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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. 00-1-00138-2)

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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:

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Attorney at Law
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Colville, WA. 99114

VOLUME 8 of 17
February 12, 2001
(Pages 855 through 992)

Transcript prepared by:
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February 12, 2001

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COURT RECONVENED WITH THE JURY SEATED

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

MR. WETLE: Thank you, your Honor. The State would call Loren Erdman.

WITNESS IS SWORN

THE COURT: If you'll start by giving your name, please, and spelling your last name for the record?

MR. ERDMAN: Loren Erdman, E-R-D-M-A-N.

THE COURT: And your current business address, please?

MR. ERDMAN: P. O. Box 186, Colville, Washington.

THE COURT: Thank you. Mr. Wetle?

MR. WETLE: Thank you, your Honor.

LOREN ERDMAN

Being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. WETLE:

Q. Good afternoon, Detective. Could you please state your occupation?

A. I'm a detective with the Stevens County Sheriff's Office.

Q. And how long have you been so employed?

A. Two years as a detective.

Q. And how long, overall, with the County?

A. Six years.

Q. On Sunday, September 24th, year 2000, were you called to investigate a burned vehicle with possible human remains

Loren Erdman - Direct (by Mr. Wetle)

855.

1 found in northern Stevens County?

2 A. Yes, I was.

3 Q. And do you remember when you were called out?

4 A. I was called out by our dispatch.

5 Q. And do you know when you arrived at the scene?

6 A. It was about 11:40 in the morning.

7 Q. What did you do when you arrived?

8 A. I assisted-- Basically I was briefed, initially, and

9 then I assisted in the initial observations of what we saw

10 there, and then we did a line search, isolated the area,

11 and then I photographed the scene.

12 Q. Okay, did you meet Deputy Smith up there?

13 A. Yes. Deputy Smith was the first officer up there, and

14 he's the one that briefed us on what he had found up to

15 that point, that the hunters had found the vehicle.

16 Q. Did you observe any human remains in or near the vehicle?

17 A. Yes, I did, both in and around it.

18 Q. Then did you and Detective Baskin put together a large

19 general area map?

20 A. Yes, I did.

21 Q. And is that the map basically on the board there?

22 A. This here's the map, yes.

23 Q. And basically how did you construct that?

24 A. We took three maps from the National Forest Service and

25 matched them all up, pieced them together to cover the

Loren Erdman - Direct (by Mr. Wetle)

856.

- 1 entire area, or at least as best as we could.
- 2 Q. I'd ask the bailiff to hand you what's been marked as
3 State's Exhibit 21, and ask if you could identify that?
- 4 A. This is an aerial photograph of the Crown Creek area.
- 5 Q. And how did you get that particular photograph?
- 6 A. We got a photograph from the National Forest Service from
7 their records, and we had it enlarged, and this is pretty
8 much that photograph.
- 9 Q. And where did you take it to have it enlarged?
- 10 A. At the Mountain-- Mountain View Photography, or photogra-
11 phy place--
- 12 Q. And they have the ability to blow up those pictures?
- 13 A. Yes, they do.
- 14 Q. And is that enlargement substantially a true and accurate
15 representation of the original photo?
- 16 A. Yes. There's-- The sides were cropped that weren't--
17 didn't cover the area, just so that they could fit on this
18 particular posterboard, but the photograph itself is the
19 same photograph.
- 20 Q. Okay. When was that photograph taken?
- 21 A. According to their records it was June 20, 1993, at 11:47
22 A.M.
- 23 Q. And has the area that we're speaking about, that Flat
24 Creek-- or Crown Creek area, has that changed since then?
- 25 A. The major landmarks and physical portions of it are all

Loren Erdman - Direct (by Mr. Wetle)

857.

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the same. There are a few added logging roads from logging that's taken place since 1993. Other than that I don't see any significant changes.

MR. WETLE: We'd offer State's Exhibit 21, your Honor.

THE COURT: That was 21?

MR. WETLE: Twenty-one, yes.

THE COURT: All right, any objection?

Loren Erdman - Direct (by Mr. Wetle)

858.

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1 LOREN ERDMAN

2 VOIR DIRE EXAMINATION

3 BY MR. SIMEONE:

4 Q. Are any of the changes to the area, Detective Erdman-- do
5 any of those changes involve any of the roads that are the
6 subject matter of the scene itself here?

7 A. The logging roads which go up to the actual scene were not
8 visible on this aerial photograph from-- basically from
9 just north of the cabin to the actual scene. Those have
10 been added somewhere around two years ago.

11 Q. North of the cabin?

12 A. Right. Correct. North, northwest of the cabin.

13 Q. North and going toward the burn site?

14 A. Correct.

15 Q. So that's not visible here?

16 A. The roads are not visible. The logging roads. The area
17 of the burn scene is right on the edge of the photograph.

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

19 THE COURT: Yes.

20 Q. Can you show me where it is that the changes were made?

21 A. Basically from this portion of road, where it turns up
22 above-- beyond here. In this portion here there's new
23 roads that got-- that access this area right here where
24 the vehicle was located.

25 Q. So we don't have any other demonstration on this map--

Loren Erdman - Voir Dire (by Mr. Simeone)

859.

1 A. On the actual logging roads that go from there to there,
2 they are not visible on this aerial.

3 Q. Are you going to be using this map for the purpose of
4 determining route or distance or anything else from the
5 one to the other?

6 A. Not of the location of the burned vehicle.

7 MR. SIMEONE: No objection.

8 THE COURT: All right, Exhibit 21 is admitted. And
9 counsel, I show that Exhibit 20, the big map here, was
10 also admitted, but I think the Clerk's notes say that it
11 wasn't.

12 THE CLERK: It is.

13 THE COURT: It is? Okay.

14 THE CLERK: (Inaudible)

15 THE COURT: Thank you.

16 MR. WETLE: I'd ask the Bailiff again to maybe help me
17 get this--

18 THE BAILIFF: (Inaudible)

19 COLLOQUY REGARDING PLACEMENT OF EASEL SO
20 WITNESS CAN MARK ON EXHIBIT 21
21
22
23
24
25

Loren Erdman - Voir Dire (by Mr. Simeone)

860.

1 LOREN ERDMAN

2 CONTINUATION OF DIRECT EXAMINATION

3 BY MR. WETLE:

4 Q. Detective Erdman, I'd ask you to step to the jury box and
5 get a marker that you can use to mark the photo.

6 MR _____: _____ matches up.

7 Q. Can you please show the jury where the cabin is that's
8 owned by Lou Ash that we referred to as the Crown Creek
9 cabin?

10 A. I'll circle it. It's right there.

11 Q. What kind of roof does it have on it?

12 A. A metal roof. _____ like silver metal.

13 COURT ASKS IF ALL JURORS CAN SEE

14 THE COURT: Do you want to put a C.C. or something for
15 Crown Creek?

16 MR. WETLE: Thank you, your Honor. Yes.

17 THE COURT: Nearby where you marked that.

18 Q. Where you did the circle, put C.C.C. for Crown Creek
19 Cabin.

20 A. I'll put it right there. You can see-- Can everybody--
21 I don't know if everybody can see that in red. Can we try
22 a different color?

23 Q. Okay, you think black might work better?

24 A. I didn't see a black one there. Or blue, maybe. I'll try
25 blue. I'll try to mark it here again. That's not any

Loren Erdman - Direct (by Mr. Wetle)

861.

1 better either.

2 MR. WETLE: Does the Clerk have a black marker that--

3 THE CLERK: (Inaudible)

4 A. Okay, I'll try black here now. Right there. Okay.

5 Q. And then could you show when you come into the driveway to
6 that cabin, where the driveway would be to come into the
7 Crown Creek cabin?

8 A. This is Crown Creek Road right here. If you come up Crown
9 Creek Road, you go past the fork here, and you also take
10 a left at the second fork, and you'll see the driveway
11 just to the left right here. It's past the cabin, and you
12 have to come right back down towards it, and it comes up
13 to the cabin. Everybody see that?

14 Q. Now could you show the jury the Andrea Cameron home?

15 A. Andrea Cameron's residence is right there.

16 Q. You want to put A. C., maybe, for Andrea Cameron?

17 A. A. C.? Yes. Make sure everybody can see that down here.

18 Q. And then could you show the jury the approximate location
19 of the home that Dane Williams was caretaking?

20 A. You can't-- Through the trees here, you can't really see
21 it, but it's in this location right-- right about here.
22 It's just off of Hamlet Road. This here's Lael Road.
23 Just down below here it splits off into Hamlet, and if you
24 take Hamlet down here just a little ways, it's on the left
25 down there in the trees.

Loren Erdman - Direct (by Mr. Wetle)

862.

1 Q. I don't know if you can mark where-- Put a HAM for Hamlet
2 Road, so that the jury can remember which road was Hamlet.

3 A. Okay. Write Hamlet right here.

4 Q. Okay.

5 A. And Lael? You want me to mark here?

6 Q. Can you write Lael and get it on there so that's where the
7 road forks?

8 A. Okay.

9 Q. Then I would ask you to mark a V for the vicinity where
10 the vehicle was located from the Crown Creek cabin.

11 A. Right up here. _____ right here at the edge of the
12 picture. Did you want me to annotate this Dane Williams?

13 Q. That should be a D.W., yes.

14 A. Okay.

15 Q. And then I don't know-- Certainly the first juror has not
16 been able to see that. You want to just take the photo
17 down and let them orient themselves to that?

18 A. This is Dane Williams, _____ Lael Road, Andrea Cameron's,
19 _____.

20 MR. WETLE: Your Honor, would it be all right if he--
21 if the Bailiff handed that to the jurors up in the top
22 row?

23 THE COURT: Sure.

24 MR. WETLE: I'd ask the Bailiff to hand it up to the
25 second row and they can pass it as we're talking about

Loren Erdman - Direct (by Mr. Wetle)

863.

1 photographs.

2 Thank you, Detective Erdman, and I'd ask you to retake
3 the stand.

4 Q. Detective Erdman, did you take photos of the scene where
5 the Bronco or the human remains were found?

6 A. Yes, I did.

7 Q. And when did you do that?

8 A. The actual photographs of the scene were taken on Septem-
9 ber 24th.

10 Q. That would have been the day that you arrived?

11 A. That was the day I arrived.

12 Q. I'd ask the Bailiff to hand you some photographs. The
13 first packet would be what's marked as Exhibit 25 through
14 37, and I'd ask if you can identify those particular
15 exhibits.

16 A. These are photographs of the scene that I took on Septem-
17 ber 24th, 2000.

18 Q. And you took those photos?

19 A. Yes, I did.

20 Q. And do those photos-- Are they a true and accurate
21 representation of the scene and the objects at the scene
22 on the day it was taken?

23 A. Yes.

24 MR. WETLE: We'd offer State's Exhibits 25 through 37,
25 your Honor.

Loren Erdman - Direct (by Mr. Wetle)

864.

1 THE COURT: All right, if you'll hand those to Mr.
2 Simeone.

3 MR. SIMEONE: No objection, your Honor.

4 THE COURT: Twenty-five through 36 are admitted. Did
5 I get the right numbers?

6 THE CLERK: (Inaudible)

7 THE COURT: Excuse me. Thirty-seven. I could tell by
8 the shocked look on the Clerk's face I'd missed one.

9 Q. Then I would ask the Bailiff to hand you what's been
10 marked as Exhibits 38 through 44, and I would ask if you
11 can identify those.

12 A. Yes, I can.

13 Q. And what are they?

14 A. They're photographs from the vehicle when we processed it
15 on September 25, 2000.

16 Q. Okay, and you're taking pictures of what in those photo-
17 graphs?

18 A. Items that were located in the vehicle as we processed it
19 and removed them.

20 Q. And do these photos fairly and accurately depict the scene
21 as it appeared on the day the photo was taken?

22 A. Yes.

23 MR. WETLE: And we'd offer State's Exhibit 38 through
24 44.

25 MR. SIMEONE: There would be no objection there.

Loren Erdman - Direct (by Mr. Wetle)

865.

1 THE COURT: All right, 38 through 44 are admitted.

2 Q. Then I'd ask the Bailiff to hand you what's been marked as
3 State's Exhibit 45 through 47, and ask if you can identify
4 those.

5 A. Yes, these are photographs inside the Crown Creek cabin
6 that I took on the 2nd of October, 2000.

7 Q. And do those photos fairly and accurately depict the scene
8 as it appeared on the day the photo was taken?

9 A. Yes, they do.

10 MR. WETLE: And we'd offer 45 through 47.

11 MR. SIMEONE: I have no objection to those exhibits,
12 your Honor.

13 THE COURT: All right, 45 through 47 are admitted.

14 MR. SIMEONE: Well, could I-- For a moment I retract
15 that. Could I look at these for a second, please?

16 THE COURT: All right.

17 MR. WETLE: And while counsel's looking at those, Mr.
18 Bailiff, could you hand the witness State's Exhibits 48
19 through 58?

20 MR. SIMEONE: No objection to 45 through 47, your
21 Honor.

22 THE COURT: Forty-five through 47 are admitted. Sorry,
23 forty-- You've having him identify 48 through--?

24 MR. WETLE: Forty-eight through 58.

25 Q. Can you identify those photos, Detective Erdman?

Loren Erdman - Direct (by Mr. Wetle)

866.

1 A. Yes, I can.
2 Q. And what are they?
3 A. They're photographs I took of the Crown Creek cabin on the
4 17th of October, 2000.
5 Q. And are those on the outside of the cabin?
6 A. Yes, they're on the outside.
7 Q. And do those photos fairly and accurately depict the scene
8 as it appeared on the day that those were taken?
9 A. Yes, it does.
10 MR. WETLE: And we'd offer 48 through 58.
11 MR. SIMEONE: No objection to 49 (sic) through 58.
12 THE COURT: I believe it was 48 through 58 that was
13 being talked about.
14 MR. SIMEONE: Forty-eight, that's right.
15 THE COURT: Forty-eight through 58? All right, those
16 are admitted.
17 Q. And then I'd ask the Bailiff to hand you what's been
18 marked as Plaintiff's Exhibit 59 through 63, and ask if
19 you can identify those.
20 A. Yes, I can.
21 Q. And what are they?
22 A. They're photographs of the grave site from October 25,
23 2000, that I took.
24 Q. And do those photos fairly and accurately depict the scene
25 as it appeared on the day the photo was taken?

Loren Erdman - Direct (by Mr. Wetle)

867.

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A. Yes, they do.

MR. WETLE: And we'd offer 59 through 63, your Honor.

THE COURT: All right.

MR. WETLE ASKS BAILIFF TO GATHER ALL THE PHOTOGRAPHS

MR. SIMEONE: I'd like to voir dire the witness on 59 through 63, your Honor.

THE COURT: All right.

Loren Erdman - Direct (by Mr. Wetle)

868.

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1 LOREN ERDMAN

2 VOIR DIRE EXAMINATION

3 BY MR. SIMEONE:

4 Q. Detective Erdman, did the area you investigated here
5 that's alleged to be the-- the grave sites, or the
6 presumptive grave sites, did it show any evidence of
7 having had any caving in of dirt to fill in the holes?

8 A. It looked like there was possibly a little bit like from
9 rain, where it washed in the sides on portions of it.
10 Small amounts.

11 Q. Did that affect, you think, the dimensions of the-- of
12 these given pits that you looked at here?

13 A. It didn't seem--

14 Q. How much had sloughed in or--

15 A. It didn't seem to affect them a whole lot. I mean
16 obviously there was a small amount that was gathered down
17 at the bottom where possibly the rain had washed 'em in.

18 Q. Did you ever come up with a determination of how different
19 they were from the time they were originally dug until how
20 they looked after weather and natural sloughing had
21 occurred?

22 A. No. Most of the-- The upper-- The upper edge of it
23 appeared to be pretty much as it was at the time, 'cause
24 there were tool marks-- tool marks evidence around the
25 top edge of it, so it would appear that the original

Loren Erdman - Voir Dire (by Mr. Simeone)

869.

1 dimensions at the top were fairly accurate as far as the
2 size. And the bottom we didn't determine how much more--
3 how much shallower it might have been.

4 Q. And the date the pictures were taken?

5 A. On the date the pictures were taken?

6 Q. No, I say the dates these were taken.

7 A. Oh, October 17th. Oh, correction, 20-- October 25th.
8 October 25th we were up there.

9 Q. So it's over four months then of natural rain, whatever
10 other debris may have-- may have dropped into the pit, et
11 cetera?

12 A. Right.

13 MR. SIMEONE: Your Honor, my objection would be that
14 they don't really very fairly and accurately represent the
15 site or the scene or the pits themselves at the time they
16 were dug. That would be my objection to the admission of
17 those.

18 THE COURT: Your objection would go to the weight and
19 not the admissibility of the evidence, so your objection
20 is overruled and Exhibits 59 through 63 are admitted. And
21 you wanted 25 through 63 then to be-- to question about
22 next?

23 MR. WETLE: That's correct, your Honor. Actually, I
24 was going to-- Rather-- I was going to have him just
25 bring all the photos over and have the officer explain

Loren Erdman - Voir Dire (by Mr. Simeone)

870.

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those--

THE COURT: That's what I meant. So you want 25
through 63 for his--

MR. WETLE: I'm sorry, yes, that's correct.

THE COURT: Okay.

1 LOREN ERDMAN

2 CONTINUATION OF DIRECT EXAMINATION

3 BY MR. WETLE:

4 Q. Okay, Detective Erdman, if you could take those photo-
5 graphs, and in particular if you want to just set those
6 down, we're going to talk about Exhibits 25 through 37.

7 MR. ____: (Inaudible)

8 MR. WETLE: Yes.

9 A. This first photograph is--

10 THE COURT: And when you say this first photograph, why
11 don't you identify them by number so the record can show.

12 DETECTIVE ERDMAN: Thank you, your Honor.

13 A. Exhibit 25 is a photograph of the vehicle--

14 MR. WETLE: Step to the center by the microphone.

15 A. Photograph of the vehicle parked in the trees after we'd
16 isolated the area, the initial vehicle area, and it just
17 shows some of the burn areas on the vehicle and up in the
18 trees above it, in a V pattern above it. Basically just
19 a distance photo of the vehicle.

20 Q. And if you want to hand that to Juror Number 6, they can
21 pass it down. And what does Exhibit Number 26 show?

22 A. Exhibit 26 is a little closer photo from the other side of
23 the vehicle, and the trees. Also shows some of the burn
24 in the trees, the burn on the vehicle. Also clearly the
25 license plate, which we used to identify which-- what the

Loren Erdman - Direct (by Mr. Wetle)

872.

1 vehicle was, or who it belonged to.

2 Q. Pass that to Juror Number 6.

3 A. Also _____

4 Q. If you want-- If you have something else you'd like to
5 point out--

6 A. I just want to point out that the green garden hose that
7 we located is right at the base of the vehicle, and _____
8 is included in the picture. It's kind of hard to see it,
9 it's in the trees.

10 Q. And that green garden hose was in that position when you
11 arrived?

12 A. Correct.

13 Q. I'd ask you to explain what's shown in Exhibit Number 27.

14 A. Twenty-seven is the same vehicle from the front, just
15 showing the amount of burn. The front license plate is
16 actually intact, it's just fallen off, was at the base of
17 the bumper. This is, again, from the front, looking
18 towards the back of the Bronco.

19 Q. Pass that to Juror Number 6. And then would you please
20 show the jury what Exhibit 28 shows?

21 A. Exhibit 28 is also of the vehicle from looking towards the
22 driver's side, also showing the burn area. Also, each
23 number here indicates an item, generally bones, that were
24 found outside the vehicle, where a large portion were
25 found in fairly close proximity to the vehicle.

Loren Erdman - Direct (by Mr. Wetle)

873.

- 1 Q. So is that a-- Where the numbers are, was that a grove or
2 a--
- 3 A. It's a small thicket of trees, fairly dense in there.
4 It's not real visible from outside it. You'd have to kind
5 of crawl in there to take a good look around.
- 6 Q. Then I'd ask you to show the jury what's in Exhibit 29.
- 7 A. Exhibit 29 is a photograph I took of the back of the
8 vehicle. The entire fiberglass canopy had pretty much
9 melted, and this is the back frame of it that had fallen
10 in. This is the compressed gas cylinder that was in the
11 back of the vehicle. The material here is all from the
12 fiberglass top laying in the back of the Bronco.
- 13 Q. Thank you, and then Exhibit 30, please?
- 14 A. Thirty is a picture also of the inside of the vehicle,
15 from the back of the vehicle looking towards the passenger
16 seat, just showing the devastation of the burn. Also,
17 you'll notice in the photograph there's a lot of bone
18 matter, bone material, laying around the passenger door,
19 the back area here, and right in between this area here,
20 mixed in the ash. A lot of the long bones _____.
- 21 Q. Detective Erdman, what did the bones look like in there?
22 It's sort of--
- 23 A. If I can point-- Here's a lengthy one here. It's a
24 fairly long, large bone. This one here, which I'm no
25 expert, but I believe it's a knee bone or joint up here

1 against the door. There's numerous other ones that are
2 just small fragments, or powder, in this same vicinity
3 here along the passenger door. Everybody see that?

4 Q. And can you show the jury what's seen in Exhibit 31?

5 A. Thirty-one is a picture of the partially opened passenger
6 door. What it shows is there's a blanket that would have
7 been hanging out the door at the time of the fire that did
8 not burn. When we opened the door, of course, it was
9 evident that the blanket had just been jammed in the door,
10 and the door prevented the fire from going below it, and
11 this is just a picture of the blanket hanging out the
12 door. A light blue blanket.

13 Q. And show the jury what's the focus of Exhibit 32.

14 A. Exhibit 32 is a photograph of the gas tank, or the nozzle
15 for the gas tank, with the cover open. You can see there
16 was a paper wick, or a piece of paper, jammed down into
17 the nozzle of the gas tank's nozzle.

18 Q. And then please show what's shown in Exhibit 33.

19 A. Exhibit 33's taken from the back of the Bronco, the back
20 area. It shows the green garden hose which had a burnt
21 end on one side and a cut end on the other. Also, you'll
22 notice there's a piece of wrapper here. This was a K-Mart
23 wrapper for a garden hose. There's also an upper jaw
24 sitting over here next-- on the ground behind the vehicle
25 next to the garden hose.

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1 Q. Can you make-- Can you distinguish what the jaw is, or is
2 it mainly based on color in that photo? Can you see the
3 fact that it's a jaw?

4 A. It's very clear. You can see the teeth in the jaw. It's
5 upright with the teeth facing up, and it was pretty
6 evident to look at it what it was.

7 Q. And then what did Exhibit 34 show?

8 A. Exhibit 34 is as we picked up the upper jaw with the teeth
9 in it to place it in evidence. We took photographs of--
10 This is the bottom side as we would have viewed it from
11 above, looking at it on the ground. There's three teeth
12 that are broken and missing from the top _____.

13 Q. And then I'd ask you what is shown in Exhibit 35.

14 A. Exhibit 35 is-- Once again, it's that same portion of the
15 upper jaw. Just a front view of it after we picked it up
16 and placed it into evidence. You can see some of the burn
17 or scorch marks on it.

18 Q. And Exhibit 36?

19 A. Exhibit 36 was one of the marked evidence numbers that
20 were in the thicket of trees next to the vehicle, that
21 there were several bones that were-- appeared to be ribs
22 and other items, but there was also a small ring in here
23 which we later determined to be Nick Kaiser's tongue ring.
24 So it's in the debris here.

25 Q. And Exhibit 37?

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- 1 A. Exhibit Number 37 is from Evidence Item Number 29, which
2 was down the hill from the vehicle about 300, 400 feet,
3 where we found another large portion of bone matter. This
4 is a piece of skull with a hole in it that we determined
5 to be a bullet hole.
- 6 Q. Then, Detective Erdman, I'd like to direct your attention
7 now to the package of photographs you took from 38 to 44,
8 and generally speaking, what are these photos? What are
9 they of?
- 10 A. This is from September 25th, the next day when we came
11 back to process the inside of the vehicle for evidence.
- 12 Q. And what does number-- Exhibit 38 show?
- 13 A. Number 38 is the head of a shovel that was pulled out of
14 the back of the vehicle. This was amongst the fiberglass
15 debris, near the vicinity of the compressed gas cylinder.
16 There's also _____. There's also the end of a garden
17 hose here too, and the gas cap that was not in the gas
18 nozzle. It's also on this photograph.
- 19 Q. And that was taken in the vehicle?
- 20 A. Yeah, that-- Those were taken out of the vehicle. They
21 were found both in the back portion, underneath the
22 fiberglass debris.
- 23 Q. And Exhibit 39?
- 24 A. Thirty-nine is an axe or a pick-- head of a pick that we
25 also pulled out from the same vicinity of the back of the

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1 vehicle, underneath the fiberglass debris. The gas cap
2 and nozzle are in this picture still, as well.

3 Q. And what does Exhibit 40 show?

4 A. Exhibit 40 is a braided piece of rope that was found in
5 the-- in the back of the vehicle. Actually, toward the
6 front of the vehicle, right behind the passenger seat in
7 the vicinity of that previous photo where I showed you
8 where the bones were, is a portion of hemp rope that was
9 burnt on either side, that we later determined was Nick
10 Kaiser, he carried his wallet attached to one side and the
11 other attached to his pants pocket. At one time it was
12 supposedly two to four feet long.

13 MR. SIMEONE: Your Honor, I'm going to object to the
14 characterization of the rope as a hemp rope. I don't
15 think there's been any evidence to that effect yet.

16 THE COURT: Sustained. The jury will disregard the
17 last commentary.

18 Q. Then I'd ask you to show the jury what's depicted in
19 Exhibit 41.

20 A. Exhibit 41 is a small ring that was removed from the
21 vehicle behind the driver's seat. It has a ball on one
22 end and is a circular metal ring that we later identified
23 as Josh Schaefer's nose ring.

24 Q. And then what is shown in Exhibit 42?

25 A. Exhibit 42's a set of house keys that were removed from

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1 the same vicinity as the nose ring in the vehicle. They
2 were sifted and removed, placed into evidence.

3 Q. And Exhibit 43, what does it show?

4 A. Exhibit 43 is a silver metal ring. Initially thought it
5 was just a finger ring. We later found out it was a ring
6 that Josh Schaefer wore in his dreadlocks. This was
7 recovered from the same vicinity as the nose ring behind
8 the driver's seat area.

9 Q. And Exhibit 44?

10 A. Exhibit 44 is a portion of dreadlock hair with a glass
11 bead around it. It was also found in that portion of the
12 vehicle behind the driver's seat in the ashes there. It
13 was later determined to be Josh Schaefer's ring that he
14 wore in his dreadlocks.

15 MR. SIMEONE: I'm going to object to that comment too,
16 your Honor. I don't know where that information has
17 filtered down to Detective Erdman, so it's a hearsay
18 objection.

19 THE COURT: Sustained, and the jury will disregard the
20 last remark.

21 Q. And now, Detective Erdman, if you could look at Exhibits
22 45 through 47, and show the jury what-- or tell the jury
23 what Exhibit 45 shows.

24 A. Exhibit 45 is the photograph I took on the 2nd of October
25 of Crown Creek cabin. This was identified as John

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1 Grange's room at the time he was staying there. It's on
2 the second floor of the cabin, in the northwest corner.

3 MR. SIMEONE: Same objection, your Honor.

4 THE COURT: Sustained. Detective, you need to refrain
5 from testifying about what was later discovered. Just
6 indicate what you took a picture of and what it is that
7 you're describing there in the picture, please.

8 MR. ERDMAN: Thank you, your Honor.

9 Q. Can you tell the jury what's in Exhibit 46?

10 A. Forty-six is a picture of the same bedroom, just the
11 opposite corner of the bed. Second floor of the Crown
12 Creek cabin.

13 Q. And Exhibit 47, what does that show?

14 A. Forty-seven is the-- showing the second floor of the
15 Crown Creek cabin again, showing the southern bedroom and
16 also the middle portion between the north and south sides
17 of the upstairs.

18 Q. And then I would direct your attention to the set of
19 photos from 48 through 58, and starting with Exhibit 48,
20 could you show the jury what that represents?

21 A. Exhibit 48 is a photograph of the Crown Creek cabin I took
22 on the 17th of October. Basically this is the front of
23 the cabin. There's a little trail that runs right up here
24 to the cabin. The left side of the photograph being the
25 north, the right being the south. The basement area is

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1 crossed underneath the balcony area here. The main
2 floor's here, the second floor is up underneath the roof.

3 Q. Where is that trail coming from, Detective Erdman?

4 A. This one goes-- This trail goes down to the garden area,
5 down towards the actual creek down below. This is the
6 major route down to the garden area and the creek.

7 Q. And then Exhibit 49?

8 A. Exhibit 49-- Once again, these photographs were taken on
9 the 17th of October. This is the south end of the Crown
10 Creek cabin, also showing the A-frame storage area. And
11 also the area between it. Garbage pit, water faucet.

12 Q. Is there a water stanchion there somewhere?

13 A. Yes, there's a post right here with a water faucet
14 attached to the back side of it. Once again, you can see
15 the basement area underneath the balcony. The first floor
16 is on the balcony level, and then right up above here,
17 underneath the roof area, is where the second floor is.

18 Q. Thank you. Describe Exhibit 50?

19 A. This is a photograph from the northeast portion of the
20 cabin, or towards the northeast portion of the cabin. It
21 shows the fire pit with the green hood fireplace. These
22 are the stairs that lead up to the main floor of the
23 cabin. Also visible over here is the doorway to the
24 basement, the blackened area. Also you'll see these red
25 tags on the ground. Each one of those were used to mark

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1 a .22 shell that was recovered this date.

2 Q. So if you were driving up the driveway to the cabin, would
3 that be a similar view?

4 A. I would be standing in the driveway at the edge-- on the
5 east edge of it to take this photograph. The driveway
6 runs right up past the fire pit, past the stairways in
7 front of the balcony.

8 Q. And Exhibit 51?

9 A. This is a closer view showing the stairs in relationship
10 to the fireplace, also of the north side of this green
11 fireplace and the fire pit. Also in the back you can kind
12 of see the doorway through the stairs leading to the
13 basement.

14 Q. And 52, what does it show?

15 A. This is another view of the fireplace from the top
16 portion of the trail that led down to the creek and the
17 garden, looking back towards the fire pit and the green
18 fireplace. I would be facing somewhat northwest in this
19 photograph, taking it.

20 Q. So that's coming up from the--

21 A. From the-- basically the top of that trail from that
22 first photograph.

23 Q. That trail goes down to the creek?

24 A. Correct.

25 Q. And the garden?

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1 A. Right.

2 Q. And what does Exhibit 53 show?

3 A. Exhibit 53 shows the fire pit again with the fireplace and
4 the hooded shroud. It also shows a bullet impact on the
5 fireplace, the top portion. I took this photograph
6 standing basically directly out from the basement opening,
7 and lined this up as close as possible with that bullet
8 impact to show the view from there.

9 Q. And what does Exhibit 55 (sic) show?

10 A. Fifty-five (sic) is the green fireplace again. This is
11 just a closeup shot of the bullet impact at the top of the
12 fire-place. It's a closer view of the other one.

13 Q. And 55?

14 Q. Exhibit 55 is a photograph in the fire pit showing a piece
15 of wood as we found it leaning in the fireplace. On this
16 piece of wood we found a small diameter hole in this
17 vicinity. Right at the bottom of it you can see the char
18 marks come down right at the bottom on the left hand side
19 of the wood, is where--

20 Q. That where the char mark ends?

21 A. Basically right at the base of where the char mark ends.

22 Q. And 56, what does it show?

23 A. Fifty-six is a closeup of that portion of wood with the
24 small diameter hole in the wood.

25 Q. And the hole is in the gray portion?

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1 A. Correct.

2 Q. And what does Exhibit 57 show?

3 A. Exhibit 57 is a photograph of the back side of that
4 portion of wood where that hole-- basically the small
5 diameter hole came out the back side. It's the lighter
6 portion of wood where it's not charcoaled.

7 Q. So 57 is the other side of that piece of wood?

8 A. The back side of that wood.

9 Q. And then what does 58 show?

10 A. Exhibit 58 is-- Once we removed the piece of wood from
11 the fireplace, directly behind the piece of wood there was
12 what appeared to be a fresh break in the rock directly
13 behind where that hole was at.

14 Q. And then the next packet of photographs, Detective Erdman.
15 They run from Exhibit 59 through 63, and I would ask you
16 to talk about Exhibit 59.

17 A. Fifty-nine is a photograph from the 25th of October, when
18 we went up to find the grave sites that were described to
19 us. The fall foliage makes it kind of hard to see them in
20 here, but if we use this blue flag here as a reference
21 point, we can look-- Down below here is the upper grave-
22 site. This is on a slope, a slight slope headed down.
23 The grave was dug in this area here for the first one, and
24 the debris from that hole right beside it in the trees.
25 Look down directly past that, you'll see the dark spot

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- 1 where the second grave was located, and that's about that.
- 2 Q. Can you see about how apart-- Any estimate how far apart
3 those two graves were?
- 4 A. I don't have those exact measurements, but they're-- It
5 was about 30 feet, I would imagine. Thirty, 40 feet.
- 6 Q. Then I'd ask you to show what Exhibit 60 shows?
- 7 A. Exhibit 60 is the upper grave showing basically the
8 overall dimensions of approximately four feet. Also you
9 can see that there was debris in the bottom portion of the
10 grave.
- 11 Q. So the tape measure then is attempting to show the length?
- 12 A. Yeah, the approximate length of the grave, of the upper
13 grave.
- 14 Q. And Exhibit 61, what does it show?
- 15 A. This, again, is the upper grave. This is showing the
16 approximate dimensions across the grave. It was just--
17 just over two feet. And looking closely you can see some
18 tool marks from a shovel, concave marks that were evident
19 when we located them.
- 20 Q. So in that upper grave you have shovel marks?
- 21 A. We were-- We were able to see shovel marks on the sides
22 of the upper grave.
- 23 Q. And Exhibit 62?
- 24 A. Sixty-two is a photograph of the lower grave site. Once
25 again, it's approximately four feet in length. And the

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1 tape measure.

2 Q. And Exhibit 63?

3 A. Sixty-three, this is also of the lower grave, showing the
4 approximate depth of it at the time we found it of
5 approximately 17 inches.

6 Q. And were-- Are there any tool marks on any of the lower
7 graves?

8 A. Yeah, there was tool marks evident on the lower grave that
9 appeared to be consistent with an axe, or a pickaxe.
10 Small-- Small in width. Not the same marks of a shovel
11 as we observed in the upper one.

12 MR. WETLE: Thank you, Detective Erdman, and I'd ask
13 that you retake the stand.

14 Q. Detective Erdman, on October 17th, the year 2000, did you
15 go to the Crown Creek cabin to serve a search warrant on
16 that cabin?

17 A. Yes, I did.

18 Q. And while you were there did you see some evidence?

19 A. Yes, I did.

20 Q. I'd ask the Bailiff to hand you what's been marked as
21 Exhibit 11, and ask you to open that, please.

22 A. It's wrapped up pretty good.

23 Q. I'd ask if you could identify that?

24 A. Yes, this is what we believe to be a bullet fragment that
25 was removed from the fire pit ashes that we took in

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1 evidence on the 17th of October.

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

4 A. Yes, it appears that it is.

5 MR. WETLE: We'd offer State's Exhibit 11, your Honor.

6 THE COURT: If you want to just lay it on top so Mr.
7 Simeone can see, and then we'll put it back in.

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LOREN ERDMAN

VOIR DIRE EXAMINATION

BY MR. SIMEONE:

Q. Detective Erdman, you're sure this is a bullet fragment?

A. I was informed that by the Crime Lab.

MR. SIMEONE: Okay, objection on that basis. Should I go forward, your Honor, with the rest of my voir dire here?

THE COURT: The objection to the testimony or objection to the admissibility of the exhibit?

MR. SIMEONE: That would be an objection to the admissibility of the exhibit, based upon that, unless there's further foundation laid.

THE COURT: Okay. Well, I'll sustain the objection for now, counsel, pending further foundation.

Loren Erdman - Voir Dire (by Mr. Wetle)

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1 LOREN ERDMAN

2 CONTINUATION OF DIRECT EXAMINATION

3 BY MR. WETLE:

4 Q. And where did you find that particular object, Detective
5 Erdman?

6 A. It was in the ashes of the fire pit.

7 THE COURT: Let's put it together here with this
8 envelope here.

9 Q. And did you suspect that it had evidentiary value?

10 A. Yes.

11 Q. And what's that-- Why did you suspect it had evidentiary
12 value?

13 A. It appeared to be the remnants of a bullet.

14 Q. And have you seen remnants of bullets in other investiga-
15 tions?

16 A. Yes, I have.

17 Q. And based on your prior experience as an officer, you felt
18 it was important that you seize that?

19 A. Yes, as an officer, also as just target practicing and
20 shooting I've seen numerous other bullets after they've
21 been fired and it appeared to be similar to that.

22 MR. WETLE: Your Honor, we'd offer the exhibit so that
23 the firearms examiner can give further testimony about
24 what it is, but the officer needs to have that-- or the
25 firearms examiner needs to have the exhibit admitted so he

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can talk about it.

THE COURT: He can talk about it without its being admitted, counsel. So if that's what you're waiting for, the additional foundation, then we'll wait until the additional foundation is in, in terms of relevance at this point. So the objection is still sustained for the time being, pending further foundation from someone who can testify to what it-- what it has to do with this case.

MR. WETLE: Thank you, your Honor.

THE COURT: In other words, your later witnesses can testify about the exhibit, and so depending on what they say about it, then it can be admitted at that time, Mr. Wetle.

MR. WETLE: Thank you, your Honor. The testimony will stand, however, your Honor, that it was found in the fire pit, and it--

THE COURT: Yes.

MR. WETLE: Thank you.

Q. I'd ask the Bailiff to hand you what's been marked as Exhibit 12, and please open that. I'd ask if you can identify what's been marked as Exhibit 12?

A. These are items that were located in the ashes we removed from the fire pit on the 17th. They were later sifted and divided up in this manner. There are several metal items, including D-rings and hooks, like from a boot. Buttons,

Loren Erdman - Direct (by Mr. Wetle)

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1 snaps, a zipper, a metal-- kind of like a suspender
2 clasp, as well as several other miscellaneous metal items,
3 and remnants of clothing, fabric. Do you want me to go
4 ahead and open all these individual-- Some of these--
5 They're inside paper bags.

6 Q. Yes, we need to see what's in them.

7 A. This is the miscellaneous other metal items and cloth
8 fabric items that were removed from that-- those ashes.

9 Q. And are they in substantially the same condition as when
10 you seized them?

11 A. Yes, they appear to be.

12 MR. WETLE: Your Honor, we'd offer State's Exhibit 12.

13 THE COURT: You want to put them all back together so
14 we can hand them to Mr. Simeone to look at?

15 MR. ERDMAN: Oh, stash them in the bag.

16 MR. SIMEONE: No objection to the exhibit, your Honor.

17 THE COURT: All right, Exhibit 12 is admitted.

18 Q. I'd ask the Bailiff to hand you what's been marked as
19 Plaintiff's Exhibit 13, and I'd ask you to open that. And
20 can you identify what's been marked as Exhibit 13?

21 A. These are .22 caliber casings removed from outside the
22 Crown Creek cabin on the 17th of October. There are seven
23 individually wrapped .22 casings here.

24 Q. And for jurors who are not familiar with that, when you
25 speak of the word casing, what are you talking about?

Loren Erdman - Direct (by Mr. Wetle)

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1 A. That is the expended shell after it had been fired. Just
2 the brass portion that held the powder.

3 Q. And are those in substantially the same condition as when
4 they were seized?

5 A. Yes.

6 MR. WETLE: We'd offer State's Exhibit 13, your Honor.

7 THE COURT: All right, if you'll pass them over to Mr.
8 Simeone.

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Loren Erdman - Direct (by Mr. Wetle)

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1 LOREN ERDMAN

2 VOIR DIRE EXAMINATION

3 MR. SIMEONE:

4 Q. Detective Erdman, before I even look at them, where were--
5 where were the casings found at the cabin?

6 A. Those, 1 through 7, were found in the vicinity of the fire
7 pit.

8 MR. SIMEONE: I have no objection to them, your Honor.

9 THE COURT: Exhibit 13 is admitted.

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Loren Erdman - Voir Dire (by Mr. Simeone)

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1 LOREN ERDMAN

2 CONTINUATION OF DIRECT EXAMINATION

3 BY MR. WETLE:

4 Q. Ask the bailiff to hand you what's been marked as Exhibit
5 14, and ask if you can identify that? Please open that.

6 A. Exhibit 14 is shells Number 8 through 16. They're also
7 .22 caliber casings that were located outside the cabin
8 near the basement area. They were recovered on the 17th
9 of October.

10 Q. And are they in substantially the same condition as when
11 seized?

12 MR. WETLE: Ask the bailiff to hand him Exhibit 15 as
13 well.

14 A. Yes, they are.

15 MR. WETLE: We'd offer--

16 Q. Well, take a look at Exhibit 15 as well. I think it's a
17 single casing.

18 A. Correct. This is a single casing that was labeled as
19 Number 17. We didn't locate this one until we'd already
20 numbered the ones near the fire pit. This was also
21 located in the vicinity of the fire pit. Between the fire
22 pit and the trail leading down to the garden. It appears
23 to be in the same condition as when it was recovered.

24 MR. WETLE: We'd offer, your Honor, State's Exhibits 14
25 and 15.

Loren Erdman - Direct (by Mr. Wetle)

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1 THE COURT: All right.

2 MR. SIMEONE: Your Honor, there's no objection to those
3 exhibits.

4 THE COURT: I beg your pardon?

5 MR. SIMEONE: You don't have to bring those over here,
6 Jack. No objection.

7 THE COURT: No objection? All right, 14 and 15 are
8 admitted.

9 ~~Q. Detective Erdman, when you found the skulls in the-- up~~
10 at the crime scene, were you able to look at the size of
11 the holes in those skulls?

12 A. Yes, I was.

13 Q. And did you form any kind of opinion as to, you know, size
14 of bullet that may have caused that injury?

15 A. They were small in diameter, and from my experience they
16 appear to be consistent with .22 caliber or something in
17 that vicinity.

18 Q. And when you found that bullet in the fire pit, do you
19 have any experience to tell what size shell fragment that
20 may have been?

21 A. From the back ring on it, it appeared to be similar to the
22 .22 caliber, and it was consistent with the other informa-
23 tion we'd received also, the bullet casings that we found
24 ~~on the ground near the fireplace.~~

25 MR. WETLE: Your Honor, I was hoping that might

Loren Erdman, - Direct (by Mr. Wetle)

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1 establish a little more relevance for the court to allow
2 in that bullet fragment.

3 THE COURT: Any objection to Exhibit 11 now, Mr.
4 Simeone?

5 MR. SIMEONE: I think that's sufficient foundation,
6 your Honor.

7 THE COURT: All right, Exhibit 11 will be admitted.

8 Q. Having seized this evidence, Detective Erdman, what did
9 you do as you continued the investigation?

10 A. I assisted in writing and serving search warrants. I
11 assisted or interviewed potential suspects.

12 Q. Did you talk to witnesses, potential witnesses?

13 A. Yes, I did.

14 Q. Did you assist in any arrests?

15 A. I assisted in the arrest of Dane Williams, and also of
16 John Grange.

17 Q. Did you attempt to gather any information in the Portland
18 area?

19 A. Yes, I did. I worked with the Multnomah County Sheriff's
20 Special Investigation Unit, attempt to find leads or
21 locate witnesses and suspects in this case.

22 Q. Did you work with any of the Special Investigation Units
23 in any particular areas?

24 A. Portland area, as well as down in the Eugene area, or
25 Veneta.

Loren Erdman - Direct (by Mr. Wetle)

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1 Q. And what were you trying to find in those particular
2 areas?
3 A. Ah--
4 Q. With respect to the associations or the groups?
5 A. What we were trying to do is find out more information
6 about the family, and they were helping locate people and
7 pull up the information that we needed to do that.
8 Q. Did you have occasion to run a Department of Licensing
9 check on the 1989 Chevrolet Blazer that was at the Brian
10 Murphy residence?
11 A. Yes, I did.
12 Q. And were you able to find out who the registered owners of
13 that vehicle were?
14 A. That vehicle was registered to Kim Kerpin and Joshua
15 Schaefer. The address was 1051 Donald Avenue in Oak
16 Harbor, Washington.
17 Q. And do you know who else had lived at that Donald Avenue
18 address besides the Schaefers?
19 A. That was Nick Kaiser's address at the time of his arrest
20 in April of 2000.
21 MR. WETLE: Thank you very much, Detective Erdman. I
22 have no further questions at this time, your Honor.
23 THE COURT: All right, Mr. Simeone, cross examination,
24 if any?
25

Loren Erdman - Direct (by Mr. Wetle)

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1 LOREN ERDMAN

2 CROSS EXAMINATION

3 BY MR. SIMEONE:

4 Q. Just let me take off on that last point. Did you have a
5 day in April when Nicholas Kaiser was arrested?

6 A. I was told April 25th.

7 Q. That would be after the spring Barter Fair in Northport,
8 wouldn't it?

9 A. Correct.

10 Q. Detective Erdman, it's fair to say that you took a pretty
11 hands-on part in the investigation of this incident, isn't
12 it?

13 A. Yes.

14 Q. You participated in various levels, didn't you?

15 A. Correct.

16 Q. You actually went out to the alleged scene of the incident
17 and took photographs?

18 A. Right.

19 Q. You tried-- You went out to the-- let's call it the
20 scene of the cabin, first. You went there?

21 A. Correct.

22 Q. You went out to the scene of the alleged-- the burial
23 sites, which you depicted in depth in various photographs
24 that are now admitted into evidence, right?

25 A. Yes.

Loren Erdman - Cross (by Mr. Simeone)

898.

1 Q. You went to another site that we would refer to as the
2 burn site. Isn't that right?
3 A. Yes.
4 Q. Okay, plus you interviewed people?
5 A. Right.
6 Q. Participated in arrests?
7 A. Yes.
8 Q. And you also participated in-- Well, the arrests of both
9 Mr. Grange as well as Cunningham and Williams. Isn't that
10 right?
11 A. I didn't participate in Jeff Cunningham's, but Dane
12 Williams, yes.
13 Q. Okay. Now, you were there for the interviews of Mr.
14 Cunningham, isn't that right, or the second one, is it,
15 only?
16 A. The interview that took place on the 4th of January I was
17 present for.
18 Q. Yeah, the first one because that took place in Lauderdale,
19 right?
20 A. Correct.
21 Q. And Dane Williams, you participated in two of his inter-
22 views, at least Number 6 and Number 7, isn't that right?
23 A. Yes.
24 Q. Okay. Now, were there any others that weren't recorded in
25 which you participated?

Loren Erdman - Cross (by Mr. Simeone)

899.

1 A. Interviews with Dane Williams?
2 Q. Right.
3 A. That were not recorded as in a report or--
4 Q. As in recorded and then transcribed on paper.
5 A. Those are the only two interviews I was present for, I
6 believe.
7 Q. Okay, but were there any other-- Do you know of any
8 others then that were taken but not transcribed and put on
9 paper?
10 A. Well, I guess you'd have to-- Our interviews took place--
11 The whole thing was not on-- on tape. We usually spent
12 a significant amount of time prior to taping it going
13 through the details. It's very hard for the transcribers
14 to transcribe it from the basic information, so we try to
15 get the facts and have them tape recorded at the end.
16 Q. I mean a verbatim discussion that was tape recorded, in
17 addition to that there were some other interviews that
18 were conducted?
19 A. In addition to the tape recorded statements--
20 Q. Right.
21 A. --the time of those interviews?
22 Q. In addition, just to what--
23 A. Not that I'm aware of.
24 Q. --you see in black and white. There's some other discus-
25 sions that you had with Cunningham or Williams?

1 A. Outside of an interview, not that I'm aware of. I-- The
2 two interviews I participated with Dane Williams, one was
3 in the jail in Multnomah County, and the other interview
4 was on the 29th, I think, of December, here in the
5 courthouse. It lasted probably-- I'm guessing probably
6 six, eight hours maybe.

7 Q. But was there any part of the interview that wasn't
8 recorded?

9 A. Yes.

10 Q. Okay. Now, as a result of your investigation, you
11 recovered some evidence there that is depicted in the
12 photographs of a burial site. You remember I had some--

13 A. Right.

14 Q. --dialogue with you about whether or not it had been
15 sloughed in and how close it was to--

16 A. Yes.

17 Q. Okay. Your testimony was pretty clear, from what I
18 understand and what I asked you, that you can tell pretty
19 easily what kind of border there was around the grave, and
20 it showed evidence of protrusion into the earth with some
21 kind of an implement. Is that right?

22 A. Yes.

23 Q. And, in fact, you did a report in connection with your
24 investigation into the burial sites, didn't you?

25 A. Yes, I did.

Loren Erdman - Cross (by Mr. Simeone)

901.

1 Q. And that was dated-- That was dated ten-- or 11/13 of
2 last year. Do you remember that report?

3 A. Not by the date, but I remember that report.

4 Q. Do you have a copy with you?

5 A. I do not.

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

7 THE COURT: Yes.

8 Q. Hand you a copy of your report. Do you recognize that,
9 Detective?

10 A. Yes. Yes, I do.

11 Q. And that's the report that you-- Is that the report that
12 you put together in connection with the investigation
13 and-- your investigation of the area that we have called
14 the burial site, right?

15 A. Yes.

16 Q. Okay, now, that report concludes on the-- on the second
17 page, that the upper grave appeared to have been dug with
18 a shovel. Isn't that correct?

19 A. Yes.

20 Q. I'm looking on the second page of your report. And the
21 second grave, or lower grave, appeared to have been dug
22 with a pick or similar item.

23 A. Correct.

24 Q. Now, you came to that conclusion based upon evidence that
25 was pretty good before you there, wasn't it-- didn't you?

1 Evidence before you that--
2 A. Between-- I'm not sure what--
3 Q. The evidence that you had before you there indicating that
4 the one was dug with one implement, that is the pickaxe on
5 the upper, and the shovel on the lower, that was pretty
6 good evidence that you had before-- I'm sorry, vice
7 versa.
8 A. Yes.
9 Q. The pickaxe above, shovel below.
10 A. No, vice versa.
11 Q. That was pretty-- That was pretty apparent to you from
12 what you saw?
13 A. It appeared to be-- I could see those distinct tool
14 marks on those particular graves.
15 Q. Now, that's inconsistent with evidence that you received
16 from some of the witnesses here, isn't it, about what was
17 dug-- what was used to dig where?
18 A. Inconsistent with--
19 Q. Evidence that you obtained from Mr. Williams and Mr.
20 Cunningham.
21 A. Not entirely, no.
22 Q. Isn't it true that they indicated to you that the pickaxe
23 was used to dig the upper hole? I'm sorry, the lower
24 hole?
25 A. I believe Jeff Cunningham at one time said that he

1 believed it was used on the upper one, but he said he
2 couldn't remember if they'd swapped tools at one time.

3 Q. Isn't it true that evidence you found from them said that
4 they never did switch tools and they never did switch
5 holes?

6 A. One of-- One of the people we talked to did, yes.

7 Q. Because that would be inconsistent with the results of
8 your investigation of the burial holes.

9 A. I wouldn't say it's inconsistent. I only saw evidence of
10 the shovel marks in the upper grave, and I only saw two
11 marks of the pick in the lower grave.

12 Q. That's all-- But that's all you saw. Pick in the lower,
13 shovel, upper.

14 A. That's all I observed.

15 Q. But isn't it-- Isn't that vice versa of what you deter-
16 mined from your interview of the other witnesses as to
17 what was used where?

18 A. As far as who dug which graves?

19 Q. That's right.

20 A. I believe-- I'd have to refresh my memory exactly, but I
21 believe that at one time they said that they possibly--
22 Jeff Cunningham said that they had swapped the tools, and
23 I believe Dane Williams at one time did say that he dug
24 the lower grave with a pick.

25 Q. Isn't it true that he said he dug the upper grave with a

1 pick?

2 A. The upper grave with a pick? Not that I recall. I'd have
3 to-- I have to refresh my memory with that particular
4 portions of the interviews.

5 Q. Okay, well, we'll wait for their testimony. You're aware
6 of an interview that occurred with Brian Murphy?

7 A. Yes.

8 Q. He brought-- He volunteered some information in your
9 investigation, didn't he?

10 A. Yes, he did.

11 Q. And finally, the conversation in your interview came
12 around to details about Nick's truck?

13 A. Right.

14 Q. Is there something in his interview that was problematic
15 to you in the consistency of the testimony you were
16 getting from other witnesses about the ability of the
17 tailgate in that Bronco to raise and lower?

18 A. Yes.

19 Q. Now, we went through quite a bit of physical evidence
20 already. Detective Baskin has introduced evidence of a
21 pick, shovel. You've introduced evidence now that's been
22 admitted after finally laying the right foundation of a
23 bullet fragment. You've introduced some evidence of
24 apparently some kind of a rope. You've introduced
25 evidence of rings, earrings, that kind of thing. What of

1 that-- What of the fingerprints you've discovered,
2 Detective? What have you found in that regard?
3 A. No fingerprints.
4 Q. No fingerprints? That's something that you ordinarily do
5 in an investigation of a murder, isn't it?
6 A. Correct.
7 Q. Was any fingerprint evidence done?
8 A. Attempted.
9 Q. Nothing positive?
10 A. Nothing found.
11 Q. How about the clothes samples? Was there any positive
12 identification of clothes samples?
13 A. Of clothing samples?
14 Q. Yeah.
15 A. From?
16 Q. From Mr. Grange. Owned by Mr. Grange.
17 A. No.
18 Q. Okay, how about blood samples at the scene? You usually
19 do that in your investigation, don't you?
20 A. Right.
21 Q. And that's because that's a pretty important part of
22 recreation of a murder scene, isn't it?
23 A. Yes.
24 Q. To find blood?
25 A. Yes.

Loren Erdman - Cross (by Mr. Simeone)

906.

- 1 Q. Now this is an alleged incident where numerous shots were
2 shot into two people at a crime scene that you are
3 identifying as the Crown Creek cabin.
- 4 A. Correct.
- 5 Q. In your investigation you've pretty much localized and
6 isolated the area where that was supposed to have oc-
7 curred, right?
- 8 A. Correct.
- 9 Q. And you then scanned and you scoured that area for
10 evidence of blood, haven't you?
- 11 A. Yes.
- 12 Q. Now this is blood from people who have had multiple
13 gunshot wounds to their heads?
- 14 A. Yes.
- 15 Q. Allegedly? Now, maybe you can tell me, what blood was
16 found at the crime scene that you've linked to these
17 victims?
- 18 A. There's no blood that was located at the scene after that
19 amount of time.
- 20 Q. What about the murder weapon? Have you found the weapon
21 that's allegedly supposed to have killed these individu-
22 als?
- 23 A. No.
- 24 Q. Okay. Now, you found a bullet fragment, is that right?
- 25 A. What I believed was a bullet fragment at the time and

1 later confirmed.

2 Q. Okay, and there was one that you found?

3 A. Correct.

4 Q. Okay. And you found numerous casings.

5 A. Yes.

6 Q. Now, that's not inconsistent with what your understanding
7 is of the target shooting that's occurred at that cabin
8 prior to this time, is it?

9 A. No.

10 Q. Okay, so those could or could not be linked to the shoot-
11 ing of these boys?

12 A. Right.

13 Q. Okay. Now, the hose that you saw in the vicinity of the
14 fire pit, and I think those are exhibits-- in the
15 vicinity of the Bronco. Here in the Bronco. Did you make
16 a determination of where it was that the hole, the bullet
17 holes, at the fire pit, did you make a determination of--
18 I think I understand your testimony correctly, that one
19 bullet hole or one bullet appeared to have been fired from
20 a downward angle?

21 A. A downward angle?

22 Q. Yeah.

23 A. Into the wood. It might have been at a downward angle, I
24 suppose, to get to the ground.

25 Q. Okay, and there was another that was fired and apparently

1 had made some kind of a protrusion into rock or it--
2 A. Right behind the piece of wood.
3 Q. Knocked some of it off?
4 A. Right.
5 Q. Okay.
6 A. A chip of wood.
7 Q. Are you saying that is one and the same bullet hole?
8 A. That went through the wood? It appeared to be that way.
9 It was directly behind the piece of wood.
10 Q. And did you make a determination of whether or not that
11 was fired from a distance?
12 A. I had no way to do that.
13 Q. Okay. So that could have been a shot that was fired
14 close to that fire pit?
15 A. Yes.
16 Q. It could have been a shot that was fired in connection
17 with target practice that was being done out there from
18 who knows what time period?
19 A. Could have been.
20 Q. Now, there are numerous pieces of pictorial evidence that
21 you've admitted now into evidence, various photos on items
22 Number 25 through 48. Did any of those pieces of pictori-
23 al evidence link Mr. Grange to this incident wherein these
24 boys were killed?
25 A. Directly link him?

Loren Erdman - Cross (by Mr. Simeone)

909.

1 Q. Right.

2 A. No.

3 Q. Now, how many-- So the-- Did you participate in the
4 drafting of the affidavit then that went into getting the
5 arrest warrant for Mr. Grange?

6 A. Yes, I did.

7 Q. Okay.

8 A. The arrest warrant?

9 Q. Right.

10 A. No, I believe that was drafted up here by the Prosecutor.

11 Q. Did you contribute to the information that he--

12 A. I contributed to the information.

13 Q. Okay, so I've learned from you so far in your testimony
14 that there's no physical evidence that you recovered as a
15 result of your investigation and the investigation of the
16 rest of the officers into this matter that immediately
17 links Mr. Grange to this crime scene. Is that right?

18 A. That I've entered?

19 Q. Right.

20 A. I haven't entered anything that directly links him.

21 Q. Okay. The pictorial evidence that you've shown here
22 doesn't show any connection between Mr. Grange and this
23 crime, does it?

24 A. Not the pictures, no.

25 Q. Okay, how about any hair samples?

1 A. Of Mr. Grange?
2 Q. Right.
3 A. None recovered.
4 Q. No hair recovered either from there that would link him to
5 this crime that's occurred?
6 A. Not that I recovered.
7 Q. Okay, so basically your affidavit then for arrest warrant
8 is based upon the information given you by Messrs.
9 Cunningham and Williams, is that right?
10 A. It wasn't my affidavit, but the base-- they used that
11 information as well as other.
12 Q. Sure. That's your understanding though.
13 A. Right.
14 Q. They're the only ones who allegedly have any first hand
15 information of Mr. Grange's involvement in this crime, is
16 that right?
17 A. They're the only ones that were there as witnesses to the
18 crime, yes.
19 Q. But you'd be willing to say that there are numerous
20 inconsistencies in the testimony and the statements given
21 by Mr. Cunningham and Mr. Grange, wouldn't you?
22 A. About their personal--
23 Q. I'm sorry, Mr. Cunningham and Mr. Williams.
24 MR. WETLE: Actually, your Honor, this is beyond the
25 scope of cross-- or direct, sorry.

Loren Erdman - Cross (by Mr. Simeone)

911.

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MR. SIMEONE: Your Honor, may I respond?

THE COURT: Yes.

MR. SIMEONE: He did talk quite a bit about evidence that he's recovered and how it went into the procurement of the various warrants, and I think that it's opened the door for my discussion of this part of my case with this witness.

THE COURT: I'm going to sustain the objection, inasmuch as it is beyond the scope. It doesn't prevent you from calling this witness later, if you need to.

MR. SIMEONE: Okay.

Q. Well, dare I venture further? Is it safe to assume, though, that the information you had used, or that the office, the Sheriff's office, had used in obtaining the arrest warrant, was riddled with inconsistent statements?

MR. WETLE: Objection. Same-- Same objection, your Honor.

THE COURT: Sustained.

MR. SIMEONE: Then I have no further questions for the witness. Thank you, Detective.

THE COURT: Any redirect, Mr. Wetle?

MR. WETLE: Just briefly, your Honor.

1 LOREN ERDMAN

2 REDIRECT EXAMINATION

3 BY MR. WETLE:

4 Q. Detective Erdman, this crime is alleged to have occurred
5 on June 11th?

6 A. Yes.

7 Q. And that was after the spring Barter Fair?

8 A. Yes.

9 Q. But at the time of the summer Barter Fair?

10 A. Correct.

11 Q. And you said that Mr. Kaiser had been arrested, according
12 to your information, on April 25th?

13 A. Yes, just after the spring Barter Fair.

14 Q. But just what, how many days before the June 11th-- or
15 June 9th Barter Fair?

16 A. Over a month. Almost two months.

17 Q. So a little over a month. A month and some days after he
18 got arrested, he's at the June Barter Fair?

19 A. After he got arrested, yeah. April 25th to June 9th,
20 10th, 11th.

21 Q. When we talk about interviews being recorded, please
22 explain for the jury the process that you go through when
23 you are interviewing somebody so you can clarify this
24 unrecorded versus recorded interview.

25 A. Generally when we do an interview of this nature, we--

Loren Erdman- Redirect

913.

1 there's a lot of information to go over. A lot of it may
2 or may not even make sense at the time. We have to-- We
3 have to basically pull the facts out and then-- other-
4 wise, the person who's transcribing it cannot-- they can't
5 hear a lot of the things that go on. They can't hear, you
6 know, if they mumble or tap or all the things that go on.
7 Plus it may be eight hours of reviewing the information
8 before we get the facts out. Then we just ask the person
9 we're interviewing to-- for the tape-recorded portion to
10 go back over just the facts of the case that we're looking
11 at. And that just simplifies it for the person who's
12 transcribing it.

13 Q. So one portion of that interview is not recorded as a
14 preliminary let's-go-over-the-facts introduction?

15 A. Right.

16 Q. And then you ask if you can record the statement?

17 A. Yes.

18 Q. And then you get a recorded statement based on the general
19 information you've obtained?

20 A. Right.

21 Q. And it all happens at the same time?

22 A. Correct. We may have a ten minute, you know, smoke break
23 or pop break or something in between, but it's all the
24 same portion of time. All the same interview.

25 Q. We have the alleged murders on June 11th?

1 A. Yes.

2 Q. And you don't get to the Crown Creek Cabin until October
3 what?

4 A. Twenty-fourth-- Or September 24th.

5 Q. September?

6 A. Well, the cab-- Actually get to the cabin?

7 Q. Yes.

8 A. That would have been the 2nd of October, I think was our
9 first search warrant there.

10 Q. ~~So would you ordinarily expect if there were blood on the~~
11 ~~ground that you'd be able to find evidence of that, that~~
12 ~~late?~~

13 A. ~~No. My knowledge of the blood analysis is that even in~~
14 ~~dirt it's hard even immediately after to get a good~~
15 ~~result. But after three months of rain and whatever else,~~
16 ~~the likelihood of finding any blood is-- is pretty small!~~

17 MR. WETLE: Thank you very much. I have no further
18 questions, your Honor.

19 THE COURT: Any recross?

20 MR. SIMEONE: I do, your Honor, yes.

21

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24

25

1 **LOREN ERDMAN**

2 **RE CROSS EXAMINATION**

3 **BY MR. SIMEONE:**

4 Q. You keep-- In responding to Mr. Wetle's questions, Detec-
5 tive, he keeps on talking about the scene of the crime at
6 the Crown Creek cabin. Do you have any good physical
7 evidence that shows this is really the place where these
8 boys were killed?

9 A. It's consistent with the witnesses' statement.

10 Q. Right, but is there-- My question is do you have any good
11 physical evidence that really proves that this is where
12 these boys were killed?

13 A. Physical evidence that puts them at that scene at that
14 particular time?

15 Q. Any other evidence of a killing? Blood or hair or
16 anything else?

17 A. Not at that scene.

18 Q. And isn't it true that these killings were supposed to
19 have taken place, or the shootings were supposed to have
20 occurred where those boys fell in a fire pit?

21 A. That-- That's what our witnesses provided, yes.

22 Q. The fire pit was lined with rocks?

23 A. Right.

24 Q. Blood on rocks wouldn't go away, would it?

25 A. We had rocks processed and they said that they would

Loren Erdman - Recross

916.

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likely not be able to find blood if it had been on there.

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

WITNESS STEPS DOWN BUT IS NOT EXCUSED

COURT RECESSED

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COURT RECONVENED WITH JURY SEATED

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

MR. WETLE: Your Honor, the State would call Danny Percival.

MR. SIMEONE: Who is that?

THE COURT: Danny Percival?

MR. WETLE: Yes. Madam Clerk, do you know if you have marked Exhibit 22?

THE CLERK: It's not with the exhibits you gave me.

WITNESS IS SWORN

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

MR. PERCIVAL: Daniel A. Percival, P-E-R-C-I-V-A-L.

THE COURT: Thank you, and, Mr. Percival, what's your current address?

MR. PERCIVAL: 308 West Hemlock, Sequim, Washington 98382.

THE COURT: Thank you. Mr. Wetle?

MR. WETLE: Thank you, your Honor.

DANIEL A. PERCIVAL Being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. WETLE:

Q. Good afternoon, Mr. Percival. Could you tell the court and the jury basically what you do for a living?

Daniel A. Percival - Direct (by Mr. Wetle)

918.

- 1 A. I've been trying to buy and sell vehicles and car stereos.
2 I've been trying to get into real estate. I've been
3 researching a lot before I try to buy my first house. And
4 hopefully after the first house, you can mortgage that to
5 buy the next, and so on. And that's what I want to do.
- 6 Q. Okay, when did you meet Nick Kaiser?
- 7 A. About two years ago, I think. In '97 I met him briefly,
8 but I didn't know that his name was Nick then, and I
9 didn't really know him at all, but then a couple years
10 later I again met him at a barter fair down in Oregon,
11 and--
- 12 Q. That would be in 1999?
- 13 A. Yes.
- 14 Q. And when you met him back in 1997, do you know what his
15 name was then, to you?
- 16 A. I can't recall for sure. I think I did-- He was intro-
17 duced as Nick then, but I met a lot of people that weekend
18 and it was only for a minute that I had met him in '97.
- 19 Q. Okay, do you know that he had a nickname?
- 20 A. In '99 he had a nickname, Echo.
- 21 Q. And Echo was the nickname?
- 22 A. Yes.
- 23 Q. And do you know how he got that name?
- 24 A. I have no idea.
- 25 Q. So when did you see him next?

1 A. I think in the early summer in Bremerton, Washington. He
2 had moved up there with a couple other guys, and then
3 moved over to Seattle and I was in contact with him every
4 so often. I'd get hold of him and we'd hang out for a
5 couple days.

6 Q. Okay, do you know who he moved into-- who he moved in
7 with in Seattle?

8 A. Yes, that was Brian Murphy.

9 Q. And were you in contact with him then? With Nick then?

10 A. Yes, occasionally.

11 Q. Was there a period of time, about seven months, where you
12 had little or no contact with him?

13 A. Yes. I had lost contact with him because he changed cell
14 phone numbers, and somewhere after I long-- lost contact
15 with him he had moved to Whidbey Island.

16 Q. And then did you hear from him again in May of 2000?

17 A. Yes. He called me. He was very upset, he was crying and
18 telling me that he was in big trouble and that his
19 girlfriend left him, and he-- he was talking about
20 suicide and-- And I tried to dissuade him from that idea,
21 and I had told him that in the past when I had gotten in
22 trouble that I read the Bible and it had helped me, so I
23 tried to kinda let him know that that's an option.]

24 MR. SIMEONE: Your Honor, I'm going to--

25 Q. And did you give him--

1 MR. SIMEONE: Your Honor, excuse me. I want to
2 interrupt and I would want to ask that the Prosecutor try
3 to elicit testimony from the witness that's going to be
4 his perceptions, rather than what Mr. Kaiser said, unless
5 there's any other exception to hearsay that I'm not aware
6 of right now.

7 MR. WETLE: The next question probably is a declaration
8 against interest exception, your Honor.

9 THE COURT: All right.

10 Q. So did he tell you what trouble he was in?

11 A. Not at first. He had just said that it was something big
12 and that he was facing a lot of jail time. But as the
13 week progressed, after he had gotten out of jail or
14 whatever, he had-- he told more bits and pieces, but not
15 all of it made sense and I don't think I ever did really
16 get the whole story.

17 Q. Did he tell you what he got busted for?

18 A. Yeah, he just said a lot-- a lot of drugs, or a lot of
19 stuff.

20 Q. Did he tell you about possible jail time?

21 A. Yeah, he said that he was facing ten to life. And I tried
22 to tell him that it couldn't be that harsh and that there
23 must be some sort of option for treatment, or a plea
24 bargain or something.

25 Q. Well, after you had that conversation, had you convinced

1 him that it was going to be better or okay?

2 A. I think I had let him know that it wasn't the end of the
3 world, and that, you know, life will go on and things
4 could get better.

5 Q. Did he ever tell you what might happen to him?

6 A. He had said--

7 MR. SIMEONE: Your Honor, again-- Your Honor, I don't
8 know that that's a declaration against interest. To me it
9 sounds like it's pure hearsay.

10 MR. WETLE: I'll strike the question, your Honor.

11 THE COURT: All right.

12 Q. After his arrest then, and when he called you, do you know
13 where he was living?

14 A. Whidbey Island.

15 Q. And what was he doing?

16 A. After his arrest?

17 Q. Uh-huh.

18 A. He was trying to-- He had got a telemarketing job, he had
19 told me, and he was trying to find a place to live. I
20 offered him to stay at my house, but he had decided to
21 move in with Brian Murphy in Seattle.

22 Q. Okay, did he have any funds when he was talking to you?

23 A. No, he was very broke. I had went over to visit him and
24 I bought him a small stereo and some groceries and helped
25 him get his dog out of impound-- or out of the pound.

1 Q. So he had a dog at that time?
2 A. Yes, a German shepherd.
3 Q. And then you said you offered him a place to stay?
4 A. (No audible response)
5 Q. What did he decide to do?
6 A. To stay with Brian Murphy in Seattle.
7 Q. Did you and Nick Kaiser make any plans to go to the
8 Northport Barter Fair the weekend of June 9th to 11th, or
9 8th to 11th?
10 A. I had planned to go, and I didn't know if he was going or
11 not, but then like a day or two before the fair he had
12 decided to go, and then I met him there on Saturday night,
13 but he was sleeping.
14 Q. So do you know what time you arrived on Saturday?
15 A. In the evening. Maybe sometime between 6:00 and 8:00 P.M.
16 Q. And did you see his rig?
17 A. Yes.
18 Q. And you know what rig he drives?
19 A. Yes, it was a Bronco.
20 Q. So did you--
21 A. Gray Bronco.
22 Q. That's correct. Did you go over to see him or--
23 A. I walked over to the Bronco, and him and Josh Schaefer and
24 somebody else were all sleeping in it, and I had talked to
25 the people camped next to them, they said that they had

Daniel A. Percival - Direct (by Mr. Wetle)

923.

1 been doing nitrous all weekend, so they were passed out.
2 Q. Okay. So then the first time you actually talked to him
3 would have been when?
4 A. Sunday morning, after we both woke up.
5 Q. And did you talk to him more than once that morning?
6 A. Yes, probably several times.
7 Q. Did he introduce you to anybody at that time?
8 A. Yeah, he introduced me to Josh Schaefer as his friend that
9 came with him to the Barter Fair.
10 Q. And could you describe him? Josh, that is.
11 A. Yeah. He had ratty hair, kind of dreadlocks, and he had
12 a fleece bandanna type thing on his hair. His teeth
13 weren't in great condition, and just kinda raggedy clothes
14 all together.
15 Q. Notice any jewelry?
16 A. I can't say that I did.
17 Q. Okay. Have you seen any pictures of him since that time?
18 A. Yeah, I-- I saw a missing flyer-- missing persons flyer,
19 probably-- I don't know, maybe three months or so
20 afterwards.
21 MR. WETLE: I'd ask the Bailiff to hand this to the
22 Clerk and ask if it could be marked as-- I think it's
23 Exhibit 22. I'd ask the bailiff to hand that to the
24 witness, please.
25 Q. Mr. Percival, I'd ask if-- You've been handed what's been

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1 marked as Exhibit 22, and I'm asking if you can identify
2 that?

3 A. Yeah, that is Josh Schaefer, the kid that Nick met--
4 introduced me to at the Barter Fair. That is the same
5 flyer I had seen, except for the one I saw was black and
6 white, I believe.

7 MR. WETLE: We'd offer Exhibit 22, your Honor.

8 THE COURT: Would you hand that over to Mr. Simeone,
9 please?

10 MR. SIMEONE: No objection.

11 THE COURT: Exhibit 22 is admitted.

12 Q. On Sunday morning, how did Nick Kaiser appear to you?

13 A. He seemed a little worn out from the weekend.

14 Q. What was-- What was the weather like on that weekend?

15 A. It was very poor. It was raining and cloudy and just real
16 wet and soggy. It was miserable, all together.

17 Q. Did you see anybody with Nick Kaiser and Josh Schaefer?

18 A. Possibly another guy, but I was never introduced and I
19 wasn't paying that much attention to anybody else.

20 Q. Do you remember Nick moving his Bronco before he left the
21 Barter Fair?

22 A. Yes. He moved it about-- maybe 200 feet over, and was
23 waiting for somebody that never showed up, I guess.

24 Q. Okay, when you-- When you say moved it about 200 feet, is
25 that toward the gate, or is it just to a different

1 location?

2 A. Actually toward the hillside, actually. I think the
3 hillside has a peace sign or something up on it. Towards
4 that hill.

5 Q. Do you know when Nick Kaiser left the Barter Fair, and do
6 you know if he had anybody with him?

7 MR. SIMEONE: Can we confine that to a day? I don't
8 know when it is he means. I don't know when it is that he
9 means he left. Which day are we talking about?

10 MR. WETLE: Okay. Thank you.

11 Q. Mr. Percival, do you know when Nick Kaiser left the Barter
12 Fair on June 11th, a Sunday?

13 A. Yes. It was some time before 2:00 o'clock P.M. for sure,
14 and some time after 11:00 or 12:00.

15 Q. And do you know if there was anybody with him when he
16 left?

17 A. Yes, Josh Schaefer was.

18 Q. And did you see anybody else in the Bronco at the time?

19 A. I didn't.

20 Q. Could there have been somebody in the back of the Bronco
21 and not be seen by you?

22 A. Yeah, if they were laying down or hiding, possibly.

23 Q. Where did you think they were going after they-- after
24 you said goodbye?

25 A. I assumed back to Seattle directly, 'cause I didn't think

Daniel A. Percival - Direct (by Mr. Wetle)

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1 he had anything else to do.

2 Q. So after saying goodbye, what did you do?

3 A. I think we helped somebody jumpstart their van, and ate
4 lunch, and then we left shortly after that.

5 Q. And do you remember when you left the Barter Fair?

6 A. It had to have been about 2:00 P.M. 'cause I made the very
7 last ferry in Port Townsend which was at 9:00 or 9:30,
8 something like that.

9 Q. Did you ever see Nick Kaiser or Josh Schaefer again?

10 A. No, I didn't.

11 Q. Before Nick Kaiser was arrested, do you know what he was
12 doing?

13 A. I-- I hadn't talked to him for about six or seven months,
14 but before that six or seven months he had been going to
15 California and back, and I think he was probably involved
16 in dealing of some sort.

17 MR. WETLE: Thank you very much, Mr. Percival. We have
18 no further questions, your Honor.

19 THE COURT: All right, before you step down, I'll see
20 if Mr. Simeone has any questions, Mr. Percival.

21 MR. SIMEONE: Yes, I do, your Honor. Thank you.
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1 DANIEL A. PERCIVAL

2 CROSS EXAMINATION

3 BY MR. SIMEONE:

4 Q. Mr. Percival, you were interviewed by Detective Erdman in
5 October of this year, is that right?

6 A. That is correct.

7 Q. Do you know how it is that Mr. Kaiser got the nickname
8 Echo?

9 A. I don't. That's what he introduced himself to me as in
10 '99, but I had previously knew his name in '97 when I met
11 him briefly.

12 Q. Okay. Is it your understanding that people were mad at
13 him?

14 A. Yes. After he had got arrested he said that people would
15 probably be angry with him, that they might be after him.

16 Q. That was something he thought might be true?

17 A. That's what he had said to me.

18 Q. Did you have any personal knowledge that anybody was mad
19 at him?

20 A. To my personal knowledge, no.

21 MR. SIMEONE: Could I see Exhibit 48 through 53?

22 Q. Nick showed you pictures of a cabin, didn't he?

23 A. Yes, he did.

24 Q. Did he tell you where it was that that cabin was located?

25 A. He said somewhere about ten, 15 miles from Northport.

Daniel A. Percival - Cross (by Mr. Simeone)

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1 Q. Do you think you can remember it if you saw it?
2 A. I would probably recognize that picture, yes.
3 Q. Hand you what's been admitted into evidence as Exhibit 48.
4 Does that look like what it is he told you was a cabin?
5 Hand you another picture of it.
6 A. This looks very much like the picture. I'm not sure if I
7 remember the trees in front of it, but that is the same
8 cabin.
9 MR. SIMEONE: The record will, of course, reflect that
10 I showed the witness Exhibit Number 48 and 49.
11 Q. Did he tell you that he owned that cabin?
12 A. I think he had said that him and some other guys went in
13 on it, but yeah, he had said he had partially owned it, or
14 owned it.
15 Q. Okay. You're pretty sure about the time that you saw him
16 leave? It sounds like maybe you'd already reviewed that
17 information in your mind before you came into the court-
18 room today. Is that right?
19 A. Well, yeah. It's the same statement I gave over the phone
20 a couple months ago.
21 Q. Okay, when you spoke to Mr. Wetle, did he interview you
22 about this before trial today?
23 A. Not today.
24 Q. Before today?
25 A. Yes.

1 Q. Now you say the day of the Barter Fair-- You recall the
2 weather, don't you?
3 A. Yes.
4 Q. It was wet and cloudy, I think is what you said. Cool.
5 A. Yeah.
6 Q. Kind of day where a fire would be welcome?
7 A. Yeah.
8 Q. There were fires happening around the Barter Fair camp-
9 grounds? Isn't that right?
10 A. Yes, I believe there were a few.
11 Q. Now, would you consider yourself Rainbow Family?
12 A. No.
13 Q. You're not a-- Are you associated with them?
14 A. I have no idea who any of those people would be.
15 Q. Going back to your previous answers about whether or not
16 Nick was intimidated or threatened, do you know if anybody
17 had threatened Nick at the fair?
18 A. I don't-- I was only there Saturday night when they were
19 sleeping, and the next day I only talked to him briefly
20 before he left.
21 Q. You didn't see anybody warn him or threaten him or tell
22 him to leave the fair, did you?
23 A. No, I didn't.
24 Q. Did you see anybody harass him at all?
25 A. Not that I know of.

Daniel A. Percival - Cross (by Mr. Simeone)

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1 Q. Okay. Did he appear to you to be depressed?

2 A. He-- Well, he was still generally depressed, but he had
3 cheered up a bit since I had first talked to him.

4 Q. Was he drinking a lot?

5 A. During the week after his release, yes, he was drinking a
6 lot.

7 Q. How about at the fair?

8 A. At the fair? I don't believe he was drinking, really.

9 Q. Did you see him abusing any other substances?

10 A. Yeah, they had a tank of nitrous, and I guess him and the
11 other guys had been doing it all weekend.

12 Q. On the tank all weekend?

13 A. Yeah.

14 MR. SIMEONE: Okay, no further questions. Thank you.

15 THE COURT: Any redirect, Mr. Wetle?

16 MR. WETLE: Just briefly, your Honor.

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1 DANIEL A. PERCIVAL

2 REDIRECT EXAMINATION

3 BY MR. WETLE:

4 Q. When he said that other people would be after him, was
5 that in relation to him getting arrested?

6 A. Yes. I think he actually said because he knew too much.

7 MR. WETLE: Thank you. I have no further questions.

8 THE COURT: All right, Mr. Simeone?

9 MR. SIMEONE: Nothing further, your Honor.

10 WITNESS IS EXCUSED

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

12 MR. WETLE: Call Brian Murphy, your Honor.

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- 1 A. He was a friend of mine, and he-- he was in some trouble
2 and he called me, and so I went out there to see him.
- 3 Q. Okay, now, that's probably prior to June 9th?
- 4 A. June 9th?
- 5 Q. Yes. I gave you sort of a specific date.
- 6 A. I don't know-- I don't know dates very well. Sorry.
- 7 Q. Okay. Let's just say to your recollection, in the month
8 of May of 2000, what was your relationship with Nick
9 Kaiser?
- 10 A. He was my friend.
- 11 Q. Okay, and did he ever come to stay with you?
- 12 A. Yes, he did.
- 13 Q. And when would that have been?
- 14 A. It would have been right after he got arrested and then
15 released for a few months, and I was in contact with his
16 parole officer, which we were pending (sic) on whether or
17 not he could stay with me or not.
- 18 Q. So after he gets arrested, he comes to live with you?
- 19 A. He was kinda suicidal, so he was-- Well, not really
20 suicidal, but he was very, very depressed about all the
21 things that just aspired (sic) to him.
- 22 Q. How long had you known Nick?
- 23 A. About a year.
- 24 Q. And how did he come to live with you?
- 25 A. He met my friend, James, and he met him at a party, and

1 then James found out he didn't have a place to stay so he
2 offered that he could stay in our living room for like a
3 week or two until he could get a place of his own. And so
4 he started staying there, and it turned into like six
5 months, and then we found out that he was dealing drugs
6 and we kicked him out.

7 Q. So then he got kicked out, and then subsequently he comes
8 back? He needed a place to go and you let him come back?

9 A. No, no. He went to-- Well, we didn't actually just kick
10 him out. We told him to get everything that we didn't
11 like that he was doing out of the house. And then we told
12 him, you know, you can stay here until you find a place to
13 stay, but you have to be actively looking for a place to
14 stay, other than here.

15 Q. All right. So when-- He had a friend come up from
16 California?

17 A. Uh-huh.

18 Q. Was he at that stage looking for another place to go to?

19 A. I don't know if-- Are you talking about Josh or--

20 Q. Yes.

21 A. No, no. This was way before Josh.

22 Q. Okay, I'm sorry. So then he-- Did he ever find a place
23 to stay?

24 A. Yes, he moved to-- I forget the island's name, but
25 there's an island in the Puget Sound that he moved to.

Brian Murphy - Direct (by Mr. Wetle)

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- 1 Q. Whidbey Island?
- 2 A. Whidbey Island, correct.
- 3 Q. All right, and then after he got arrested-- Let's jump
4 forward to that period of time. Did he then come back to
5 stay with you again?
- 6 A. ~~Yes. Well, he called me from Whidbey Island and he~~
7 ~~sounded really, really bad, and he said they had taken~~
8 ~~everything from him and that his girlfriend had left and~~
9 ~~taken more stuff from him, and that he wasn't feeling like~~
10 ~~life was worth living, and stuff like that. And so I went~~
11 ~~out to Whidbey Island to talk to him and, you know, try to~~
12 ~~be a friend to him, because like all of his friends that~~
13 ~~he thought were his friends were really just drug dealers~~
14 ~~and really didn't stick by him at all. And so me being~~
15 ~~like the only person-- one of the only people that he~~
16 ~~knows that aren't into the circles that he ran in, and he~~
17 ~~turned to me for a friendship because he knew my friend-~~
18 ~~ship was genuine.~~
- 19 Q. Okay, and so then did you offer him a place to stay?
- 20 A. Yes, I did, because I didn't think it was safe that he was
21 alone.
- 22 Q. How long was he staying with you then before his friend
23 Josh came?
- 24 A. Well, he was with me for about a week, or maybe a week and
25 a half or two weeks, and he was constantly gone 'cause he

1 worked still half way between Whidbey Island and where I
2 lived in Seattle, so he was constantly commuting and
3 sometimes staying in his truck, and stuff like that, plus
4 we were waiting to hear from his parole officer on what we
5 should do in order to make it so he could stay with me
6 until he had to go back to Pennsylvania. And then-- And
7 then he told me he was going to a concert, and I never met
8 Josh--

9 Q. Okay.

10 A. I was at work, and I guess Josh and he left, and he left
11 me a note saying that-- to move Josh's car for him 'cause
12 it was parked in the parking spot that expires at 7:00.

13 Q. Okay, what kind of car was that that was left there?

14 A. It was an older Chevy Blazer.

15 Q. Okay. And from your information, you expected that he was
16 going to the concert in the Gorge?

17 A. Yes, totally.

18 Q. What would you have thought about him going to the Barter
19 Fair?

20 A. I would have strongly encouraged him not to, and I told
21 him he couldn't lead the life that he had before, espe-
22 cially not living out of my house. And I went through
23 pretty much everything that he brought to my house to make
24 sure that he had nothing going on that he did, and I
25 talked to his parole officers to make sure he had clean

Brian Murphy - Direct (by Mr. Wetle)

937.

1 ~~UA's and wasn't leading any kind of the same existence as~~
2 ~~he was before.~~

3 Q. Okay. So do you know whose car the Blazer was?

4 A. He told me it was his friend Josh.

5 Q. But you went-- When they came, when Josh came, you were
6 gone?

7 A. Totally. Yeah.

8 Q. So never did meet him?

9 A. No, I didn't. I read a note on the table that said they
10 were going to call me to make sure that I moved the car,
11 and the car keys were on the note.

12 Q. Okay, so have you-- Had you ever met Josh Schaefer
13 before?

14 A. No, I hadn't.

15 Q. And what were you supposed to do after they left?

16 A. I was supposed to move his car, because like they parked
17 there on a Friday afternoon, and then that day on one side
18 of the street you can only park from like-- like 4:00--
19 it expires at like noon or 7:00. No, it expires at 4:00,
20 and then on the other side of the street you can park from
21 4:00 to 7:00 it expires. You can't park there from 4:00
22 to 7:00.

23 Q. I see.

24 A. So like you can only have your car on one side of the
25 street at a time, or else you get ticketed or towed. So

Brian Murphy - Direct (by Mr. Wetle)

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1 he told me to move it to the other side of the street, and
2 then all weekend you can park anywhere. And so like he
3 just wanted me to keep the car there, and they said they
4 would be back on Sunday to pick it up.

5 Q. ~~When was the last time that you actually talked to Nick~~

6 Kaiser?

7 A. It was that evening. He called me, but his batteries on
8 his cell phone were running out and so it was very brief.
9 He just told me to-- to move the car for him, make sure
10 it was moved, and they'd be back.

11 Q. Okay, and you're saying that was that evening? Are we
12 talking the 9th or the 10th or--

13 A. It was that Friday evening.

14 Q. That Friday? So--

15 A. And he had called me like three times.

16 MR. SIMEONE: Your Honor, I'm going to object to the
17 hearsay. I think the answers have been hearsay and I
18 haven't been able to get to it fast enough, but he's
19 asking questions that are eliciting hearsay repeatedly.

20 MR. WETLE: (Inaudible)

21 THE COURT: All right. Well, ask your next question
22 ~~and we'll see whether that calls for hearsay.~~

23 Q. And basically, what time do you know that the call came in
24 Friday night?

25 A. About 9:00 o'clock.

Brian Murphy - Direct (by Mr. Wetle)

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1 Q. Early?

2 A. It was early evening. It was right after I got off of
3 work.

4 Q. And do you remember when the last call came in that night?

5 A. Oh, no, that was the last call. That was the call that I
6 actually talked to him at.

7 Q. Okay.

8 A. The other two, I wasn't home and they were on my answering
9 machine.

10 Q. Did you help him load anything into the back of his
11 Bronco?

12 A. When he was-- When he was taking his belongings over to
13 my house, yes.

14 Q. And now that would have been what, end of April, first
15 part of May?

16 A. Yes, around that time. I'm not really sure about exact
17 dates. I'm really not that oriented.

18 Q. After he got arrested?

19 A. Yes, it was after he got arrested.

20 Q. Did you have any trouble getting the futon into the back
21 of his Bronco?

22 A. Yes, the back of his Bronco didn't open, or he told me it
23 didn't open. And I looked at the locking mechanism and
24 there was none. There was no place to put a key. It was
25 a big hole, and he had a piece of wood stuffed into where

Brian Murphy - Direct (by Mr. Wetle)

940.

1 the glass meets the back of the-- back of the door, to
2 keep the glass from falling down into the door. So he
3 told me don't even mess with it, so we had to put a futon
4 in the back of his car, and it was his bed in his house on
5 Whidbey. And we took it through the passenger side door.

6 Q. All right, so if the piece of wood was taken out and it
7 was dismantled it probably would-- That was what was
8 holding--

9 MR. SIMEONE: Objection, leading.

10 THE COURT: Sustained.

11 Q. Do you know what effect that wood had on the back door in
12 the window?

13 A. From what I understand, the window would fall.

14 Q. Did you ever know if that was ever fixed while he was
15 staying at your house?

16 A. Not to my knowledge.

17 Q. Did you ever see Nick carry large compressed gas cylinders
18 in his rig?

19 A. No.

20 MR. WETLE: Thank you very much. I have no further
21 questions.

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

23 MR. SIMEONE: Yeah.

24

25

1 BRIAN MURPHY

2 CROSS EXAMINATION

3 BY MR. SIMEONE:

4 Q. You had an interview with Officer Erdman, didn't you,
5 earlier on? Well, last year, in September, Mr. Murphy?

6 A. Officer Erdman?

7 Q. Erdman, yeah.

8 A. Over-- Over this?

9 Q. Right. On September 29th of 2000, did you have an
10 interview with Officer Erdman?

11 A. I talked to about four different officers at different
12 times about these instances, including once I came over
13 and picked up Nicholas' belongings. So I don't really
14 remember the exact name of an officer.

15 Q. Don't remember--

16 A. But I would think I did.

17 Q. Around September sounds right to you, though?

18 A. Correct.

19 Q. Okay. You were basically Nick's roommate, then, just
20 right before the incident that occurred here. Is that how
21 you would classify yourself?

22 A. He was my roommate.

23 Q. He was your roommate.

24 A. It was my house. Me and my girlfriend live there.

25 Q. Okay.

Brian Murphy - Cross (by Mr. Simeone)

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1 A. And I was accepting him out of the kindness of my heart.

2 Q. You accepted him in, basically?

3 A. Yes.

4 Q. Now, you were talking about the rear window and the-- of
5 the Bronco, and it was-- It was not functioning, was it?

6 A. No, it was not.

7 Q. Did you ever see him take the door down to that rear
8 door-- Did you ever see him lower the rear door of the
9 Bronco?

10 A. No, I did not.

11 Q. And that was broken too, so far as you know?

12 A. As far as I know. He had told me that we couldn't move
13 the futon in there because it would not-- the window
14 wouldn't stay up and it would break it.

15 Q. Did he tell you he was part owner of a cabin in Northport?
16 Did he tell you he was part owner of a cabin up here in
17 Northport?

18 A. He had told me that there was a cabin a long time ago.

19 Q. He showed you pictures of it?

20 A. He showed me a lot of pictures. He was running through a
21 photo album that was quite extensive. It was really
22 thick. And he might have showed me-- He showed me so
23 many pictures of so many wooded areas and so many cabins
24 that I don't know if he showed me that one.

25 Q. Do you think you'd remember it if you saw it?

Brian Murphy - Cross (by Mr. Simeone)

943.

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

2 THE COURT: Yes.

3 Q. Do you think you could remember it if you saw it?

4 A. Perhaps.

5 MR. SIMEONE: Handing the witness Exhibit 40 and 41.

6 Q. Would you look at those for us and tell us whether or not
7 those look like pictures of a cabin that he told you that
8 he was part owner of?

9 MR. WETLE: Objection, your Honor. He said he didn't
10 know if he owned it. It's been asked and answered.

11 THE COURT: Overruled.

12 A. I remember him mentioning about this cabin, only he said
13 all the windows were broken out.

14 Q. Does that look like it though?

15 A. So many cabins look the same. I have no idea.

16 Q. Can't really identify it?

17 A. No, I can't.

18 Q. Was it your understanding, though, that he was a part
19 owner of the cabin up here?

20 A. He had mentioned that he knew of a cabin, not that he was
21 part owner, not that he owned anything.

22 Q. Okay. Do you know personally whether or not people were
23 after him because of-- well, for any reason, or that he
24 was in peril at all?

25 A. He seemed very frightened.

Brian Murphy - Cross (by Mr. Simeone)

944.

1 Q. He seemed frightened?

2 A. I don't know if it was because he couldn't lead the life-
3 style that he was so accustomed to, or if he was actually
4 frightened because his girlfriend had left him. He was
5 very, very devastated. Really distraught.

6 Q. Okay, my next question, though, is do you know if any-
7 body-- Do you know, of personal knowledge, if anybody was
8 after him?

9 A. No, I do not.

10 Q. Do you know, of personal knowledge, whether or not people
11 were ostracizing him?

12 A. Yes, I do.

13 Q. And what do you know about that?

14 A. He told me that due to the facts that-- due to the
15 circumstances that he was in he could never lead-- lead
16 the same life he had. He could never associate with the
17 people he had because he was scared of them.

18 MR. SIMEONE: Your Honor, I would object and ask that
19 the answer be stricken as hearsay.

20 MR. WETLE: Objection, your Honor.

21 THE COURT: Overruled. It was the answer to your
22 question, Mr. Simeone.

23 MR. SIMEONE: I was trying to ask if he knew of
24 personal knowledge.

25 Q. Do you know, from your personal knowledge, whether-- from

1 anybody else, or whether or not you saw anybody else
2 trying to distance themselves from Nick, or ostracize him,
3 or is your knowledge limited to what you heard from him?

4 A. I tried to stay out of Nick's life after I found out what
5 he was doing, so no, I did not actually witness any actual
6 ostracizing of him.

7 Q. Was it your understanding that a certain group of people
8 were mad at him? A group of people from a given geograph-
9 ic area, say, San Francisco?

10 A. He mentioned people in more-- in not so much terms of
11 where they were or who they were at all, because he knew
12 me for awhile and I did not-- I didn't want to even know.
13 And he had just said that he was scared to lead the same
14 life that he had, and that he could never go to another--
15 another party, another Barter Fair. He couldn't associate
16 with the same people because he was frightened of them.

17 Q. But he went to a Barter Fair gathering anyway, didn't he?

18 A. Yes, he did.

19 Q. Does that militate against your opinion that he was afraid
20 of people having any kind of plan for his demise?

21 A. I have no idea.

22 Q. Well, I mean, wouldn't it, though, if he were scared that
23 much, he wouldn't go to a Barter Fair? If he was scared
24 for his life, he wouldn't leave, would he?

25 A. He was scared of so many things, including the fact that

1 he couldn't lead the life that he had.

2 Q. Okay, so mainly, if I'm understanding your testimony
3 correctly, you can't really ascertain the reason why he
4 was scared? A lot of things may have entered into this
5 feeling he had. Is that right?

6 A. That is correct.

7 Q. Could be the fact that he was looking at a serious jail
8 sentence of some kind? Is that right?

9 A. Well, he was already looking at that, and that didn't
10 really scare him very much. It was the fact that his--
11 his love, his girlfriend, left him.

12 Q. Girlfriend entered into it?

13 A. That was like mainly the reason he was so ready to do
14 himself in.

15 Q. Had to start leading a different kind of life? Okay. All
16 those things would be contributory to the fear you saw in
17 him, probably?

18 A. Totally. Yeah.

19 Q. Did he carry his futon around with him fairly consistent-
20 ly, do you know? Black futon that you talked about?

21 A. No. He had it in his house. He was sleeping on it for
22 awhile.

23 Q. He didn't take it with him to-- well, when you last saw
24 him?

25 A. When I last saw him, yes, because he had moved out of his

Brian Murphy - Cross (by Mr. Simeone)

947.

1 place. He was in the process of moving into mine.

2 Q. Well, when he left your place to go, what turns out to be
3 Northport's Barter Fair, did he have it with him then?

4 A. Yes, I have beds, and he didn't need to bring into the
5 house.

6 Q. So he took it with him here?

7 A. Correct.

8 MR. SIMEONE: Okay, thank you. No further questions.

9 THE COURT: Mr. Wetle, any redirect?

10 MR. WETLE: Thank you, your Honor.

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Brian Murphy - Cross (by Mr. Simeone)

948.

1 BRIAN MURPHY

2 REDIRECT EXAMINATION

3 BY MR. WETLE:

4 Q. Mr. Murphy, basically we're talking there's a number of
5 things going on in Mr. Kaiser's mind. One of them, if I
6 can just summarize, jail was not such a big deal to him?
7 It was a fact, but not a big deal?

8 A. Well, it-- It wasn't-- It wasn't so pronounced in the
9 fact that the rest of his life had crumbled around him as
10 well. So, I mean, yes, it did bother him, and yes, he was
11 worried about it, but I think he was much, much more
12 worried about never seeing Shauna again for those however
13 many years he was sentenced for. He was-- He was more
14 worried, in fact, that he couldn't be the successful
15 person that he had been before.

16 Q. Successful person in what?

17 A. In drugs. He was very-- He was very open about how much
18 money he had and what was going on, and he spent money
19 pretty easily.

20 Q. So that was all now gone?

21 A. Uh-huh.

22 Q. And you mentioned that he had to-- He could no longer
23 associate with those people in that lifestyle?

24 A. Yes. Correct.

25 Q. And why was that?

Brian Murphy - Redirect (by Mr. Wetle)

949.

1 A. He was afraid.

2 Q. Of them?

3 A. Yes.

4 Q. Because he knew too much?

5 MR. SIMEONE: Your Honor, I'm going to object--

6 A. Well, not--

7 MR. SIMEONE: Object as to hearsay, and he doesn't know
8 what was going on in Mr. Kaiser's mind about that particu-
9 lar detail.

10 THE COURT: Well, if it calls for state of mind, he can
11 answer, if you were aware of his state of mind from what
12 he told you. Indicate that.

13 A. Yes, and-- Well, the way he acted and what he actually
14 told me was that yes, he was scared of the people he was
15 associating with.

16 MR. WETLE: Thank you very much.

17 MR. SIMEONE: And, Mr. Simeone, anything further?

18 MR. SIMEONE: Yeah.

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BRIAN MURPHY

RE CROSS EXAMINATION

BY MR. SIMEONE:

Q. He was scared, but he went to the Northport Barter Fair to be with the people you say he was afraid of associating with. Is that right?

A. Yes, I guess. He told me he was going to a concert.

Q. Turns out not to be the case though?

A. Correct.

MR. SIMEONE: Thank you. No further questions.

WITNESS IS EXCUSED

THE COURT: And you may call your next witness.

MR. WETLE: Your Honor, I would call Wayne Kaiser.

Brian Murphy - Recross (by Mr. Simeone)

951.

1 **WITNESS IS SWORN**

2 THE COURT: Sir, if you would start by giving us your
3 name, spelling your last name for the record?

4 MR. KAISER: My name is Wayne J. Kaiser, Jr., K-A-I-S-
5 E-R.

6 THE COURT: Thank you. And your current address,
7 please, sir?

8 MR. KAISER: 8399 Sheffield Manor Boulevard, Waynes-
9 boro, PA. 17268.

10 THE COURT: Thank you. Mr. Wetle?

11 MR. WETLE: Thank you, your Honor.

12 **WAYNE J. KAISER, JR.**

Being first duly sworn, on
oath testified as follows:

13 **DIRECT EXAMINATION**

14 **BY MR. WETLE:**

15 Q. Good afternoon, Mr. Kaiser. Could you tell the court and
16 the jury your occupation, what you mainly do for a living?

17 A. Right now I'm unemployed.

18 Q. And when you were working, what did you do?

19 A. I worked-- janitor at Martin's Foods in Waynesboro,
20 Pennsylvania.

21 Q. How are you related to Nicholas Kaiser?

22 A. Nicholas Kaiser is my son.

23 Q. I'd ask the bailiff to hand you what's been marked as
24 Exhibit 3, and I'd ask if you can identify that photo-

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Wayne J. Kaiser - Direct (by Mr. Wetle)

952.

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graph?

A. That's Nicholas Kaiser, my son.

Q. And do you remember when it was taken?

A. Nineteen-ninety-six, in his 12th grade class.

Q. So that's a 12th grade school picture?

A. Yes, sir.

Q. And does this picture substantially and accurately depict Nick Kaiser at the time it was taken?

A. I didn't hear that, sir.

Q. Does that picture substantially and accurately depict Nick Kaiser at the time it was taken?

A. It does.

MR. WETLE: We'd offer State's Exhibit 3, your Honor.

THE COURT: All right, if you'll hand that to Mr. Simeone, please.

MR. SIMEONE: No objection.

THE COURT: All right, Exhibit 3 is admitted.

MR. WETLE: Thank you, Mr. Kaiser.

MR. KAISER: Thank you.

THE COURT: That's all the questions? All right, Mr. Simeone, any questions?

MR. SIMEONE: No questions.

WITNESS IS EXCUSED

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

MR. WETLE: Call Tom Schaefer.

Wayne J. Kaiser - Direct (by Mr. Wetle)

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WITNESS IS SWORN

THE COURT: Please give us your full name, please, spelling your last name.

MR. SCHAEFER: Thomas Albert Schaefer, S-C-H-A-E-F-E-R.

THE COURT: Thank you, and your current address, Mr. Schaefer?

MR. SCHAEFER: 10730 Thornmint Road. That's T-H-O-R-N-M-I-N-T Road, San Diego, California.

THE COURT: Thank you. Mr. Wetle?

MR. WETLE: Thank you, your Honor.

THOMAS ALBERT SCHAEFER

Being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. WETLE:

Q. Good afternoon, Mr. Schaefer.

A. Hi.

Q. I'd like you to tell the court and the jury what your occupation, your line of work is, please.

A. I'm a manager of the Information Services for a division of the J. R. Simploc Company.

Q. Basically what does that do?

A. Well, I manage voice and data communications. It's computer work. We have 19 locations that all communicate with computers in San Diego. I manage that, and the PC's that the people use to access the system.

Thomas Albert Schaefer - Direct (by Mr. Wetle)

954.

1 Q. How long have you been in data processing, Mr. Schaefer?

2 A. About 15 years.

3 Q. And how are you related to Josh Schaefer?

4 A. I'm his dad.

5 Q. And were you able to examine some items recovered from the
6 Kaiser vehicle?

7 A. Yes, I was.

8 Q. I'd ask the bailiff to hand you what's been marked as
9 Exhibit 76. I believe that's the crystal.

10 THE COURT: And, Mr. Schaefer, there's holes in the
11 bottom of some of these exhibits where they've been
12 identified by previous witnesses, so you can go ahead--

13 A. So I can just open this and take it out?

14 THE COURT: You sure can.

15 Q. I'd ask if you can identify that, Mr. Schaefer?

16 A. Yeah, this is Josh's crystal.

17 Q. And what is it?

18 A. It's a quartz crystal that he kept with him, kind of-- He
19 kept it with him everywhere he went. You know, he'd put
20 it by his bed, and keep it in his pocket. It was kind of
21 for good luck. He took it-- If we went to the beach,
22 he'd take it to the beach.

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

24 THE COURT: It's already been admitted.

25 MR. WETLE: Oh, I'm sorry, that's correct.

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THE COURT: You can go ahead and put that back on the ledge there and the bailiff will pick it up here shortly.

MR. WETLE: And I'd ask the bailiff to hand Mr.

955-A

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

1 Schaefer what's marked as Exhibit 90.

2 THE CLERK: (Inaudible)

3 MR. WETLE: No, it would be a glass bead.

4 THE CLERK: (Inaudible)

5 THE COURT: Was it one that was previously identified,
6 counsel, by a previous witness, because our exhibit list
7 for plaintiff only goes up to 89.

8 MR. WETLE: Let me see what Exhibit 44 looks like,
9 please.

10 THE COURT: It's not a photo, it's--

11 MR. WETLE: Exhibit 44.

12 THE COURT: Oh, is it? I guess it is, yeah.

13 MR. WETLE: May I see it, please? I'd ask the bailiff
14 to hand that photo-- Exhibit 44 to Mr. Schaefer.

15 Q. The bailiff has handed you what's been marked as Exhibit
16 44, Mr. Schaefer. Can you identify that bead?

17 A. Yeah, this is a bead that Josh wore in his hair. He had,
18 you know, thick dreadlocks and he'd wear glass beads in
19 it.

20 Q. Thank you. I'd ask the bailiff to hand you what's been
21 marked as Exhibit 7.

22 MR. WETLE: And I'd ask the bailiff to pass that photo
23 to the jury, please.

24 THE COURT: I'm sorry, I lost track of what number this
25 was?

Thomas Albert Schaefer - Direct (by Mr. Wetle)

956.

1 MR. WETLE: This is Exhibit 7, your Honor.

2 THE COURT: Seven? Thank you.

3 MR. WETLE: And I think it's been offered and admitted.

4 THE COURT: It's already been admitted, yes.

5 Q. Ask you if you can identify what's been marked as Exhibit
6 7, Mr. Schaefer.

7 A. This-- There's two items in here. One looks like the
8 nose ring that Josh wore, and the other looks like a ring
9 that he had, has like triangle-square designs on it. This
10 is-- The other one looks like the nose ring that he wore.

11 Q. Okay, thank you. I'd ask the bailiff to hand you then
12 what's been marked as Exhibit 89, that is a photograph,
13 and I would ask if you can identify that.

14 A. That's my son, Josh.

15 Q. And who took that photo?

16 A. I did.

17 Q. And do you remember when you took it?

18 A. It was February, March, a year ago.

19 Q. And does this photo fairly and accurately depict Josh as
20 he appeared on the day the photo was taken?

21 A. Yes. Yes, it does.

22 MR. WETLE: Your Honor, we'd offer State's Exhibit 89.

23 THE COURT: All right, if you'd hand that, please, to
24 Mr. Simeone.

25 MR. SIMEONE: No objection, your Honor.

Thomas Albert Schaefer - Direct (by Mr. Wetle)

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THE COURT: All right, Exhibit 89 is admitted. Did you want that shown to the jury?

MR. WETLE: Yes, please. Thank you very much, Mr. Schaefer. I have no further questions of this witness, your Honor.

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

MR. SIMEONE: Yes, your Honor.

1 THOMAS ALBERT SCHAEFER

2 CROSS EXAMINATION

3 BY MR. SIMEONE:

4 Q. Mr. Schaefer, it turns out that the individual they
5 identified here was the person-- was your son. I extend
6 my apologies to you and my-- my condolences. Did you say
7 that you had-- Did you have an interview or did you write
8 a letter to the police in September of 2000?

9 A. I-- I don't-- I may have. I don't know.

10 Q. Did you--

11 A. I know that I was trying to find Josh. I had been in
12 contact with the Stevens County Sheriffs, knowing that he
13 had been up here and had disappeared.

14 Q. Did you do that on your own initiative, or did somebody
15 ask you to write to them?

16 A. I did it on my own initiative.

17 Q. Josh had been in some trouble involving one Jerry Ash-
18 worth, is that correct?

19 A. That is correct.

20 Q. And is it true that Jerry was a major LSD supplier?

21 A. I don't know.

22 Q. And Josh was arrested?

23 A. He was never arrested and charged, no.

24 Q. He was-- He was arrested but not charged, is that what
25 you said?

Thomas Albert Schaefer - Cross (by Mr. Simeone)

959.

1 A. He was-- He was held and questioned and let go.
2 Q. Is it correct that he gave some information about other
3 drug dealers to the authorities?
4 A. I wouldn't know that.
5 Q. And you knew Nick Kaiser?
6 A. No, I did not.
7 Q. Did you know of him?
8 A. Not until Josh disappeared.
9 Q. Was it your belief that your son may have given the
10 authorities Nick's name in connection with drug-related
11 activity?
12 A. That-- No, it wasn't a belief, it was a-- a-- When
13 Josh disappeared with Nick, and I had found out in my
14 search for Josh that Nick had been in trouble, and I
15 thought that it was possible that Nick thought Josh had
16 given authorities information leading to his arrest.
17 Q. Was it your opinion that Josh was maybe at risk because of
18 Nick luring him to Seattle?
19 A. At the time, when I was searching for Nick-- or for Josh,
20 I-- And I found out Nick's situation, I thought that was
21 a possibility, yes.
22 Q. And you told the police that you thought maybe Nick had
23 done something to Josh here to hurt him?
24 A. I told them that I thought Josh may have lured Nick-- or
25 Nick may have lured Josh up there, yes.

1 Q. Were there others who threatened Josh as well?
2 A. No one ever threatened Josh that I know of. That was my--
3 my guess in trying to find Josh and finding out about
4 Nick.
5 Q. Now, you tried to do something to find your missing son.
6 A. Correct.
7 Q. On your own?
8 A. Yes.
9 Q. You came up and did some investigation?
10 A. Yes.
11 Q. You spoke to some people about the fact that he was
12 missing for awhile.
13 A. Yes.
14 Q. Circulated flyers?
15 A. Yes.
16 Q. And you spoke to some people who said they'd seen Josh on
17 July 4th?
18 A. Yes.
19 Q. Before I extended you my condolences on the condition that
20 they identified the person who's the deceased here as your
21 son, do you know of any information that clearly identi-
22 fies the second individual killed here as Josh Schaefer,
23 your son?
24 A. Josh's items, his hair bead, his crystal, his nose ring.
25 Q. Isn't it correct that he was with Nick Kaiser that

Thomas Albert Schaefer - Cross (by Mr. Simeone)

961.

1 weekend?

2 A. Yes.

3 Q. That he may have had some of his personal belongings in
4 Nick Kaiser's truck?

5 A. With him, yes. He would never have taken-- That crystal
6 was with him. His nose ring, he never took out. And the
7 crystal was with him everywhere he went.

8 Q. That would assume that your son, Josh, was alive to
9 prevent somebody from putting that in his truck, or Nick's
10 truck. Isn't that right?

11 A. I don't understand the question. If the stuff was in
12 Josh's-- or in Nick's truck, it was in Josh's pocket or
13 in his nose.

14 Q. Unless he was deceased before somebody took those items
15 and put them in Nick's truck?

16 A. I guess that's possible.

17 MR. SIMEONE: I've got no further questions, sir.
18 Thank you.

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

20 MR. WETLE: No, your Honor.

21 **WITNESS IS EXCUSED**

22 THE COURT: Mr. Wetle, did you wish to try to get one
23 more brief witness in this afternoon, or one or more?

24 MR. WETLE: Yes, your Honor. I have two that traveled
25 up from Spokane.

Thomas Albert Schaefer - Cross (by Mr. Simeone)

962.

1 THE COURT: All right.

2 Q. Mr. Hart, on Sunday, September 24th, year 2000, were you
3 called to investigate a burned vehicle in north Stevens
4 County?

5 A. Yes, I was.

6 Q. And do you remember when you responded-- what time you
7 arrived?

8 A. I arrived, I believe, at 5:15, or late in the afternoon on
9 Sunday afternoon, and I stayed for a period of time, and
10 then returned to the scene the following day.

11 Q. So basically that night you make your preliminary observa-
12 tions, and--

13 A. Yes. I was able to conduct a preliminary scene assessment
14 on Sunday night.

15 Q. Did you return to the scene the next morning?

16 A. Yes, I did.

17 Q. And what did you bring with you at that time?

18 A. I brought some equipment to excavate the vehicle, which
19 included some sifting screens and other equipment to use
20 to process the vehicle.

21 Q. Would you give a brief overview of how you conduct a scene
22 investigation or examination?

23 A. Yes. Every scene is approached with the same procedure.
24 We start-- It's a systematic approach using scientific
25 methods. We start with the exterior. In this case we

Lance Hart - Direct (by Mr. Wetle)

965.

1 have a vehicle that burned, so we start on the exterior.
2 We work in a-- I chose to work in a clockwise direction.
3 We made observations as to the heat or burn patterns on
4 the vehicle on the exterior, as well as the surrounding--
5 immediate surrounding area of that vehicle. We document
6 it, and then we move to the interior. We work from areas
7 of least damage to areas of greatest damage, and then we
8 also look for potential sources of ignition at the area of
9 greatest damage.

10 Q. I'd ask the bailiff to hand you what's been marked as
11 Exhibits 64 through 72, and ask if you can identify those.

12 A. Yes, I can.

13 Q. What are they, Mr. Hart?

14 A. They're photographs that I took of-- Some of the photo-
15 graphs that I took of the scene examination.

16 Q. And when were they taken?

17 A. On September the 24th, Sunday afternoon, and also on
18 Monday, September 25th.

19 Q. And do those photos fairly and accurately depict the scene
20 at the time the photos were taken?

21 A. Yes, they do.

22 Q. And are they a true and accurate representation of the
23 scene at that time?

24 A. Yes, they are.

25 MR. WETLE: Your Honor, we'd offer 64 through 72.

Lance Hart - Direct (by Mr. Wetle)

966.

1 MR. SIMEONE: I have seen them and I have no objection.

2 THE COURT: All right, 64 through 72 are admitted.

3 Q. Can you please take those exhibits, Mr. Hart, and step to
4 the jury box and show the jury what they represent?

5 THE COURT: If you want to just step down right there
6 towards the middle of the rail there. Mr. Wetle, did you
7 want him to go through them one by one?

8 MR. WETLE: Yes, please.

9 THE COURT: And if you would, please, sir, identify
10 them by number as you're talking about them.

11 A. The first photo is State's Exhibit Number 64. It's a
12 photograph of the vehicle as I observed it when I arrived
13 on Sunday afternoon. The vehicle is pointed in a direct--
14 or orienting towards the north. The barrier tape was up
15 when I arrived, and it basically shows the positioning of
16 the vehicle in the woods. It's difficult to see from this
17 photo, but one of the-- one of the things to note was on
18 the driver's side of the vehicle the vegetation or the
19 timber in that area was burned approximately 50 feet high,
20 as opposed to the brush on the passenger side. It was
21 much lower. There was very little damage on the passenger
22 side.

23 Q. Mr. Hart, you may pass that to Juror Number 6, and then
24 I'd ask you to explain the significance of Exhibit 65.

25 A. State's Exhibit Number 65 shows the starting point at the

Lance Hart - Direct (by Mr. Wetle)

967.

1 rear of the vehicle. I took this photograph to document
2 the vehicle's condition at the rear. It shows that the
3 heat or fire damage is high along the mid-point of the
4 tailgate, which is an indication that we had fire high in
5 the rear compartment of the vehicle. The bumper and
6 license plate are intact, and you'll notice that there's
7 differences to the heat damage of the taillights. You'll
8 notice that the passenger taillight is intact with a
9 little bit of heat damage to the top, while the passenger
10 side-- I mean the driver's side taillight is consumed.

11 Q. And, Mr. Hart, if you want to take off the yellow stick-
12 ies, I just have those on there for my aids. And then the
13 significance of Exhibit 66?

14 A. As I mentioned, we move in a-- This is State's Exhibit
15 Number 66. We move in a clockwise direction when we're
16 doing the exterior examination. This is the driver's
17 side, right rear quarter panel, and the significance of
18 this photo is I have a point of origin of where a fire was
19 initiated deliberately. We can see what is referred--
20 what we refer to as a distinct V pattern originating from
21 the gas tank, the gas tank filler spout. The cover is
22 open, and I have a heat or fire damage that's extending
23 vertical from that filler spout. This would be an area of
24 origin.

25 Q. And then the significance of Exhibit 67?

Lance Hart - Direct (by Mr. Wetle)

968.

1 A. State's Exhibit Number 67 is a closeup of that same right
2 quarter panel. It's the gas tank filler spout. The door,
3 you can see, is open. You can see the heat or the thermal
4 damage. It's heavy-- The side of the vehicle is heavily
5 oxidized, and there's a closeup view of the filler spout,
6 and if you look closely at that filler spout you'll see
7 what is a rolled-up piece of paper that's been fabricated
8 into a fuse. It's been stuffed into the gas tank filler
9 spout. It was ignited, it burned. I can explain more
10 about this later.

11 Q. Okay.

12 A. Unless you want me to--

13 Q. I'd go right into it.

14 A. Okay. The fire-- And someone intentionally started a
15 fire by using the gas tank and this paper fuse. However,
16 this would not cause the vehicle to burn up because the
17 gas-- the fuel in the tank of the automobile is too rich
18 of an environment. There's not sufficient oxygen, so this
19 would not cause the vehicle to burn up and have the
20 destruction that you will see in the later photographs.
21 This was one origin that somebody attempted to burn the
22 vehicle and it didn't work. Or it wouldn't work, either.

23 Q. And Exhibit 68, the significance?

24 A. State's 68 depicts the driver's side. As you see as we're
25 moving forward toward the passenger-- or the driver's

1 compartment of the vehicle, you'll notice that the heat or
2 the burn pattern on the door is much greater, so we have
3 a fire that is in the front compartment of the vehicle.
4 You can see that there's a heat pattern or a line that
5 extends from the compartment back, and it's up high in the
6 back, but it goes all the way to the floor in the front.
7 And the reason for that is our greatest fuel load is going
8 to be in the front compartment of this vehicle. We're
9 going to have the seats, the bucket seats, that are in the
10 front are our major fuel load, as well as the dash. It's
11 composed of polyurethane foam, which burns very, very
12 readily, and it produces lots of black smoke and lots of
13 heat. And that's why you're seeing much greater damage up
14 towards the front of the vehicle.

15 Q. And the significance of Exhibit 69?

16 A. The government's-- State's Exhibit Number 69 shows the
17 passenger side. This shows a little bit better detail of
18 what I was talking about, how the fire-- You can see the
19 damage is much more significant in the cab area, and you
20 can see that the heat or the fire damage externally
21 extends up high towards the back. Again, the tire is
22 intact and the taillight assembly is intact. So this is--
23 This is also directing towards the front of the cab where
24 we have our major fuel load.

25 Q. And 60-- I mean 70?

Lance Hart - Direct (by Mr. Wetle)

970.

1 A. State's Exhibit Number 70 shows the bed of the Bronco.
2 This metal frame was used to support the fiberglass top
3 that covered the bed of the vehicle, and it also depicts
4 a steel compressed gas tank. The items that you're seeing
5 that look white and charred, that's the remains of the
6 fiberglass top which covered the bed of the vehicle. It's
7 barely depicted, but in this corner you'll see what
8 remains of the tailgate handle on the interior of that
9 Bronco. It's composed of a light pot metal material, and
10 it was intact. It was heat damaged, and that also
11 supports that the fire is mainly in the front cab, and the
12 heat and the fire in the back is up high. That's why
13 we're not consuming that handle in the rear.

14 Q. And the significance of Exhibit 71?

15 A. State's Exhibit Number 71 depicts the cab area. It shows
16 the consumption and the damage to the interior of the
17 vehicle. You can see that all of the material that
18 covered the seats and the dash is consumed.

19 Q. And the significance of 72?

20 A. State's Exhibit Number 72 is the passenger side. I found
21 this door slightly ajar. It's been opened now and you can
22 see that the heat damage to this wing window is the window
23 is-- the glass has flowed towards the inside of the
24 vehicle. It's flowing in the direction of the heat
25 source. And it also shows the devastation of the cab area

Lance Hart - Direct (by Mr. Wetle)

971.

1 of the vehicle.

2 MR. WETLE: Thank you, Mr. Hart, and you could retake
3 the stand, please.

4 Q. Mr. Hart, based on your scene examination, training and
5 experience, were you able to form an opinion as to the
6 cause of this fire?

7 A. Yes.

8 Q. And what was that opinion?

9 A. That this was an incendiary fire. What I mean by that is
10 that this fire was intentionally set by a human being.
11 There was an open flame ignition to a paper torch that was
12 stuck into the gas tank of the vehicle, ~~and there was~~
13 ~~another intentional set on the inside or cab area of the~~
14 ~~vehicle.~~

15 MR. WETLE: Thank you very much. I have no further
16 questions, your Honor.

17 THE COURT: All right, Mr. Simeone, any cross examina-
18 tion?

19 MR. SIMEONE: Thank you, your Honor. Yes.
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1 LANCE HART

2 CROSS EXAMINATION

3 BY MR. SIMEONE:

4 Q. Gasoline is an accelerator? It's referred to as an
5 accelerator, right, Mr. Hart?

6 A. It is. It can be, yes.

7 Q. And then after that a vehicle would burn on its own?

8 A. Correct. Provided that there's sufficient oxygen to-- if
9 the fire's on the inside of the vehicle and the windows
10 were all up, it's quite possible that we could go into--
11 we can consume the oxygen in the vehicle and end up with
12 a smoldering fire that never-- never transitions into a
13 fully developed fire.

14 Q. That's not the case here, though? Right?

15 A. No, it's not.

16 Q. This vehicle burned.

17 A. Yes.

18 Q. Burned up.

19 A. It's a fully developed fire, yes.

20 Q. Now, you completed a report in connection with your
21 investigation, didn't you?

22 A. Yes, I did.

23 Q. And that's dated October 10, 2000?

24 A. I--

25 Q. Do you have a copy of your report with you, sir?

Lance Hart - Cross (by Mr. Simeone)

973.

1 A. No, I do not.

2 Q. Can I provide you with a copy to refresh your memory?

3 A. Sure.

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

5 THE COURT: Yes.

6 Q. Can you identify that document?

7 A. Yes.

8 Q. What is that?

9 A. It's the statement-- my statement that I prepared for the
10 Sheriff's Department as to the origin and cause of the
11 fire.

12 Q. And that contains your conclusion as to where the fire was
13 started and the rest of the results of your investigation,
14 doesn't it?

15 A. Yes.

16 Q. Now, I'll refer you to the last page, then, of your
17 report, and the conclusion that's contained thereon.

18 A. Yes.

19 Q. Can you read to the jury what your conclusion is in that
20 report?

21 A. Yes.

22 A paper fuse was fabricated from a rolled
23 paper and introduced into the gas tank
24 filler spout. An open flame was exposed to
25 the paper by human hand, resulting in open
flame combustion, and the vehicle fire
progressed full development.

Lance Hart - Cross (by Mr. Simeone)

974.

1 Q. Okay, now, I thought when I heard you testify just a
2 little while ago that you said you couldn't rule out some
3 evidence that there was another fire that was started from
4 inside the truck?

5 A. Based on the fire in the exterior of the vehicle, there
6 had to have been the introduction of an open flame to the
7 interior of the vehicle as well.

8 Q. Do you refer to that in your conclusion?

9 A. I believe in my discussion, under the discussion area, I
10 stated that the introduction of gasoline to the interior
11 of the vehicle could not be eliminated.

12 Q. Okay, right, but you never said anything in your discus-
13 sion or your conclusion, for that matter, that another
14 flame was started from inside the truck, did you?

15 A. I didn't identify a specific second point of origin due to
16 the consumption of the-- the total destruction of the cab
17 area.

18 Q. It's totally burned down, basically, isn't it?

19 A. Yes, it is.

20 Q. I mean all the--

21 A. So to be specific and say that the fire was started on a--
22 on the, for example, the driver's seat, you can't do that.

23 Q. But you can identify that there was an origin of flame at
24 the gas tank spout?

25 A. Yes.

1 Q. Because you identified that from that very familiar and
2 discernable V pattern, didn't you?

3 A. Yes.

4 Q. Okay, and that's--

5 A. It was-- It was readily apparent that someone had
6 introduced a fuse into the tank.

7 Q. Into the tank. And then that, if I understand your
8 investigation well enough, or your report well enough, and
9 your conclusions, it spread there from that point down the
10 side of the driver's-- or down the driver's side of the
11 vehicle?

12 A. No, it would have-- I believe-- I believe that the fire
13 in the vehicle caused the damage to extend to the rear.
14 That V pattern on the gas tank was limited to that area.
15 If you look at the photos on the passenger side, you can
16 see the progression of the heat or flame damage.

17 Q. I do, but I'm also looking at Exhibit 66, and isn't that
18 evidence of flame happening right there at the gas tank?

19 A. Yes, there was a pattern that extended vertical from the
20 gas tank.

21 Q. Okay, we're not getting away from the conclusion that
22 that's how it was started, are we?

23 A. That is one point of origin, yes, sir.

24 Q. But it's actually the point of origin that you highlight
25 in your conclusion, right?

1 A. That's-- That's one of them that I mentioned, yes.

2 Q. Well, you say that you mention it. I'm thinking this is
3 a fairly detailed report, isn't it? It has seven pages,
4 and I don't see any other facts in your conclusion to
5 militate that there was another source of combustion.

6 A. Again, if you'll read the discussion area, I think that I
7 allude to the area in the cab area could not be elimi-
8 nated, due to the total destruction. You cannot start a
9 vehicle on fire by introducing a wick to the gas tank.
10 The fuel/air mixture is too rich. The fire will not
11 progress to full development. It will not involve the
12 tank.

13 Q. But if there-- But if there was ignition from that point
14 on, wouldn't that start the rest of the truck on fire? An
15 ignition from the spout?

16 A. I'm not following you.

17 Q. If there was an ignition point at the spout which led to
18 other gasoline, wouldn't that then ignite the remainder of
19 the truck?

20 A. Are you asking-- Are you-- Let me follow you. You're
21 saying that there's a gasoline trail to the interior of
22 the vehicle?

23 Q. Well, let's assume that there's some other gasoline that
24 would ignite.

25 A. There very well could have been gasoline that was poured

1 on the exterior of the vehicle that led to the interior of
2 the vehicle.

3 Q. Well, assume then that the evidence might show that there
4 was some attempt to siphon gas from this tank. Wouldn't
5 that then result in some gasoline dripping out of the
6 nozzle of the gas tank and onto the body?

7 A. Correct.

8 Q. From there a fire can progress, can't it?

9 A. You're going to have to develop sufficient heat to conduct
10 that energy to the inside of the vehicle to get something
11 on the inside to decompose, produce a gas-- a gas or
12 ignitable vapor, and then extend the flame into the
13 vehicle.

14 Q. Well, I would like you to once again-- Maybe I'm thick
15 about this, but tell me how you get what you just told me
16 from the conclusion you have in your Paragraph 44.

17 A. My conclusion is simply just straight-- straightforward
18 that this was not an accidental fire, that it was a
19 deliberately set fire.

20 Q. But it's even more detail--

21 A. And it does not go into the specifics as to there was a
22 fire started at, for example, on the driver's seat, the
23 passenger seat, the bed of the vehicle. I just am saying
24 that the cause or the conclusion is that this was a fire
25 that was intentionally set.

1 Q. That it's-- Well, let's-- Let's assume-- Let's take
2 that as a given, but your conclusion is that a paper
3 fuse-- Let's read along so we know.

4 A paper fuse was fabricated of rolled paper
5 and introduced into the gas tank filler
spout.

6 A. And the following sen--

7 Q. Now wait, wait for a moment.

8 An open flame was exposed to the paper fuse
9 by a human hand, resulting in open flame
combustion. the vehicle fire progressed to
full development.

10 Is there any other part to the report?

11 A. I believe that there's a final sentence that's not-- It
12 may be on the following page, but my final sentence should
13 read that the fire was determined to be incendiary.

14 Q. Right.

15 The damage to the vehicle was estimated to
16 be \$5,000. The cause of this fire was
determined to be incendiary.

17 But that doesn't really take away from your conclusion,
18 does it? There's your last page.

19 A. Right. The fire was determined to be incendiary.

20 Q. Meaning that somebody lighted it up?

21 A. Correct.

22 Q. It's caused by a human being?

23 A. Correct.

24 Q. And you could have included in your conclusion that there
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was some other source of origin of this flame, but you didn't. Isn't that right?

A. That's correct.

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

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

MR. WETLE: Just briefly.

1 LANCE HART

2 REDIRECT EXAMINATION

3 BY MR. WETLE:

4 Q. It seems like in the direct testimony you said you really
5 felt that there were two flames being introduced to this
6 vehicle, one to the outside and one to the inside.

7 A. Correct.

8 Q. And assuming you have an enclosed vehicle, and maybe-- I
9 don't know if the windows are open or you got the cab over
10 the back at that time. Would it take gasoline into--
11 being introduced into the inside of the vehicle to cause
12 that type of fire?

13 A. Yes. If we had a-- for-- In this case, the paper that
14 was stuffed into the gasoline tank, that paper is going to
15 burn and you're going to have a vertical pattern onto the
16 paint or the exterior side of the vehicle. That flame
17 height is going to be limited by that fuel of that paper.
18 It's not going to be tremendous. It's not going to be so
19 much heat energy that we're going to get the vehicle to
20 become fully involved. We need more than just the paper
21 being introduced into the gas tank. The gasoline in that
22 tank is not going to become involved because it's too rich
23 of a mixture. So by looking at that gas tank, the only
24 fuel that we have there that's causing that V pattern is
25 the paper that's stuffed inside that gasoline filler

Lance Hart - Redirect (by Mr. Wetle)

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spout.

Q. And then to get the fire into the inside of the cab, you're saying that there was probably accelerant added inside the cab?

A. Yes. I couldn't eliminate the introduction of gasoline to the interior of the vehicle because the vehicle had set for such an extended period of time in the environment, and naturally over time the gasoline vapors are going to be lost, and there's also bacteria that will cause the gasoline to be degraded to where it's not detectable.

MR. WETLE: Thank you very much, your Honor.

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

MR. SIMEONE: I have some follow-up.

1 LANCE HART

2 RECROSS EXAMINATION

3 BY MR. SIMEONE:

4 Q. You agree that there was more damage from fire to the
5 driver's side of the vehicle than to the passenger side?

6 A. I-- I believe that, yes. On the driver's side, yes.

7 Q. Right. And why is that?

8 A. That could be an environmental condition. For example, I
9 believe that both-- both the passenger and the driver's
10 side window were open, and that if the weather is coming--
11 If you look at the photos, I mentioned how the trees were
12 burnt vertically on the driver's side. I believe the
13 weather at the time was a factor, and that's why you have
14 the driver-- the passenger side lens cap is protected,
15 and you have less damage on the passenger side. I think
16 it's an environmental factor, due to the weather. The
17 wind is blowing in that direct, and that's why we have
18 vertical spread on the driver's side.

19 Q. But that also militates towards the conclusion that the
20 fire started on that side of the truck, doesn't it?

21 A. No, it could be an environmental factor, like I just
22 stated, sir. It-- The fire starts in the cab of the
23 vehicle. If you have open windows, those are vent
24 openings, and the fire and the heat, or the gases, are
25 going to flow towards that opening. And if the weather is

Lance Hart - Recross (by Mr. Simeone)

983.

1 pushing the fire in that direction, you're going to have
2 vertical extension on the driver's side. You're going to
3 have more damage to the vegetation. That's exactly what
4 we had in this case.

5 Q. But it's also consistent with the fire starting on that
6 side of the truck, isn't it? It's not inconsistent with
7 that, is it?

8 A. No, it very well could have started on the driver's side.
9 It also could have started on the passenger side.

10 Q. You did a--

11 MR. SIMEONE: You know, your Honor, I want to move for
12 the admission of what we marked here as Exhibit Number 91,
13 because I think it's for impeachment purposes.

14 THE COURT: Well, first of all you have to get someone
15 to identify it.

16 MR. SIMEONE: I think I'd have Mr. Hart identify it.

17 Q. That is your report, isn't it, Mr. Hart? All pages now,
18 including __.

19 A. Yes. Now you have the final page, yes.

20 MR. SIMEONE: (Inaudible)

21 Q. And while I'm at it, and I don't know if you can remember
22 from the top of your head without reviewing your report
23 again, but you did a review and investigation of the
24 body's various parts, right, like the front exterior--
25 interior doors, et cetera?

1 A. Of the vehicle?
2 Q. Right.
3 A. Yes.
4 Q. Okay, and you made a determination about whether or not
5 the rear window of the vehicle was up or down. Did you
6 conclude that the window was up? Do you remember off the
7 top of your head?
8 A. I believe that I did say that the rear door that folds
9 down on the Bronco, if my recollection is correct, the
10 window was up.
11 Q. That would mean that the door was up as well?
12 A. The door was up. The door was up when I arrived on scene.
13 Q. Okay. Assuming nobody else did anything to interfere with
14 the evidence, that's the way the door would have been when
15 the vehicle burned up. Window closed.
16 A. Correct.
17 Q. Okay.
18 MR. SIMEONE: Any objection?
19 MR. WETLE: Well, no objection.
20 THE COURT: Exhibit 91 will be admitted.
21 MR. SIMEONE: Thank you. No further questions of Mr.
22 Hart. Thank you, Mr. Hart.
23 THE COURT: All right, thank you, sir. You may step
24 down, and you're excused. Thank you for your testimony.
25 And you may call your next witness, Mr. Wetle. You want

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1 to get Exhibit 91 from him, please?

2 MR. WETLE: Yes. And I-- I didn't realize it was
3 going to move along this far, Your Honor. Maybe we--
4 This is the time to--

5 THE COURT: You said you had one more witness from
6 Spokane?

7 MR. WETLE: I have one more, but it'll be a medium
8 length witness, I think.

9 THE COURT: Medium length? Okay. Well, maybe we
10 should call it a day then. I don't know. How tired is
11 everyone? _____ fatigued? A few bleary eyes. Let's take
12 up tomorrow morning at 9:00. We'll have the jury back at
13 9:00, and I'd like counsel and Mr. Grange to remain just
14 a few minutes after today to take up a couple of things.

15 And I guess I now remember that I'm supposed to remind
16 the jury, no discussion, please, about the case. Addi-
17 tionally, you're reminded again of the court's instruc-
18 tions not to read, view or listen to any reports in the
19 newspaper, radio or television on this-- on the subject
20 of this trial, if any. Again, that's a very important
21 instruction. And don't allow it to be discussed or read
22 or in any other way presented to you by someone else. All
23 right? So we'll have everyone else remain after the
24 jury's excused. We'll see you folks at 9:00.

25

985-A

1 JURY IS RECESSED FOR THE DAY

2 THE COURT: We have a couple of items of business left
3 over from this morning. I alerted counsel in chambers that I
4 had had a change of thought, given the additional information
5 that Mr. Simeone provided at the tail end of our argument.
6 Well, I guess, after my previous ruling on the Evidence Rule
7 609 issue, in that it does appear to me that that pushes it
8 over the edge for me that this is more like an adult convic-
9 tion if there are probation violations being adjudicated and
10 dealt with all the way as recently as '97. That makes it more
11 like a actual adult conviction as referenced in ER 609 (d).
12 And so Mr. Simeone will be allowed to ask the question of Mr.
13 Cunningham if he has been adjudicated of a burglary. Adjudi-
14 cated guilty of a burglary involving theft, and then Mr.
15 Cunningham will be required to answer that question. We're
16 not all that sure how he's going to answer it. He does have
17 counsel of his own and will no doubt make a decision in
18 conjunction with that attorney.

19 As the parties know, there can be no further evidence
20 introduced, other than a certified copy of the conviction.
21 That would be the only way that Mr. Simeone could pursue that
22 line of questioning, and he's not going to be able to inquire
23 about the probation violation because that would violate ER
24 404 (a) with regard to prior bad acts, inadmissible character
25 evidence. So I think--

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1 Counsel, do you both understand the parameters of that
2 ruling?

3 MR. SIMEONE: Yes, your Honor. This is how my question
4 would be phrased:

5 Do you have a prior adjudication for theft-
6 related burglary in 1994 in Suffolk County,
New York?

7 MR. WETLE: I would ask that that be modified somewhat,
8 your Honor, to say:

9 Do you have an adjudicate-- Have you been
10 adjudicated as a youthful offender of a
burglary involving theft in Suffolk County?

11 THE COURT: Well, the way that Mr. Simeone has suggested
12 it would be acceptable to the court, and I'm not going to
13 limit it further than that. The fact that it was youthful
14 offender, you can elicit that, I suppose, on redirect, if you
15 wish, from Mr. Cunningham, if you're trying to get it indicat-
16 ed that it was a juvenile offense or he was young at the time
17 or something. You can do that. But I'm not going to require
18 Mr. Simeone to word it that way, primarily because the rule
19 doesn't read that way.

20 So, now, anything else that we need to deal with before we
21 recess for today, or in the morning before the jury comes
22 back?

23 MR. WETLE: I don't think so.

24 MR. SIMEONE: I don't think there's anything that occurs
25 to me right now, your Honor.

1 THE COURT: Okay. Mr. Wetle, when is it that you do plan
2 on calling Mr. Cunningham, because we still do have that one
3 issue involving the necessity of a brief ER 104 hearing.

4 MR. WETLE: I was hoping that when we call him we'll
5 recess and excuse the jury and deal with the issue at that
6 time, Your Honor.

7 THE COURT: Well, but when was it you were planning on--

8 MR. WETLE: It's either going to be late tomorrow or
9 Wednesday.

10 THE COURT: Okay, 'cause I sure don't want to spend a lot
11 of time with the jury hanging out in the jury room doing that.
12 Can you make it early Wednesday?

13 MR. WETLE: Early--

14 THE COURT: As opposed to-- In other words, so that we
15 can do it at 8:30 in the morning and not have the jury cooling
16 their heels in the jury room while we deal with that issue.
17 Just trying to make use of their time that doesn't involve
18 waiting in the jury room.

19 MR. WETLE: Okay.

20 THE COURT: You think that would work?

21 MR. WETLE: We can try that, yes.

22 THE COURT: Or at the end of the day, for that matter. We
23 could send them home early, too. That'd be about the timing?

24 MR. SIMEONE: The only other thing that occurs to me is
25 whether or not I'm able to get a roster for tomorrow's

1 witnesses from the Prosecutor now. Likely roster.

2 MR. WETLE: I'm going to go back now and see who we got
3 left.

4 MR. SIMEONE: Is it fair to say you're going to start out
5 with the three witnesses that you didn't-- or four witnesses
6 you didn't call from today's roster first?

7 MR. WETLE: That would be yes.

8 MR. SIMEONE: Starting with Detective Paramore, and then
9 Robinson?

10 MR. WETLE: Paramore, Robinson, Caruso, Cameron, then
11 Jimmy Nailor.

12 THE COURT: Who was the Spokane witness for this after-
13 noon?

14 MR. WETLE: Ed Robinson, the firearms man with the
15 fragmented bullet.

16 THE COURT: Okay. And are you going to get to Mr.
17 Williams tomorrow?

18 MR. WETLE: Good question, Your Honor. It's going to be--
19 I think it will be-- Well, I'll tell you. No, actually, I
20 have to call the doctors tomorrow, so, Bob, this will not be
21 the order. The order will start with Dr. Lindholm and Dr.
22 Morgan, and then we'll move into these-- these witnesses.

23 MR. SIMEONE: Will we have Mr. Williams before we have Mr.
24 Cunningham?

25 THE COURT: Or do you know yet?

988-A

1 MR. WETLE: I don't know yet.

2 THE COURT: All right. And you're still counting on
3 calling Kim Kerpin at some point?

4 MR. WETLE: Yes.

5 THE COURT: And Maija Soucie?

6 MR. WETLE: Yes.

7 MR. SIMEONE: Will they likely be tomorrow?

8 MR. WETLE: Yes. Absolutely.

9 THE COURT: And Andrea Cameron?

10 MR. WETLE: Yes.

11 THE COURT: And Mr. Grange, Douglas Grange?

12 MR. WETLE: Yes. Or possibly Wednesday on Douglas Grange.

13 THE COURT: Okay.

14 MR. WETLE: I see Mr. Troberg is here. He might have had
15 an opportunity to talk to his client.

16 THE COURT: Well, he can let you know, you folks know, how
17 he's advised his client. If he feel that he needs to let you
18 know. All right. Anything else, then?

19 MR. SIMEONE: Yeah. I'm sorry.

20 THE COURT: Okay.

21 MR. SIMEONE: I know that the Prosecutor said he's having
22 trouble getting Duchene and Momanee--it rhymes--in the
23 courtroom. I'm wondering if he's going to-- if he antici-
24 pates any better success tomorrow. Are you anticipating that
25 you'll have them?

988-B

1 MR. WETLE: Oh, they're absolutely too afraid to come.

2 MR. SIMEONE: So we're not going to have them tomorrow
3 then either?

4 MR. WETLE: No. They just said, We're going to go to
5 Canada if we have to come and testify against this group of
6 people.

7 MR. SIMEONE: Did you ever consider a material witness
8 warrant?

9 MR. WETLE: The information that I needed was covered.

10 THE COURT: So you're striking off your witness list at
11 this time-- I'm sorry, I didn't get the names.

12 MR. WETLE: Duchene--

13 THE COURT: Oh, you already said that they were off.
14 Duchene and--

15 MR. WETLE: And Roxanne Momanee.
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988-C

1 THE COURT: Momanee, okay.

2 MR. SIMEONE: Your Honor, you know those people's wit-
3 ness-- those people's testimony directly contradicts that of
4 other witnesses they have, and I've been under the assumption
5 all along that we would have them here, and it's just today
6 that I understand that these people are begging off. And now
7 I'm in a position where I'm probably too late here myself to
8 request that material witness warrants be issued, but they're
9 important witnesses to me.

10 THE COURT: Well, you can make your application to the
11 extent that you didn't subpoena them. I think--

12 MR. SIMEONE: I did.

13 THE COURT: And they're not going to appear?

14 MR. SIMEONE: Well, I expected them to be here, at which
15 time I was going to subpoena them.

16 THE COURT: Oh, I see.

17 MR. SIMEONE: I mean the subpoenas are filed.

18 THE COURT: So you had subpoenas but you haven't served
19 your subpoenas, or had them served?

20 MR. SIMEONE: No, and part of the reason for that is
21 because we've had this shared witness kind of an understand-
22 ing, if not explicit, at least implicit and implied.

23 THE COURT: Well--

24 MR. WETLE: Not by my part.

25 MR. SIMEONE: Well, I'll remember that.

1 THE COURT: You have to serve your own subpoenas. You
2 have to arrange to get your own subpoenas served, Mr. Simeone.
3 If you haven't subpoenaed them, then that's not going to be
4 Mr. Wetle's problem or the court's concern at this point.
5 So--

6 MR. SIMEONE: Well, I want to be heard on that too, your
7 Honor. I talked to the Sheriff's office and they tell me:
8 Well, do we really want to serve these subpoenas, because
9 these are witnesses that the State will have here anyway, and
10 do you really want to duplicate this process. And I get into
11 a kind of discussion about whether or not we're going to be
12 incurring State's expenses here for no reason as a result of
13 the Sheriff having to pro-- in a form-- an informal-- as a
14 formality serve subpoenas on people who are going to be here
15 anyway. So again, I'm hamstrung, and I'm in a situation based
16 upon representations and beliefs I had that I'm going to have
17 witnesses here to where I can't make an argument for a
18 material witness warrant. And I feel like I'm prejudiced as
19 a result of that.

20 THE COURT: Okay. Well, I think you've made whatever
21 record that might be, Mr. Simeone, but I don't consider it to
22 be cause for much concern on the part of the court. It's up
23 to you to make sure-- or to make the judgment call as to
24 whether duplicate subpoenas need to be issued or whether they
25 don't. And so to the extent that they haven't been subpoenaed

1 naed, then they're not subpoenaed witnesses at this point.

2 MR. SIMEONE: Well, I mean the State's subpoenas were
3 served, so far as I know.

4 THE COURT: Well, I don't know if they were or weren't.

5 MR. WETLE: No, they were not served.

6 THE COURT: It's a question of whether yours were. If Mr.
7 Wetle wants to release witnesses he has subpoenaed from
8 attendance, he is perfectly entitled to do that, and to the
9 extent that they were subpoenaed by you, then they would have
10 to ask your permission as well. And so since they weren't,
11 then that's the end of that issue, I would think.

12 So I think you've made your record to the extent you
13 needed to make a record, but that will be my ruling on that
14 issue.

15 Anything else then? Mr. Simeone?

16 MR. SIMEONE: No, nothing here.

17 THE COURT: Mr. Wetle?

18 MR. WETLE: No, your Honor.

19 THE COURT: All right.

20 MR. WETLE: I will say that as to local people that the
21 Sheriff would serve, I think they did ask Mr. Simeone's
22 agreement that he would coordinate on local witnesses. Those
23 out of county of witnesses our Sheriff has nothing to do with.
24 It's a different matter.

25 THE COURT: All right.

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COURT REQUESTS COUNSEL AND DEFENDANT TO REPORT AT 8:50 A.M.

COURT RECESSED FOR THE DAY