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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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CLERK OF COURT OF APPEALS  
STATE OF WASHINGTON III

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

BEFORE: Hon. REBECCA M. BAKER, Judge.

APPEARANCES:

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

For the Defendant:  
  
ROBERT A. SIMEONE  
Attorney at Law  
300 East Birch  
Colville, WA. 99114

VOLUME 7 of 17  
February 12, 2001  
(Pages 766 through 854)

Transcript prepared by:  
Judy Americk  
762 South Pine St.  
Colville, WA. 99114  
(509) 684-2267

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1 FEBRUARY 12, 2001

2 COURT RECONVENED WITHOUT THE JURY

3 THE COURT: Good morning. I have a couple of matters.  
4 One has to do with a juror. Juror Number 8 has indicated--  
5 and we'll file this note that she wrote. She had alerted the  
6 bailiff on Friday to her concern. Apparently she's got a  
7 concern about the fact that she's reported neighbors for  
8 suspected drug activity. She's concerned about the fact that  
9 this case involves allegations of drug activity. The last  
10 paragraph of her statement indicates she's-- she doesn't  
11 recognize any of the names of the witnesses-- or that's the  
12 middle paragraph. But she apparently is communicating, I  
13 guess, the context of it. Both attorneys read through this.  
14 The context of it is that she fears retaliation of some sort.  
15 Is fearful about possible retaliation. And so, Mr. Wetle, any  
16 comments on this matter?

17 MR. WETLE: Yes, your Honor. I think that all the jurors  
18 have-- are somewhat apprehensive about the situation. That's  
19 a normal circumstance under the circumstances of this particu-  
20 lar trial, given the testimony that they-- or the opening  
21 statements they've already heard, and I think that, you know,  
22 once that was done, I think she was a little more concerned  
23 about it and decided that it was something to be a little  
24 fearful about. I don't think that there's anything real here  
25 in terms of people that address the specifics of this case, or

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1 the people involved, and her fears are much the same as all  
2 the people involved in this case.

3 THE COURT: All right, Mr. Simeone?

4 MR. SIMEONE: I think it might be prudent for the court to  
5 inquire of her. The concern she has is a little different, I  
6 think, than what the other jurors had said. On our voir dire  
7 we asked whether or not they had concerns about presiding over  
8 a case of this kind of a gravity, and they all, to a person,  
9 I think, said yes, they thought that it was a weighty respon-  
10 sibility. But I don't know that any of them said that they  
11 had individualized fear of any kind of retribution or retalia-  
12 tion for the kind of thing that I'm sensing from the woman--  
13 the juror's letter. So I'm going to reserve on whether or not  
14 I would agree that there's a basis for her to excuse herself  
15 for cause until I hear from her.

16 THE COURT: All right. Well, I'm going to take the bull  
17 by the horns and excuse Number 8, because I-- Clearly the  
18 tenor of the letter is that she's afraid of retribution and  
19 retaliation of some sort, which would interfere with her  
20 objectivity as a juror, and so I'm going to go ahead and  
21 excuse Number 8, current Number 8, and we will indicate that  
22 to her through the bailiff so that she can go ahead and be  
23 excused.

24 We do have some other business, so if the bailiff would  
25 just call her out of the jury room and tell her separately

1 that she's excused, I would appreciate it, so that she doesn't  
2 go back in and communicate anything to the rest of the jury  
3 about why or what the circumstances were. And she's released  
4 now from talking about the case but, of course, not to the  
5 other jurors, she cannot talk to them, of course. And we'll  
6 just make a note here and have the Clerk file this. What's  
7 today? The 12th, isn't it?

8 THE BAILIFF: (Inaudible)

9 THE COURT: We'll go ahead and have everyone \_\_\_\_.

10 COLLOQUY WITH BAILIFF REGARDING CHAIRS

11 BAILIFF IS REQUESTED TO REMOVE NUMBER 8'S NOTEPAD

12 THE COURT: All right, now--

13 MR. SIMEONE: We also discussed, and I think you're  
14 getting around to it, your Honor, but before we call the jury  
15 in I am sure that Mr. Wetle had-- he pared down his list of  
16 proof-- offers of proof that he's going to actually try to  
17 elicit at trial, and we discussed that, as you recall.

18 THE COURT: Yes. Mr. Wetle, you want to go ahead with  
19 that then before we go on to the ER 609 issue? I believe your  
20 first-- you started it in chambers and I indicated we should  
21 just go ahead and do this on the record. We started with  
22 certain matters that were reserved on page 6.

23 MR. WETLE: That's correct, your Honor. This would have  
24 been the statements that Dane Williams gave Sean Cummings and  
25 Phil Hart. We started on page-- The offer of proof starts on

768.

1 page 5, and then we get to page 6, and I think everything had  
2 been allowed down to bullets 5, 6 and 7, and on those we agree  
3 that they aren't shown by a preponderance and that they are  
4 speculation.

5 THE COURT: Okay, so 5, 6 and 7 you would be withdrawing?

6 MR. WETLE: Yes.

7 THE COURT: Okay, next then?

8 MR. WETLE: On page 9, information to Cunningham-- or  
9 information from Cunningham to Detective Erdman and Baskin,  
10 bullet Number 7 was speculation.

11 THE COURT: You agreed that that's speculation then?

12 MR. WETLE: Yes.

13 THE COURT: Okay.

14 MR. WETLE: At the bottom the-- I don't know how far we  
15 went, but it was Schultz and others, and it was how-- I think  
16 I struck others, just said Schultz.

17 THE COURT: Okay.

18 MR. WETLE: And then on Page 10, bullet Number 4, Chewy  
19 also mentioned he used to do this before for the family and  
20 by-- do this. The reference was threaten, not murder.

21 THE COURT: All right.

22 MR. SIMEONE: And how about he used to threaten, if that's  
23 what he's going to say, because the-- there's no antecedent  
24 reference to this that really makes that very clear.

25 MR. WETLE: What I tried to do in the questions to the



1 witness was to tailor it toward that word, so I hope that  
2 there--

3 THE COURT: That's the way the testimony will come out  
4 then, in other words, is that he used to threaten people for  
5 the Family, as opposed to kill people.

6 MR. WETLE: I can't remember how bad I led it, but I tried  
7 to put it into the threat and we have discussed it.

8 THE COURT: Okay. All right, and the next? I believe it  
9 was Paragraph--

10 MR. WETLE: It goes down to Number 7, that he got rid of  
11 some people. Same thing.

12 THE COURT: What do you mean, same thing?

13 MR. WETLE: We're not going to use that.

14 THE COURT: Not going to-- That's going to be withdrawn?

15 MR. WETLE: Yeah. Yes.

16 THE COURT: Okay.

17 MR. WETLE: And then Number 10, the bottom paragraph, had  
18 done this before, that he's been a collector, taken care of  
19 people.

20 THE COURT: Just that he had been a collector, he wants to  
21 say, but he will not be saying that he had done this before,  
22 as in murder people before?

23 MR. WETLE: Right.

24 THE COURT: And taking care of people would only have been  
25 threatening them for collection purposes? Is that what you're

1 saying?

2 MR. WETLE: That's what I'm trying to say, yes.

3 THE COURT: All right. Then with that clarification it'll  
4 be allowed in, as I indicated that it would if that was what  
5 he was saying. And then the top of Page 11, I believe was the  
6 last reserved item. Or maybe the last. The getting colder  
7 and colder each time testimony?

8 MR. WETLE: Right, and I feel that that's an admission.

9 THE COURT: Okay. We're going to need to-- I think I  
10 need to have the ER 104 hearing on that to get a clarification  
11 of what was-- what the context of that was.

12 MR. SIMEONE: And, your Honor--

13 THE COURT: Whether in fact it was stated and so on. That  
14 is to say by a preponderance. So the State wants it in as an  
15 admission to the current crime. Right? That's what you're  
16 saying, Mr. Wetle?

17 MR. WETLE: Yes, your Honor.

18 THE COURT: Okay. Now, one other thing--

19 MR. SIMEONE: I wanted to be heard just before you're  
20 through, your Honor.

21 THE COURT: Pardon me?

22 MR. SIMEONE: I wanted to be heard before you're through.  
23 I don't want to interrupt you, but I do want to be heard on  
24 these.

25 THE COURT: Okay. One last thing, Mr. Wetle. On page 4?

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1 No, I guess we did resolve that last week. And was there  
2 anything on the second offer of proof, the additional offer of  
3 proof filing February 2nd?

4 MR. WETLE: I don't think so. The tattoo was excluded and  
5 everything else was okay.

6 THE COURT: Okay, Mr. Simeone?

7 MR. SIMEONE: Yeah, your Honor. Thank you. I would renew  
8 and restate the same objections I had to those that are going  
9 to be admitted for those objections I previously stated.  
10 Plus, I don't know that I've mentioned on the record before,  
11 but I know I said it in the context of our conversations, I  
12 still think that what they're required to do, even at the 104  
13 hearings that you were talking about, was to have some other  
14 evidence, the rule says, that in itself is independently  
15 admissible. And so far all we've had, even though the rule  
16 says hearsay is admissible for preliminary hearings, I think  
17 that the case law is-- would supersede that rule, and what  
18 it says quite clearly is that what they need is independent  
19 evidence to substantiate, independently prove the existence of  
20 those things. And I don't think they've got that. So far all  
21 they've got is hearsay testimony, save those items that came  
22 in by way of Mr. Douglas Grange's testimony as to things he  
23 believed he actually heard. I don't think they've got the  
24 independent proof as to any of these other things that they're  
25 trying to establish here will be brought out by, for example,

1 Dogeagle and Nehring.

2 The other thing I would say with regards to the specific  
3 item there in-- on page-- that's being brought out by Jeff  
4 Cunningham, or that will be referred to as Jeff Cunningham.  
5 I don't think there's a preponderance of evidence--in particu-  
6 lar I'm talking about the last item on page 10, that would be  
7 bullet Number 10--that he had done this before, et cetera,  
8 even if they're paring it down now to just that he had done  
9 this before. I don't know that there's a preponderance there  
10 that that has been-- that he has done this before.

11 MR. WETLE: Well, I think because of the ambiguity, your  
12 Honor, we are taking that out.

13 MR. SIMEONE: But I think he's saying--

14 THE COURT: Oh, you are taking that out?

15 MR. SIMEONE: All of it? That he had done this before?

16 MR. WETLE: No, just that Cunningham said Chewy had done  
17 this before, and that he had taken care of people. I'm saying  
18 the taking care of people is by threatening them, and that  
19 he's been a collector for the Family for years. So the  
20 reference to--

21 THE COURT: So you're not making-- Your witness is not  
22 going to be offering proof that he did anything but threaten  
23 people before.

24 MR. WETLE: Yeah, and I have no independent grounds that  
25 he murdered people before.

1 THE COURT: Right.

2 MR. WETLE: Maybe boasting and his innuendo that he has,  
3 but nothing that I feel comfortable with to present to the  
4 jury.

5 THE COURT: So all you will be offering is that he  
6 threatened to take care of people in the sense of just  
7 threatening them, bullying them, into paying up for their drug  
8 debts or paying for their past misdeeds?

9 MR. WETLE: Yes. I don't have any independent evidence of  
10 murder.

11 THE COURT: All right. Okay, with that, then, Mr.  
12 Simeone, that-- Okay, anything else you want to say?

13 MR. SIMEONE: No, nothing else on that point, your Honor.  
14 We do have--

15 THE COURT: Any other points then with regard to the other  
16 offers of proof?

17 MR. SIMEONE: No, none that I haven't already objected to  
18 or raised earlier.

19 THE COURT: All right, in regard to the independent proof  
20 requirement, I think the independent proof is at least  
21 threefold. One is the non-hearsay admissibility of the-- of  
22 the observations of Mr. Williams and Mr. Cunningham that  
23 provide-- provide additional circumstantial evidence of the  
24 existence of the conspiracy. We have the admission of those  
25 two individuals directly of their own involvement in the

1 conspiracy. We have the-- and this is the drug trafficking  
2 conspiracy, not a conspiracy to commit the murder. But in  
3 additionally-- in addition, we have the independent proof of  
4 the admissions as testified to by Mr. Cunningham and Mr.  
5 Williams of Mr. Grange, the defendant. Those are non-hearsay  
6 and those are otherwise admissible. So those are the indepen-  
7 dent proof that is required in addition to the-- in order to  
8 initially admit the statements of co-conspirators.

9 In regard to the concern about the prior bad acts, the  
10 action in conformity therewith, purpose of-- or concern about  
11 admissibility of the evidence about taking care of people  
12 being inadmissible character evidence or improper character  
13 evidence, this is an exception under 404 (b) to that general  
14 rule because it is so probative of the motive. And under 403  
15 the balancing of probative value against prejudicial effect,  
16 I think clearly it is highly probative and the State is  
17 entitled to admit that as part of its proof of the defendant's  
18 motive.

19 So that's just to clarify that that balancing is, I  
20 recognize, important, and I do find that the probative value  
21 is so high as to outweigh any possible prejudicial effect,  
22 particularly since the clarification has been made that the  
23 State isn't going to offer proof that he killed other people  
24 or he did anything but collect with the threat of violence  
25 and/or the use of non-lethal violence.

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1 MR. SIMEONE: For that reason--

2 THE COURT: We will be reserving the issue about the  
3 colder and colder each time. That's definitely a highly  
4 probative statement, let's put it that way. But I think I do  
5 need to make a finding under ER 104 about whether or not it  
6 is-- it actually occurred by a preponderance of the evidence  
7 that that statement actually occurred, and if so, whether the  
8 probative value outweighs its obvious prejudicial effect of  
9 some kind of reference to a past head shot, so to speak. So,  
10 in other words, a past killing with a gun to the head. So  
11 we'll have to hear from Mr. Cunningham on that before I admit  
12 that, Mr. Wetle.

13 Now, we have a couple of other items. One is the admissi-  
14 bility under ER 609 of Mr. Cunningham's juvenile adjudication.  
15 Mr. Simeone?

16 MR. SIMEONE: Thank you, your Honor. Before we go into  
17 that, I just wanted to make one parting shot on the issue with  
18 regards to the admissibility of the prior acts, and that is  
19 that if-- even if what the State is trying to do is say that  
20 he had threatened people in the past, I'm thinking that is a  
21 prior act, that if you're only talking about a threat that  
22 it's not a prior act that's really probative of anything that  
23 we're talking about here. It's the kind of prior act evidence  
24 that I think is only irrelevant and it's only prejudicial with  
25 regards to this. Surely a threat is not what we're talking

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1 about here. We're talking about an actual act and an actual  
2 murder, so all the jury could do is go make the logical jump,  
3 or illogical and speculative jump, from threats in the past,  
4 which are the prior acts that I'm trying to have excluded, to  
5 that he actually acted in such a way here that I think is  
6 violative of the rule.

7 THE COURT: Again, I think you've made your record, Mr.  
8 Simeone, but--

9 MR. SIMEONE: Yeah, okay. Moving along--

10 THE COURT: Just so that I have made my record, I will  
11 indicate that I recognize that it is proof of prior miscon-  
12 duct, which is ordinarily inadmissible, but because it is so  
13 highly probative of motive to please the higher-ups, to  
14 ingratiate oneself to the higher-ups within his organization,  
15 by carrying out their wishes on behalf of the drug trafficking  
16 conspiracy than it is highly probative of the motive to kill.  
17 And so that is why it is admissible in my ruling.

18 So, now, was there something else, Mr. Simeone, before we  
19 move on to Rule 609?

20 MR. SIMEONE: I think that--

21 THE COURT: Mr. Cunningham's prior burglary.

22 MR. SIMEONE: I think that would take care of my arguments  
23 on that point, your Honor.

24 THE COURT: Okay. I'll hear from you on the Rule 609  
25 issue.

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1 MR. SIMEONE: Thank you, your Honor. As you know, we  
2 raised this issue in court last week. I think that would have  
3 been Friday. The issue that's arisen here is whether or not  
4 Mr. Cunningham's prior burglary conviction is admissible.  
5 I've, all along, have had some discussion on the record with  
6 the Prosecutor about the admissibility of this offense. The  
7 stipulation that we had prior to this time was that a conviction,  
8 not certified, would be sufficient here for purposes of  
9 proving it. That is, we did not have to show the authenticity  
10 of the conviction by way of a certified copy. And I've been  
11 relying on that assumption, let's say, until last week.

12 What's surfaced then is when I tried to get a copy of the  
13 conviction, which had not been provided, which the court had  
14 ordered the State provide me probably three or more weeks ago,  
15 when I'd not got that I requested it of the Prosecutor's  
16 office. They then made the recommend-- or the request of  
17 Suffolk County. Suffolk County came back with an answer that:

18 We're sorry, this is a sealed record, we don't  
19 have-- we're not going to be able to do that  
20 for you. He's charged with a burglary but it's  
21 a sealed-- it's a sealed file now,

22 which information could have come to our attention long before  
23 had this-- had my request for the copy been acted on earlier.  
24 Now we've got a situation where we're saying it's a youthful  
25 offender, even though at the time of the adjudication, the  
record will show that it occurred in July of 1993 when Mr.

1 Cunningham was already 18, his birthday being in May of the  
2 year. Therefore, I don't know why it's a youthful offender  
3 status at all. But now that it's a sealed record, we don't  
4 have a copy of the conviction.

5 So first and preliminarily, what we need is a ruling from  
6 the court with regards to the admissibility and my ability to  
7 impeach him for that prior conviction. If you look at the  
8 Rule 609, and I think that's (f)-- I'm not sure if it's (f)  
9 or (g).

10 THE COURT: (d).

11 MR. SIMEONE: (d), I'm sorry. Proof of-- Juvenile  
12 adjudications generally are not admissible, except that, and  
13 it's a very wide gaping exception, if it's not a defendant and  
14 you're talking about a case where the admissibility of it  
15 would be probative and it would have been probative-- or  
16 admissible if it's an adult, if it were an adult situation--  
17 I think I'm-- I'm paraphrasing the rule because I don't have  
18 it before me. That then, within the court's discretion, we  
19 can use that. Well, now we've got this other skullduggery  
20 going on that Mr. Cunningham is playing hide the ball with  
21 regards to what his conviction is. And I think what we've  
22 learned in chambers is that he disclosed this information to  
23 Mr. Wetle somehow already, and I think the court is prepared  
24 to make Mr. Wetle come forth with that information in the  
25 interests of justice here, and as a matter of his duty as a

1 discovery issue. Under Rule 3.3 or 4.7 I think he has to come  
2 forward with that, and I think he will. But if we find out  
3 it's a theft burglary, I think I'm entitled to know and I'm  
4 entitled to ask him about it, (1), and (2) if he's going to  
5 deny it, I think that I'm entitled to have the court make an  
6 inquiry of Suffolk County and say, let me have a copy of the  
7 conviction because it's sealed, but I think that your order  
8 that it be unsealed or that you get information out of it  
9 would supersede it, and that's where I'm at with that.

10 You asked me in chambers briefly why is it that this is so  
11 important. Well, their credibility is of the-- is of utmost  
12 importance. It is of-- It is of crucial importance here  
13 because we're saying that their testimony is falsified. I  
14 think the jury has a right to know that he has a crime of  
15 dishonesty in his background, and I think that's what it is,  
16 a theft-related burglary. And for that reason it's important  
17 to me that this come out. It's not just a matter where we've  
18 got a cut and dried story of a witness that's not in dispute.  
19 A fact witness, a medical witness, for example, and I'm trying  
20 to impeach that person's testimony for a crime of dishonesty  
21 when it's not going to get me anywhere. Now here I'm clearly  
22 placing in issue here whether or not this boy is telling the  
23 truth, and for that reason, I think, this becomes of crucial--  
24 it is of absolutely crucial importance to know that this is--  
25 this has happened so that the jury can get a feel for him as

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1 a person and weigh that into their decision about whether or  
2 not he's being truthful.

3 THE COURT: All right, thank you. Mr. Simeone, one might  
4 inquire, doesn't this court owe full faith and credit to the  
5 court of another state which has seen fit to seal a record?

6 MR. SIMEONE: I think so, but I think that even if you  
7 want to look at a parallel situation here about whether or not  
8 a court can open or take away a motion to vacate a conviction,  
9 for example, for purposes of recidivism later in a sentencing,  
10 or for some other reason, it can. And I think the court of  
11 Suffolk County can as well. I don't think that that seal  
12 order is so sacrosanct that when you have a situation that has  
13 arisen, such as this, that that can't be undone, especially at  
14 the request of a Superior Court Judge for a good reason.

15 THE COURT: And is there such a procedure, even in this  
16 state, whereby I would ask that to be done by another county?  
17 I've not heard of such a thing, just in order to impeach a  
18 witness.

19 MR. SIMEONE: Well, I don't know that that's some-- If I  
20 understand the court's sense about it, it seems like we're  
21 minimizing the importance of impeaching the witness. I think  
22 that that's just as important a reason as for purposes of, for  
23 example, establishing an offender score for a repeat offender  
24 when that--

25 THE COURT: Can't we assume that the reason that a court

1 would seal such a record would be so that it could not be used  
2 as impeachment, for example?

3 MR. SIMEONE: No. No, I don't think so. I think that--  
4 I think that the re-- In fact, I think that's probably one of  
5 the least significant reasons that the court would have for  
6 wanting to seal a record. That's so tangential to that  
7 purpose that I think it's far-- it's far outside of their  
8 thought processes or even enacting such a rule. I think its  
9 purposes of not allowing the public to get general exposure to  
10 it, if they're coming in and just casually walking through  
11 Clerks' files. I think it's for purposes of allowing a person  
12 to say truthfully and on the record, if he's applying for a  
13 job, that no, he's got no other convictions, which is general-  
14 ly the purpose why we do it here. But as to whether or not  
15 it's so nobody can impeach you later at a trial, I think  
16 that's probably way low on the list, if it were ever a  
17 consideration.

18 THE COURT: All right, Mr. Wetle, any comments?

19 MR. WETLE: Thank you, your Honor. As this court is well  
20 aware, 609 (d) basically provides that juvenile adjudications,  
21 and that was the key, because at the time we were discussing  
22 this it was believed to be an adult conviction, and it wasn't  
23 until just prior to trial that we all find out that it's a  
24 youthful offender adjudication, and so given that new pos-  
25 ture--

1 THE COURT: When you said youthful offender adjudication,  
2 is that the other state-- What state are we talking about, by  
3 the way?

4 MR. WETLE: New York.

5 THE COURT: The State of New York's terminology for  
6 juveniles?

7 MR. WETLE: That's how they-- When we called the Clerk's  
8 office, that's how they classified it.

9 THE COURT: That's not just an adult who happens to be a  
10 young adult?

11 MR. WETLE: No, I think it got handled in juvenile court,  
12 otherwise it wouldn't have been the adjudication.

13 THE COURT: Okay. All right.

14 MR. WETLE: Without having the record before us, that is  
15 problematic. But the court--

16 THE COURT: All right.

17 MR. WETLE: The rule says that the evidence of juvenile  
18 adjudication is generally not admissible, and so we have the  
19 general rule, and then it goes to the court's discretion  
20 whether or not to allow it, especially if it would meet other  
21 adult criteria. And so the court has to weigh this to see  
22 whether it would be necessary for a fair determination of  
23 guilt or innocence.

24 The State would submit that this is a 1993 adjudication.  
25 The individual was 18 years old, that the extra steps were

1 taken in this case to seal the record. One of the purposes  
2 for sealing the record is that you don't-- it won't be used  
3 for impeachment purposes because the record is not available.

4 The discussion with Mr. Cunningham was that that was to be  
5 sealed. That was gone back to court and done at some expense  
6 to his family, and he did not want the result of that adjudi-  
7 cation to be made known.

8 Unfortunately, he did disclose to me this weekend what the  
9 intent of the burglary was. I told him that I would have to  
10 tell the court and Mr. Simeone, and that we would then discuss  
11 whether or not I would be ordered by the court to disclose  
12 whatever that answer is.

13 THE COURT: And I think you are required under 4.7  
14 (a)(1)(VI) to disclose any record or prior criminal convic-  
15 tions known to the Prosecuting Attorney of the defendant, and  
16 of persons whom the Prosecuting Attorney intends to call as  
17 witnesses at the hearing or trial. I think that is something  
18 that you do have to disclose when you have it, and so I'll  
19 order you to do that at this time.

20 MR. WETLE: And we have disclosed the conviction, and you  
21 want the intent of the conviction, which I say--

22 THE COURT: If that's been disclosed to you, I would  
23 require that you disclose it, at least for the record.  
24 Whether we'll require that it be admitted is another issue  
25 yet.

1 MR. WETLE: Okay, your Honor. Well, Mr. Cunningham did  
2 say that it was theft related.

3 THE COURT: All right.

4 MR. WETLE: And that he did not wish to admit that in  
5 court and make that public.

6 THE COURT: He wanted to rely on the sealing of the  
7 record?

8 MR. WETLE: That is correct.

9 THE COURT: And not be cross examined on that issue.

10 MR. WETLE: Exactly.

11 THE COURT: And what is your view, then, about how that  
12 fits in with Rule 609 (d)? Clearly I have some discretion  
13 here, but how do you see that that discretion should be  
14 exercised in this case?

15 MR. WETLE: I think that given the--

16 THE COURT: Well, how-- Let me ask you more directly.  
17 The second prong of that test under 609 (d) that the court be  
18 satisfied that the admission in evidence is necessary for a  
19 fair determination of the issue of guilt or innocence of--  
20 obviously, of Mr. Grange? Don't I have to find both that the  
21 conviction of the offense would be admissible to attack the  
22 credibility of an adult, and that the court is satisfied, and  
23 I have to be satisfied that it's necessary for a fair determi-  
24 nation? How is it not necessary, from your viewpoint?

25 MR. WETLE: I think the weight that would be given to the



1 juvenile adjudication in 1993 is not a major issue with  
2 respect to Mr. Grange's guilt or innocence in this particular  
3 trial, and that the remoteness in time and the circumstances  
4 are such that that conviction would not be necessary for him  
5 to have a fair trial.

6 THE COURT: Okay. If there's an adult that has had his  
7 records sealed, a crime of dishonesty ten years ago or eight  
8 years ago, or let's say it was a Class C felony and he had it  
9 sealed or expunged, five, six, seven years ago, and it's  
10 within the ten year period, would that be useable?

11 MR. WETLE: It's--

12 THE COURT: To impeach, if it's been sealed?

13 MR. WETLE: I don't think so. I think it's useable for a  
14 criminal history.

15 THE COURT: And for firearms and other statutes?

16 MR. WETLE: But I don't know that it's-- And I'm-- I  
17 don't know the answer, your Honor.

18 THE COURT: Well, under (c) we're talk-- they have things  
19 about pardons, annulments and certificates of rehabilitation.  
20 I guess that would be like a-- not termination from supervi-  
21 sion, but a discharge from supervision.

22 MR. WETLE: It says as if the conviction didn't happen.

23 THE COURT: Would you analogize this sealing of the record  
24 to a certificate of rehabilitation? I mean is that what we're  
25 supposed to do, from your argument?

1 MR. WETLE: I think you have to speculate as to the scope  
2 of the sealing of the records. I don't know what-- I don't  
3 know what happened in New York with respect to those issues.

4 THE COURT: All right, thank you. Mr. Simeone, I'll hear  
5 from you with any--

6 MR. SIMEONE: On the last point--

7 THE COURT: --additional argument.

8 MR. SIMEONE: On the last point, your Honor, I don't think  
9 that it's equivalent to that at all, and I think we're jumping  
10 to a conclusion that's really not warranted at all, that that  
11 means a cert-- it's a certificate of rehabilitation. In  
12 fact, we had people who sealed their records here all the  
13 time. It's not an equivalent procedure anyway. Vacate prior  
14 convictions because a requisite amount of time has passed,  
15 and then it's no longer to be-- They don't have to report it  
16 in their job applications, et cetera. But that's not tanta-  
17 mount to a certificate of rehabilitation or any such thing.  
18 And we have no proof to that effect at all, as a matter of  
19 fact.

20 My way-- My way of looking at the rule is that you still  
21 have to make a finding that it's somehow helpful to the  
22 determination of guilt of innocence here, and I think the  
23 answer to that is very clearly it is.

24 Now, like I said, this is not where we have a fact witness  
25 who's testifying to indisputable points and I'm trying to

1 impeach that person by some prior conviction.

2 And also, on the fact that this is a juvenile conviction,  
3 I want to point out, and this bothers me too, we're talking  
4 about an 18 year-plus person now at the time of his convic-  
5 tion, and how he can be a youthful offender, I don't know, but  
6 we're not talking about a ten or 12 year old, in any event,  
7 where the significance of it certainly would wane over a  
8 period of time. We're talking about a fairly recent convic-  
9 tion of an individual who was an adult, for all practical  
10 purposes, and I think that-- I at least-- I at least, at the  
11 very least, deserve the opportunity to inquire. And even if  
12 I can't prove it with extrinsic evidence, because we don't  
13 want-- or have made a decision that it's not a good idea to  
14 try to get them to open the file. Then I think I at least  
15 have an opportunity to prove it intrinsically, and that is on  
16 cross examination from his own testimony. And then if he  
17 wants to lie and say that he's never been convicted of a  
18 burglary, theft related, that's his business and we can take  
19 whatever sense of Mr. Cunningham we want as a result of his  
20 testimony. But I don't think that anything, a sealed order  
21 there or anything else, should prevent me from asking that  
22 question.

23 THE COURT: All right. Well, we do have an in limine kind  
24 of a situation here where the court can indicate what it is  
25 that's proper and what isn't proper to inquire into on

1 witnesses as well as on the defendant, if the shoe were on the  
2 other foot.

3 But I think that the second prong of Rule 609 (d), the  
4 part about the admission in evidence, it might be somewhat  
5 necessary for a fair determination of the issue of guilt or  
6 innocence. In other words, it might have some bearing. But  
7 I'm really troubled by the fact that I don't think that it can  
8 be established that this would be admissible. The first prong  
9 would be satisfied that this would be admissible if the  
10 witness were an adult at the time of the commission of the  
11 crime. In fact, he was an adult at the time of the adjudica-  
12 tion, apparently. And then the court in the State of New York  
13 saw fit to seal the record.

14 Well, when I look at this in conjunction with Paragraph C  
15 of Rule 609, that appears to me to be analogous to a certifi-  
16 cate of rehabilitation. But then when I look at it further in  
17 light of the State v. Caldwell decision, that's the 29 Wash.  
18 App. 396, the 1981 case, that indicated that if the witness  
19 denies the conviction, the only proper method of proof is a  
20 public record, ordinarily a certified copy. Well, a certified  
21 copy of the conviction would not be available to Mr. Simeone,  
22 to Mr. Wetle, to the court. It is a sealed file. Mr. Simeone  
23 thinks that somehow this court should call up the other court,  
24 or request of the other court to unseal its file. I don't  
25 think that this court has anything in its-- anything of the

1 sort in its power, but, instead, must give full faith and  
2 credit to the other court's order which has already sealed it.

3 Now, the comments to the rule indicate that the law isn't  
4 completely settled on the question of whether Mr. Simeone must  
5 have a certified copy of the prior conviction in hand prior to  
6 cross examining the witness, if I were to allow that. But  
7 clearly we know that the result of the question would be gee,  
8 no, I have a-- I have a sealed file, you're not allowed to  
9 ask me that. Or something to that effect. I don't think that  
10 we can allow, just like we can't allow a person to ask a  
11 question knowing that they-- that the only answer they're  
12 going to get is an invocation of the Fifth Amendment or  
13 something. I don't think that it's at this juncture going to  
14 be fair to-- when this is a sealed file, it is a non-  
15 conviction. As far as this court is concerned it is not  
16 usable for impeachment because a certified copy would not be  
17 available to prove it. And so despite the admissions that the  
18 witness has made and disclosed to Mr. Wetle, and despite what  
19 he has had to disclose here, I don't think that it qualifies  
20 as a juvenile adjudication, whereas a conviction-- because it  
21 is a sealed record. And that's the basis of why I'm going to  
22 exclude it from the testimony in limine. So in other words,  
23 no cross examination can take place on that particular issue.

24 Okay, now, is there anything else that we need to deal  
25 with before we get the jury in, 45 minutes after we told them

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1 to be here this morning. Mr. Wetle, from your standpoint?

2 MR. WETLE: No, your Honor.

3 THE COURT: Mr. Simeone?

4 MR. SIMEONE: Nothing here, your Honor.

5 THE COURT: Okay, let's forge on and bring the jury in, if  
6 you will.

7 COURT REMINDS BAILIFF TO ADVISE JURORS  
8 OF REVISED SEATING ARRANGEMENT

9 MR. SIMEONE: Your Honor, I did want to bring up for the  
10 court's attention again that he did receive a probation  
11 violation and he served 270 days pursuant to that so-called  
12 sealed record in 1997. So it's not as though it's dead,  
13 unresurrectable in the eyes of the State of New York.

14 THE COURT: Okay. Well, the fact that it's been sealed is  
15 the issue upon which I am relying most heavily, particularly  
16 because he was 18 when the conviction occurred.

17 COURT INQUIRES REGARDING DAY'S SCHEDULE OF WITNESSES

18 JURY IS SEATED

19 COURT APOLOGIZES TO JURORS FOR DELAY

20 THE COURT: I'll ask Mr. Wetle to call his first witness,  
21 please.

22 MR. WETLE: Thank you, your Honor. The State would call  
23 Fran Harbaugh.  
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**PLAINTIFF'S CASE IN CHIEF**

**WITNESS IS SWORN**

THE COURT: Give us your name, please, spelling your last name?

MS. HARBAUGH: My last-- My name is Frances Harbaugh. It's spelled H-A-R-B-A-U-G-H.

THE COURT: Thank you. And your current business address, please?

MS. HARBAUGH: It's 750 South Potomac Street, Waynesboro, that's W-A-Y-N-E-S-B-O-R-O, Pennsylvania 17268.

THE COURT: Thank you. Mr. Wetle?

MR. WETLE: Thank you, your Honor.

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

**DIRECT EXAMINATION**

**BY MR. WETLE:**

Q. Good morning, Ms. Harbaugh.

A. Good morning.

Q. Could you please state your occupation?

A. I'm a receptionist for Dr. Robert R. Zimmerman in Waynesboro.

Q. And how long have you worked for Dr. Zimmerman?

A. Fifteen years.

Q. On September 26th, the year 2000, did you receive a request to make a copy of Nicholas Kaiser's dental x-rays

Frances Harbaugh - Direct (by Mr. Wetle)

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1 and send a copy of those to Dr. George Lindholm in  
2 Spokane, Washington?

3 A. Yes.

4 Q. And were you able to make-- successfully make a copy and  
5 send that to Dr. Lindholm?

6 A. We sent the originals to the doctor, and we kept a copy of  
7 the original.

8 Q. So it was just because of the way it turned out that you  
9 decided to send the original?

10 A. Yes.

11 MR. WETLE: I'd ask the bailiff to hand the witness  
12 what's been marked as Exhibits 4 and 5. Actually-- Yes,  
13 4 and 5 and 6, if it's there handy as well.

14 Q. I would direct your attention to Exhibit 4 and ask if you  
15 could identify that particular x-ray.

16 A. Yes. These are Nicholas Kaiser's x-rays from '91.

17 Q. And are those the original x-rays?

18 A. Yes, they are. The original.

19 Q. And what are they?

20 A. They're both wings. They're two bite wings showing molars  
21 on both sides.

22 Q. And what is on-- labeled on that particular x-ray?

23 A. This particular one says: Nicholas Kaiser, Dr. Robert R.  
24 Zimmerman, and it has the date of 4/8/91.

25 Q. Then I would direct your attention to what's been marked

Frances Harbaugh - Direct (by Mr. Wetle)

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1 as Exhibit Number 5, and ask if you can identify that.

2 A. These are also two bite wings that were taken on January  
3 24, '94, of Nicholas Kaiser.

4 Q. And how is that particular x-ray labeled?

5 A. It's-- It's labeled Nicholas Kaiser, and then it has  
6 1/24/94.

7 Q. Ms. Harbaugh, are you the custodian of dental records for  
8 Dr. Zimmerman?

9 A. Yes, I am.

10 Q. Are the x-rays that you have before you made at or near  
11 the time of examination and treatment of Nicholas Kaiser?

12 A. Yes, they would have been.

13 Q. And are the x-rays maintained in your care, custody and  
14 control?

15 A. Yes.

16 Q. And are those dental records made in the regular course of  
17 business?

18 A. Yes.

19 MR. WETLE: Your Honor, we'd offer State's Exhibit 4  
20 and 5.

21 THE COURT: Would you hand those to Mr. Simeone,  
22 please?

23 MR. SIMEONE: Let me briefly voir dire, your Honor?

24 THE COURT: All right.

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Frances Harbaugh - Direct (by Mr. Wetle)

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1 **FRANCES HARBAUGH**

2 **VOIR DIRE EXAMINATION**

3 **BY MR. SIMEONE:**

4 Q. These-- How is it that you know that these are those x-  
5 rays then, Ms. Harbaugh?

6 A. I took them out of the folder.

7 Q. And how is it that you identified these as the same as  
8 those?

9 A. Because they were in the folder.

10 Q. But I mean as you look at them, do you recognize them?

11 A. Yes, I do.

12 Q. And do you recognize that the x-ray inside is the same as  
13 that x-ray that you took out?

14 A. Yes.

15 Q. How do you do that?

16 A. Well, one of the x-rays would have been in an envelope.  
17 The other one stated Robert R. Zimmerman, was in the  
18 original folder, original holder.

19 MR. SIMEONE: Okay, fine. No further questions. Thank  
20 you.

21 THE COURT: Any objection to 4 and 5?

22 MR. SIMEONE: No objection to the admissibility of  
23 those, your Honor.

24 THE COURT: All right, 4 and 5 are admitted.  
25

1 **FRANCES HARBAUGH**

2 **CONTINUATION OF DIRECT EXAMINATION**

3 **BY MR. WETLE:**

4 Q. And you've been handed what's been marked as State's  
5 Exhibit Number 6, and I will ask if you can identify that?

6 A. Yes, I can.

7 Q. And what is that?

8 A. This is what we call a treatment card, which we have on  
9 each of our patients. We write every single thing that's  
10 done with a patient at the time that they are in our  
11 office.

12 Q. And are you the custodian of this dental record for Dr.  
13 Zimmerman?

14 A. Yes. Each patient has one of these in their folder, and  
15 it is on file at all times.

16 Q. And is this dental chart made at or near the time of  
17 examination or treatment?

18 A. Yes.

19 Q. And is the dental chart maintained under your care,  
20 custody and control?

21 A. Yes.

22 Q. And is this dental record made in the regular course of  
23 business?

24 A. Yes, it is.

25 **MR. WETLE: We'd offer the State's Exhibit Number 6,**

**Frances Harbaugh - Direct (by Mr. Wetle)**

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the treatment chart.

THE COURT: Mr. Smith, whenever it's offered, if you'll just pick it up off the witness chair and hand it to Mr. Simeone so that he can look at it.

MR. SIMEONE: No objection, your Honor.

THE COURT: Exhibit 6 is admitted.

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

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

MR. SIMEONE: No questions, your Honor.

**WITNESS IS EXCUSED**

THE COURT: Mr. Wetle, you may call your next witness.

MR. WETLE: We call David Kretz.

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**WITNESS IS SWORN**

THE COURT: Give us your full name, please, spelling your last name for the record.

MR. KRETZ: David Andrew Kretz.

THE COURT: Okay.

MR. KRETZ: K-R-E-T-Z.

THE COURT: Thank you. Sorry to interrupt. Would you give us your address, please?

MR. KRETZ: North 7717 Walnut, Spokane, Washington.

THE COURT: All right thank you.

**ADJUSTMENT TO MICROPHONE**

THE COURT: Mr. Wetle, you may inquire.

MR. WETLE: Thank you, your Honor.

**DAVID ANDREW KRETZ**

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

**DIRECT EXAMINATION**

**BY MR. WETLE:**

Q. Good morning, Mr. Kretz.

A. Good morning.

Q. Can you please state what your occupation is?

A. I am a general contractor.

Q. And are you familiar with the Flat Creek area in the north part of Stevens County?

A. Yes, I am.

Q. And how did you become familiar with that area?

David Andrew Kretz - Direct (by Mr. Wetle)

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1 A. I've hunted it in years past, and on this particular day  
2 I was headed up there to scout it out for the next season.

3 Q. So on September 24th, year 2000, were you in that area?

4 A. Yes, I was.

5 Q. And what were you doing, again?

6 A. Scouting out the area for hunting, and so we got up there  
7 early to scout it out, my brother and I, and-- and just  
8 have a good day.

9 Q. Can you describe it, the area in general?

10 A. Yes, I can. We went up-- up above Kettle Falls, across  
11 the river, go up Northport/Flat Creek Road, all the way up  
12 to East Crown Creek. I'd got these directions from a  
13 person I'd worked for previously, and so we had hunted  
14 there years past and we-- a year before, and so we went  
15 up-- went up in, and the road dead-ends up there, and we  
16 stopped, and it was about 5:30 in the morning, and we got  
17 out and I sent my brother one way and I went around the  
18 other, and I came upon the truck that was at the end of  
19 the road.

20 Q. Did you then summon your brother?

21 A. Yes, I did. I looked at the rig and saw that things  
22 weren't as they should be, and that there were some things  
23 that were very in question, so I went over and got my  
24 brother and we came back and spent about 20, 30 minutes  
25 looking around, and finding bones and other things, and

1 trying to put the whole story together of what happened.  
2 And then he found the roof of the mouth of the person--  
3 one of the people, and we found the hose hanging out of  
4 the gas tank and some type of an acetylene tank bottle in  
5 the back of the truck, and there were cigarette package on  
6 the ground. The truck was still licensed. We found a  
7 blanket hanging out of the door that had not been burnt  
8 because it was hanging out of the door, and that was the  
9 blanket that they wrapped the bodies in, that we supposed-  
10 ly thought that that's what they'd done. And-- And the  
11 truck had been pretty well burnt and the trees were burnt.

12 Q. So at that point you decided you'd better tell somebody?

13 A. Yes. From that point we-- After we found the mouth, the  
14 roof of the mouth with all the teeth, we knew that it  
15 wasn't just an animal, a prank or somebody burning up  
16 their rig, and so we got in our rig and headed back and  
17 called the Sheriff.

18 Q. And then after you contacted the Sheriff, did you-- did  
19 you join the Sheriff?

20 A. Yes. I believe it was Mr. Smith. Smith-- He followed us  
21 up there, and then he proceeded up the mountain with us  
22 because his car wouldn't have made it, and we took him up  
23 there and he took some pictures and looked over the crime  
24 scene.

25 Q. So basically 4-wheel drive?

David Andrew Kretz - Direct (by Mr. Wetle)

800.

1 A. Yes.

2 Q. Do you know if that's in Stevens County or not?

3 A. I don't know that question.

4 MR. WETLE: Okay. Thank you very much, Mr. Kretz. I  
5 have no further questions, your Honor.

6 THE COURT: Before you step down, I'll see if Mr.  
7 Simeone has any questions.

8 MR. SIMEONE: Thank you.

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David Andrew Kretz - Direct (by Mr. Wetle)

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1 DAVID ANDREW KRETZ

2 CROSS EXAMINATION

3 BY MR. SIMEONE:

4 Q. Mr. Kretz, it didn't appear to you that there was any  
5 attempt to hide that vehicle, did it?

6 A. Attempt to hide it? It was-- It was at the very end of  
7 a road that was about-- I don't know, I would guess 15  
8 miles in, and it was kinda ran into some trees, in between  
9 two sets of trees at the very end of the road. So--

10 Q. Did it look as though there were any attempt to cover it  
11 up with other things--

12 A. There--

13 Q. --or to make it so it wasn't apparent to you?

14 A. There wasn't anything over it.

15 Q. Now, you said that you saw a hose hanging out of the gas  
16 tank?

17 A. I saw something that was a green-- I think it was a hose.

18 Q. Did you remove that?

19 A. No, I did not. Or it might have been on the ground. One  
20 or the other.

21 Q. You're not sure?

22 A. I'm not sure of that.

23 MR. SIMEONE: Okay. No further questions.

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

25 MR. WETLE: No, your Honor. Thank you very much.

David Andrew Kretz - Cross (by Mr. Simeone)

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**WITNESS IS EXCUSED**

**THE COURT:** You may call your next witness, Mr. Wetle.

**MR. WETLE:** Call Dave Fenn of the Washington State  
Patrol.

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**WITNESS IS SWORN**

THE COURT: If you'll start by giving us your name, please, spelling your last name?

MR. FENN: Yes, it's David Fenn. The spelling on the last is F-E-N-N.

THE COURT: And your current business address, please?

MR. FENN: It'd be the Washington State Patrol, West 6403 Rowand Road, Spokane, Washington 99224.

THE COURT: Thank you, and, Mr. Wetle, you may inquire.

MR. WETLE: Thank you, your Honor.

DAVID FENN

Being first duly sworn, on oath testified as follows:

**DIRECT EXAMINATION**

BY MR. WETLE:

Q. Mr. Fenn, could you give the jury your occupation?

A. Yes. I'm a detective for the Washington State Patrol.

Q. And how long have you been so employed?

A. It will be 19 years this July with the State Patrol.

Q. And what are your current duties?

A. I'm currently assigned to the Investigative Services Bureau. We have a detachment office in Spokane, and we provide a variety of investigative services for the seven counties.

Q. On September 24th, year 2000, did you respond to Stevens County to assist in mapping a crime scene in the Crown

David Fenn - Direct (by Mr. Wetle)

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1 Creek area?

2 A. Yes, I did.

3 Q. And how many crime scene areas did you find at that  
4 location?

5 A. There were two general areas that we mapped for them.

6 Q. So what did you do?

7 A. Well, once we arrived on scene-- I believe it was around  
8 1:20 in the afternoon I responded to the call, along with  
9 my sergeant and another detective. We met up with  
10 Detective Erdman, Captain Mike George, and also LaVonne  
11 Webb of the Sheriff's Department, and they showed us two  
12 general areas that they would like processed and measured  
13 with our Total Station.

14 Q. Could you describe what an electronic Total Station is?

15 A. Yes. It's-- It's been used for some time in the engi-  
16 neering industry, surveying industry. It's a Sokia (sp?)  
17 set, C-4. It's basically an electronic distance meter  
18 which records slope distance. And it also has an elec-  
19 tronic \_\_\_\_\_light which measures horizontal and vertical  
20 angles, so we're actually able to measure the exact point.  
21 That information is downloaded on a magnetic card on the  
22 instrument, and then that's taken back to the office,  
23 later time downloaded with some Sokia software, and then  
24 we're able to actually plot out the scene as it was that  
25 day.

David Fenn - Direct (by Mr. Wetle)

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1 Q. What happens when all of this information-- to all this  
2 information as it is gathered?

3 A. The information is recorded on a magnetic card that's on  
4 the instrument, and then that information is taken to a  
5 card reader that's by the computer, and it's downloaded.  
6 The raw data, which cannot be changed, is downloaded into  
7 the program so we finish the drawing. We can-- Like if  
8 we want to change a line style, if we want to make  
9 different colors on the diagram, we can-- we can do that.  
10 I can add text to the diagram, but the raw data or the raw  
11 points that we've taken with the instrument, we can't  
12 change.

13 Q. After all the data's gathered, then what is done with it?

14 A. After it's downloaded into the computer, it's basically  
15 assigned a case number, and then I start working with it  
16 through an auto-CAD program which I can bring in text, a  
17 north arrow, some other logos that we need. If I need to  
18 make a specific legend that shows the items-- evidence--  
19 evidentiary items, I can do that at that point.

20 Q. And how many times have you made diagrams for court such  
21 as this?

22 A. At least-- At least 75 times.

23 Q. When you are finished with your data and-- what do you  
24 finish-- What do you come up with?

25 A. I come up with a scale diagram of the scene. I take that--

1 We have a large plotter at our office and I plot that out  
2 on a large piece, usually 34x44 inches wide, and then I  
3 take that to a photographic shop and it's mounted, so it  
4 just makes it easier to look at in court.

5 Q. I'd ask the bailiff to hand you what's been marked as  
6 Exhibits 17, 18 and 19, and I'll ask you to direct your  
7 attention to what's been marked as Exhibit 17, 18 and 19,  
8 and ask if you can identify them?

9 A. Yes. These are the drawings that I did regarding this  
10 case. Seventeen being-- Since we had to shoot two  
11 different areas, locations that were not within sight  
12 distance of one another, this one is the overview of the  
13 entire of both scenes, to scale, and in the exact location  
14 as were represented that day.

15 Q. And Exhibit 18 and 19?

16 A. Eighteen and 19 both represent blow-ups of both of the  
17 specific areas that we did. This one is the area around  
18 the Ford Bronco, which numerous evidentiary items were  
19 measured. And again, that's to scale. And then 19--  
20 Nineteen is the area basically-- basically out in the  
21 middle of the woods. And again, that's a blow-up of that,  
22 and also the legend here which shows what was measured.

23 MR. WETLE: Thank you. Your Honor, we would offer  
24 State's Exhibits 17, 18 and 19.

25 MR. SIMEONE: No objection.

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1 THE COURT: All right, 17, 18 and 19 are admitted.

2 Q. I'd ask, Detective Fenn, if you could just step to the  
3 jury here. I know it's difficult for them to see that,  
4 and you may be able to take the scene at the vehicle and  
5 show what you have--

6 THE COURT: Would you like the easel?

7 MR. WETLE: Yes.

8 EASEL IS SET UP

9 Q. I'd ask you, Detective Fenn, if you could show to the jury  
10 what scene you're talking about and what you labeled?

11 A. Okay.

12 THE COURT: And what exhibit number is that, for the  
13 record?

14 DETECTIVE FENN: This is Exhibit 18.

15 THE COURT: Thank you.

16 A. This is the scene that was generally around the Ford  
17 Bronco that had been burnt out. There was some areas in  
18 the woods, right to the left of that, where some bones  
19 were located. All of these areas I've got lettered from  
20 A to Z, and what exactly those items were that day.

21 Inside the Bronco I've got an area specifically where  
22 the driver and passenger seat were located, and then there  
23 were several items of interest in the back of the-- in  
24 the bed of the Bronco. One was a, I believe, acetylene or  
25 oxygen tank. It was a piece of metal frame. There was a

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1 shovel, what was left of it. What was left of a pick-axe,  
2 and then a gas cap was all located in that back section  
3 there. And we measured all that and, again, that's to  
4 scale.

5 If you look at pictures, there's going to be a lot more  
6 trees and everything around. We did not take the time to  
7 measure every-- normally I don't do that, measure every  
8 tree that's in the general area, 'cause it's just-- it  
9 would clutter up everything. I measured some of these  
10 trees just as a point of reference. If I had to go back  
11 out and actually set our instrument back over our back  
12 site, I could measure on a couple known points and then we  
13 could lay out the scene again if we had to.

14 Q. And with respect to Exhibit-- Let's see that was--

15 A. This is 18.

16 Q. --eighteen, so 19?

17 A. Okay, this is-- This is Exhibit 19. This is the scene  
18 that we shot basically in the middle of a woods. We set  
19 the Total Station up and then there were several items  
20 that they wanted located at that point. Again, I have  
21 that listed here from A to R, in this case, and what those  
22 items were. And again, if you look at pictures, there's--  
23 this is a very dense area, wooded area, here. And again,  
24 I didn't locate all the trees, just some as a point of  
25 reference.

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1 Q. And Exhibit 17? And what was the purpose of creating  
2 that?

3 A. Well, I wanted just to show an overview of both scenes.  
4 We had a GPS instrument at the scene, so we were able to  
5 locate not only this site, but actually this site. I knew  
6 the degrees difference between the two, and I knew the  
7 actual feet between the two, so when I brought this  
8 original diagram in, I knew the angle and I knew the  
9 distance of my other set site, so I just incorporated that  
10 into this diagram. So this is actually to scale, as it  
11 was that day.

12 Q. Okay, thank you, Detective Fenn.

13 THE COURT: Thank you again. I have no further  
14 questions.

15 THE COURT: All right, Mr. Simeone?

16 MR. SIMEONE: I have no questions for this witness,  
17 your Honor. Thank you.

18 WITNESS IS EXCUSED

19 THE COURT: And you may call your next witness, Mr.  
20 Wetle.

21 MR. WETLE: Thank you, your Honor. That would be Dave  
22 Baskin.

23

24

25

David Fenn - Direct (by Mr. Wetle)

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1 Q. And what did you do?

2 A. We were-- The detectives were all off on Sunday; we were  
3 all called out from our residence. We agreed to meet at  
4 the Sheriff's office, and then once we were all assembled  
5 and had most of our gear together we headed up to contact  
6 Deputy Charlie Smith, who led us into the area.

7 MR. WETLE: And I'd ask if we have Exhibit 20 on the  
8 board there?

9 Q. I'd ask if you can identify what's been marked as Exhibit  
10 20?

11 A. Yes, I can. That's a map that we received from the U. S.  
12 Forest Service here in town. I believe they call it an  
13 \_\_\_\_\_ or topographical style map. There's actually three  
14 different sections that we acquired that are-- they have  
15 in their storage there, and we were able to piece the  
16 three maps together to come up with one that kinda  
17 explains the area there.

18 MR. WETLE: We'd offer State's Exhibit 20, your Honor.

19 THE COURT: Any objection?

20 MR. SIMEONE: No objection.

21 THE COURT: All right, Number 20 is admitted.

22 MR. WETLE: I'd ask the bailiff if we could maybe pull  
23 the map out so that Detective Baskin can talk to the jury  
24 about some of the locations.

25 MAP IS MOVED SO JURY CAN SEE IT

David C. Baskin - Direct (by Mr. Wetle)

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1 Q. Detective Baskin, first of all I'd ask you when this map  
2 was made?

3 A. I believe it was made by the Forest Service in 1992.

4 Q. Could you show the jury the location of the Barter Fair on  
5 June 11, 2000?

6 A. Yes.

7 Q. And put a B.F. by that.

8 A. Okay, it's up here. There's a flat area along the  
9 Columbia River. It's up in this area right here. The  
10 Northport Barter Fair is what they call it.

11 MR. WETLE: Okay, so let the--

12 A. That's what the N.P. stands for.

13 MR. WETLE: --record reflect that he has put N.P.B.F.

14 Q. And then could you show where the town of Northport is  
15 located?

16 A. Yes. It also lays along the Columbia River here.

17 Q. And then we have an area called the Crown Creek cabin.  
18 Could you show the jury the location of the Crown Creek  
19 Cabin?

20 A. Okay. This dark line is the highway on the south side of  
21 the river. This line on the north side is the Northport-  
22 Flat Creek Road. It does kind of go \_\_\_ in that period  
23 just a little bit where the railroad and Crown Creek Road  
24 intersect. We kinda come down off from that, and then  
25 back up here on the Crown Creek Road, and the Crown Creek

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1 Cabin that they refer to lays right in this area. Put  
2 C.C. by it or--

3 Q. Just put C.C.C., Crown Creek Cabin.

4 A. Okay.

5 Q. And from there do you have a showing where the vehicle,  
6 burned out vehicle, was found?

7 A. Yeah, it's in Section 3 here. It would be, oh, approxi-  
8 mately this area.

9 Q. You want to just put vehicle?

10 WITNESS MARKS MAP

11 Q. Do you recall being able to check the approximate mileage  
12 from the Barter Fair to Northport?

13 A. Yes, it was-- We ran it with just one of our patrol  
14 vehicles, and from the entrance way to the Barter Fair  
15 itself, along the road, the Waneta Road, to Northport to--  
16 there's an Exxon Station just about the middle of town  
17 there in Northport, it was 9.7 miles from this point to  
18 Northport.

19 Q. So do you want to see if we can put a 9.7 somewhere up  
20 there with little arrows going toward the Barter Fair and  
21 also down toward Northport?

22 WITNESS MARKS ON MAP

23 Q. And then do you recall the distance between the town of  
24 Northport and the intersection of the Crown Creek and Flat  
25 Creek Roads?

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1 A. Can I refer to my notes just real quick here? I've got  
2 them right here. It's approximately ten miles. As you go  
3 across the river here at Northport, down along the Flat  
4 Creek-- Northport/Flat Creek Road, down and then to  
5 actually this intersection. When we did this, the area  
6 was extremely snow-covered. We couldn't get our vehicle  
7 any further up the road, just to past the intersection of  
8 Crown Creek. It was approximately ten miles to the  
9 intersection.

10 Q. And in terms of time, how long did it take you, and what's  
11 the posted speed limit in that area?

12 A. Like I said, we did it in the winter time, and it was  
13 fairly slick. We ran at 45 miles an hour, and that's--  
14 I mean 45, 50's probably the posted speed limit up there.  
15 From this point, Barter Fair to Northport, took us about  
16 13 minutes.

17 Q. You want to put that under the mileage there? And then  
18 the time from Northport down to that intersection.

19 A. Okay, that took us-- Again, about ten miles. It took us  
20 about 17 minutes to run that. So overall, the two  
21 distances was-- if you're driving at a normal rate of  
22 speed, take approximately 30 minutes to cover both  
23 distances. Twenty-five to 30 minutes, depending on the  
24 speed.

25 MR. WETLE: Okay, if the Bailiff could help you move

1 that back, and you can retake the witness stand.

2 Q. Detective Baskin, what did you see when you got to the  
3 scene?

4 A. When we first arrived we-- detectives did kind of a  
5 quick, overall evaluation of the scene. We found the  
6 Bronco, the burned-out Bronco, a set of human teeth out at  
7 the rear end of the Bronco. At that point we decided we  
8 had enough to back off and regroup and figure out what we  
9 were going to do. We decided at that point to call in the  
10 Washington State Patrol Total Station team to help us  
11 diagram the scene. The diagrams you were just shown there  
12 by Detective Fenn. The Washington State Patrol Crime Lab  
13 and Lance Hart, who's a ATF fire investigator, arson  
14 investigator, he also responded to the scene to give us a  
15 hand.

16 Q. So those people were called in. Did you start then to  
17 process the area prior to the time they arrived?

18 A. Yes. We-- We took our initial photographs, then we  
19 started to do some evidence location, marking-type things.  
20 Basically what happens is the detectives, there were four  
21 or five of us up there, we'd line up, basically shoulder  
22 to shoulder, and start doing a grid search of the sur-  
23 rounding area, just looking for evidence, anything we  
24 could find. Anything that was brought to our attention or  
25 that we located we marked with-- We have yellow numbers.

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1 We mark it with the yellow markers so we can identify  
2 them, photograph them and then mark them on the Total  
3 Station.

4 Q. What time did you quit that night?

5 A. We quit at dark, which was approximately 7:30 that night.  
6 It was just too dark to see any more. We didn't want to  
7 miss any evidence.

8 Q. So then the scene was secured?

9 A. Yes, it was. The detectives cleared out and we left a--  
10 actually, two patrol officers up at the scene and they  
11 guarded the scene all night.

12 Q. And what did you do the next day?

13 A. The first thing I did was obtain a search warrant for the  
14 vehicle itself, and then we just continued processing the  
15 scene. The Total Station team hadn't had much time to  
16 work the night before, nor had the fire investigator,  
17 because of the hour they got up there. We just continued  
18 on with evidence.

19 Q. So generally what did you find?

20 A. The main thing was the burned up Bronco, the human teeth,  
21 bones, human remains that were just outside the vehicle,  
22 and then due to our evidence search-- actually Deputy  
23 Harbolt, or Detective Harbolt now, located the bones down  
24 over the hill, just following paths and--

25 Q. Did you have any indication as to how many people you



1 might have at that time?

2 A. Yes, we figured we had at least two people, mainly-- I'm  
3 not a forensic doctor, by any means, but I recognized  
4 three shoulder blades, in layman's terms.

5 Q. How would you describe the condition of those remains?

6 A. Severely burned. The remains that were in the vehicle  
7 were severely burned. The bones were almost coming apart,  
8 they were badly burned. The remains that we found outside  
9 the vehicle were charred and had suffered animal predation  
10 and they were scattered by a large animal of some kind.  
11 You could see the pad marks of what I believe would be a  
12 bear had got up in the back of the Bronco and drug the  
13 remains out of the Bronco and scattered them down the  
14 hillside.

15 Q. Could you-- Did you have any impression about how long  
16 ago this might have happened?

17 A. The whole scene? It would-- It had happened some time  
18 ago. There was needle shed from the trees, it was coming  
19 on fall and we started to have some needle shed that was  
20 covering some of the items. And the back of the Bronco  
21 had needle cast.

22 Q. How would you describe the vehicle?

23 A. Just a burned out hulk. It was a-- what the remains were  
24 of a Ford Bronco.

25 Q. Okay, in terms of the area, you processed that through

1 kind of a grid sweep search and marked all the locations  
2 for the Total Station. Would you please describe how you  
3 processed the vehicle?

4 A. The vehicle was divided into basically four sections, so  
5 when we took evidence out of the vehicle we knew where it  
6 came from. We just basically divided it into four  
7 sections. The front and rear passenger side, and the  
8 front and rear driver's side. It was divided basically  
9 behind the seats in the Bronco forward, and then seats  
10 back, and then split right down the middle.

11 Q. So you had four quadrants, and then did you look for what  
12 type of items?

13 A. Any evidentiary items at all in the vehicle. The big  
14 items-- There were several large items in there. Some  
15 were described by Detective Fenn there, the pick-axe head,  
16 the shovel head. There was a large tank. There was a  
17 large piece of metal that was part of the framework of the  
18 roof of the Bronco. These items were taken out and marked  
19 as they were removed, the larger items. The smaller items  
20 and the ash from within the vehicle was all taken out very  
21 meticulously, one shovelful at a time, or scoop full at a  
22 time, and it was all swept into a container, and that  
23 container was then brought over to some sifting screens  
24 where myself and several other of the detectives were  
25 sifting the items. It's a three-stage screen where the

1 larger screen, then underneath that's a smaller screen,  
2 and underneath that's an even smaller screen to catch any  
3 items of evidence, no matter how small, unless they're  
4 about sand size will fall through that third screen. We  
5 sifted every-- every bucketful of ash, or anything that  
6 came out of that Bronco was sifted very meticulously.

7 MR. WETLE: I'd ask the bailiff to hand Detective  
8 Baskin what's been marked as Exhibit 1. It should-- Is  
9 it in the box?

10 WITNESS IS PROVIDED SCISSORS TO OPEN EXHIBIT

11 A. This is a--

12 THE COURT: I'm sorry. I was jumping the gun, but wait  
13 for a question from Mr. Wetle.

14 MR. BASKIN: Oh, I'm sorry.

15 Q. Detective Baskin, you've been handed what's been marked as  
16 Exhibit 1. Can you identify that?

17 A. Yes, I can. It's a brown paper bag that we use to collect  
18 evidence. It's sealed with evidence tape, and on the  
19 front side it's marked as to what it is, who collected it,  
20 and where it's been since then. And it's got Plaintiff's  
21 Exhibit 1 on a white tag.

22 Q. Okay, I'd ask-- You can open that and describe for the  
23 jury what-- or tell me what's in it.

24 A. It's a charred ring. It's a very small, fine metal ring  
25 with a design of some kind on the top side of it. That

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1 was found in the left front quadrant of the Bronco when we  
2 sifted the material out.

3 Q. And is it in substantially the same condition as when you  
4 seized it?

5 A. Yes, it is.

6 MR. WETLE: We'd offer State's Exhibit 1, your Honor.

7 THE COURT: You want to just kind of put it on top of  
8 the bag so that Mr. Simeone can look at it, and then put  
9 it back in?

10 MR. SIMEONE: No objection.

11 THE COURT: All right, Exhibit 1 is admitted.

12 Q. I'd ask the bailiff to then hand you what's been marked as  
13 Exhibit 2.

14 Q. You've been handed what's been marked as Exhibit 2. Can  
15 you identify that?

16 A. Yes, it-- Again, the brown paper bag, evidence marked and  
17 sealed. It's labeled Unknown Braided Material. It was  
18 recovered from the right front quadrant of the vehicle.

19 Q. And I'd ask if you would open that, please.

20 A. It's a braided material of some origin. I don't know what  
21 it's braided-- or made of. It, unfortunately, appears  
22 to-- it was about twice this long. It's broken inside  
23 the bag here. It's very fragile.

24 Q. Is it substantially in the same condition, other than  
25 having been broken, as when it was seized?

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A. Yes.

MR. WETLE: We'd offer State's Exhibit 2.

A. There's another little piece inside there too.

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DAVID C. BASKIN

VOIR DIRE EXAMINATION

BY MR. SIMEONE:

Q. Detective, have you actually made the determination of what this item is so far?

A. Yes, we-- We believe, and we're speculating, that it's a piece of braided rope or hemp that Nick Kaiser had that attached his wallet to his pants.

MR. SIMEONE: No objection, over my-- Or no objection to the admissibility, over my objection that the officer's speculating as to what it is.

THE COURT: All right, Exhibit 2 is admitted.

1 DAVID C. BASKIN

2 CONTINUATION OF DIRECT EXAMINATION

3 BY MR. WETLE:

4 Q. I'd ask the bailiff to hand you what's been marked as  
5 Exhibit 7, and ask if you can identify what's been marked  
6 as Exhibit 7?

7 A. Yes. Again, it's our brown evidence bag that's been  
8 sealed and marked. It's marked as ring and nose ring.

9 Q. And would you please open that?

10 A. Also, this was recovered out of the left front quadrant of  
11 the vehicle.

12 Q. Is it in substantially the same condition as when it was  
13 seized?

14 A. Yes, it is. It's a-- Looks like a ring that you'd wear  
15 on your finger, and then-- they call it a nose ring or  
16 some kind of body piercing ring.

17 MR. WETLE: We'd offer State's Exhibit 7, your Honor.

18 MR. SIMEONE: Your Honor, no objection over admissibil-  
19 ity, reserving any argument I might have later with  
20 regards to what these actually are, their significance.

21 THE COURT: All right, Exhibit 6-- excuse me.

22 MR. WETLE: Seven.

23 THE COURT: Seven is admitted.

24 Q. And I'd ask the bailiff to hand you what's been marked as  
25 Exhibit 9, and ask if you can identify that?

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1 A. Yes. Again, it's a paper bag, tagged and marked and  
2 sealed. It's marked as the shovel head. It's the spade  
3 part of the shovel. It was recovered out of the left  
4 front-- excuse me. Left rear quadrant of the vehicle.

5 Q. You want to open that? Is that shovel in substantially  
6 the same condition as when you seized it?

7 A. Yes, it is.

8 MR. WETLE: We'd offer State's Exhibit 9, your Honor.

9 MR. SIMEONE: No objection.

10 THE COURT: All right, Exhibit 9 is admitted.

11 Q. I'd ask the bailiff to hand you what's been marked as  
12 State's Exhibit 10, and ask if you can identify that?

13 A. Yes, it's, again, a bag sealed and marked. It's a pickaxe  
14 head. It was recovered out of the left rear quarter panel  
15 of the vehicle, or quarter quadrant of the vehicle.

16 Q. I'd ask if you'd open it, please. And is that in substan-  
17 tially the same condition as when seized?

18 A. Yes, it is.

19 MR. WETLE: And we'd offer State's Exhibit 10.

20 MR. SIMEONE: No objection.

21 THE COURT: All right, Exhibit 10 is admitted.

22 MR. WETLE: I'd ask the bailiff to find what's marked  
23 as Exhibit 76.

24 Q. I'd ask if you can identify that?

25 A. Yes, it's a-- Again, it's our evidence bag that's been

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1 sealed and marked. It's marked a Large White Crystal.

2 Q. And would you please open that? Is that in substantially  
3 the same condition as when you seized it?

4 A. Yes, it is.

5 Q. And where was that found?

6 A. It was located in the vehicle, and I-- It's not marked on  
7 the bag exactly which quadrant it was located in. I  
8 believe it was towards the front of the vehicle, but I'm  
9 not exactly sure.

10 MR. WETLE: We'd offer State's Exhibit 76, your Honor.

11 MR. SIMEONE: No objection to that exhibit, your Honor.

12 THE COURT: Exhibit 76 is admitted.

13 Q. Then I would ask for the smaller items so that the jury  
14 doesn't have to handle these, if you would maybe take the  
15 crystal, the rings, the braided hemp and show the jury  
16 here, Detective Baskin? Let's see, that'd be probably  
17 Exhibit 1, 2, 7 and 76.

18 A. Start with Exhibit 7, it's the ring and nose ring. This  
19 is a silver finger ring, and a nose ring, or a body  
20 piercing ring of some kind. Can you see it way back  
21 there?

22 Q. There should be no danger in handling those, given their  
23 burned condition?

24 A. No. No, they're-- They just have a little ash on them.

25 Q. And Exhibit 2?

David C. Baskin - Direct (by Mr. Wetle)

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1 A. Number 2 is a-- Again, it's a piece of braided hemp  
2 \_\_\_\_\_. Braided-- I'm not sure what it is. Braided hemp  
3 or a rope of some kind. It's been severely charred.

4 MR. SIMEONE: Your Honor, I'm going to object to any  
5 further editorialism or comments as he's demonstrating the  
6 exhibits.

7 THE COURT: Sustained, given the previous testimony.

8 Q. What's the next exhibit, Exhibit 1? Could you show the  
9 jury what is Exhibit 1?

10 And lastly, would you show the jury what's been marked  
11 as Exhibit 76?

12 A. \_\_\_\_\_ back there?

13 Q. Thank you, Detective Baskin, and if you'd retake the  
14 stand. What did you do with the vehicle that night?

15 A. As we finished up and we had it all cleaned up, we called  
16 a flatbed vehicle recovery truck. There's only one in the  
17 county. It come clear out of-- down by Deer Lake, Loon  
18 Lake area. We got it up the hill and loaded the Bronco on  
19 it. It's a slide-back bed so we were able to get the  
20 Bronco in its totality up there. We covered it with a  
21 tarp, and it was transported back to a locked storage area  
22 down at Deer Lake.

23 Q. What did you do with the gasoline in it?

24 A. When we tipped it up on the truck, gas started running out  
25 of the tank. The fuel line running from the fuel tank to

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1 the motor itself had been burned and ruptured, and as we  
2 tipped the truck fuel started running out, and there was  
3 copious amounts of gasoline running from the fuel tank  
4 onto the bed of the truck. And due to the fuel leakage,  
5 we didn't want to put it in our indoor storage at that  
6 time. We transported it to Deer Lake to an outside area,  
7 and then the next day they were able to drain that fuel  
8 tank, which made it safe for us to store indoors then.

9 Q. Do you know how much gas you actually got out of the tank  
10 when you got it down to the storage area?

11 A. Yeah. After the ride, and there was actually 17 gallons  
12 of fuel that were recovered from the tank at that time.

13 Q. From the license plate on the Bronco, were you able to  
14 determine who the owner or alleged owner of that vehicle  
15 was?

16 A. Yes, we were.

17 Q. And who was it registered to?

18 A. It was registered to a Nicholas Kaiser and James Allison,  
19 and they had an Oak Harbor, Washington, address at that  
20 time.

21 Q. Is that on Donald Street or do you recall?

22 A. I believe so. I don't recall. I believe that's what it  
23 was.

24 Q. Did the Sheriff's office have a missing persons report on  
25 Nicholas Kaiser?

- 1 A. No. We did have a missing persons report on Josh Schaefer,  
2 and Nick Kaiser had been associated to Josh Schaefer.  
3 Q. So they'd been reported together, or seen together?  
4 A. Yes.  
5 Q. After you found out who owned the vehicle, what did you  
6 do?  
7 A. We started canvassing the neighborhood up there in the  
8 Crown Creek area. As far as what the detectives were  
9 doing, the remains that we recovered at the scene were  
10 taken to Holy Family Hospital to Dr. Lindholm, who's a  
11 forensic scientist doctor, and they were taken down there  
12 to be examined and to determine what we had at that point.  
13 We also were interested in a cabin that was near the  
14 scene, and it's been marked as the Crown Creek Cabin, or  
15 C.C.C. on Exhibit 20.  
16 Q. And why were you interested in that cabin?  
17 A. It was the closest one to the crime scene, in the near  
18 vicinity of the crime scene, and we had also learned that  
19 it had housed two males out of the Seattle area.  
20 Q. So when did you end up going to the Crown Creek cabin?  
21 A. It would have been October 2nd of 2000.  
22 Q. And did you find out who owned that cabin?  
23 A. Yes, we did. It belonged to a Lou and Karen Ash. They're  
24 absentee landowners. They don't live in the area.  
25 Q. Is that cabin in Stevens County?

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1 A. Yes, it is.

2 Q. And did you get permission to search that cabin?

3 A. Yes.

4 Q. What did you do?

5 A. We actually wrote a search warrant, in addition to having  
6 signed permission to search forms from the owners. The  
7 officers went to the cabin on October 2nd, and basically  
8 were looking to see who may have been at or in the cabin  
9 around that time frame.

10 Q. What did you see when you got to the cabin?

11 A. The cabin was abandoned. You could tell somebody had lived  
12 there in the not too distant past. Basically we searched  
13 it for evidence of who might have lived there. ~~We found~~  
14 some papers, some other jewelry, lots of .22 rifle casings  
15 outside, some personal effects inside, old clothes, that  
16 kind of thing. Old food.

17 Q. Any papers with individuals' names on them?

18 A. Yes, we did.

19 Q. What were you trying to do next?

20 A. Basically find out who-- who had been in the area, and  
21 who may have been staying there, who had any connections  
22 with the cabin, just to give us some kind of base to start  
23 looking.

24 Q. And why, again, were you doing that?

25 A. Like I say, the cabin was close to the crime scene. It

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1 was the nearest in proximity. There's no other residences  
2 up past that cabin, and the road that the Bronco was  
3 located on, that road goes right by the driveway to the  
4 cabin.

5 Q. And the road that goes up to the Bronco, is that a through  
6 road?

7 A. No, it's a dead-end road. It's a logging road. Hasn't  
8 been in existence for too long.

9 Q. Any other residence near the burned-out vehicle, or  
10 between the Crown Creek cabin and the burned-out vehicle?

11 A. No.

12 Q. Could you find who was connected to that cabin?

13 A. Well, we-- Again, we found out who the owner was, it was  
14 Lou Ash, and then locally we learned of a gentleman up--  
15 lives a little further up the Flat Creek Road, his name's  
16 Jack Wylie. He's an older gentleman, was friends with Lou  
17 Ash, and we had heard that he might know who had been at  
18 the cabin, or he was supposedly kind of watching the cabin  
19 for Lou Ash. And we went and talked to Mr. Wylie.

20 Q. Yes?

21 A. And he directed us-- He didn't know who had been at the  
22 cabin. Like I say, he's an older gentleman who travels  
23 outside the state quite frequently. And he directed us to  
24 a Mr. Lael, and I don't recall his first name. But  
25 anyways, he lives on the next drainage over, and myself

1 and Sergeant Caruso went and talked to Mr. Lael and he  
2 gave us the directions to the Hamlet Road Cabin, where he  
3 said some young people were living and had been kind of  
4 caretaking that Hamlet Road cabin.

5 Q. So did you go to the Hamlet Road cabin?

6 A. Yes, we did.

7 Q. And what did you find there?

8 A. We talked to a lady there that afternoon. Her name was  
9 Janell Clark, I believe, and she was there just helping  
10 the-- helping herself to some food dehydrator that the  
11 people there had, and she said she didn't live there but  
12 she gave us the name of Maija and Reb, the couple that  
13 lived there.

14 Q. What's Maija's full name?

15 A. Maija Soucie.

16 Q. And so apparently Maija and Reb were living at the Hamlet  
17 Road cabin?

18 A. Yes, they--

19 MR. SIMEONE: Your Honor, I'm going to start objecting.  
20 It's a little more substantive now. He's starting to get  
21 into details of what it is that he knows as a result of  
22 that conversation, so my objection would be hearsay.

23 THE COURT: Sustained.

24 Q. Could you show where--

25 MR. WETLE: Thank you, your Honor.

1 Q. Could you show where the location of that Hamlet Creek  
2 Road is, if it's on that map, on Exhibit 20?

3 A. Yes. It should be close. It kind of runs off the end of  
4 the map here, but it's the next drainage. The ridge runs  
5 through here, and it's over-- Now, the other-- The other  
6 picture shows it a little better, but it's off in this  
7 area, roughly. Maybe a little further off the map.  
8 Hamlet Road. Lael Road runs up and it forks off in this--  
9 Just a little ways up, I believe. It's not covered on  
10 this map very well.

11 Q. So you were then told to come back to that cabin by  
12 Janell?

13 A. Yes.

14 Q. What did you do?

15 A. We returned a short time later.

16 Q. Did you go to any other neighborhoods near--

17 A. Yeah, we continued to ask around the neighborhood. Ran  
18 into, oh, a rancher up there that was moving some cows,  
19 and just talked to other people in the area to see if they  
20 had any more information on who might have been in the  
21 area around that time and around the Crown Creek cabin.

22 Q. So-- And eventually did you go back to the Hamlet Road  
23 cabin?

24 A. Yes, we did.

25 Q. And what happened then?



1 A. At that time, Maija Soucie and Reb were home. Now, we  
2 talked to them for a little bit, explained why we were  
3 there. They gave us the name of Dane Williams, who had  
4 lived at the cabin previously.

5 MR. SIMEONE: I'm going to keep objecting to hearsay as  
6 to anything that other witnesses say to the officer, your  
7 Honor.

8 THE COURT: Sustained.

9 Q. How did they appear to you when you talked to them?

10 A. Reserved. Very reserved.

11 Q. And did they appear to want to talk to you?

12 A. Yes, they wanted to say something, but they didn't know  
13 how to say it at that time.

14 Q. Did you leave anything there when you left?

15 A. Yes, both Sergeant Caruso and I left our business cards  
16 with them and asked them to contact us if they had any  
17 more information.

18 Q. And did you subsequently get a call?

19 A. Yes, we did. It was maybe half an hour later.

20 Q. And what did the call request?

21 A. They requested we come back and talk to them again.

22 Q. And what did you do?

23 A. We were able to go back and interview them this time, and  
24 they gave us the information.

25 Q. Did they give you-- They gave you the information.

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Without saying what they gave you, did they give you a statement?

A. Yes, they did.

Q. With that statement, what were you able to do?

A. We were able to identify three individuals that we considered to be witnesses or suspects in the-- in the homicide.

Q. And after you had those three identified, what was your next goal?

A. Well, we wanted to find them.

COURT INQUIRES AS TO GOOD TIME TO TAKE A RECESS

COURT RECESSED

1 COURT RECONVENED WITH THE JURY SEATED

2 THE COURT: Detective, you may retake the witness  
3 stand, if you would, please.

4 WITNESS IS REMINDED HE IS STILL UNDER OATH

5 DAVID C. BASKIN

6 CONTINUATION OF DIRECT EXAMINATION

7 BY MR. WETLE:

8 Q. Detective Baskin, so now you're looking for the three  
9 individuals. What was your thinking as far as the  
10 strategy for how you're going to proceed at that point?

11 A. We're looking for who we thought we could talk to and  
12 locate, and Dane Williams was the first one we thought we  
13 could find and interview.

14 Q. And why was it that you picked Dane Williams?

15 A. Thought we might have a possible location on him, for one,  
16 and figured he was part of the three, and he was the one  
17 we wanted to talk to.

18 Q. Did you think he'd give you a statement?

19 A. Yes, we did.

20 Q. And what was that based on?

21 A. The information we had got from Maija Soucie as to the  
22 part he played in this.

23 Q. So then what did you do?

24 A. We located Dane Williams on the west side of the state,  
25 and were able to contact him there, and we interviewed

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1 him.

2 Q. And what did he do?

3 A. He gave us a statement.

4 Q. So now you have Maija's statement, Williams' statement.

5 What were you able to do then?

6 A. Well, with the information from both these statements, we

7 were able to get an arrest warrant for Jeff Cunningham,

8 and we were able to locate Mr. Cunningham in Florida. In

9 Fort Lauderdale, Florida.

10 Q. Remember what the arrest warrant for Mr. Cunningham was?

11 A. Rendering criminal assistance in the first degree.

12 Q. So now you have a warrant for him and you're looking for

13 him?

14 A. Yes, that's correct.

15 Q. And what did you find?

16 A. We located him in Fort Lauderdale, Florida, and were able

17 to assist in that arrest in Florida.

18 Q. Were you there?

19 A. Yes, I was.

20 Q. And--

21 A. Not at-- Not at the exact time of the arrest. We got

22 there a minute and a half later.

23 Q. And who was with you from Stevens County?

24 A. Detective Sergeant Jim Caruso.

25 Q. And then after he was arrested, what happened?

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- 1 A. We were able to interview Mr. Cunningham at the Broward  
2 County Sheriff's Department in Fort Lauderdale, Florida.
- 3 Q. And he then gave you a statement?
- 4 A. Yes, he did.
- 5 Q. So now based on Maija's statement, Williams' statement,  
6 and Cunningham's statement, what were you able to do?
- 7 A. With the combination of that information, we were able to  
8 get an arrest warrant for John Grange for two counts of  
9 second degree murder.
- 10 Q. So then what did you do?
- 11 A. Again, myself and Detective Sergeant Jim Caruso traveled  
12 back to Portland, Oregon, where we thought Mr. Grange was.  
13 We were also joined by Detective Loren Erdman, and we  
14 tried to locate Mr. Grange for a few days, were unable to  
15 do so. With the cooperation of the Portland City Police  
16 Department and the Special Investigations Unit of Mult-  
17 nomah County, we agreed to keep an eye on the location we  
18 thought Mr. Grange was. The Stevens County detectives  
19 came home for a couple days, and we received a phone call  
20 late one evening that they had located the vehicle back at  
21 Mr. Grange's residence, and we went back down to Portland.  
22 Again, myself, Detective Sergeant Jim Caruso, and Detec-  
23 tive Erdman, and we were able to assist in the arrest of  
24 Mr. Grange.
- 25 Q. Did you subsequently go into the Portland area after that?

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1 Did you ever go back there?

2 A. Oh, yes.

3 Q. And in the course of that, did you get a phone call from  
4 the Sheriff's office giving you a number off a dog collar?

5 A. Yes, we did.

6 Q. I'd ask the bailiff to hand you what's been marked as  
7 Plaintiff's Exhibit 8, and ask if you can identify that.

8 A. It's a--

9 THE COURT: What happened to the scissors?

10 A. --an evidence envelope, manila envelope, again with our  
11 evidence tag and sealed, and it's a purple dog collar with  
12 a dog tag on it.

13 Q. Okay, I'd ask if you can open that. Is that in substan-  
14 tially the condition in which it was seized?

15 A. Yes, I believe it was.

16 Q. And what is that?

17 A. It's a braided dog collar, and it has a silver dog tag on  
18 it with the name Drexler imprinted on it, and the phone  
19 number. It's Area Code 503-281-4736.

20 MR. WETLE: We'd offer State's Exhibit 8, your Honor.

21 MR. SIMEONE: No objection.

22 THE COURT: All right, Exhibit 8 is admitted.

23 Q. What did you do with that number off that dog tag?

24 A. Again, through the cooperation of the Multnomah County SIU  
25 unit down there, we ran that phone number, and they have

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1 an information system on a phone number that lists all the  
2 people identified with that phone number, and that phone  
3 number came back to a Laurie Heinz (sp?).

4 Q. And who is Laurie Heinz?

5 A. Laurie Heinz is Mr. Grange's sister.

6 Q. And why was that important?

7 A. Again, that phone listing, it records everybody that's  
8 associated with that phone number, and in those list of  
9 associates we found John Grange's name. It was a name  
10 that we had associated at the Crown Creek cabin when we  
11 did our original search warrant off some paperwork that we  
12 found there.

13 MR. SIMEONE: Your Honor, I'm thinking about that, and  
14 I think I'm going to object and ask that the part of  
15 Detective Baskin's last remark be stricken because he's  
16 testifying from something and trying to prove the truth  
17 thereof based upon something that hasn't been introduced  
18 into evidence.

19 ~~THE COURT: Well, the part about the search warrant~~  
20 ~~is-- Were you present, Detective, during the execution of~~  
21 ~~the search warrant?~~

22 MR. BASKIN: Yes, I was.

23 THE COURT: What part are you objecting to?

24 MR. SIMEONE: Well, he was-- He was referring to  
25 information that he was able to glean from another record

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1 that he referred to. That's not evidence, as far as I can  
2 tell, yet.

3 THE COURT: Well, your objection isn't very timely, Mr.  
4 Simeone. I'm going to overrule your objection since it  
5 wasn't made at the time of the question. Go ahead, Mr.  
6 Wetle.

7 MR. WETLE: Thank you, your Honor.

8 Q. Detective Baskin, did you participate in the interviews of  
9 Dane Williams?

10 A. Yes, I did.

11 Q. And do you remember when you first interviewed him?

12 A. It was October 13th, 2000.

13 Q. And where was that?

14 A. In Vancouver, Washington.

15 Q. And do you recall when he was next interviewed?

16 A. Been October 18th. Again, that one was at the Gresham  
17 Police Department in-- Just outside of Portland, Oregon.

18 Q. And do you recall who was there? Were there other  
19 agencies besides you and Sergeant Caruso?

20 A. Yes, there was. Again, there was investigators from the  
21 Multnomah County Sheriff's office. They were not present  
22 at the interview. They set the area and room up for us.  
23 There was Agent Sean Cummings from the DEA, Agent Phil  
24 Hart from the DEA were present during that interview.

25 Q. So at that interview-- Maybe-- How many times was Dane

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1 interviewed at that time?

2 A. During that interview, myself and Sgt. Caruso interviewed  
3 him, and then the two agents from the DEA sat and talked  
4 with him for awhile, and myself and Detective Sgt. Caruso  
5 were not present for that. They talked with him at  
6 length, and after they talked to him, they came out and  
7 said that he had some more information for us, and we went  
8 back in, or I did, and spoke with him again and did  
9 another short interview.

10 Q. So was that a continuation of the first interview, or was  
11 that another separate interview?

12 A. It was a continuation of the first interview. That day,  
13 anyway.

14 Q. And then when did the third interview take place?

15 A. It was October 21st, in-- Again, it was in Vancouver,  
16 Washington.

17 Q. And what was the purpose of that?

18 A. We had gained some more information. It was just to  
19 clarify some points of information.

20 Q. And then when did the fourth interview take place?

21 A. November 8th at the Clark County Jail.

22 Q. And why was that interview held?

23 A. Mr. Williams had been arrested and was in the Clark County  
24 Jail, and we interviewed him there at the jail. We had  
25 gone down to Florida and we had interviewed Mr. Cunningham

1 prior to that, and we had some information that had been  
2 gained through the investigation and we had, again, some  
3 more points to clarify with Mr. Williams.

4 Q. Did you, in the course of that, tell Mr. Williams what Mr.  
5 Cunningham had said in his statement?

6 A. No, we had not.

7 Q. And the purpose for not telling him?

8 A. We didn't want the two to-- information to mix or blend.

9 Q. And then when did the fifth interview take place?

10 A. Here in Stevens County on December 29th, here in the  
11 Stevens County Courthouse.

12 Q. And was that after he had pled?

13 A. Yes, it was.

14 Q. So in your recollection, how many times did the detectives  
15 interview Mr. Williams?

16 A. Five times.

17 Q. And then if you count going back in to talk to him at the  
18 Gresham Police Department, if that's either one or a  
19 separate time?

20 A. Yeah, I considered that to be one interview. It could be  
21 construed as two.

22 Q. Is that unusual to have that many interviews under-- in  
23 a case like this?

24 A. No, not really. It depends on how the-- how the investi-  
25 gation unfolds and what information develops and what

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1 points that the investigators need clarified.

2 Q. When you-- When you first interviewed Mr. Williams, what  
3 did you think his role to be?

4 A. The very first interview we believed him to be just a  
5 witness.

6 Q. And then based on Maija Soucie's statement and Dane  
7 Williams' statement, what crime did you feel that Jeff  
8 Cunningham should be arrested for?

9 A. Rendering criminal assistance in the first degree.

10 Q. And was that the charge used to arrest-- to get an arrest  
11 warrant for Mr. Cunningham?

12 A. Yes, it is.

13 Q. And is that the charge he pled guilty to?

14 A. Yes, it is.

15 Q. And what was the requested charge for Mr. Williams?

16 A. The same, rendering criminal assistance in the first  
17 degree.

18 Q. And what charge did Mr. Williams plead to?

19 A. The same, rendering criminal assistance in the first  
20 degree.

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

23 THE COURT: Mr. Simeone, any questions of this witness?

24 MR. SIMEONE: Yes. Thank you, your Honor. And I will  
25 be calling Detective Baskin again. This will not be the

David C. Baskin - Direct (by Mr. Wetle)

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end of my discussion with him.

THE COURT: All right.

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845.

Judy Americk  
762 S. Pine  
Colville, WA 99114  
(509) 684-2267

1 DAVID C. BASKIN

2 CROSS EXAMINATION

3 BY MR. SIMEONE:

4 Q. Detective Baskin, you say you had six interviews with Mr.  
5 Williams, is that right?

6 A. We had five, with the break in the second one that could  
7 be either one or two interviews.

8 Q. But, in fact, wasn't there another interview you had with  
9 Mr. Williams that wasn't recorded?

10 A. No.

11 Q. You never had another one with him?

12 A. No.

13 Q. So all the-- All the interviews you had were on record  
14 and recorded?

15 A. Yes.

16 Q. And two with Mr. Cunningham? Is that right?

17 A. That's correct.

18 Q. Okay, and they were all very lengthy, weren't they?

19 A. Yes, they were, for the most part. The third one wasn't  
20 quite as long.

21 Q. Okay, did you have interviews with Mr. Cunningham that  
22 were not recorded?

23 A. No.

24 Q. None?

25 A. No.

David C. Baskin - Cross (by Mr. Simeone)

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1 Q. I'm not talking about you personally, now, but any other  
2 police officers?

3 A. No.

4 Q. Not that you're aware of?

5 A. No.

6 Q. But every time you had an interview with the given  
7 witness, you had an objective in mind for your interview,  
8 didn't you?

9 A. To gain information.

10 Q. Yeah. Was your objective to show that Mr. Grange was the  
11 perpetrator of the murder?

12 A. Just to gain the information that Mr. Cunningham had. I  
13 don't try to go in with a set purpose, just to gain infor-  
14 mation.

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

16 THE COURT: All right.

17 Q. Detective Baskin, do you have a copy of your second  
18 interview with Mr. Williams with you?

19 A. No, I don't.

20 Q. I'll refer you to my copy, and see whether or not this  
21 appears to you to be a transcript of that interview.  
22 Would you look at that, please, then I'll address your  
23 attention to page 785. Dates marked, page 785.

24 A. Okay. Yes, it is a--

25 Q. That's it?

David C. Baskin - Cross (by Mr. Simeone)

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1 A. --transcript of that interview.

2 Q. Well, look-- For example, look at the top of that  
3 question and answer session there, where you asked Mr.  
4 Williams:

5 Okay, did you talk about the same thing on your  
6 way back?

7 That being on his way back from the Barter Fair that day.  
8 I'll give you a second to orient yourself in the inter-  
9 view, because I know there were numerous interviews and  
10 they-- they were very sprawling. So if you want to  
11 orient yourself to where you are in that interview, that's  
12 fine with me.

13 A. Okay.

14 Q. Okay, do you see that? His response to that question was  
15 what? You said: Okay, did he talk anything-- And you're  
16 referring to Mr. Grange, aren't you?

17 A. Yes.

18 Q. Did he ref--

19 Did he talk to you about anything or say  
20 anything on your way back?

21 And his answer was what?

22 A. Not that I can recall.

23 Q. But you prompt him again after that, don't you? Didn't  
24 you ask him later on down the page,

25 Did he make a statement to you, why don't  
you come back, come on over later on?

1 Is that right?

2 A. Okay, you're talking about this line here?

3 Q. Did he make a statement:

4 Why don't you come back, come over later on?

5 A. I-- I asked him that question, yes.

6 Q. Okay, so actually he gave you an answer, and he said not  
7 that I can recall, and then you prompted him. Isn't that  
8 right? You already--

9 A. Yeah, I-- Yes.

10 Q. Okay, and that was for the purpose of trying to see  
11 whether or not Mr. Grange had said anything there that you  
12 would consider incriminating evidence, isn't that right?

13 A. Yes.

14 Q. Okay, and he-- Because he basically parroted that  
15 verbatim right after you asked him that remark, or asked  
16 him that question, didn't he? Didn't he say-- He said:

17 Yeah, he just said he wanted me to stop by later.  
18 So that's basically just a-- almost a verbatim repetition  
19 of what your question was, or your answer was, wasn't it?

20 A. Yes, it is.

21 Q. Okay, thanks. Thank you. I'll take that exhibit back.  
22 Now, you talked briefly in the preliminary part of your  
23 examination about the evidence that you recovered and  
24 numerous exhibits of physical evidence that you found at  
25 the scene of the incident were admitted, and these are

David C. Baskin - Cross (by Mr. Simeone)

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1 they, correct?

2 A. That's correct.

3 Q. Now, in any of the physical evidence that you obtained  
4 from the scene, have you in your investigation, do you  
5 have any knowledge that any of that physical evidence is  
6 linked to Mr. Grange, as a result of any testing or any  
7 other investigation you did?

8 A. No.

9 Q. I know what I wanted to clarify you not-- with you now,  
10 preliminarily. We heard testimony when you were in the  
11 courtroom when the-- Mr., I think, Gretz (sic) testified,  
12 the hunter who came upon the scene?

13 A. Yes.

14 Q. Do you recall?

15 A. Yes.

16 Q. Now, I want to know, as a result of your investigation,  
17 did you see that there was a hose in the gas tank nozzle?

18 A. No, it was not. It was laying on the ground when we found  
19 it.

20 Q. Okay. We admitted as an exhibit what you refer to as a  
21 woman's ring. Is there any certainty that that is a  
22 woman's ring?

23 A. I don't--

24 Q. Or is there-- The ring. Is there any certainty that that  
25 is a male's ring, I should say.

David C. Baskin - Cross (by Mr. Simeone)

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1 A. No, it's just a small-- small ring..

2 Q. And again, with regards to the mileage, I wasn't clear as  
3 to which distances you were--

4 MR. SIMEONE: Your Honor, may I approach the exhibit?

5 THE COURT: Yes.

6 Q. Which distances you were referring to, Detective Baskin.  
7 I think you testified that there are about 20 miles, all  
8 in all? About ten and then another 9.9?

9 A. Nine-point-seven, yeah.

10 Q. Point seven?

11 A. Yeah, and then ten miles.

12 Q. And that is from the Barter Fair to Northport, is it 9.7?

13 A. That's correct.

14 Q. Okay, and then there's ten miles from Northport to the  
15 fork at Crown Creek Road and Flat Creek Road? Is that  
16 right?

17 A. Yes. Yes.

18 Q. Okay, and there's still-- There is, indeed, a lot more  
19 distance involved and drive time involved from the fork  
20 there to when you get to the cabin?

21 A. Yes.

22 MR. SIMEONE: Okay, I have no further questions for the  
23 witness at this time.

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

25 MR. WETLE: Just to clarify, your Honor.

David C. Baskin - Cross (by Mr. Simeone)

851.

1 DAVID C. BASKIN

2 REDIRECT EXAMINATION

3 BY MR. WETLE:

4 Q. Detective Baskin, when you were interviewing Mr. Williams  
5 and Mr. Cunningham, did you, in the course of the way you  
6 do your investigation, do you talk to them first?

7 A. Yes, we do.

8 Q. And when you talk to them first to find out generally what  
9 they're going to say, is that recorded?

10 A. No.

11 Q. So that portion, if you looked at the whole interview, the  
12 preliminary, when you meet them, greet them, and start  
13 talking, there's nothing recorded at that time?

14 A. No, not until we read the tape statement for them.

15 Q. And then you ask them if they would give you a taped  
16 statement?

17 A. Yes.

18 Q. And then you run the tape recorder and you take that  
19 recorded statement?

20 A. Yes.

21 Q. So there's a portion of it that is not recorded, but the  
22 primary portion that comes back in your file is the tape  
23 recorded statement?

24 A. That's correct.

25 Q. In your investigation of the crime, did you uncover any

David C. Baskin - Redirect (by Mr. Wetle)

852.

1 evidence showing whether Cunningham or Williams did  
2 anything but rendering?

3 A. No.

4 Q. And with respect to some of the physical evidence that was  
5 recovered at the Crown Creek cabin, was there anything  
6 that you found in the Crown Creek cabin that linked Mr.  
7 Grange to that cabin?

8 A. Yes, there was a-- I believe it was a credit card or  
9 credit card application. Some kind of card that had Mr.  
10 Grange's name on it. It was located at the Crown Creek  
11 cabin.

12 MR. WETLE: Thank you. Your Honor, I have no further  
13 questions.

14 THE COURT: All right, Mr. Simeone, anything further?

15 MR. SIMEONE: Yeah.

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1 DAVID C. BASKIN

2 RECROSS EXAMINATION

3 BY MR. SIMEONE:

4 Q. I want to make sure I understand. You did have some  
5 discussions with the various interviewees then prior to  
6 recorded statements?

7 A. Yes.

8 Q. So those were interviews, weren't they?

9 A. They were lead-ins to the-- to the tape, yes. We kinda  
10 introductory and we'd talk a little bit about what was--  
11 what information they had.

12 Q. Okay, and they lasted over a period of some minutes, isn't  
13 that correct?

14 A. Yes.

15 Q. So are you-- Do you want to then amend your answer to my  
16 question as to whether or not there were other interviews  
17 that weren't recorded?

18 A. Yes, in that sense, yes.

19 MR. SIMEONE: Okay, no further questions.

20 THE COURT: All right, Detective, you may step down, and  
21 thank you for your testimony.

22 Do we have a fairly quick witness we could get to? No,  
23 it's going to be a lengthy one. Okay. Then we'll go ahead  
24 and take our recess, ladies and gentlemen, for the noon hour.  
25 Can we resume, Mr. Wetle, as far as you're concerned, right at

David C. Baskin - Recross (by Mr. Simeone)

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1:00?

MR. WETLE: We could, Your Honor.

THE COURT: All right..

MR. WETLE: Or 1:15? What I'm seeing is that we are, pending on the length of cross examination, we're going through pretty quickly, and I think I need to see if I can't round up a couple more witnesses. So if I can get some more witnesses, if we had a little more time, maybe I can do that.

THE COURT: Okay. Then let's say 1:15, ladies and gentlemen, so we can just keep moving forward here today. And I would direct you to make sure you wear your juror badges to lunch with you, in case that there are other people that might be speaking in your presence, just to make sure that they're not going to say anything out of line without knowing that they did so. And again, no discussion among yourselves or with anyone else about the matter until it's finally submitted to you.

Court will be at recess until 1:15.

**COURT RECESSED FOR LUNCH**

854-A