun, so I know you have little  
22 familiarity with it.

23 A. Uh-huh.

24 Q. Hardly ever-- Ever used it, so I want to get an idea of  
25 your overall feel for--

Juror #27 (Ms. Supita) - Examination by Mr. Simeone 669.

1 MR. WETLE: Objection, your Honor. It's just a  
2 statement.

3 THE COURT: Sustained.

4 MR. SIMEONE: Oh, okay.

5 Q. Now, you have a position where you work, and you report  
6 there probably on a daily basis--

7 A. Uh-huh.

8 Q. --and you're there pretty regularly. And for you, is it  
9 an easy thing then to have somebody prove your whereabouts  
10 over the course of a given day, do you think, because of  
11 your schedule?

12 A. I would think it usually is.

13 Q. Because people know, probably, where you are.

14 A. Uh-huh.

15 Q. And how about the occasion-- On the occasion where a  
16 person doesn't have a schedule, is on vacation or some-  
17 thing to that effect? Do you think it might be harder for  
18 that person to prove his whereabouts for a number of hours  
19 of the day than it would be for somebody who's on a  
20 schedule with some predictability?

21 A. Yes.

22 Q. Okay. Would you like to serve as a juror here if you're  
23 selected?

24 A. It doesn't bother me to do it. I feel it's-- it's  
25 something that as a citizen it's, you know--

Juror #27 (Ms. Supita) - Examination by Mr. Simeone 670.

1 Q. Do you think it would throw too great of a kink into your  
2 routine?

3 A. I don't think so.

4 Q. Okay. Can-- Can you make the arrangements with your  
5 employer to--

6 A. Yes.

7 Q. --take care of your job for the time being?

8 A. Uh-huh.

9 Q. Any other-- Any other reasons why you might not be able  
10 to accept-- It sounded like an impassioned plea here from  
11 the letter, but I guess you've come around a little from  
12 that position.

13 A. Well, like I said, I don't like driving in the ice, and if  
14 I can avoid that, I will, but if I'm due to be here, then  
15 it just means I leave earlier in the morning, or I make  
16 other arrangements.

17 Q. Well, it sounds like you're willing to live up to the  
18 obligation then?

19 A. Uh-huh.

20 MR. SIMEONE: Then I have no further questions for you.

21 Thank you.

22 MS. SUPITA: You're welcome.

23 MR. SIMEONE: And there will be no challenge for cause,  
24 your Honor.

25 MS. SUPITA IS ESCORTED OUT OF THE COURTROOM

Juror #27 (Ms. Supita) - Examination by Mr. Simeone

671.

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CHALLENGE SHEET IS HANDED TO COUNSEL

THE COURT: We'll have Juror Number 28, if you will, please.

JUROR NUMBER 28 IS ESCORTED INTO THE COURTROOM

THE COURT: Good afternoon, Ms. Wise, right?

MS. WISE: Uh-huh.

THE COURT: Okay, Ms. Wise, thank you so much for your patience in all this waiting. We know-- We don't know for sure, because we've never been in your shoes, but I'm certainly aware it must be totally frustrating.

A couple of things. Number 1, you're still under oath from yesterday morning when I swore everybody in.

MS. WISE: Okay.

THE COURT: Second, I had a question about whether you recalled when you signed in yesterday morning early for jury duty, if you had any conversations with anybody that was sitting on the bench out by the jury sign-in area, if you recall.

MS. WISE: Yeah, there was a lady sitting there.

THE COURT: Okay, do you recall the substance of your conversation?

MS. WISE: No, not really.

THE COURT: Okay, was it about the case at all?

MS. WISE: To tell you the truth, I can't remember. We were talking, you know--

1 THE COURT: Just visiting?

2 MS. WISE: Yeah, more or less. Everybody, 'cause we're  
3 all waiting to go over there and--

4 THE COURT: Okay, was it one of the other jurors, do  
5 you think, or do you know?

6 MS. WISE: I couldn't tell you right now.

7 THE COURT: Okay.

8 MS. WISE: Honestly.

9 THE COURT: All right.

10 MS. WISE: Now that you brought it to my mind, there  
11 was a lady sitting there, an elderly lady.

12 THE COURT: Okay, but you don't have any specific  
13 recollection about what you talked about?

14 MS. WISE: Huh-uh.

15 THE COURT: As far as you know, it wasn't anything to  
16 do with the case? Anything that you would relate thus far  
17 to the case?

18 MS. WISE: No, 'cause I really don't even know what  
19 it's really about, just what you told us yesterday.

20 THE COURT: Okay. If something comes to mind then  
21 while we're having the questions from the attorneys, would  
22 you let us know, please?

23 MS. WISE: Yeah, I will.

24 THE COURT: Okay, great. And that brings up another  
25 question, was there anything in the questioning-- You



1 know, some people it takes a little gel time, and we've  
2 had a few people as they've come through on the individual  
3 questioning that have said gee, you know, you asked us  
4 general questions and I didn't raise my hand, but I need  
5 to tell you X, Y and Z. Did anything like that come to  
6 mind since the original questioning yesterday morning or  
7 afternoon?

8 MS. WISE: Well, the only one I can think of is you  
9 asked us if we know any lawyers. Is it if we know any  
10 lawyers anywhere or--

11 THE COURT: Well, it was if you were related or close  
12 friends with any.

13 MS. WISE: Oh, okay. The answer's still no there.

14 THE COURT: All right. So you do have, maybe, some  
15 lawyer acquaintances or something like that?

16 MS. WISE: Just my son had a lawyer in Spokane, so  
17 that's all I know.

18 THE COURT: Sure, okay, so a professional relationship  
19 with a lawyer? You son?

20 MS. WISE: Well, it's an industrial.

21 THE COURT: Right, State Industrial claim?

22 MS. WIFE: Uh-huh.

23 THE COURT: All right, now, one last thing, you're  
24 still going to be under the instruction not to discuss the  
25 case with anyone from these questions in here. In other

1 words, not to go back to the jury room and discuss what  
2 you've been asked or what you've been talking about in  
3 here. You're still under the instruction not to discuss  
4 the matter with your fellow jurors or with anyone else.

5 MS. WISE: Oh, yeah. Okay.

6 THE COURT: Just a reminder. And we'll have you go  
7 ahead-- Mr. Wetle will have some questions for you.

8 MR. WETLE: Thank you, your Honor.  
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1 MS. WISE

2 EXAMINATION BY MR. WETLE

3 Q. Good afternoon, Ms. Wise.

4 A. Good afternoon.

5 Q. You've never been a juror before?

6 A. No.

7 Q. Okay. You know, before you got your notice from the  
8 court, before you ever thought that you'd be a juror here  
9 today, could you tell me what your attitude toward being  
10 a juror was?

11 A. My attitude towards one?

12 Q. Had you ever thought of it?

13 A. No, not really. It's just-- I often thought, you know,  
14 my mom did it a couple times, so, you know, I just thought  
15 well, I guess one of these days it'll happen.

16 Q. Okay, it wasn't something you didn't want to do, it was  
17 like if it happens it happens.

18 A. Right.

19 Q. Or--

20 A. If it didn't, it didn't. You know.

21 Q. Okay.

22 A. I'd do it if I got called. If not--

23 Q. No aversion toward, you know, like oh, my gosh, I never  
24 want to be called for that.

25 A. No.

Juror #28 (Ms. Wise) - Examination by Mr. Wetle

676.

1 Q. That's not the situation.

2 A. No.

3 Q. How about sitting in judgment in deciding whether a person  
4 is guilty or not guilty? Can you do that?

5 A. Yeah.

6 Q. Okay. How about following the instructions of the court?  
7 The judge will give you the law to apply to the facts of  
8 this case, and you've probably never seen that before. It  
9 comes in a packet and it's got the instructions. Would  
10 you be able to apply that law as the judge gave it?

11 A. As she told me to do, yeah.

12 Q. Okay. Because of the nature of any crime, sometimes you  
13 don't have a choice of who your witnesses are.

14 A. Right.

15 Q. It just happens.

16 A. Yeah.

17 Q. There may be people that come from a different lifestyle  
18 or walk of life than you. Would you be able to cast aside  
19 their differences of lifestyle and listen to their  
20 testimony because it's factually important to the case,  
21 and still listen to their testimony and decide the case on  
22 it?

23 A. Well, yeah, because the way their lifestyle is ain't got  
24 nothing to do with that.

25 Q. Right. They just observe what they observe.

1 A. Yeah.

2 Q. The court will instruct you that in all criminal cases the  
3 State has to prove the case beyond a reasonable doubt.

4 A. Right.

5 Q. And you agree with that, understand that?

6 A. Uh-huh.

7 Q. Sometimes it gets twisted into it has to be proven beyond  
8 all doubt. Do you see the distinction between beyond a  
9 reasonable doubt and proving a case beyond all doubt?

10 A. Yeah.

11 Q. Could you follow the court's instructions and use the  
12 beyond reasonable doubt, rather than the all doubt?

13 A. All doubt-- Yeah.

14 Q. Okay.

15 A. I think so. I'm sure.

16 Q. Do you own any firearms?

17 A. Do I own a farm?

18 Q. Uh-huh. Any firearms in the home?

19 A. Any what?

20 Q. Firearms in the home.

21 A. Yeah.

22 Q. Twenty-two?

23 A. My husband does; I don't. They're his guns, not mine.

24 Q. Do you ever get to shoot them, or like to shoot them?

25 A. Do I? No, I don't do it. I leave that up to him and my

Juror #28 (Ms. Wise) - Examination by Mr. Wetle

678.

1 son.

2 Q. Okay. Have you ever been to the Northport Barter Fair?

3 A. No, I haven't.

4 Q. How about any barter fair or hempfest gathering?

5 A. I haven't, no. My family has, but I haven't.

6 Q. By your family you mean other relatives or your husband--

7 A. My husband has and my son, and his brother and stuff.

8 They go up there once in awhile.

9 Q. Up to the Northport--

10 A. I think they've been up there once.

11 Q. How long--

12 A. But I never have been.

13 Q. How long ago was that, do you know?

14 A. Oh, a long time ago. Like my son was in grade school, and  
15 he's out of school now, so it's been quite awhile ago.

16 Q. Okay. Any impressions about what was up there, based on  
17 maybe their visits, their views?

18 A. No. They don't really talk to me about that stuff. They  
19 don't think I'm interested, which I'm probably not.

20 Q. Okay. Have any-- Have you or any member of your family  
21 or a close friend ever been charged with a felony crime?

22 Not a misdemeanor but a crime that's in Superior Court?

23 A. No. Huh-uh.

24 MR. WETLE: Thank you very much, Ms. Wise. We pass for  
25 cause, your Honor.

Juror #28 (Ms. Wise) - Examination by Mr. Wetle

679.

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THE COURT: All right, Mr. Simeone, any questions?

MR. SIMEONE: Thank you, your Honor. Yes, I do.

1 MS. WISE

2 EXAMINATION BY MR. SIMEONE

3 Q. Good afternoon, Ms. Wise.

4 A. Good afternoon.

5 Q. How you doing?

6 A. Pretty good.

7 Q. Okay, good. Thank you for your endurance here. Did you  
8 answer yes to any of Judge Baker's general questions?

9 A. Just the one, that if I knew anybody that was in the jury  
10 room.

11 Q. Okay, and you knew a juror?

12 A. Yeah.

13 Q. That was it. Okay. You also heard Judge Baker ask you  
14 about-- or tell you about what this case-- what this  
15 case concerns, and you know that it's a very serious  
16 matter.

17 A. Yes.

18 Q. It's a case where the State is charging my client, Mr.  
19 Grange, with murder. Now, does that fact in itself, does  
20 it cause you any uneasiness here about presiding over this  
21 kind of weighty subject matter?

22 A. I don't know. It just-- It's different. I mean, never  
23 been through anything like this before.

24 Q. Yeah. Well, you know, this is the first time you're  
25 called as a juror. A lot of times people never get

Juror #28 (Ms. Wise) - Examination by Mr. Simeone

681.



1 called. I don't know why, but--

2 A. Yeah, it's been a long time. No, I never have, and I  
3 never been in a courtroom before.

4 Q. Well, that's to your credit, I think. Do you feel,  
5 though, that based upon-- You don't know anything about  
6 the case, but does it cause you any internal anxieties or  
7 any kind of uneasiness that-- unnaturally uneasy--  
8 uneasy anxieties about it?

9 A. Well, I mean, any time you talk about murder, it kinda,  
10 you know, just kinda sets you on the edge of your chair--

11 Q. Sure.

12 A. --a little bit, you know, but--

13 Q. Sure. And you-- Now, Mr. Wetle asked you about the level  
14 of proof that they have to meet here before they can  
15 convict somebody, and you clarified that you know the  
16 difference between proof beyond all doubt and proof beyond  
17 a reasonable doubt, but you agree that proving something  
18 beyond a reasonable doubt, that's still a pretty high  
19 standard, don't you-- don't you agree with that?

20 A. Oh, yeah. Yeah.

21 Q. Okay, and do you think it's right that before the State  
22 can convict somebody of a serious crime like that that  
23 they have to prove guilt beyond a reasonable doubt? Do  
24 you think it's fair?

25 A. Oh, yeah.

1 Q. Okay.

2 A. I mean they-- If it was me, they'd really have to prove  
3 I really did it, you know.

4 Q. Okay.

5 A. I'd want all--

6 Q. Sure, sure, that's right. Okay, and do you-- Going hand  
7 and hand with that, do you agree that they haven't  
8 presented any evidence at all yet that he's committed a  
9 crime, that he's not guilty as he sits here before us  
10 today?

11 A. No, because I don't know nothing.

12 Q. Right, we don't know any-- because all the evidence is  
13 going to come from witnesses who are sitting right there  
14 where you are.

15 A. Yeah.

16 Q. Okay, good. Is there anything about any other experiences  
17 you've had in your life that might cause you to feel some  
18 bias or prejudice against Mr. Grange because of the crime  
19 with which he's charged?

20 A. No.

21 Q. Okay, and you haven't been or-- I forgot your answer  
22 there, there's been so many jurors. Have you been to the  
23 barter fair?

24 A. No, I never have been to the barter fair.

25 Q. Do you have any impressions of it from what you've heard

1 or anything?

2 A. No.

3 Q. Or have you ever heard of the Rainbow Family?

4 A. No.

5 Q. Okay, so those are neutral concepts in your mind then,  
6 probably, right now?

7 A. Rainbow Family. Now let me think. I have heard something  
8 about a Rainbow Family. I think one of my cousins was in  
9 the Rain-- I don't know.

10 Q. Doesn't sound like it's made a very strong impression on  
11 you one way or--

12 A. No, I know. I just--

13 Q. That's all right, then. That's really all I want to know,  
14 is if there's something that were a strong impression on  
15 you, then maybe I'd have other questions, but it doesn't  
16 sound like it's made too great an impression one way or  
17 the other.

18 A. No.

19 Q. Okay, that-- that's what I needed to know. The State is  
20 going to have witnesses testify-- Well, first of all, I  
21 want to say this: There are going to be different  
22 stories, different accounts of the incident that occurred  
23 here from the-- You'll find that out before too long.  
24 The State is going to have some witnesses testify who are  
25 being given some lenient treatment. They're going to be

1 getting lesser punishment for some of the things they did  
2 than-- well, they might have, in exchange for their  
3 testimony. Do you think that that might have some bearing  
4 on-- I'm not saying this the only thing, but do you think  
5 it might have some bearing on whether or not those people  
6 are being straightforward with you?

7 A. Oh, truthful or not?

8 Q. Yeah.

9 A. When they talk?

10 Q. Yeah.

11 A. No, not always. They're not always truthful.

12 Q. All right.

13 A. I mean they're looking out for themselves.

14 Q. Sure. How about whether or not a person has-- While  
15 he's testifying about an event, and the event about which  
16 he's testifying, while he experienced it he was under the  
17 influence of a hallucinogenic drug, LSD. Do you think  
18 that might have some effect on his recall? His ability to  
19 recollect?

20 A. Well, I guess. I really don't know too much about drugs,  
21 as I'm not around them, but I guess it'd be kind of like  
22 alcohol. They drink and they don't always remember every-  
23 thing they do.

24 Q. Might have some bearing on his ability to recollect?

25 A. Yeah.

Juror #28 (Ms. Wise) - Examination by Mr. Simeone

685.

- 1 Q. It's a fact that you would consider in deciding the truth-  
2 fulness of testimony?
- 3 A. Yeah, I could, I guess.
- 4 Q. Yeah, sure. What about whether or not he's been-- or a  
5 given person has been convicted of a crime of dishonesty?  
6 Might that have some bearing on whether or not you believe  
7 that person's testimony very fully?
- 8 A. Well, if he's dishonest, I guess you don't believe him.
- 9 Q. It's one of the things you might factor into it.
- 10 A. Yeah.
- 11 Q. I mean, among other things. Okay.
- 12 A. If they can't tell the truth, I guess you can't believe  
13 'em.
- 14 Q. Well, it's one of the things that would factor into your  
15 consideration-- your decision making process, anyway.
- 16 A. Yeah.
- 17 Q. This trial might last awhile. That rhymed. Do you-- Do  
18 you have any-- Does that conflict with your schedule? I  
19 don't think that you had-- It doesn't look like there's  
20 anything that's particularly-- particularly pressing in  
21 your schedule, but is there anything out there in the real  
22 world of your real life that this might intrude upon?
- 23 A. Only if it goes to the end of March, 'cause my daughter's  
24 supposed to have her baby then.
- 25 Q. We'll be out of here-- We'll be out of here before then.

Juror #28 (Ms. Wise) - Examination by Mr. Simeone

686.

1 A. Okay.  
2 Q. I can almost promise you \_\_\_\_\_. Okay. Any other  
3 reasons why you might not be able to be a juror? Or do  
4 you want to be a juror?

5 A. Well, there ain't no reason.

6 Q. Would you like to serve?

7 A. I thought it would be kind of interesting. Something  
8 different. I've never-- Like I said, first time in a  
9 courtroom.

10 Q. Well, I hope you enjoy your first experience here.

11 MR. SIMEONE: Thank you very much. No challenges for  
12 cause.

13 MS. WISE IS ESCORTED OUT OF THE COURTROOM

14 CHALLENGE SHEET IS HANDED TO COUNSEL

15 THE COURT: And, Mr. Simeone, just for the record, I  
16 noted under your passing the last peremptory, that you  
17 were passing through Juror Number 27--

18 MR. SIMEONE: That's right.

19 THE COURT: --other than those that have--

20 MR. SIMEONE: That's right.

21 THE COURT: --already been stricken.

22 MR. SIMEONE: That's right, your Honor.

23 THE COURT: All right.

24 MR. WETLE: Did the court-- Mr. Rhodes--

25 THE COURT: He's still in there.

Juror #28 (Ms. Wise) - Examination by Mr. Simeone

687.

1 MR. WETLE: He's in there.

2 THE COURT: Yeah, he's still on, so I'm certainly  
3 thinking he will be able to accommodate it. We'll have a  
4 word with his employer, if nothing else, just to make sure  
5 he doesn't get pressured into working too long hours.  
6 Probably young and energetic, more so than I would be.  
7 So you passed on the first alternate?

8 MR. WETLE: Yes.

9 THE COURT: Okay, and then we'll go on to-- Let's see.  
10 Let me think. Mr. Wetle, are you passing on the first  
11 alternate as well?

12 MR. WETLE: I did.

13 MR. SIMEONE: Yes.

14 THE COURT: I mean Mr. Simeone. Did I say Mr. Wetle?

15 MR. SIMEONE: I understood, your Honor. Yes.

16 THE COURT: Okay, why don't we have you mark that down,  
17 and we'll then have Juror Number 29 come in.

18 MR. SIMEONE: Does that mean you're giving a cause  
19 objection or cause strike for Mr. Rhodes?

20 THE COURT: I'm sorry?

21 MR. SIMEONE: Are-- Are we calling a second alternate?

22 THE COURT: Yes, we're calling the second alternate.

23 MR. SIMEONE: Oh, okay.

24 THE COURT: Right. The Number 29 will be in the  
25 Alternate 2 spot.

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MR. SIMEONE: Okay.

JUROR NUMBER 29 IS ESCORTED INTO THE COURTROOM

THE COURT: Ms. Burley?

MS. BURLEY: Yes.

THE COURT: Thank you for your patience. Have a seat right there. A couple of things that I needed to go over before-- I had a few questions-- allow a few questions from the attorneys.

One is that you're still under oath from yesterday morning. Two is that you're still under the instruction of the court not to discuss any of the question/answer here with your fellow jurors, or with anyone else, for that matter.

MS. BURLEY: Right.

THE COURT: And third, there was a question about a gentleman that was seated out by the place where the jurors checked in yesterday morning, so when you checked in yesterday morning, there was, perhaps, somebody seated on the bench out there that some of the jurors may have chitchatted with. Do you recall whether you noticed anyone seated on the bench out there, and if so--

MS. BURLEY: I saw somebody but I didn't recog-- I didn't-- I don't know who he was or what he was. He was just sitting there.

THE COURT: Just sitting there, okay. So you didn't



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have any conversation with anybody?

MS. BURLEY: No.

THE COURT: Okay. All right, thank you. Mr. Simeone--  
Excuse me. Mr. Wetle is going to have a few questions  
for you.

MR. WETLE: Thank you, your Honor.

1 MS. BURLEY

2 EXAMINATION BY MR. WETLE

3 Q. Good afternoon, Ms. Burley.

4 A. Hello.

5 Q. You've never been a juror before?

6 A. No, and I don't-- don't care to be.

7 Q. The second word out of your mouth.

8 A. I don't-- I don't do stress well myself, personally, and  
9 just about a year ago I started getting hyperventilation  
10 where I take a bag, start blowing in a bag, and last night  
11 I had a really bad attack and, I mean, this-- I just  
12 don't do well under pressure at all, you know, and I'm  
13 just not happy about the situation at all.

14 Q. Okay. Well, that's exactly why we're here talking.

15 A. Okay.

16 Q. I noticed that you had written a little letter to the  
17 court saying that--

18 A. Well, my husband has a disability and it's hard for him,  
19 sometimes, to move, and he's the one that drives me  
20 because I don't drive in the winter time. See. I drive,  
21 but not in the winter time. We live up in the mountains,  
22 so I don't drive in the winter time.

23 THE COURT: Let me just jump in here, Ms. Burley. Are  
24 you saying that you're having a lot of anxiety about  
25 being--

Juror #29 (Ms. Burley) - Examination by Mr. Wetle

691.

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MS. BURLEY: Yes.

THE COURT: --being asked for jury duty?

MS. BURLEY: Yes.

THE COURT: And the stresses of the situation?

MS. BURLEY: Yeah. Like last night I was up all night, and I haven't had the-- I haven't had a stress attack for about six months, but last night I had one really bad.

THE COURT: All right. Well, Mr. Wetle and Mr. Simeone, any problem with excusing Ms. Burley?

MR. SIMEONE: No objection here, your Honor.

MR. WETLE: No, your Honor.

**MS. BURLEY IS EXCUSED AND ESCORTED OUT OF THE COURTROOM**

THE COURT: We'll have Number 30 then, please?

**JUROR NUMBER 30 IS ESCORTED INTO THE COURTROOM**

THE COURT: All right, sir. Mr. McLean, is it pronounced?

MR. McLEAN: Yes.

THE COURT: Or McLeen?

MR. McLEAN: McLean.

THE COURT: All right, have a seat, sir, if you would.

MR. McLEAN: Okay, thank you.

THE COURT: A couple, three things. One, I'm going to just remind you you're still under oath from yesterday morning.

MR. McLEAN: Okay.

1 THE COURT: All right, Number 2, you're still under the  
2 instruction not to discuss the question and answer  
3 sequence that takes place in here with your fellow jurors,  
4 or with anyone else, for that matter, until you're  
5 released from jury duty.

6 McLEAN: Okay.

7 THE COURT: Whenever that may be. And the third  
8 question I had was whether when you checked in as a juror  
9 here at the top of the stairs, down by the Clerk's office,  
10 whether you recall seeing anybody sitting on a bench and,  
11 if so-- a gentleman sitting on a bench, if so, if you had  
12 any conversation with that individual?

13 MR. McLEAN: No. I seen him sitting there, but I  
14 didn't-- Or seen somebody sitting there, but I didn't  
15 talk with anybody.

16 THE COURT: All right, thank you. Mr. Wetle's going to  
17 have some questions, and then Mr. Simeone. Mr. Wetle will  
18 start.

19 MR. WETLE: Thank you, your Honor.  
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1 MR. McLEAN

2 EXAMINATION BY MR. WETLE

3 Q. Good afternoon, Mr. McLean. Never been a juror before?

4 A. I was in the selection process, but never chosen.

5 Q. Okay, and how long ago was that?

6 A. Oh, years ago. Years ago.

7 Q. Here in Stevens County or--

8 A. Well, I spent some time in Alaska, seven years, and I  
9 don't remember if it was here or in Alaska. I just-- I  
10 think it must have been Alaska though.

11 Q. Did you ever get as far as getting to be questioned--

12 A. No.

13 Q. --or voir dired?

14 A. No. I was-- They got their jury before I was--

15 Q. They got down to your number?

16 A. Yeah.

17 Q. Okay. Before you got your notice or letter or summons  
18 from the court, did you have any notion about whether you  
19 would like to be a juror, or not be a juror, or were you  
20 kind of neutral about being a juror?

21 A. Probably kind of neutral.

22 Q. If it happened, it happened, and otherwise it wasn't on  
23 your list of things to do in your life?

24 A. Right.

25 Q. Have you-- You have any problem deciding a case to

1 determine whether the person was guilty or not guilty?

2 A. No, I don't think I would have a problem.

3 Q. Do you think that you philosophically and morally could  
4 follow the judge's instructions of the law in this case?  
5 Sometimes people have philosophical differences about  
6 that, and one of the important tenets for this trial would  
7 be that the jurors be able to follow the law given to them  
8 by the judge. Do you have any concerns or issues that you  
9 might want to discuss along those lines?

10 A. No, I don't.

11 Q. Do you think that-- What do you think of the idea if you  
12 have two criminals, and one of them agrees to testify  
13 against the other one and gets a lesser sentence? Do you  
14 think that is an okay proposition or something that should  
15 be avoided? Have any thoughts on that?

16 A. It-- It would probably be okay, I think, in certain  
17 circumstances.

18 Q. Depending on the circumstances?

19 A. Yes.

20 Q. Sometimes witnesses to crimes come from different walks of  
21 life. If some of the witnesses in this trial have a  
22 different background, walk of life, than what you are used  
23 to or accept, do you think you would be able to set aside  
24 those differences, listen to their testimony for what they  
25 know in this case, and use it in terms of reaching a

1 decision?

2 A. Yes, I think I could.

3 Q. The court's going to tell you that the State needs to  
4 prove this case beyond a reasonable doubt. Do you  
5 understand that concept a little bit, or have you never  
6 really had to apply it?

7 A. I-- I think I understand it but, because, you know, I've  
8 never been in a situation where I had to really decide, I  
9 guess I'm probably a little bit in the dark on maybe all  
10 the things that it-- that is contained in that, but--

11 Q. Okay. By having the judge instruct you prove-- to have  
12 the case proven beyond a reasonable doubt, would you hold  
13 the State to prove it beyond all doubt?

14 A. I think I probably would.

15 Q. You'd make them go to that higher standard?

16 A. Is-- I didn't realize that was a higher standard.

17 Q. Yeah. All doubt would be-- there's no-- no question  
18 about anything.

19 A. Oh. No, I think just beyond a reasonable doubt would  
20 probably be--

21 Q. Would be appropriate?

22 A. Yeah.

23 Q. Okay, you see the distinction? Sometimes people get the  
24 impression that they have to prove it beyond all doubt.  
25 But that's not the test. The judge will instruct you--

1 MR. SIMEONE: Objection, your Honor. He's making a  
2 statement.

3 THE COURT: Sustained.

4 Q. Do you have any firearms?

5 A. No, I don't.

6 Q. Have you ever fired a .22?

7 A. Yes.

8 Q. Ever fired a semi-automatic .22?

9 A. Yes.

10 Q. So you know how they work?

11 A. A semi-automatic .22?

12 Q. Yes.

13 A. Yes.

14 Q. Have you ever been to a barter fair?

15 A. Yes, I have.

16 Q. And which one would that be?

17 A. Northport.

18 Q. How many times?

19 A. Once.

20 Q. When was that?

21 A. It would have been in the late eighties. Eighty-seven or  
22 '88. I think it was '87.

23 Q. Some time back?

24 A. Yeah. Yeah. I haven't been there for a long time.

25 Q. What was your impression?

Juror #30 (Mr. McLean) - Examination by Mr. Wetle

697.



- 1 A. I-- I guess I don't totally understand your question.
- 2 Q. Was it an interesting time for you? Did you have a fun
- 3 time? Was it a lot of different people? What were your
- 4 overall impressions of the barter fair?
- 5 A. Well, it was-- It was a good time, I guess, but, you
- 6 know, I could kinda tell that there's, you know, some
- 7 people that are into partying, and I'm not really into
- 8 partying that much, and-- You know, not everybody was
- 9 into partying, but it was kind of a wild crowd to a
- 10 certain degree. There was a lot of not so wild people
- 11 there, but I did notice that there was a lot of party-ers,
- 12 I guess, would be the word.
- 13 Q. Have you or a member of your family or a close friend ever
- 14 been charged with a felony crime?
- 15 A. Not that I'm aware of.

16 MR. WETLE: Thank you very much. Your Honor, we pass

17 Mr. McLean for cause.

18 THE COURT: All right, Mr. McLean, now Mr. Simeone

19 might have some questions.

20 MR. SIMEONE: Thank you, your Honor.

21

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1 MR. McLEAN

2 EXAMINATION BY MR. SIMEONE

3 Q. Good afternoon, Mr. McLean.

4 A. Good afternoon.

5 Q. How you doing?

6 A. Good.

7 Q. Thank you for your answers so far. Mr. Wetle discussed  
8 with you the burden of proof the State has beyond a  
9 reasonable doubt, and you understand that it's not proof  
10 beyond all doubt, but it is proof beyond a reasonable  
11 doubt. Do you agree that that's still a high standard  
12 that the State has to meet? Proof beyond a reasonable  
13 doubt?

14 A. Yeah, I think that would be a high standard.

15 Q. You think that's right, before the State can convict  
16 somebody of a crime, put them in prison or what have you,  
17 they prove a crime beyond a reasonable doubt?

18 A. Yeah, I think that would be appropriate.

19 Q. Are there any-- Are there any logistical problems you  
20 have with coming back and forth? Are you a cattle  
21 rancher?

22 A. Yes.

23 Q. Any problem with getting the livestock fed if you're  
24 called to be a juror?

25 A. No. My brother and I run the farm together, the ranch.

Juror #30 (Mr. McLean) - Examination by Mr. Simeone 699.

1 Q. That's pretty much covered then?  
2 A. Yes.  
3 Q. All right. Do you think you could listen to all the  
4 testimony that's presented here and decide it fairly based  
5 upon what you hear, rather than with any preconceived  
6 ideas you might have?  
7 A. Yes, I can.  
8 Q. Okay. And do you want to be a juror?  
9 A. Well, there's a-- There's a burden of responsibility  
10 that, you know, isn't taken lightly, but--  
11 Q. Right.  
12 A. But I'm an American citizen and I don't take that lightly  
13 either, so I think that-- Could you repeat the question  
14 again before I give my final answer?  
15 Q. A final answer. If called, shall you respond? That's  
16 basically the question.  
17 THE COURT: I think you asked him do you want to be a  
18 juror.  
19 Q. Do you want to be a juror?  
20 THE COURT: That was what the initial question was.  
21 A. I really honestly don't know how to answer that. It's--  
22 It's a responsibility, but it's not like--  
23 Q. I can't get you a lifeline.  
24 A. I'm sorry?  
25 Q. I can't get you a lifeline.

Juror #30 (Mr. McLean) - Examination by Mr. Simeone 700.

1 A. I don't understand that. I'm sorry.

2 Q. Well, what do you think your-- What do you think your  
3 answer would--

4 THE COURT: That's a television show reference.

5 A. Oh.

6 Q. What do you think your answer is? Do you want-- Will you  
7 do it if you're required to? That's what it comes down  
8 to.

9 A. Yeah. Yes, I would.

10 Q. Okay.

11 MR. SIMEONE: Thank you very much, sir. I pass for  
12 cause, your Honor.

13 MR. MCLEAN LEAVES THE COURTROOM

14 THE COURT: I had a clarification for Mr. Wetle. Mr.  
15 Wetle, you were passing, I gather than, through Number 28--  
16 Through Number 28. Is that what I'm gathering?

17 MR. WETLE: Well, actually, your Honor, we never did pass  
18 on the first round, but we passed for the alternate, but we  
19 have agreed to not--

20 THE COURT: Not exercise your--

21 MR. WETLE: Not exercise--

22 THE COURT: --fifth and sixth?

23 MR. WETLE: Yes.

24 THE COURT: Okay, so you're passing your fifth and sixth  
25 peremptories?

Juror #30 (Mr. McLean) - Examination by Mr. Simeone 701.

1 MR. WETLE: Yes.

2 THE COURT: Okay.

3 MR. WETLE: And I'm not sure that even at this stage we  
4 could do it anyway, so--

5 THE COURT: I think you're right. So I'm making that  
6 notation that you passed through Number 27 before you passed  
7 Number 28 as a peremptory. I mean as an alternate.

8 MR. WETLE: Yes.

9 THE COURT: Okay, then, Mr.-- Let's see, whose turn is  
10 it? Mr. Wetle's turn to exercise on the--

11 MR. WETLE: And we would pass, your Honor.

12 THE COURT: --second alternate.

13 MR. SIMEONE: As would I, your Honor.

14 THE COURT: All right, second alternate passed by both.  
15 Number 30.

16 So just before we have the jury come back in, we have  
17 Juror Number 1 would be Juror Number 1, Dixon.

18 Number 2 would be Number 2, Jones.

19 Seat Number 3 would be Number 17, Larson.

20 Seat Number 4 would be Number 19, Vasquez.

21 Seat Number 5 would be 13, Rhodes.

22 Seat Number 6, Number 6, Basset.

23 Seat Number 7, Number 24, Garringer.

24 Seat Number 8, Number 14, Holibaugh.

25 Seat Number 9 would be Number 25, McBride.

702.

1           Seat Number 10, Number 18, Flett.  
2           Seat Number 11 will be Number 27, Supita.  
3           Seat Number 12 would be Number 16, Drury.  
4           Alternate Number 1 will be Number 28, Wise.  
5           Alternate Number 2 would be Number 30, McLean.  
6           So any differences of opinion on that, counsel?  
7           MR. SIMEONE: That's in agreement with my notes, your  
8 Honor.  
9           THE COURT: Okay, Mr. Wetle, as well as yours?  
10          MR. WETLE: That's fine, your Honor.  
11          THE COURT: Okay, let's take about a 10 minute recess.  
12 I'm going to go ahead and have the bailiff go gather up these  
13 people that are on this list here. We'll go over it in  
14 chambers. I'll have him corral all the jurors in chambers--  
15 Well, yeah, let's do that so that we-- Let's take a 10 minute  
16 recess. We'll come back and deal with the ER 609 issue that  
17 we had on record.  
18          MR. SIMEONE: Okay.  
19          MR. WETLE: And then after that, your Honor? After we  
20 deal with the 609, what are we-- What's next?  
21          THE COURT: Opening statements. I trust you can make your  
22 opening statement without rulings on certain ones of what we  
23 sort of left over.  
24          MR. WETLE: I'm trying to be broad-- I went through and  
25 I looked to see which ones were absolutely okay without

1 contest for some of the issues. I do have-- I don't know if  
2 we've got-- I think almost all of the exhibits have been  
3 marked, so it would take a little bit to get the exhibits up  
4 here, your Honor, for maps and diagrams and things of that  
5 nature, and I'm wondering if we couldn't take maybe a 20  
6 minute recess, rather than a ten minute recess?

7 THE COURT: And then get it all done at once, instead of  
8 having to--

9 MR. WETLE: Exactly.

10 THE COURT: Are you going to use some exhibits in your  
11 opening statement? Is that what you're thinking?

12 MR. WETLE: I may just refer to an overall map. I think  
13 Mr. Simeone has seen the overall map and we'd probably both be  
14 using it.

15 MR. SIMEONE: Yeah, I could-- That would be fine. I'll  
16 stipulate to that. Your Honor, I don't know if you just  
17 mentioned it while I wasn't paying attention, but are we  
18 addressing the order in limine at this time so we know what he  
19 will and what he will not say in his opening remarks?

20 THE COURT: No, not right this minute. We're talking  
21 about what exhibits are going to be needed for the opening  
22 statements, because I want to talk about, Number 1, whether we  
23 can get through opening statements this afternoon before we  
24 finish up for the day, and, Number 2, if so, whether we had  
25 time for, you know, a quick witness or whether that's unreal-

1 istic. So how much time were you expecting to use in opening  
2 statement yourself, Mr. Wetle?

3 MR. WETLE: I'm thinking about 40 minutes.

4 THE COURT: Forty minutes. And Mr. Simeone, I assume you  
5 were going to make an opening statement at the get-go?

6 MR. SIMEONE: Yes. And it would be a similar amount of  
7 time, if not maybe a little more. I don't know.

8 THE COURT: Okay, so even optimistically, we're not going  
9 to get to any witnesses today, then?

10 MR. SIMEONE: No.

11 MR. WETLE: That's good to know so we can send people  
12 home.

13 THE COURT: Uh-huh. That sounds realistic with the--

14 MR. SIMEONE: Right.

15 THE COURT: So, then, the idea being-- A couple other  
16 things for scheduling. We have the issue-- There's just a  
17 few up-in- the-air issues about some of the statements of Mr.  
18 Cunningham, as I recall. Some of the issues that we were  
19 going to resolve through direct testimony of Mr. Cunningham.  
20 And there was one other issue you were going to resolve for me  
21 about whether the gentleman, Gabe, was ever apprehended.

22 MR. WETLE: He was worked, I think knew he was worked, and  
23 the case could not be made, but he had knowledge that they  
24 were trying to set it up.

25

705.



1 MR. SIMEONE: The question I would have then in response  
2 to his position is when he gained that knowledge, your Honor.

3 THE COURT: So does, let's see, Agent Dogeagle know when  
4 the controlled-- You're talking about a controlled buy type  
5 situation?

6 MR. WETLE: I think so. They had somebody that was  
7 supposed to make contact with Gabe. Tried a couple times and  
8 couldn't-- couldn't make it work.

9 THE COURT: Okay.

10 MR. WETLE: But I don't have the time on that.

11 THE COURT: When can you get that?

12 MR. WETLE: Monday.  
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705-A

1 MR. SIMEONE: Not in time for his opening statement,  
2 though, I gather.

3 THE COURT: Right, so you'll have to avoid mention of it  
4 during your opening statement, obviously, because we can't  
5 rule on that until you can answer that question for me.

6 MR. WETLE: Anything about Gabe?

7 THE COURT: Right. Now, what you can mention is that  
8 people went down, not necessarily in San Francisco, but that  
9 people went down, because there was at least one person in  
10 Seattle that went down, according to your pre-trial testimony.  
11 And so you can use that, in a general way. People in the  
12 family who went down.

13 MR. WETLE: Even though they tried but were not success-  
14 ful?

15 THE COURT: In regard to Gabe? Well, the problem is the  
16 time frame, Mr. Wetle, knowing whether that occurred before or  
17 after the--

18 MR. WETLE: The hit?

19 THE COURT: The hit.

20 MR. WETLE: Okay.

21 THE COURT: The alleged hit.

22 MR. WETLE: Well, if I can have, I guess, an extra five,  
23 maybe I can find that out.

24 THE COURT: Maybe you can get that information.

25 MR. WETLE: Yes.

1 THE COURT: Okay. All right.

2 MR. SIMEONE: But how are we going to present that infor-  
3 mation? Doesn't that have to be in the form of some testimo-  
4 ny, or are we just going to accept his offer of proof on it?  
5 That doesn't seem to me to be the right way to do it.

6 THE COURT: If you can represent to me through an offer of  
7 proof that Agent Dogeagle will be testifying as to a date of  
8 a controlled buy involving this Gabe individual and Mr.  
9 Kaiser, then that will be sufficient for my purposes. So that  
10 answers your question, Mr. Simeone?

11 MR. SIMEONE: It does.

12 THE COURT: I'm not going to require Dogeagle to get back  
13 on the witness stand.

14 MR. SIMEONE: Okay, I understand. I understand the  
15 court's ruling.

16 THE COURT: Okay, and then the rest of it, you can wait  
17 on, can't you, Mr.-- about whether or not he got rid of  
18 people in the sense of prior bad acts? Getting rid of people?

19 MR. WETLE: I wasn't going to go into that, your Honor.

20 THE COURT: Okay, in your opening statement?

21 MR. WETLE: No, it's just going to be a background. What  
22 I do is I look through the documents that you had okayed  
23 without controversy, tried to tailor it to those statements,  
24 and then I'll go into the factual allegations around the  
25 barter fair and going up to the cabin.

707.

1 THE COURT: Okay. Let's go ahead with our arguments then  
2 on the ER 609 issue with Mr. Cunningham's juvenile conviction.  
3 Mr. Simeone wants to be able to cross examine him with respect  
4 to that.

5 MR. SIMEONE: That's right, your Honor. I raised that  
6 argument earlier, and the basic rule, if you refer to the  
7 rule, 609. I think it's sub--

8 THE COURT: (d).

9 MR. SIMEONE: (d)? Generally we are restricted from  
10 referring to juvenile adjudications, but the rule gives, I  
11 think, a pretty broad exception to that \_\_\_\_\_, and that is  
12 that the judge can allow the testimony, and especially if  
13 we're in a criminal trial where the person who's being  
14 impeached is not the defendant, but just a witness, and if  
15 it's in the interests of justice. There's some kind of a  
16 catchall, loose kind of phraseology there about when it's  
17 allowable.

18 I think here we're talking about a witness who is not a  
19 defendant, so we pass at least that hurdle. And secondly, we  
20 have to remember when it was that this individual, that is Mr.  
21 Cunningham, was convicted. It was July, I think, of 1993. At  
22 that time he would already have been 18 by two months. I  
23 don't know how it was he was a youthful offender. There must  
24 be some kind of laxity in their rule there in New York about  
25 when a person's a youthful offender. But he's at least 18, so

708.

1 it's not like we're talking about a ten year old offender here  
2 either that I'm trying to strain the-- the parameters of the  
3 rule at all. I think it's fairly consistent with what we do  
4 in Washington here, if he were an 18-- or 18 years and two  
5 months offender, he's an adult offender, and I think it's a  
6 crime of moral turpitude and I think I should be allowed to  
7 use the evidence of it to impeach him.

8 THE COURT: And this is a burglary conviction, counsel?

9 MR. WETLE: It's burglary, but we don't know if it has a  
10 theft rider, your Honor.

11 THE COURT: Mr. Simeone, do you know whether it was  
12 burglary to enter-- enter into a building to commit a theft,  
13 as opposed to an act of violence or some other crime not  
14 involving theft, because there's case law indicating that's  
15 not a crime of dishonesty then.

16 MR. SIMEONE: Well, I thought it was--

17 THE COURT: If it's not a theft.

18 MR. SIMEONE: My understanding is that it was a theft-  
19 related crime, and I think in my interview with Mr. Cunningham  
20 I think that came out somewhere in the discovery. It is-- It  
21 is a crime of moral turpitude, that's my understanding. It  
22 wasn't just that he entered for the purpose of looking around  
23 or for sleeping there or anything like that, or trespass-- or  
24 just a trespass crime. I think it's--

25 THE COURT: Well, Mr. Wetle, are you moving in limine to

709.

1 exclude it? Exclude questioning on that?

2 MR. WETLE: I would your Honor, until we find out, and  
3 maybe Mr.-- in the records-- We're not going to get the  
4 records because they're sealed juvenile adjudications. If Mr.  
5 Cunningham can shed some light on that, then, you know--

6 THE COURT: When can you find out the answer to whether it  
7 was a theft?

8 MR. SIMEONE: He's in custody.

9 MR. WETLE: All I have to do is talk to him.

10 THE COURT: That's what I mean. When can you do that?

11 MR. WETLE: He's down in the jail.

12 THE COURT: Okay, can you send an officer down there to  
13 talk to him? I assume he'll talk to you or talk to his  
14 attorney and see? I guess he has an attorney, doesn't he?

15 MR. WETLE: He does.

16 THE COURT: Who is it? Ms. St. Clair or--

17 MR. SIMEONE: No, it's John Troberg, \_\_\_\_\_.

18 MR. WETLE: John Troberg.

19 THE COURT: Mr. Troberg. Can you get one of your officers  
20 to talk to Mr. Troberg and see if you can get that clarified?

21 MR. WETLE: Okay. I think that'd be probably my only leg  
22 to stand on. It's within the ten years, you know. He is a  
23 witness. We're in 2001, it's--

24 THE COURT: Sure. Yeah. I mean you know you have the  
25 problem, Mr. Simeone, which I don't think will probably come

710.

1 up, that if Mr. Cunningham denies that he has such a convic-  
2 tion, period, you're between a rock and a hard place present-  
3 ing a certified copy to confront him with.

4 MR. SIMEONE: Well, except that there is evidence in the  
5 file. I don't know what level of proof I'm \_\_\_\_\_.

6 THE COURT: Well, if you're-- You know, if he's going to  
7 say no, and it's a sealed record, then, you know, there's  
8 that. So we'll see what Mr. Troberg says about it. If it's  
9 a sealed record, my thought is that it's probably a non-  
10 conviction at this point.

11 MR. SIMEONE: You know, I didn't pursue this too vigorous-  
12 ly because my understanding was that there was going to be,  
13 and I've been kind of lulled along here, that there was going  
14 to be a stipulation to this conviction. And then recently  
15 it's arisen that now it might be a youthful offender, and now  
16 I'm starting to hear that well, maybe we don't have proof of  
17 this at all because he's \_\_\_\_\_. I've got records from  
18 the State of New York to the effect that he was convicted, but  
19 I-- there's some kind of a notation in the file that well,  
20 this was a youthful offender and therefore it's sealed. So I  
21 mean there's ample proof by a preponderance that it happened.

22 THE COURT: Okay. Well, let's first get the answer to the  
23 question was it a theft-related conviction, and whether or not  
24 Mr. Cunningham is going to admit to it. And if he's not, then  
25 I guess we'll take it from there.

711.

1 MR. SIMEONE: And once more, before it escapes my thinking  
2 here, I think there was a separate conviction for theft in  
3 1997 where he did over a hundred days in jail for it.

4 MR. WETLE: No, I think that was a-- Well, I'm not-- I'm  
5 thinking of the probation violation. He got convicted of--  
6 He's on probation, and some time later there is a probation  
7 violation, then he served some jail time for the probation  
8 violation.

9 THE COURT: So it is or is not a separate conviction for  
10 a separate crime?

11 MR. SIMEONE: That I'm not sure, but you know, there are  
12 ample ways for me to impeach him on the issue of whether or  
13 not he's told the truth about that, because he admitted to  
14 this in my interview, before my investigator.

15 THE COURT: Okay. Well, all right. My thought is that I  
16 sure wish I'd known about this issue before, but go ahead and  
17 get in touch with Mr. Troberg. I assume it won't be an issue.  
18 Hopefully he'll just admit that it was a conviction back in  
19 '93, or a theft-related burglary, and if it's a rape-related  
20 burglary, well, you're going to be out of luck, Mr. Simeone.

21 MR. SIMEONE: I understand.

22 COLLOQUY REGARDING RECESS AND SCHEDULE

23 COURT RECESSED  
24  
25



1 COURT RECONVENED WITHOUT THE JURY

2 THE COURT: Okay, a couple of pre-trial issues still  
3 remaining to clean up before we call the jury in to start the  
4 opening statements and introductory instructions.

5 One has to do with the information you were going to check  
6 with Agent Dogeagle about, Mr. Wetle, in regard to the timing  
7 of the contact between Nick Kaiser and the DEA and Gabe in  
8 regard to Mr. Kaiser's agreement to turn State's evidence on  
9 him.

10 MR. WETLE: Thank you, your Honor. I did contact Detec-  
11 tive Warren Dogeagle this afternoon during the recess, and he  
12 did state that they attempted to set up a deal with Keith  
13 Henry, also known as Gabe, immediately after Kaiser was busted  
14 and agreed to work with the DEA agents. He said that there  
15 was some urgency on the part of the U. S. Attorneys, that they  
16 wanted that to happen sooner rather than later.

17 The situation was that Nick Kaiser owed Gabe three to  
18 \$6,000 for prior drugs that he had received from Gabe, so this  
19 situation was merely a payoff for drugs received on a prior  
20 occasion. Agent Dogeagle says that they made several attempts  
21 to have Gabe meet Nick Kaiser in a neutral position, or  
22 neutral location, but Gabe wouldn't do it and that finally  
23 they kept-- he kept-- Gabe kept putting it off until he  
24 wanted Nick to come to his home to pay Gabe for the prior  
25 transactions. This all happened prior to the death of Nick

713.

1 Kaiser.

2 THE COURT: All right, Mr. Simeone?

3 MR. SIMEONE: Your Honor, I don't know that this is  
4 furtherance of the conspiracy, which is really what we're  
5 trying to talk about in the exception. We're talking about  
6 somebody who's got a transaction. A transaction or money debt  
7 does not a conspiracy make. So I think before we get-- leap  
8 too fast to that conclusion that this is somehow an 801  
9 (d)(2)(v) exception, that we need more information on that,  
10 and we just-- we just don't have it. All we're asking here  
11 is that we provide better proof from Agent Dogeagle to that  
12 effect. And it's not prejudicing Mr. Wetle that greatly for  
13 him to be required to keep this out of his opening argument.  
14 He can bring that information in later if it's proved to the  
15 court's satisfaction, which Mr. Dogeagle can do at some  
16 hearing that we have outside the presence of the jury, at a  
17 later date. I think it's-- We're just rushing, I think, at  
18 this point to take that \_\_\_\_\_ on face value, as being  
19 sufficient.

20 THE COURT: Okay, but as I recall, this wasn't an 801  
21 (d)(2)(v) argument, but an 803 (b)(3) argument, unavailable  
22 declarant. Is that right, Mr. Wetle?

23 MR. WETLE: That's right, your Honor.

24 MR. SIMEONE: Well, who would that declarant be at that  
25 point?

714.

1 THE COURT: This is Mr. Kaiser, I would imagine. Is that  
2 right, Mr. Wetle?

3 MR. WETLE: He's saying what Nick Kaiser tried to do.  
4 Actually, your Honor, my opening statement as to Mr. Dogeagle  
5 is that Mr. Kaiser was arrested as he was processing LSD, and  
6 that Nick agreed to work the feds to give up his LSD source  
7 and do a reverse, i.e. sell some of it to one of his buyers.

8 THE COURT: So you don't need to mention that at this  
9 point until we get further clarification.

10 MR. WETLE: So I--

11 THE COURT: All right. Well, let's leave that hanging once  
12 again then, until we can clarify that. And I'll be able to  
13 kind of review the rule on that over night.

14 Now, there was one other issue about Mr. Williams's-- not  
15 Mr. Williams's--

16 MR. SIMEONE: That's right. Williams's theft conviction.

17 THE COURT: Okay. Mr. Williams's theft conviction was a  
18 misdemeanor theft conviction, and that's not an issue,  
19 correct?

20 MR. WETLE: No.

21 THE COURT: It's Mr. Cunningham's--

22 MR. SIMEONE: Juvenile.

23 THE COURT: --juvenile conviction that's still at issue.

24 MR. SIMEONE: That's correct.

25 THE COURT: All right, and, Mr. Simeone, Mr. Wetle

1 indicated in chambers just a second ago, didn't you, that you  
2 had tried to contact Mr. Troberg, Mr. Cunningham's attorney?

3 MR. WETLE: I did call his office and I found him in the  
4 other courtroom and asked him if he would talk to his client  
5 about that to see whether or not he would say that it was a  
6 theft-related burglary, and, you know, if he wanted to do  
7 that. And so there was a certain amount of foot-stomping and  
8 perspiration, and then Mr. Troberg then left, and I don't know  
9 whether he went to see Mr. Cunningham or he was going to see  
10 the judge. I wasn't quite sure. But the message was relayed.

11 THE COURT: In regard to this issue?

12 MR. WETLE: Yes, he was going to go talk to his client.

13 THE COURT: Okay, so you don't know whether it's a theft-  
14 related conviction at this point?

15 MR. WETLE: I don't know that.

16 THE COURT: And you don't either, Mr. Simeone?

17 MR. SIMEONE: I can't represent that I do, your Honor.

18 THE COURT: Okay. Well, you'll need to avoid mention of  
19 it in any opening statement that you get to today. We may not  
20 get through your entire opening statement. To the extent  
21 you're not finished with your opening statement by day's end,  
22 then we will take it up again on Monday morning, and perhaps  
23 have that issue resolved so that you can refer to it in your  
24 opening statement.

25 MR. SIMEONE: I'm permitted, however, to refer to the fact

1 that the State has a witness who has a conviction of a crime  
2 of moral turpitude.

3 THE COURT: Yes.

4 MR. SIMEONE: Without being specific that I'm talking  
5 about Dane Williams.

6 THE COURT: That's fine, yes.

7 MR. SIMEONE: Okay.

8 MR. WETLE: How long did the court think we would go  
9 today?

10 THE COURT: Well, I'd like to go till 5:00, at least.  
11 Maybe a few minutes after. My thought is that I've got some  
12 introductory instructions to the jury about the function of  
13 the various parties, and about note-taking and that kind of  
14 thing that will take me a little bit to get through, and then  
15 we'll launch into your opening statement.

16 MR. WETLE: Okay.

17 THE COURT: I'd like to get part way into Mr. Simeone's so  
18 that he can get a few words out, at least, and it may be, Mr.  
19 Simeone, that you would prefer to finish your opening state-  
20 ment. Do you know? Or do you feel that you'd like to--

21 MR. SIMEONE: Well, let me get--

22 THE COURT: --partition it.

23 MR. SIMEONE: --a temperature reading on the jury's  
24 fatigue level at the time Mr. Wetle's through.

25 THE COURT: Okay.

1 MR. SIMEONE: \_\_\_\_\_ at that time. It might be that I  
2 want to start now and finish \_\_\_\_\_.

3 THE COURT: Okay. All right. That sound all right? And  
4 I see we have an exhibit here-- One second. Hold on. Okay.  
5 I see we have an exhibit here, Mr. Wetle?

6 MR. WETLE: That's correct. It's just a map, your Honor.

7 THE COURT: And what is the exhibit number?

8 MR. WETLE: Twenty.

9 THE COURT: Any objection to a reference to Exhibit 20  
10 during the opening statement?

11 MR. SIMEONE: No objection.

12 THE COURT: All right, we can get the jury to come in.

13 MR. SIMEONE: The last thing I want to mention, Your  
14 Honor, is that I do need Mr. Wetle's witnesses before we leave  
15 today. \_\_\_\_\_ before we leave today.

16 THE COURT: All right. Any problem with that?

17 MR. WETLE: The witnesses? You have the witnesses.

18 MR. SIMEONE: Your Monday witnesses is what I need.

19 MR. WETLE: Okay, we-- I will tell the court that  
20 Monday's schedule is completely turned around, and will be  
21 turned around probably until Saturday because some people have  
22 airplane fares that need to come in to testify Monday and go  
23 back Monday afternoon, so those people who were expected to  
24 testify in the middle of the trial are now going to need to  
25 testify, I think, in the beginning of the trial.

717-A

1 THE COURT: Well, at the end of the day I'll just ask you  
2 to do the best you can to let Mr. Simeone know who it is  
3 you'll be calling Monday. I'm not going to require Mr. Wetle  
4 to tell you with certainty exactly who he's going to call on  
5 Monday, because--

6 MR. WETLE: I don't know, Your Honor, and--

7 THE COURT: He doesn't-- He's not going to be held to a  
8 particular order of presentation of his case.

9 MR. SIMEONE: Your Honor, I've always been required to do  
10 that in the past.

11 THE COURT: Hold on one second.

12 MR. SIMEONE: I've always been required to at least advise  
13 opposing counsel who I'm going to call the next day. I think  
14 I'm entitled to that courtesy.

15 MR. WETLE: I have never--

16 THE COURT: Well, I think it is a matter of courtesy, but  
17 I'm not going to make it a matter of a court order. So if the  
18 two of you can coordinate, just out of courtesy, that would be  
19 helpful, but--

20 MR. WETLE: And we should be able to do that.

21 THE COURT: I'm going to give both parties quite a bit of  
22 leeway in terms of how they present their cases, and we want  
23 to try to accommodate, particularly, out-of-state, out-of-  
24 town, witnesses, if we can. If we can't, then so be it. If  
25 it interferes too much with the orderly presentation of the

717-B

1 case, then that's--

2 MR. WETLE: They will be greatly out of order, I can tell  
3 the court that.

4 THE COURT: Yeah. And that's up to you. Okay. So, Mr.  
5 Wetle, will you be able to confer, then, with Mr. Simeone at  
6 the end of the day about the best you can guess?

7 MR. WETLE: What I will need is the-- who has what plane  
8 fares to come on Sunday, because all the officers were going  
9 to go first. Now they're all not going to go first, so I will  
10 see who has plane fares and who has to go back Monday.  
11 They'll be the ones that will be testifying Monday first, and  
12 then I'll switch to the officers.

13 THE COURT: All right.

14 MR. SIMEONE: \_\_\_\_\_ witnesses are experts or \_\_\_\_\_?

15 MR. WETLE: They're Seattle people. The people over in  
16 Seattle that are coming-- The one from Pennsylvania with the  
17 dental X-rays, records, has to come in on Monday and leave by  
18 noon on Monday, so those are just scheduling people, mainly.

19 THE COURT: All right. Okay, let's bring the jury in, if  
20 you would.

21 **JURORS ARE SEATED**

22 THE COURT: All right, please be seated. And before we're  
23 going to cast our seating arrangement in stone, I'm going to  
24 ask, people on the back rows, any-- is there any problem  
25 seeing the witness stand up here, over the people in front of

717-C



1 you? How about in the front row, any problem with that?  
2 Okay. All right, if anyone has any trouble hearing, let us  
3 know, and if anyone needs to stand up and stretch between  
4 witnesses, you're certainly free to do that, stretch your legs  
5 between witnesses. If you see the attorneys and I have a  
6 sidebar conference over here, that's not going to be for your  
7 ears so you can-- that's your opportunity to get up and  
8 stretch your legs, maybe even talk quietly among yourselves,  
9 and make an effort not to listen, please, to us because that's  
10 for a different record, as opposed to your ears. All right?  
11 And anyone having trouble hearing me now?

12 No? Okay.

13 I have some preliminary instructions for you, and I do  
14 need to have you sworn in to try the cause, and so I'll have  
15 all of you please rise and raise your right hands.

16 Do you and each of you solemnly swear or affirm under  
17 penalty of perjury that you will well and truly try the issue  
18 joined between the State of Washington and John Douglas  
19 Grange, defendant, and a true verdict render according to the  
20 evidence and the instructions of the court? If so, please  
21 answer I do.

22 THE JURY: (Collectively answers "I do.")

23 THE COURT: All right, please be seated. There's some  
24 notepads in front of you, and I'm going to start out with my  
25 instruction on note taking. During the course of

717-D

1 this trial you're permitted to take notes, if you wish. By  
2 permitting you to take notes, I'm not urging or instructing  
3 you to do so. I caution you note-taking may interfere with  
4 your opportunity to observe the demeanor of witnesses and  
5 other events of the trial. On the other hand, the court will  
6 not be providing you with a transcript or recording of any of  
7 the testimony, so when a witness testifies that will be your  
8 only opportunity to hear what that witness says. So, do not  
9 disclose or discuss your notes with any other juror until the  
10 jury begins its deliberations at the conclusion of the trial.  
11 At that time you may disclose and discuss your notes with the  
12 other jurors, if you so desire. When you recess during the  
13 trial, you will leave your notepad on the ledge in front of  
14 you inside the envelope provided. At the end of the day leave  
15 your notepad on the ledge inside the envelope. Notepads are  
16 not permitted to be taken out of the courtroom or the jury  
17 room at any time or for any reason.

18 After you have reached a verdict, the bailiff will collect  
19 your notepads. The notes you took will then be shredded. No  
20 one will be allowed to read your notes.

21 Finally, I caution you not to assume that any particular  
22 note you-- that you may have taken is necessarily more  
23 accurate than your memory, or the notes or memories of your  
24 fellow jurors. At all times keep your minds open to the notes  
25 or memories of your fellow jurors.

1 All right? So if any of you want to get your notepads out  
2 now and be ready to take notes, feel free. I do have some  
3 preliminary instructions about certain things that may or may  
4 not be of note-taking value, but you're free to take that into  
5 account.

6 I'm going to just touch on the instruction about not  
7 discussing the case among yourselves or with anyone else.  
8 That may involve a personal penalty to you and result in a  
9 mistrial, which would obviously be of great injury to the  
10 parties and to the county and would be an overall disaster.  
11 Let's put it that way.

12 Experience has shown that it would be difficult to keep an  
13 open mind as well if you discussed your case with one another  
14 before you've heard the entire amount of evidence.

15 And as I mentioned, we're not going to sequester you,  
16 except possibly towards the end. During your deliberations  
17 there might be something like that, but probably not. And  
18 because of this, you're admonished again not to read, view or  
19 listen to any report in the newspaper, radio or television on  
20 the subject of this trial.

21 Do not permit anyone to read or comment on it to you or in  
22 your presence. It is important that you keep your mind free  
23 of extraneous influences so that you may decide the case on  
24 the evidence and under the court's instructions on the law.

25 Furthermore, news reporters are often not in the courtroom

1 throughout the trial, so their impressions may be incomplete  
2 or inaccurate.

3 And I've indicated what to do if your family or friends  
4 ask you about the case. You're to just indicate to them you're  
5 under the court's instruction not to discuss the case. And  
6 when the case is concluded you'll be released from that  
7 instruction.

8 And we had a juror--not one of you folks--violate my  
9 instruction about not conversing with one of the parties. One  
10 of the attorneys had to alert me that a juror had approached  
11 him and had indicated something about her questionnaire, and  
12 she had obviously not paid attention to my instruction that  
13 you folks are not to greet or converse with the attorneys, and  
14 vice versa. And so-- And the participants. Additionally,  
15 there are witnesses here and there that you may not be able to  
16 identify by sight. There might be friends or family members  
17 of witnesses or parties. That-- It would be absolutely  
18 important not to have any discussion with any of those people,  
19 and so you're not to have any contact at all with participants  
20 or people in their realm of experience.

21 So you'll be taking your recesses, most of them, in the  
22 jury deliberation room, and when we recess for the day you'll  
23 proceed directly out of the courtroom, out of the courthouse,  
24 and then when you come back on Monday morning, or at the  
25 beginning of every court day, we will have you come back

720.

1 directly to the jury deliberation room without lingering by  
2 the entrances or exits to the building, please. Again, to  
3 avoid any inadvertent contact with people that you may not be  
4 able to identify by sight.

5 If you do happen to have some contact, accidental or  
6 otherwise, then we do need you to let the bailiff know so that  
7 the bailiff can advise me and I can deal with it that way.

8 Now, as I've indicated, I may repeat or refer to those  
9 instructions from time to time during the trial. Inevitably,  
10 I'll forget at one recess or another to remind you of your--  
11 of your duty not to discuss the case, but they continue-- the  
12 instructions continue to apply to your conduct throughout the  
13 trial and at every recess until the matter is finally submit-  
14 ted to you for a decision. And that applies whether or not I  
15 specifically repeat them or refer to them again.

16 So, now, we have some instructions about the function and  
17 duties of jurors, the court and the lawyers and the procedure  
18 to be followed during the trial.

19 The lawyers' remarks, statements and arguments, including  
20 their comments to you and/or their questions to you during the  
21 voir dire process are intended to help you understand the  
22 evidence and apply the law, but they are not evidence and you  
23 should disregard any remarks, statements or arguments which  
24 are not supported by the evidence or by the law as given to  
25 you by the court.

1           The law doesn't permit me to comment on the evidence in  
2 any way, and I will not intentionally do so. By a comment on  
3 the evidence, I mean some expression or indication from me as  
4 to my opinion on the value of the evidence or the weight of  
5 it. If it appears to you that I do comment on the evidence,  
6 you are to disregard such apparent comment entirely.

7           The lawyers may make objections to questions and evidence.  
8 They have the right and the duty to make any objections which  
9 they deem appropriate. Such objections, however, should not  
10 influence you and you should make no presumptions because of  
11 their objections.

12           The evidence you are to consider consists of the testimony  
13 of the witnesses and the exhibits admitted into evidence.  
14 There may also be some stipulations as to evidence, and if so,  
15 then I would let you know, and that would be something that I  
16 would give to you from the bench here. So the only evidence  
17 you're to consider will be either stipulations, witnesses'  
18 testimony, or exhibits admitted into evidence.

19           You must not concern yourselves with reasons for rulings  
20 on admissibility of evidence. It's my duty to rule on that  
21 issue, admissibility of evidence.

22           You will disregard any evidence which either is not  
23 admitted or which may be stricken by me.

24           The case will proceed in the following order: First, the  
25 State's lawyer, Mr. Wetle, may make an opening statement

1 outlining the evidence to be presented on behalf of the  
2 State's case.

3 The defendant's lawyer, Mr. Grange's lawyer, Mr. Simeone,  
4 may make an opening statement outlining Mr. Grange's case  
5 immediately after the State's statement, or Mr. Simeone may  
6 reserve opening statement until the conclusion of the State's  
7 case.

8 Second, the State will introduce evidence. At the  
9 conclusion of the State's evidence, the defendant may intro-  
10 duce evidence. Rebuttal evidence may also be introduced by  
11 either side.

12 Third, at the conclusion of all the evidence, further  
13 instructions will be given you, after which the lawyers will  
14 have the opportunity to make closing arguments.

15 Then you will select a presiding juror and deliberate on  
16 your verdict.

17 You are now officers of the court and must act judiciously  
18 with an earnest desire to determine and declare a proper  
19 verdict.

20 Throughout the trial you should be impartial and permit  
21 neither sympathy nor prejudice to influence you.

22 Now, ladies and gentlemen, I'll ask that you give your  
23 attention to Mr. Wetle, who will give you the opening state-  
24 ment on behalf of the plaintiff, State of Washington. Mr.  
25 Wetle?

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PLAINTIFF'S OPENING STATEMENT

MR. WETLE: Thank you, your Honor. Counsel, Mr. Grange, ladies and gentlemen of the jury, thank you for being here for the last few days to break up your ordinary schedule to serve as jurors in a trial such as this. I would submit that you will find it is both interesting and educational.

The State has charged Mr. Grange with two counts of murder in the first degree. To convict Mr. Grange of those two counts, the State has to prove the following elements beyond a reasonable doubt, and I'll read these.

That on or about the 11th day of June, year 2000, the defendant, with premeditated intent to cause the death of another person, did shoot Nicholas Kaiser in the body and/or head.

Secondly, that the defendant did act with intent to cause the death of Nicholas Kaiser.

Thirdly, that the intent to cause the death was premeditated.

Fourth, that Nicholas Kaiser died as a result of the defendant's acts, and that the acts occurred in the State of Washington.

For the second count: That on or about the 11th day of June, 2000, the defendant, with premeditated intent to cause the death of another person, did shoot Joshua Schaefer in the body and/or head; that the defendant acted with intent to



1 cause the death of Joshua Schaefer; that the intent to cause  
2 the death was premeditated; that Joshua Schaefer died as a  
3 result of the defendant's acts; and that the acts occurred in  
4 the State of Washington.

5 Just to orient you just momentarily, this is a map of the  
6 north part of the county. This is the United States/Canadian  
7 border. Right here is Northport. Up in this area is the--  
8 where the barter fair is, and down in this area--

9 DETECTIVE BASKIN: Keep going. Clear over. A little  
10 more. Left, left, left, left. Three more miles.

11 MR. WETLE: Detective Baskin will show you.

12 THE COURT: No, no, not now, Detective. Wait.

13 DETECTIVE BASKIN: Later.

14 MR. WETLE: On the map, where the respective cabins are.  
15 It was kind of like you're getting warmer, you're getting  
16 warmer.

17 There's an aerial photo that was blow up that will give  
18 you a little better description of where the cabins are in  
19 this process and where the various people live, so that you  
20 will be able to orient yourself, and when we're talking places  
21 and distances you'll have a feel for what we're doing rather  
22 than having to guess.

23 The State will have a number of witnesses. Each of them  
24 has small parts or roles that they play. Little bits of  
25 information that they will give you.

1 David Kretz will be the first witness. I thought he would  
2 be the first witness, but we're behind schedule now and I  
3 think we'll end up taking witnesses out of order to accommo-  
4 date plane fares and travel time. So I apologize, but as long  
5 as you understand that it wouldn't be the ordinary sequence,  
6 but we are now fighting other schedule problems. And so I'll  
7 give you this lineup, but Monday it will be different.

8 Mr. Kretz was the first person to come upon the vehicle  
9 that recognized that this burnt-out vehicle had human remains  
10 in and about it. He and his-- He'll testify he and his  
11 brother were up in the area and they come across this and make  
12 that find. This is about September 24th. At that time he and  
13 his brother head to Colville to contact the local Sheriff's  
14 office, and from that time on Detective Baskin and his  
15 detectives are all involved in securing the scene and doing  
16 their investigation.

17 Trooper Dave Fenn is a trooper with the Washington State  
18 Patrol, and he will come. Over by Detective Baskin are some  
19 what they call Total Station diagrams, and even though you  
20 can't be there, these are to-scale drawings of certain  
21 landmarks where the vehicle was found, certain areas in the  
22 trees where skeletal remains were found. Those have all been  
23 logged and numbered so they're done to scale. So you'll have  
24 those to view here in the jury room.

25 Then Detective Baskin will be called, and he will just

1 tell you what they do when they get to a crime scene, and he  
2 is the lead investigator, along with Sergeant Caruso, and how  
3 they secure the scene and then begin to process a scene.  
4 Night time comes, they secure the scene and come back the next  
5 day with search warrants for the vehicle, and how they  
6 quadrant up the vehicle and start sifting through the ashes of  
7 the burned-out vehicle to see what evidence that they can find  
8 that would lend some light to what happened.

9 He will tell you that part of their-- the course of their  
10 investigation that they then canvassed the area to find out if  
11 anybody knows anything about this circumstance or this  
12 situation. By that time he has the license plate number off  
13 the vehicle and is able to find out who the registered owner  
14 was. So he has at least a name to start working around.

15 He then contacts the neighbors, people in the area, and  
16 they get an important piece of information with respect to  
17 Maija Soucie. And so as they're talking to people they  
18 eventually get ahold of Maija. Maija isn't real anxious to be  
19 involved here. Knows the officers want to speak to her, but  
20 is not real willing to proceed. They give a card, and they  
21 leave. Some time later she calls back and says that she would  
22 like to talk to the officers. They go back. As a result of  
23 that contact, the officers were able to get the names of three  
24 people. So now there is-- there are suspects. At that point  
25 the officers need to start locating those suspects. They were

1 able to locate one over on the west side. When that person  
2 was confronted, that person gave a statement. From that  
3 information they were able to get a warrant based on Maija's  
4 statement and the first individual they contacted, Mr.  
5 Williams. They had enough information to get a warrant for  
6 the arrest of Mr. Cunningham for rendering criminal assis-  
7 tance. That warrant was issued, and then the hunt was on for  
8 Mr. Cunningham.

9 They were able to find Mr. Cunningham in Florida, and he  
10 was then arrested and interviewed, and he too gave a state-  
11 ment. Based on those first-- Maija's statement, Williams'  
12 statement, Cunningham's statement, an arrest warrant was  
13 issued for Mr. Grange for two counts of murder in the second  
14 degree.

15 Detective Baskin will then be able to tell you about his  
16 other activities, including the mileage and the time it takes  
17 to travel from one place to another, to the extent that it  
18 would shed light on all of your deliberations and piecing  
19 together what happened.

20 As you've heard in your voir dire questions, there are  
21 some inconsistencies. We'll all deal with the inconsistencies  
22 and the consistencies as we proceed through the case.

23 Detective Baskin will tell you that in the course of the  
24 interview he interviewed Dane Williams five times. I think  
25 they interviewed Mr. Cunningham two times.

1           Detective Loren Erdman will testify that he was one of the  
2 helpers at the scenes, and that he takes photographs, and he  
3 will have, maybe, 40 photographs that will be enlarged, that  
4 we will offer those as evidence, and then he will present  
5 those photographs to you and show you as best he can the  
6 significance of the various photographs so that you will be  
7 able to see what the site looked like at the time.

8           Detective Paramore, who's also there, does much of the  
9 same overlapping type of work. So as not to bore you stiff,  
10 he will focus on a few photos that he took that ended up going  
11 to Dr. Lindholm down at the Forensic Pathology Institute at  
12 Holy Family Hospital.

13           Sergeant Caruso, of course, is there present for all of  
14 this, but basically will duplicate other testimony. His  
15 specific role came when he sees some papers at the Crown Creek  
16 cabin, which is the closest residence to where the vehicle was  
17 found burned out at the top of some remote mountain.

18           Ed Robinson is a crime lab firearms expert, and he will  
19 come and testify to you that he was asked to look at a green  
20 fire hood and analyze that for evidence of bullet impacts.  
21 He's asked to analyze objects found in the fire pit around the  
22 Crown Creek cabin where the deaths are believed to have  
23 occurred. And he will give you some firearms testimony as to  
24 his findings and conclusions in those respects.

25           Jimmy Nailor is a worker at the Wal-Mart store in Col-  
Plaintiff's Opening Statement

729.

1 ville, and that he happened to be the individual that pro-  
2 cessed a form that everybody fills out when they buy a  
3 firearm. And the significance of that form was that Mr.  
4 Grange, Sr. had come to Colville for the week just before the  
5 barter fair, and on June 7th, according to the documents, goes  
6 down to Wal-Mart and buys his son a semi-automatic .22 rifle.  
7 So he'll just give you the business records of the transac-  
8 tions at Wal-Mart.

9 Fran Harbaugh is a receptionist, dental assistant, in  
10 Waynesboro, Pennsylvania. She is part of the case. The State  
11 needs to be able to prove who's been killed. The State said  
12 that Nick Kaiser was killed and Josh Schaefer was killed. So  
13 as you will see from the photographs, what we have recovered  
14 are skeletal remains, including mandibles and teeth and such.  
15 So they suspected who this was, based on canvassing neighbor-  
16 hoods and seeing who was with who last, and we were able to  
17 find out from his parents where his dentist was. And we found  
18 out it was Dr. Zimmerman in Waynesboro, Pennsylvania, but  
19 that's where the X-rays are for Nicholas Kaiser, that's where  
20 his dental charts are, so those items were subpoenaed and she  
21 will bring them here and testify to you that those are the  
22 records.

23 And then Dr. Morgan, Frank Morgan, a forensic odontologist  
24 in Spokane, will piece together the teeth, the jaws and take  
25 his own X-rays, plus the X-rays that they get, and show you

1 how a forensic odontologist makes an identity conclusion based  
2 on dental records, which in many cases are all that people  
3 have left to identify human remains.

4 Dr. George Lindholm will be the one that will have sent  
5 the teeth and jaws to Dr. Morgan to do his work. He is the  
6 forensic pathologist in Spokane. He will be here to testify  
7 to you what he could conclude with respect to the bones that  
8 were transported down to his office. And by comparing the  
9 bones and looking at the types of bones, he was able to  
10 conclude that there were two human beings, rather than one.  
11 And he'll show you how he makes that conclusion and how he  
12 shows which mandible goes with which spinal cord, which goes  
13 with which skull. He will also be able to show you pictures  
14 of the skulls. Both of them have bullet holes to the back of  
15 the head. So he would be able to show you that and attach  
16 those to the bodies, and by being able to attach one to Nick  
17 Kaiser with the teeth, we know that's Nick, and then the  
18 question was who's the other individual.

19 Some phone rep people, hopefully, will be here to explain  
20 phone records and how-- I don't know if you've all got your  
21 phone bill and can decipher what they mean, but there are some  
22 phone records in the case and they'll be here to talk about  
23 some of that information as well.

24 Both fathers, Tom Schaefer and Wayne Kaiser, will be here  
25 to do a couple of things. Mr. Kaiser does not need to prove

Plaintiff's Opening Statement

731.

1 identity, but Mr. Schaefer needed to identify some personal  
2 effects that were found in the vehicle as whether or not they  
3 belonged to his son or not. So he'll be able to testify about  
4 that, and he'll offer an in-life picture so that you'll have  
5 the opportunity to see a picture of who actually was killed.

6 Warren Dogeagle is a special assignment detective that  
7 worked with the DEA drug task force over in the Tacoma area,  
8 and he gets involved because Nick Kaiser, one of our victims  
9 here, as you will have seen in the Information, is alleged to  
10 have been killed on June 11th. He will testify that on April  
11 25th, year 2000, a little over a month before June 11th, he  
12 had been busted over on the west side in the process of  
13 diluting and preparing LSD for sale. So he gets arrested with  
14 a substantial amount of LSD. At that time he enters into an  
15 agreement to work with the federal agents in giving up  
16 somebody below him and somebody above him. His source, and  
17 also somebody that he sells to. And so they enter into an  
18 agreement. He'll have a copy of that document that was  
19 signed. We'll offer that to you. Then how he worked with  
20 Nick in the process of giving up his source.

21 Brian Nehring is a DEA agent in Oakland. In Oakland,  
22 about the same time, the latter part of April, Josh Schaefer  
23 had been earlier arrested in a house that was processing LSD  
24 in Oakland. At that time his girlfriend, Kim Kerpin, was also  
25 arrested. She will be here to testify in this trial. He gave



1 a statement that implicated the people that were living in the  
2 house as being involved in the LSD business. One of the  
3 people, then, was charged and transported back to Virginia, I  
4 believe. He pled guilty.

5 In the course of the trial, and in the course of any  
6 trial, all the paperwork that the State gathers needs to be  
7 given to the defendant so he can present his case and defend  
8 himself. So the person that was informed on by Josh Schaefer  
9 got all the discovery, all the statements that Josh Schaefer  
10 had made. He pled guilty. A month later Josh Schaefer is  
11 with Nick Kaiser up here at the barter fair, and both of them  
12 end of shot in the back of the heads. So both are involved in  
13 the LSD business. Both of them are, the testimony will show,  
14 were friends, and Agent Nehring will talk to you about the  
15 Oakland implications of the case.

16 Kim Kerpin is Josh Schaefer's girlfriend, mother of his  
17 baby. She will identify the personal items that she knew Josh  
18 to wear because in his case Dr. Morgan just didn't have enough  
19 teeth to make the dental identification. She will tell you  
20 that Nick and Josh were both members of this Family. The  
21 Family is a large drug network organization that distributes  
22 and produces marijuana and LSD, primarily. We knew about the  
23 west coast, but it is nation-wide.

24 That Josh left to go see Nick in Seattle. This was after  
25 Nick had apparently rolled in Seattle and Josh was going to

Plaintiff's Opening Statement

733.

1 comfort him. That she talked to him on Saturday morning on  
2 June 10th at the barter fair, and on several occasions on June  
3 9th. I think there's three times on June 9th, once on June  
4 10th, and that was the last time that she ever talked to him.

5 Brian Murphy is Nick Kaiser's roommate. Nick Kaiser got  
6 busted and ended up going up to stay with Brian Murphy in  
7 Seattle. At that time, Brian Murphy will be able to testify,  
8 that he described Kaiser's Bronco, describes the futon  
9 mattress that is in the back, that he helped load it, that--  
10 I think the back window or back door didn't work and so they  
11 had to put it in through the side. He talks about his wallet  
12 being attached to his pants with a braided hemp rope. He'll  
13 testify that Kaiser had called several times on June 9th, to  
14 tell Murphy to move Schaefer's vehicle. Schaefer had parked  
15 his vehicle out there and it was about to be towed unless it  
16 got moved, and so he wanted to make sure that it was getting  
17 moved. They called again on June 10th.

18 Andrea Cameron is a lady that lives right kind of in the  
19 heart of this. She is the mother of Dane. These are the  
20 Hamlet roads going up here, and her home would be right in  
21 this area, I believe.

22 THE COURT: Juror Numbers 1 and 2, can you see where he  
23 was pointing?

24 JURORS: (No audible response)

25 THE COURT: Okay.

1 MR. WETLE: So she is the mother of Dane, and lives there.  
2 She was able to get Dane a cabin just down the road from her,  
3 and he was acting as caretaker. She will be able to say that  
4 Douglas Grange, the defendant's father, came to visit the week  
5 of just before the barter fair, and she met him, and that Jeff  
6 Cunningham and the defendant were living and had been living  
7 at the Crown Creek cabin, and that they were there, or living  
8 there, the weekend of the barter fair, June 9th, 10th, and  
9 11th. She leaves, I think, on Sunday, but as of Saturday she  
10 knew they were there, and then she comes back and then goes to  
11 work on Monday.

12 Danny Percival is an individual on the Coast. He knew  
13 Nick Kaiser. He knew he was in trouble, and that he got  
14 busted with a large amount of drugs. He had offered him a  
15 place to stay, but Kaiser had thought it would be better if he  
16 went up and stayed with Murphy in Seattle. He goes to the  
17 barter fair on June 11th. He talks to Nick--he knows Nick,  
18 they're friends--a couple of times. He meets his friend, Josh  
19 Schaefer. Kaiser introduces him to Josh. He saw that Nick  
20 had a large cylinder of nitrous oxide in his truck, and he  
21 knows that on Sunday, June 11th, the day of the alleged  
22 killings, Nick and Josh left the barter fair in Nick's Bronco  
23 between 12:00 o'clock and 1:30 P.M., based on his best  
24 recollection.

25 Mika Frank is a person that lives in the area. She just

1 works sort of around the gate at the barter fair and is-- she  
2 meets a person by the name of Chewy at the barter fair, and  
3 is-- we'll see how she testifies.

4 Janell Clark is another lady who is a friend of the  
5 Camerons. She is staying, has a house, caretaking, out in  
6 that area. She took Dane Williams to the barter fair on  
7 Sunday morning. She was new to the area, she wanted to go,  
8 and she offered to take him and even pay his way into the  
9 barter fair. Her best recollection is that was some time  
10 around noon. They get to the barter fair. Dane had forgotten  
11 his wallet. Also, I think, some weed, and when they were  
12 approaching the gate he left with someone else and went off.  
13 She didn't know where. And then she went into the barter  
14 fair, and actually she then turned up taking Maija out to the  
15 Crown Creek cabin after the barter fair closed that afternoon  
16 to drop her off, because Maija was looking for a ride back to  
17 Portland.

18 Troy Phillips-- or Willard Roberts is another individual  
19 who is at the barter fair, and he met Kaiser and Schaefer at  
20 the barter fair on June 10th. He saw that-- Kaiser and  
21 Schaefer leaving the barter fair on June 11th between, he  
22 thought, 1:00 and 3:00 o'clock in the afternoon.

23 Troy Phillips is a bartender at the Whitebird Tavern in  
24 Northport. He remembers the day the barter fair closed that  
25 Dane Williams came in with two other individuals for some food

1 and some beer, and he recalls playing some pool with Dane  
2 Williams, but he doesn't recall the other two male individu-  
3 als. He thinks he started work at 6:00, and I think he got  
4 off at 12:00, and they were there for about an hour and a half  
5 or so at the Whitebird Tavern.

6 Then Maija, the individual who Detective Baskin was able  
7 to talk to earlier, she will be here. She will testify that  
8 she went to the Crown Creek cabin after the barter fair ended,  
9 that Janell Clark gave her a ride and dropped her off, didn't  
10 go up to the cabin. And she walked up to the cabin, but  
11 nobody was there. And so then she walked over to the Williams  
12 cabin, and when she got to the Williams cabin then is when she  
13 saw the three individuals, Dane Williams, Jeffrey Cunningham  
14 and Chewy, the defendant, and they were all at that cabin.  
15 And at that time she sensed something was wrong. She and  
16 Jeff, who had been boyfriend and girlfriend previously, went  
17 outside and she wanted Jeff to come with her and they decided  
18 to ask Chewy if they could borrow his Bronco to go back to the  
19 Crown Creek cabin and spend the night, and so they did. And  
20 when they got back to the-- went back to the cabin, ~~Maija~~  
21 ~~continued to press Jeff about what happened, and when she~~  
22 ~~found out, she, of course, was shocked and frightened and~~  
23 ~~didn't tell anybody. And-- At least until she was confront-~~  
24 ~~ed.~~

25 Kez Young will be called. Kez Young is a-- maybe a

1 supplier at this time for Dane Williams for his marijuana  
2 operation. Dane would then supply Portland. And so the  
3 morning of the-- after the murders, that'd be the 12th of  
4 June, Dane Williams got in the loaded-up rig, all the bags on  
5 top, and drove down to Kez's place and got three to five  
6 pounds of marijuana to take to Portland to sell, and expected  
7 that his money would be coming back. Estimated that money was  
8 going to be about eleven to \$12,000. Well, Dane had other  
9 ideas, and went to Portland and sold the marijuana but never  
10 came back with the money. So he'll testify about that.

11 Then we get to Dane Williams. He met Jeff Cunningham up  
12 in Stevens County, up there. He was caretaking a house, and  
13 Jeff Cunningham is at the Crown Creek cabin. Dane is at this  
14 Hamlet Road cabin, and they'll show you where that is on the  
15 map. And basically Dane sells marijuana at the barter fairs.

16 Jeff Cunningham, who was a member of the Family, intro-  
17 duced Dane to Rob Schultz, who is the-- one of the bosses of  
18 the Portland Family. And Cunningham had worked for Rob  
19 Schultz selling drugs in the past. Williams then started  
20 selling marijuana to Schultz. Rob Schultz got his LSD from  
21 Nick Kaiser. Nick was up in the Seattle area. Basically the  
22 Family deals in drugs. His understanding of the hierarchy is  
23 that Cunningham was-- who'd been in the Family about five  
24 years, was down here. Schultz is the Portland boss, and  
25 Shadow is above him or on an equal basis with different job

1 duties.

2 Chewy, in the Family circle is known as the Enforcer for  
3 the Family.

4 Dane Williams says that-- will testify that Rob Schultz  
5 told him that Nick Kaiser was a snitch for the feds. Schultz  
6 said that we have to take of Nick Kaiser, and Kaiser would not  
7 be breathing anymore; the Family will take care of him, and  
8 for Williams not to worry about it.

9 Williams knew that Schultz was in charge of the LSD  
10 dealers in Portland, and he knew that Kaiser was in charge of  
11 the LS (sic) dealers in Seattle.

12 Williams will say that Kaiser and Schultz both sold LSD  
13 for the Family, which was based in San Francisco. Schultz  
14 told Williams that some Family in San Francisco and-- Strike  
15 that. Schultz had told Williams that some Family had gone  
16 down because of Kaiser's involvement with the feds.

17 On the way to the Crown Creek cabin from the barter fair  
18 on June 11th, Grange is-- John Grange, with his Family  
19 nickname of Chewy, told Williams that shit is going down, that  
20 Cunningham is setting up a mushroom deal, that they were going  
21 to scare the shit out of them with some guns. Meaning Josh  
22 Schaefer and Nick Kaiser. Grange said he was going to scare  
23 them because Nick Kaiser was a snitch.

24 As the afternoon develops, Williams' position state-- or  
25 he states that he rode back to the Crown Creek cabin with

Plaintiff's Opening Statement

739.

1 Chewy, and then went down to watch for cars. Ended up going  
2 to his cabin, and then turning around and coming back to the  
3 Crown Creek cabin. And when he comes back, he says I came  
4 around the corner of the house and I saw Nick Kaiser and Josh  
5 Schaefer standing around the firepit out in front of the  
6 house. At that time Jeff Cunningham is coming down the stairs  
7 with a pail of water, apparently to go down to the creek to  
8 get some water to make some macaroni and cheese, and they  
9 together go down, or one of them goes ahead and the other  
10 talks to Kaiser and Schaefer, but they all-- those two guys,  
11 Williams and Cunningham, end up down by the creek, and they  
12 are down there waiting for something to happen, and sure  
13 enough, shortly thereafter the shots ring out, and they go  
14 back up to the cabin. When they get back up to the cabin,  
15 they will testify that Chewy is standing there with a .22 in  
16 his hand, ~~and Josh Schaefer and Nick Kaiser are lying down in~~  
17 ~~the fire pit.~~ At that time he says let's go, and solicits  
18 their help to drag one up the hill out of sight. Another one  
19 is being drug to put in Nick Kaiser's car. Both individuals  
20 are eventually loaded into the back of the Bronco, and then  
21 ~~Chewy tells them to go bury the bodies. Chewy's going to stay~~  
22 ~~at the cabin and bury the gun.~~

23 So Cunningham and Williams take off in the Kaiser Bronco  
24 with Cunningham driving, Williams in the passenger side, and  
25 they get up there a short distance and decide that there's a



1 good place down here to bury the bodies. So they get out.  
2 They took-- got a pick and a shovel, and go a little ways off  
3 the road into the underbrush and start digging. And the  
4 officers were later able to go photograph the two graves that  
5 were being dug and you'll see the measurements and the  
6 attempts to dig the graves. Those attempts were aborted and  
7 they decide not to continue on digging those graves, and got  
8 back in the car and went on up to the top of this isolated,  
9 desolate mountain top, and just parked the car between some  
10 trees. They thought they were going to burn it. So there's  
11 a hose in the back, and they try to take the hose to syphon  
12 the gas out of the gas tank, get the gasoline to burn up the  
13 car, and couldn't syphon the gas, couldn't get the little rag  
14 they stuffed in the gas tank to ignite. Lance Hart will be  
15 able to tell you, probably, why that doesn't work, but you can  
16 see the little cloth tucked in the tank. And so they left  
17 that scene and walked back down to the cabin. They get down  
18 to the cabin and Chewy's down there and wants to know what  
19 happened. Said they didn't bury them. They're up on top of  
20 the hill. I think Dane Williams says let's burn it, and Chewy  
21 then goes into the house into the basement area, or a crawl  
22 space area, and gets a gas can from where the generator was,  
23 and they take Chewy's rig and drive up to the top of the  
24 mountain, pour gas all over it, and really set it on fire.  
25 And you'll see the damage that that caused through the arson

1 photographer's pictures.

2 Come back down, and then they go to Dane's. That's when--  
3 Where they go to the Whitebird. They go to Dane's, then Maija  
4 shows up and Jeff leaves. And the next day they get up and go  
5 to Portland to Rob Schultz's house.

6 Jeff Cunningham will state that he's in the Family, that  
7 he went to Stevens County at Rob Schultz's request. His job  
8 was to grow pot for the people in Portland. ~~Schultz and~~  
9 ~~Shadow run the Family in Portland. Chewy asks-- is asked to~~  
10 ~~join Cunningham to grow pot and to make some-- get some~~  
11 ~~connections for some cheap pot up from this part of the~~  
12 ~~country.~~

13 Cunningham met Kaiser at the barter fair on Saturday, June  
14 10th, and said that Josh and Nick were doing nitrous off that  
15 nitrous tank, and you'll see a large cylinder of nitrous--I  
16 guess it's a tank--in the back of that pickup, and that Josh  
17 and Nick had been doing nitrous in Nick's truck.

18 Josh told Nick that-- or Jeff told Nick that he heard  
19 people from San Francisco wanted to kill him because he  
20 allegedly got arrested by a DEA and turned over people's names  
21 and that he was supplying names of people that he sold LSD to  
22 to the DEA. So Nick Kaiser-- I mean Jeff Cunningham's  
23 telling Nick what he had heard.

24 Rob Schultz had told Cunningham about Kaiser's arrest and  
25 that the San Francisco people wanted him dead. Kaiser felt

1 that he could smooth things out with Portland and he could  
2 continue working with them. Eventually, Kaiser and Cunningham  
3 and Schaefer came up with a plan that they would get some  
4 mushrooms from a guy by the name of Poppa Smurf up in the same  
5 area, Flat Creek area, and be able to take those mushrooms to  
6 California, sell them, and then go to Hawaii and blend in in  
7 one of the Families out there on the islands.

8 Anyway, Rob Schultz ended up not wanting to talk to  
9 Kaiser, and basically said, through intermediaries, that he  
10 could talk to Chewy. And so Cunningham was going to bring  
11 Kaiser out to the Crown Creek cabin to talk to Chewy, then  
12 they were going to go get some mushrooms. So Cunningham--  
13 They leave the barter fair sometime, noon, 1:00, 2:00, 3:00, in  
14 the afternoon, and drive to a store, apparently, get some gas,  
15 some food, and then they go on up to the cabin. When Cunning-  
16 ham gets there, Kaiser gets out and see all the .22 shells on  
17 the ground from the shooting they'd done with the new .22  
18 rifle they just got a couple days earlier, and so he says can  
19 we-- is there any guns around we can shoot too? And so  
20 Cunningham says he goes into the house to look for the .22,  
21 but the .22 is not where it usually is, and he says that Chewy  
22 is not around so he doesn't know whether he's taken the rifle  
23 and gone up in the woods, or something else. We don't know.

24 Anyway, he gets a pan, says he'll offer them some food,  
25 and that's when they go down to the creek and get water, and

1 both Williams and Cunningham are down at the creek when they  
2 hear the shots. And basically the story is pretty much the  
3 same between the two of them from that point on.

4 It's convoluted. It is-- As I said, you'll find this  
5 interesting and educational for Stevens County, and I thank  
6 you for your attention.

7 THE COURT: All right, thank you, Mr. Wetle. Now, Mr.  
8 Simeone, I'm going to give you the option of starting on your  
9 opening statement now, or waiting until Monday. I understood  
10 that you wanted to go ahead with an opening statement now as  
11 opposed to reserving it to the close of the State's evidence.

12 MR. SIMEONE: Well, I'd like to get a read from the jury  
13 as to whether or not they feel as though they can bear with me  
14 for another 20 minutes or so for my opening statement before  
15 I make the decision, and I'd certainly defer to your prefer-  
16 ences, ladies and gentlemen, so maybe you can inquire.

17 THE COURT: All right. Anybody feeling the need to get on  
18 the road right away here, or another 20 minutes make any  
19 difference to any of you? I know that probably Mr. Simeone  
20 has more than 20 minutes of an opening statement, but whatever  
21 time we can use to our benefit to try to catch up on our  
22 schedule a little bit, the better. So I don't see anybody  
23 jumping up or frowning terribly at me, so--

24 MR. SIMEONE: Can we-- Can we go with it?

25 THE COURT: That's fine. All right, Mr. Simeone, then,

Plaintiff's Opening Statement

744.

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I'll have you-- Ladies and gentlemen, I'll have you give your attention to Mr. Simeone now while he begins his opening statement on behalf of Mr. Grange.

1    **DEFENDANT'S OPENING STATEMENT**

2            **MR. SIMEONE:** I may-- I may use this for illustrative  
3 purposes, your Honor.

4            **THE COURT:** All right.

5            **MR. SIMEONE:** Your Honor, if it please the court, counsel.  
6 Thank you, ladies and gentlemen. I appreciate your atten-  
7 tiveness this morning and to our case thus far, and I congrat-  
8 ulate you on your survival of the voir dire process. You are  
9 now officially jurors. You're no longer prospective jurors,  
10 and you're part of the course-- of the court's deliberation  
11 process here. You're officers of the court. You are inti-  
12 mately and integrally involved in the process that will occur  
13 now over the course of the next week or so.

14            Let me introduce myself again. I'm Robert Simeone. I'm  
15 an attorney who has been living here, practicing law, for the  
16 last 20 years. I represent the defendant, John Grange, who  
17 you've seen now for the last two days at counsel table there.  
18 John is a 26 year old individual. He comes from Portland,  
19 Oregon. The course of his life, he's been involved primarily  
20 in the construction trade. He has also been involved as a  
21 facilitator in a group home for mentally challenged children.

22            What I don't want to do is I don't want to walk to this  
23 board here and try to find the Crown Creek cabin and not be  
24 able to find it, because it's easy to have it blend into the  
25 background there, but I'm not going to make fun of the

1 Prosecutor's faux pas there because there, but for the grace  
2 of God, go I, and it's very easy at this juncture to make  
3 those little kinds of errors, and I will be, and I'll confess  
4 to you from the outset that there will be mistakes that I'll  
5 make over the course of this trial that I hope you'll have it  
6 within your conscience to forgive me for because it's a human  
7 nature kind of a thing.

8       Again, with regards to my introduction, and I don't want  
9 to-- I don't want to completely glaze you over with facts of  
10 the case right now because as you can tell from the brief  
11 introduction that Mr. Wetle gave you, the facts are myriad,  
12 the facts are-- they're enor-- there are an enormous number  
13 of facts here that you'll have to try to grasp and synthesize  
14 and integrate into a full picture here to really understand  
15 what goes on. And I have been with this case now for awhile,  
16 and still every day when I look at evidence and try to review  
17 it, more things come to my attention. And it's going to be--  
18 It would be very difficult for me to expect that you, in the  
19 course of my brief opening statement, or even with Mr. Wetle's  
20 and mine, will be able to get all of the facts, but I do want  
21 to give you a flavor for what my case will be, what the  
22 defendant's position will be here, and why it is that the  
23 State is trying to assemble a case of guilt against Mr. Grange  
24 that will present to you as very weak and without much in the  
25 way of real palpable substantive proof.

Defendant's Opening Statement

747.

1 One of the names that Mr. Wetle brought up and I'll bring  
2 up too, and I'll try to give you a visual on it too so we can  
3 remember, is Jeff Cunningham. He'll be a witness. He's one  
4 of the individuals-- one of two individuals, ladies and  
5 gentlemen, that the State will be presenting to you that they  
6 will say gives proof of what happened on this occasion.

7 Jeff and John became friends some time in February of  
8 1999, and that meeting occurred in Portland, around where John  
9 lives. They became friendly, as young men do. Jeff, however,  
10 moved to the Northport area some time shortly thereafter, and  
11 I'm thinking now and my recollection is some time around March  
12 or April of 1999. John and he bid his farewell. But he  
13 returned to Portland after living in this area. Jeff then  
14 moved to Portland again. So he came up here, lived in a cabin  
15 owned by an individual named Lou Ash. That's the Crown Creek  
16 cabin, so that we can keep things straight. Crown Creek  
17 equals Lou Ash. Because you'll hear those two references  
18 probably simultaneously or synonymously. He lived there. He  
19 lived there for free. Liked the country atmosphere, wilder-  
20 ness. But he returned to live in Portland in November that  
21 year. Winter is setting in. He had become friendlier with  
22 Mr. Grange at that time, and asked him, may I live with you,  
23 and he did for about a month or so in November, 1999. Now the  
24 reason that fact becomes important is because it's at that  
25 juncture that Mr. Grange first met and became introduced to



1 two individuals whose names will figure largely, I think, in  
2 the case that's presented to you. A Rob and a Shadow. John  
3 allowed them to sleep on the floor. They needed a place to  
4 live. Jeff introduced-- That's how that connection was made.

5 Rob turns out to be a Rob Schultz. Shadow is a Shadow  
6 name not well-- last name not well known, but suffice it to  
7 say he's Shadow. At that time John became aware of these  
8 individuals' association with a group called the Rainbow  
9 Family. Now, that's a name that I presented to you and I  
10 discussed with almost all of you, I think, in the voir dire  
11 process, although none of you really know what the other was  
12 asked in the voir dire process because that was kind of a  
13 secret cloak-and-dagger kind of an undertaking. But I think  
14 I brought that point up to almost all of you, whether or not  
15 you knew that. But anyway, that was the introduction, that  
16 was his familiarity and first familiarity with that organiza-  
17 tion. It was a loose kind of a term that he learned of. It  
18 was-- Had no particular significance in his mind.

19 Jeff returned to the Northport area. He lived there. The  
20 two kept company, or they kept-- not company, but at least  
21 corresponded. Invited him up to the barter fair in April of  
22 2000, so the millennium just turned, we're in April of 2000.  
23 Spring time. There's a spring time barter fair and there's a  
24 summer barter fair. This is the spring time barter fair.

25 Now, other individuals went to that barter fair too. John

1 went by himself in his own vehicle. But other vehicles, one  
2 Rob, Shadow, the two names I've mentioned, and two other  
3 individuals whose names will figure big in your deliberation  
4 here. One was Nick Kaiser. Nick went up that time. John met  
5 Nick. Another individual, another acquaintance. Liked him.  
6 A new friendship. Nothing significant about that meeting.

7 But the Family that I want to talk about though-- He also  
8 met at that time, or didn't meet at that time, but a Dane  
9 Williams was there too. Dane Williams will figure largely  
10 here too, because Dane is the other witness, and I already  
11 mentioned Nick Kaiser and Jeff Cunningham. Dane Williams.  
12 These two individuals are the State's eyewitnesses, allegedly,  
13 only-- the only eyewitnesses that the State will be able to  
14 present, who supposedly saw an event that took place wherein  
15 John Grange is alleged to have taken the lives of Nick  
16 Kaiser-- Deceased.

17 His introduction to the Family was, as I've said, nothing  
18 of a major significance. He learned it to be a group that was  
19 of varied purposes. A lot of members. People of varied walks  
20 of lives. But for the most part his understanding of what  
21 that Family was, the Rainbow Family was, was that it was a  
22 benevolent kind of an organization. They had fairs. They  
23 engage in environmental type movements. Some are more  
24 actively environmentalists. They stage sit-ins. They stage  
25 tree sit-ins. They do cleanups of polluted sites. Some of

1 them, unfortunately, are people who are involved pretty  
2 heavily in a drug-related activity, whether it's the usage of  
3 it in some-- on one hand, or it could be the sale of drugs on  
4 another hand. But there are many people. It's as huge an  
5 organization as you can probably imagine, but loosely coordi-  
6 nated and loosely associated with one another, so that there's  
7 not such an integration there that all of them are doing or  
8 performing the same kinds of activities, or even interested in  
9 the same kinds of things. It's part of an alternative  
10 philosophy of life, and they're-- they strike up a common  
11 kind of a friendship easily because they have something in  
12 common.

13 Well, Mr. Grange too, I'm going to confess to you now, and  
14 it's a little something that I have to bring to your attention  
15 because I'm not going to allow us to be surprised by it later  
16 in the State's case, engages in the use of some drugs. He  
17 smokes marijuana. He has smoked marijuana. And he is engaged  
18 in the minor kind of trafficking activity that's associated  
19 with it. You'll find that, by his testimony and by the  
20 testimony of others, that this is not a significant kind of an  
21 activity of his. And it's not, in his opinion, and he'll  
22 express his philosophy to you when he testifies, and he will  
23 testify, that his usage of marijuana is more in the nature of  
24 a part of his philosophy of life or a spiritual regard for the  
25 world. I can't relate and maybe some of you can't relate, but

Defendant's Opening Statement

751.

1 for him you'll find from his testimony that it's a special  
2 kind of an association that it gives him with the world and  
3 with nature and that's it. That's where it stands. And I  
4 wanted to bring that to your attention and I want to let that  
5 get out so that you know.

6 Well, he goes to the barter fair, as I mentioned, and he  
7 visits his friend Jeff Cunningham, who has a cabin at Crown  
8 Creek. Dane Williams has a cabin too. It's called the--

9 MR. WETLE: Hamlet.

10 MR. SIMEONE: Hamlet Creek cabin. I started with the H,  
11 but I was getting there. And you'll see that those two are  
12 synonymous. The Dane Williams cabin, the Hamlet cabin. It's  
13 also owned by somebody else, a Dave Tonka, but that's a  
14 synonymous thing. They have cabins that are way out in remote  
15 corners of the woods. We visited them-- They're as remote as  
16 you can imagine, even in our very rural setting here in  
17 Stevens County.

18 John's purpose for going up is because he wanted to change  
19 his life there. There was an offer of work, that he could do  
20 some work there for Mr. Ash who owns Jeff Cunningham's cabin,  
21 for \$10 an hour. It was an attractive offer to him. That,  
22 combined with his preference, his lifestyle to be in the woods  
23 in a remote kind of a part of the world, he did it. He didn't  
24 have any real reason not to go. He had closed things up in  
25 Portland. His job there as a construction worker, at that

Defendant's Opening Statement

752.

1 time he was working for an outfit called Tough Sheds. Holds  
2 the record, by the way, for building cabins as fast as a  
3 person has ever built them. Decided to go to Northport. He  
4 was uncommitted to other things and he could make that move  
5 fairly easily.

6 I mentioned Dave-- Dane Williams' name earlier, and here  
7 it is again, and I want to bring it up again. He lived in a  
8 cabin that's adjacent to, you'll find, the Crown Creek cabin.  
9 One is-- And I'm not going to-- I don't want to get myself  
10 committed to where it is right now, but it's somewhere around  
11 here. But one is in one position, the other is in another,  
12 not too far, from one draw across to the other. The Crown  
13 Creek cabin and the Hamlet Creek cabin.

14 Now, he knew Jeff. That is Dane Williams and Jeff, they  
15 know one another. Not only because of the proximity, their  
16 mother-- one of their mothers knew that a new boy had moved  
17 in the area, she said well, there's somebody new living there,  
18 and introduced, and they hit it off and they became friends.  
19 And they'd been friends probably for about a year at the time  
20 Mr. Grange came up, and I believe, if my notes are correct and  
21 my understanding of the file, the very enormous file, is  
22 correct, I think they met in around May of 1999. So they've  
23 got about a year friendship going at the time Mr. Grange moves  
24 up.

25 And Dane Williams will show, is very much more associated

1 with this Rainbow Family. Not just the Family, but I would  
2 say the drug-related trafficking contingent of the Family,  
3 than would be-- than would be the-- Mr. Cunningham. He'd  
4 been growing marijuana up here for a long time and supplying  
5 others with marijuana for a number of years. And what you'll  
6 find, I think, from the testimony that you hear, this will be  
7 an education to you, is that our area, it turns out, is a--  
8 it's a farm. It's a farming kind of an area, and marijuana is  
9 grown here, and marijuana is taken from here and it's traf-  
10 ficked to other bigger cities where it commands exorbitant  
11 prices. This is what we'll find Mr. Williams had been doing.  
12 It's what he does for a living, is what he says-- is what  
13 he'll say. Very little in the way of serious work besides  
14 that. And that he's very shady in his dealings with others.  
15 That would be substantiated by a State's witness, Kez Young,  
16 and also by their witness, Jeff Cunningham, who is his friend.  
17 That he's very money oriented. I think his term was greedy  
18 when I interviewed him.

19 John returned, he settled in the Crown Creek cabin.  
20 Summer barter fair approached. He made a brief trip back to  
21 Portland and came back. He came back for the summer barter  
22 fair, so we're talking about now between April and June. Some  
23 time before that, in Portland--and here's where the story  
24 starts to break and this case becomes interesting--there were  
25 rumors and they were heard by Mr. Grange, who's now a friend,

Defendant's Opening Statement

754.

1 more friendly, with Rob, more friendly with that-- if you  
2 want to call it the Family. He's more friendly with Rob. But  
3 there are rumors to the effect that Mr. Kaiser, who was, as it  
4 will turn out and as the State will prove and as the State  
5 will show, a very heavy player in the LSD, not only sales but  
6 manufacturing business. That he had been arrested for the  
7 possession and synthesis of LSD on a very large scale. You'll  
8 hear numbers, I think, from the testimony, that are going to  
9 impress you as to the level of his involvement. But the funny  
10 thing that happens here, and that people take note of because  
11 this is a very small group of people, ladies and gentlemen,  
12 you'll hear about, what-- what they took note of is that he  
13 was released early, and that rang bells in people's heads.  
14 And people started thinking, well, wait a minute, he's a major  
15 kind of an arrest, a major kind of a player in this-- in this  
16 activity, released early, life goes on, he might be an  
17 informant now, and he might have decided that it's an easy  
18 thing for him to do here, to cooperate in exchange for a more  
19 lenient kind of treatment.

20 Back to the fair. We're in the summer. It starts on  
21 Saturday. That would be the 10th. Actually, it starts on  
22 Friday, which is the 9th of June, goes through the Sunday.  
23 They set up a little earlier in the week.

24 John's father came up around that time, Doug Grange. The  
25 State will have him testify. We might have him testify too.

Defendant's Opening Statement

755.

1 You'll find that at that time he observed where it was that  
2 Mr. Grange was living. He was living in a remote part of the  
3 country, and he knew that. He bought him provisions. Coleman  
4 stoves, shovels, that kind of thing. Bought him a rifle too.  
5 And you'll note, and I want you to pay attention to the  
6 testimony when this comes up, that he bought the rifle. Mr.  
7 Grange himself had earlier attempted and could buy a rifle,  
8 but didn't, because he didn't want one. And you'll find that  
9 his father's testimony will be that he bought that rifle for  
10 him because he thought that it could get to a point up there  
11 in the remote part of the woods where he needed that to find  
12 his food. John took that gun reluctantly. That will be not  
13 only Mr. Grange's testimony but his dad's testimony.

14 The fair arrives. John had met Nick earlier, as I told  
15 you. Not a very strong relationship, but he knew of him. And  
16 John knew that he might be there. There was a-- maybe you  
17 would call it an alarm, or an alert anyway, that Nick might be  
18 there. And their fear is that, wait a minute, arrested, he's  
19 arrested, he's out of jail, people watch out because it might  
20 be that he's turning in others' names. And just mind your  
21 manners around him because that might be what's happening and  
22 he might be out of control at this point.

23 Well, the story gets faster and fur-- more furious at  
24 this time, and I don't want to bore you with details but I do  
25 have to tell you a few facts before I get to the \_\_\_\_\_.



1 John, Saturday night, let's say around 4:00 o'clock, sees Mr.  
2 Cunningham. The two are friends. As I told you, he's  
3 basically living-- John is living in Mr. Cunningham's cabin.  
4 And at that time John left with Jeff to get some firewood.  
5 Returns. Barter fair needed firewood. Still a little cool  
6 that time of year. On the drive back from the cabin where  
7 they got the wood-- where they got the wood or where they got  
8 the firewood, Jeff tells John: John, incidently, Nick  
9 Kaiser's here. Okay. Cunningham had stated that Mr. Grange  
10 didn't really-- He didn't really care that Mr. Kaiser's  
11 there. That's what he told him, too. And that's what Jeff  
12 will tell you in his testimony that John said. It was kind of  
13 like almost a non-reaction to that. Okay, he's there, I know  
14 that there's an alert out, and thank you for the information.

15 John returned probably around 7:00 o'clock that night, so  
16 they're at the fair. This is Saturday, the 10th. Firewood,  
17 back. Probably around 7:00 P.M., saw Nick. Nick, how you  
18 doing? Nice to see you again. But not a lot of substance  
19 there. Like I said, there was a little bit of a concern here  
20 that maybe he needs to get people implicated or arrested for,  
21 or in exchange for whatever it is that he wants to get out of  
22 there.

23 John spent the rest of the night at the fair. Bands.  
24 Like most of you have gone to the fair, and I know that in  
25 some of the voir dire questions some of you have gone, but I

1 don't think anybody stayed the night at the fair, because  
2 that's probably the wilder side of the barter fair occasion.  
3 They have bands, they have food, they do-- they party, they  
4 get-- You know, they use the drugs, they use the marijuana,  
5 that kind of thing happens. There's testimony that Nick  
6 Kaiser's got a nitrous oxide tank in his truck. And they're  
7 using these drugs. Mind-altering LSD, you name it. The kind  
8 of thing that most people really aren't familiar with, but you  
9 know that it's out there. Has no other conversations. That  
10 is, John, with Nick that night, except for that one brief  
11 exchange that they discussed.

12 Brings us to Sunday morning. Jeff sees John there at the  
13 fair. And I guess that Jeff had been associating with Mr.  
14 Kaiser, partying with him all night. Tells John: John, I  
15 think they're going to leave, and I think I'm going to go to  
16 California with Nick. Sorry. We got five pounds of mushrooms  
17 that we can buy from a guy. Jerry-- Mr. Wetle mentioned his  
18 name, Poppa Smurf. That's another thing that's grown up here,  
19 ladies and gentlemen, that you'll learn about, this hallucino-  
20 genic mushrooms. Five pounds of mushrooms that we can get  
21 from an individual. We're going to get those mushrooms, we're  
22 going to go to California, it's going to pay our way, gonna  
23 see what it's like down there for awhile. John: Hey, I think  
24 it's a bad idea. First of all, I don't think it's a good idea  
25 to traffick in drugs in that kind of quantity. You're asking

1 for trouble. Plus, you know, you're going to be with Nick.  
2 I know he's your friend, he's your friend of long standing.  
3 That's another thing you'll find. But he's just got himself  
4 in some trouble, and I don't know what he's got up his sleeve  
5 or who's watching him, but, you know, you better mind your p's  
6 and q's. Wished him well. See you later. Good luck.

7 Well, around noon that same day-- Now, this is Sunday  
8 morning. Barter fair's winding up. He see's Dane Williams.  
9 What he learns from Dane Williams-- You remember that Dane  
10 and Jeff are friends, they live across the creek from one  
11 another. What he learns from him, very important-- very  
12 important detail. Finds out-- Well, Dane asks him, where's  
13 Jeff? I'm not really sure. But finds out that Dane had just  
14 advanced him--that is, he advanced Jeff--a large quantity of  
15 marijuana. Jeff will agree that that happened. And I don't  
16 know how much it was, but it's a significant amount, because  
17 he expected to get paid for the marijuana he advance him  
18 somewhere around-- some \$1700. So it's got to be a signifi-  
19 cant amount of marijuana. John said well, you know, Jeff is--  
20 I saw him, he's going-- he's with Nick. He's with Nick  
21 Kaiser. He's on his way to California. They're going to get  
22 five pounds of mushrooms up the creek from a guy, and they're  
23 going down there. They're going to sell them and they're  
24 going to pay for their way. That's all Dane had to hear.  
25 You'll hear the testimony from Mr. Grange. He went-- I don't

1 want to say ballistic, but he got very excited, because in his  
2 opinion at that time-- This is what Mr. Grange is going to  
3 say he saw and he said: Hey, wait a minute; he's got my  
4 marijuana. He's got basically my money. He hasn't paid me  
5 for the marijuana. He's going to California with an infor-  
6 mant, now? The likelihood in his mind is that he's going to  
7 be arrested for possession or sale of mushrooms with his money  
8 and leave him in the lurch. He wanted to borrow John's truck.  
9 He says: Let me have the truck. Let me have your-- your  
10 truck, Mr. Grange.

11 John sees Jeff and Nick, he saw them leave. It's the last  
12 time he saw Nick Kaiser. The last time he saw Joshua Schaefer-  
13 er. They left in Nick's truck with Jeff.

14 John stayed at the fair the rest of the day. Visited with  
15 some friends. You'll hear testimony from him that he made  
16 plans for dinners next week.

17 The truck came back that night, driven by Dane, Dane  
18 Williams, who borrowed the truck, about 6:30. You'll hear  
19 testimony from John that Dane appeared to him to be very  
20 agitated. He seemed pre-- preoccupied. He seemed like he  
21 had a thought in his head. Somewhat different. He can't  
22 explain or get a handle on it, but different.

23 John was unhappy that he had taken his truck and stayed  
24 away as long as he did. Dane, in a gesture to try to make  
25 amends, said I'll buy you dinner. And it was a curious thing.

Defendant's Opening Statement

760.

1 It sounds like a not too important detail, but it's curious  
2 because you'll hear testimony from people that Dane very  
3 rarely had any money. Very rarely had any kind of spending  
4 cash. And he offers to buy Mr. Grange dinner, which he did at  
5 the Whitebird-- at the Whitebird Tavern.

6 You know, ladies and gentlemen, you're going to hear  
7 details from the State about what happened when Dane Williams  
8 left, when Mr. Cunningham left with Nick and Josh. We're not  
9 going to be able to give you any testimony about what happened  
10 there firsthand, and that's because we don't know, and that's  
11 because Mr. Grange was not there. But what we will be able to  
12 show you, and you'll remember harking back to my questions on  
13 voir dire about how we go about judging the truthfulness of  
14 somebody's testimony and whether or not they're telling you  
15 the truth. What you will hear are stories that are so varied  
16 in their content as to leave you with only one explanation as  
17 to why. And the answer that we'll be presenting you with as  
18 to why they're so inconsistent is because the stories that  
19 Jeff Cunningham will tell you and the stories that Dane  
20 Williams will tell you are not true. That they are fabrica-  
21 tion.

22 You'll find also that the State has no, and I underline  
23 that no, physical evidence in its arsenal here that it will  
24 try to present to you over the course of the next several  
25 days--

Defendant's Opening Statement

761.

1 MR. WETLE: Objection, your Honor. This goes to argument,  
2 not opening statement.

3 MR. SIMEONE: Your Honor, I'm outlining his case and our  
4 defense.

5 THE COURT: Overruled. You do need to stick to what the  
6 evidence will show, and you can indicate what it won't show.

7 MR. SIMEONE: Thank you, your Honor. The evidence will  
8 show that the State has no physical evidence, not a shrapnel,  
9 not a scrap of physical evidence that will link Mr. Grange to  
10 any involvement with the murder of these boys. You'll find  
11 that Mr. Grange didn't even know very well who the second boy  
12 was. In fact, the physical evidence that the State will show  
13 you will discredit their witnesses. You'll find in the  
14 evidence that's presented from the statements that have been  
15 given-- This is a point I want to make to you too. I asked  
16 you, is it important to you in the analysis and evaluation of  
17 their witnesses' testimony that they've told the story  
18 inconsistently. You will find that, contrary to what Mr.  
19 Wetle said, Mr. Williams gave six statements. The police went  
20 back to him six different times for clarification of what he  
21 said. October 13th was his first statement. On October 18th  
22 you'll find he gave two. On October 21st another. November  
23 8th, and then still on November-- December 29th. Over a  
24 period of two-plus months they took statements from this  
25 individual. Plus one that wasn't recorded, the police officer

Defendant's Opening Statement

762.

1 said. You'll find that Mr. Cunningham gave two statements.  
2 One, I think, November-- It might escape me, but I think it's  
3 the 3rd. Another as recently as January 4th of this year.  
4 You'll find that there are inconsistencies here, both inter-  
5 nally--I'm sorry for running over--and externally. Internal-  
6 ly, I mean you'll find that from statement to statement Mr.  
7 Williams says different things. Alarming, drastic inconsis-  
8 tencies in his story that the police officers, you'll find,  
9 knew about at the time they took more statements. They have  
10 control over the statements, too, because they never let one  
11 witness know what the other had said for purposes of trying to  
12 get a fix on their stories, and to try to get them to jibe.  
13 You'll find that they never achieve that.

14 Another thing I mentioned to you in the voir dire, and I'm  
15 going to-- I'm wrapping this up now. I asked you again how  
16 it was that you're going to decide truthfulness versus false-  
17 hood. I asked you whether or not you're going to judge  
18 credibility by the fact of-- whether they're testifying now  
19 after having received a lenient treatment, a more lenient  
20 treatment. In fact, in your voir dire questions, you remember  
21 that this is something that Mr. Wetle, who asked questions  
22 first, you'll recall, always presented to you: Is that going  
23 to make a difference that somebody maybe got more lenient  
24 treatment? You'll find from the testimony and the evidence  
25 that these boys have both pleaded guilty to crimes, but they

Defendant's Opening Statement

763.

1 have received significantly and seriously more lenient  
2 sentences. Not sentences, but plea recommendations, in  
3 exchange for coming up here and testifying to you. And I  
4 think almost all of you, to a person, said well, that might  
5 bear on my decision about what they say. Their believabili-  
6 ty.

7 Ladies and gentlemen, finally, the State is going to ask  
8 you to find beyond a reasonable doubt, beyond a reasonable  
9 doubt, that this crime occurred and that this man, Mr. Grange,  
10 is guilty. And I represent to you that by the time the State  
11 finishes its case, you will see that there are inconsistencies  
12 in the statements from their only witnesses, who are convicted  
13 of crimes now in connection with this. Grave inconsistencies  
14 that will leave you not only with a little bit of doubt, but  
15 with serious doubt to the point where you know that this is a  
16 very, very weak case of guilt for them.

17 Neither sympathy nor passion nor prejudice shall influence  
18 you, and that will be your decision-- that will be your  
19 instruction. It works both ways. There will be murders that  
20 are shown to have been committed here. Deaths of two individ-  
21 uals. We don't want passion for Mr. Grange, but neither  
22 should you exercise in your deliberation here after this case  
23 is presented by the State, any passion for two individuals  
24 heavily involved in the drug trade who were killed.

25 Thank you for your attention and enjoy your weekend, and



1 I'll see you on Monday.

2 THE COURT: All right, now, ladies and gentlemen, I'm  
3 going to have you report to-- back to jury duty at 9:15 on  
4 Monday morning, and, counsel, I'll have you here at quarter  
5 till nine to finish up our last couple of issues. And so,  
6 ladies and gentlemen, 9:15, come again directly to the jury  
7 deliberation room. No discussion, of course, about the case  
8 over the weekend, and no newspaper, et cetera, to the extent  
9 that you might run into that. Make sure you don't read  
10 anything or, for that matter, any other media coverage.

11 All right, so anything further, counsel, that we need to  
12 stick around for?

13 MR. SIMEONE: Nothing here, Your Honor.

14 MR. WETLE: No, Your Honor.

15 THE COURT: All right, then, ladies and gentlemen, then  
16 court will be at recess until 9:15 for the jury, quarter till  
17 9:00 for the other parties, on Monday morning.

18 COURT RECESSED FOR THE DAY  
19  
20  
21  
22  
23  
24  
25

765.