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CLERK OF COURT OF APPEALS
STATE OF WASHINGTON III

file No. _____

FILED
IN SUPERIOR COURT STEVENS COUNTY
AUG 14 2001
PATRICIA A. CHESTER
COUNTY CLERK

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

STATE OF WASHINGTON,)

Plaintiff,)

vs.)

JOHN DOUGLAS GRANGE,)

Defendant.)

No. 20138-4-III

(Stevens County

No. 00-1-00190-20

RECEIVED
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CLERK OF COURT OF APPEALS
STATE OF WASHINGTON III

file No. _____

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

BEFORE: Hon. REBECCA M. BAKER, Judge

APPEARANCES:

For the Plaintiff:

JOHN G. WETLE
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For the Defendant:

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VOLUME 10 of 17
February 13, 2001
(Pages 1085 through 1220)

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COURT RECONVENED WITH JURY SEATED

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

MR. WETLE: Thank you, your Honor. The State would call Warren Dogeagle.

MR. SIMEONE: Your Honor, could we approach the bench for a moment, please?

THE COURT: Yes. We'll get the witness sworn in while you folks get over here.

WITNESS IS SWORN

UNRECORDED SIDEBAR

THE COURT: Ladies and gentlemen, bear with us. Mr. Wetle, I'm going to go ahead and ask the witness his name and identifying information while you make your trip downstairs for those notes.

MR. WETLE: I'm sorry, your Honor.

THE COURT: Mr. Wetle needs to run down and get something off his desk, and then we'll be resuming here.

Sir, would you please state your name for the record?

MR. DOGEAGLE: Yes. Warren Dogeagle.

ADJUSTMENT TO MICROPHONE

THE COURT: All right, sir, you said Warren Dogeagle?

MR. DOGEAGLE: Yes.

THE COURT: And, sir, would you spell your last name, please, for the record?

MR. DOGEAGLE: D-O-G-E-A-G-L-E.

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THE COURT: And that's all one word?

MR. DOGEAGLE: Yes, it is.

THE COURT: And your current business address, sir?

MR. DOGEAGLE: 930 Tacoma Avenue South, Tacoma, Washington 98402.

THE COURT: Thank you. We'll wait for Mr. Wetle. He should be back momentarily.

MR. WETLE RETURNS

THE COURT: All right, the witness has given his name and his address, and we have the microphone adjusted, so we're ready for your questions, Mr. Wetle.

MR. WETLE: Thank you, your Honor. Sorry for the delay.

WARREN DOGEAGLE

Being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. WETLE:

Q. Mr. Dogeagle, could you state your occupation, please?

A. I'm a detective with the Pierce County Sheriff's Department.

Q. And how long have you been a detective for the Pierce County Sheriff's office?

A. I've been a detective since last July.

Q. How long have you been employed with them?

A. A little over 24 years.

Warren Dogeagle - Direct (by Mr. Wetle)

1086.

1 Q. And what experience do you have in narcotic investiga-
2 tions?
3 A. Well, I have three years. I was assigned to our Special
4 Investigations Unit as a narcotics investigator. Then
5 after that I was assigned to the Drug Enforcement Adminis-
6 tration's Task Force in Tacoma for a year and a half.
7 Q. Have you participated in various investigations?
8 A. Yes, I have.
9 Q. And how many? Could you estimate?
10 A. Oh, probably well over a hundred.
11 Q. Have you testified in court on narcotics investigations?
12 A. Yes.
13 Q. And have you participated in controlled substance trials?
14 A. Yes.
15 Q. And have you received any certification?
16 A. Yes. I'm also on our clandestine lab team, have been
17 since 1996.
18 Q. And what training have you received in the narcotics
19 investigation field?
20 A. Probably well over several hundred hours. I've had the
21 basic and advanced drug enforcement training sponsored by
22 the Washington State Criminal Justice Training Commission
23 and the DEA, and then numerous other classes and training
24 and seminars, both-- some by the State and some by the
25 federal officials.

1 Q. And have you conducted any training in narcotics?

2 A. Yes, I have participated in drug awareness classes for the
3 public and also for training of our own personnel and
4 other law enforcement personnel.

5 Q. Detective Dogeagle, generally speaking, how do people
6 transact drug business in our state?

7 A. ~~Well, they usually have a system set up with-- you want~~
8 to say your top echelon people deal with certain individ-
9 uals only that they already know and have an established
10 rapport and business dealings with. And then it just--
11 It's like a food chain. They just sell down the line,
12 increasing the cost of the product, and sometimes increas-
13 ing the product by stepping on it or cutting it. You
14 know, making more of it, and selling it.

15 Q. How do they-- That is the overall scheme. I'll call it
16 the pyramid, so to say-- so to speak. How would they
17 actually do the transacting? How do they make it work?
18 Do they use mail or--

19 A. They-- Yeah, there's several schemes. One in particular
20 that I've noticed with LSD trafficking they will set up a
21 mail system, and they use, say, FedEx, and if I was going
22 to mail-- Say if I was dealing to you, I would-- You
23 would get an address and say I'm going to be over at Joe
24 Brown's house and address it, not to your real name, but
25 you'd say address it to Bill Smith at this address. And

1 I'd say okay, I'm going to FedEx you so much quantity of
2 product, FedEx it, and you should get it within a day or
3 two.

4 ~~MR. SIMEONE: Your Honor, I'm going to object to that.~~
5 ~~I've let this testimony go and I think maybe in error. I~~
6 ~~don't see where it's relevant to our case.~~

7 ~~THE COURT: Well, overruled. We had the pre-trial~~
8 ~~ruling on that, so your objection will be overruled.~~

9 Q. How do-- And so when you say they use Bill Jones, that
10 would be not a real name?

11 A. Correct. And then you would pay me the same way. You
12 would wire money through one of the companies that are
13 available to the general public, and let's say we'll send
14 it to this address for this name, and then when the money
15 arrived I would-- I would collect it or I'd have somebody
16 collect it for me, again using fictitious names.

17 Q. How do people in this industry keep track of traffickers
18 who might be cooperating with law enforcement?

19 A. Well, they have a very good word of mouth system. Right
20 away somebody hears about somebody being arrested, they're
21 going to get on the phone, let 'em know, hey, so-and-so's
22 been busted at this location or by these people or, you
23 know, whatever agency it is. And so it's almost instanta-
24 neous that the news gets out.

25 Q. So being arrested would certainly be the red flag for

1 anybody in that industry?

2 A. Oh, yes.

3 Q. And then from those arrests, what flows from that arrest?

4 A. Well, they'll monitor the individual. They might send
5 somebody to the individual's arraignment to be in court to
6 hear what's going on. They will, you know, just try to
7 keep track through their own grapevine, if you will.

8 Q. And will they attempt to get public records to check
9 whether charges have been filed or--

10 A. Yeah. They will-- They can do that.

11 Q. Do they use names other than their true given names?

12 A. Yes. It's-- That's kind of the way of doing business.
13 They'll-- Maybe they'll say that JoJo's been busted, and
14 that's not his real name but that's how they all know who
15 it is. And his real name may be known to some of the--
16 more likely the people that he's been buying from.

17 Q. So they use nicknames, in other words?

18 A. Yes.

19 Q. And how do the upper level traffickers make their connec-
20 tions?

21 A. Well, like I said earlier, it's-- They're going to have
22 a few people that they deal to, and that'll be it. They
23 won't take on any new people. They'll just deal to maybe
24 a select few, maybe half a dozen, maybe more. And then
25 they don't care who those people deal to. They just say

1 I don't want to meet any new people, I'm dealing with you;
2 next time we deal--it's kind of an understanding--you
3 don't bring anybody new with you, and we'll meet where I
4 tell you to meet. And this is how the deal will be
5 trans-- transacted.

6 Q. So basically you're saying it's a one-on-one proposition--

7 A. Yes.

8 Q. --or can there be other people involved?

9 A. More than likely it's going to be one-on-one. I might--
10 I might employ a runner. I might say well, I'm going to
11 send Jimmy to meet you at this location, but I-- You
12 know, basically if I'm selling to you, I will set up the
13 parameters of how the deal will go down, and if you don't
14 like it, well, then, I'll deal with somebody else.

15 Q. How would you describe families in the drug trafficking
16 organizations?

17 A. Well, that's-- That's basically it. It's another name
18 for organization. They just happen to adopt the term
19 family, and I think originally it used to be more of a
20 generic-- just the family type, or the family name, but
21 then after awhile there were other like sub-groups would
22 call themselves the Amber Family, or the Silver Family.
23 And that would also denote their specific product. So
24 people would come around to a concert and go: I'd like to
25 get some silver acid, or some amber acid, or white fluff.

1 And these would be traced back to certain groups or
2 families, they would call themselves.

3 Q. And do they share-- Do these families share anything in
4 common?

5 A. Pardon me?

6 Q. Do they share anything in common, these families?

7 A. Well, the-- Yeah, the lifestyle. It's kind of copying
8 the hippie lifestyle, the sixties, footloose, fancy free,
9 going to certain gatherings, barter fairs, certain concert
10 venues. The big one used to be the Grateful Dead, and
11 then after that the spinoffs from there. Oh, I think one
12 is Phil Lesh and Friends, would be an example.

13 Q. Is that-- Is Phil Lesh a member-- a member of the
14 Grateful Dead band or--

15 A. Yes.

16 Q. And he just carried on?

17 A. Right. He has his own group.

18 Q. What type of controls do the families use to keep their
19 traffickers in line?

20 A. Well, it depends on how serious, if you want to call it
21 infraction, against their code. It can go from anywhere,
22 probably, from ostracizing, black-balling, ignoring them,
23 shunning them, to ripping them off, threats, assaults, to
24 murder.

25 Q. Do you know any terms that you've heard that are used for

1 forms of punishment?

2 A. Yes. One-- One threat is called spinning, where the--
3 It's understood that the offender, if he was to cooperate
4 with law enforcement, at some point in time they would
5 catch up to him and overdose them with LSD, and the
6 implication being that they'd be a vegetable or something
7 like that the rest of their life.

8 Q. And difficult-- How difficult would that be for law
9 enforcement to tell the nature of the punishment?

10 A. Well, you just-- One day you'd have someone who was
11 somewhat normal, the next you'd have somebody that was
12 kind of a babbling-- if they're even talking, just out of
13 their mind.

14 Q. How mobile are the traffickers?

15 A. Very. It's like I say, the part of the season runs, say,
16 from the-- if you want to call it the barter fair season,
17 or the concert season, which goes year round, but the
18 other-- the main season seems to run from spring through
19 fall when you have all these outdoor events. Hemp-fests.
20 Like I say, the barter fairs and, like I say, different
21 concert venues. And some of these same people will just
22 travel like a circuit. Almost like a rodeo circuit, or a
23 race car circuit. You have the same crowd kind of going
24 around for maybe eight months, nine months out of the
25 year.

1 Q. Detective Dogeagle, what were your duties with respect to
2 the drug task force in Tacoma?

3 A. I was a narcotics investigator, and I happen to get
4 involved with different LSD traffickers.

5 Q. And were you aware of any organized LSD trafficking in
6 your area?

7 A. Yes.

8 Q. And how did you break into that organization?

9 A. ~~Actually, it started with the Bremerton police. Those~~
10 ~~detectives, they caught a person selling LSD in their~~
11 ~~jurisdiction, and when that person was caught he told the~~
12 ~~Bremerton-~~

13 Q. Well, before we get to the specifics, Detective Dogeagle,
14 how generally do you break into it? I'm sorry. To
15 clarify, just generally how do you get into it, and once
16 you get into it, where do you-- what do you do?

17 A. Well, you-- Usually somebody gets arrested and then
18 they're willing to cooperate. And then their cooperation
19 leads to the next higher up on the food chain, if you
20 will. They're willing to say well, I'll give you my
21 dealer, my source of LSD.

22 Q. And sometimes does it go both ways?

23 A. Yes.

24 Q. Up and down?

25 A. Yes.

Warren Dogeagle - Direct (by Mr. Wetle)

1094.

1 Q. When it goes down, what's that called?
2 A. A reverse.
3 Q. And how does that work?
4 A. Well, you take someone you've arrested, and they're going
5 to say well, so-and-so is a big customer of mine, and so
6 you rig up some dummy dope and then set up a transaction.
7 Then you monitor the transaction and make an arrest after
8 they exchange money and the product.
9 Q. So that person caught would then sell to one of their
10 buyers?
11 A. Yes.
12 Q. And that's called a reverse?
13 A. Yes.
14 Q. And then going the other direction?
15 A. It's just-- just making a buy. A buy bust.
16 Q. Going up the chain?
17 A. Yeah.
18 Q. And is that normal in terms of when somebody gets arrested
19 or--
20 A. Yes, it's very normal.
21 Q. ~~How did you specifically get information on Nick Kaiser?~~
22 A. Like I started to say earlier, it was the Bremerton police
23 caught a guy making a deal with LSD to an undercover agent
24 that they had employed, and then he-- After he was
25 caught, he said well, I'm willing to cooperate, I'll give

1 you my source of LSD. And then they called us and I was
2 notified to contact the detectives and debrief this guy
3 that they had, and then he named Nick Kaiser as his source
4 of LSD.

5 Q. So once Nick Kaiser was named, what did you do with that
6 information?

7 A. Then we said well, let's-- Can you make a couple buys
8 from him, and we said yeah, no problem. So we set up a
9 ~~couple different buys, and the--~~

10 Q. Where did they take place?

11 A. At Nick Kaiser's residence on Whidbey Island.

12 Q. And after the- I take it the buys were successful?

13 A. Yes.

14 Q. And then what happened?

15 A. I obtained a federal search warrant for the residence of
16 Nick Kaiser on Whidbey Island.

17 Q. And so having obtained the arrest warrant, what did you
18 do?

19 A. We--

20 Q. Actually, I should say when did you get that? It wasn't
21 an arrest warrant, it was a search warrant?

22 A. Yes, search warrant.

23 Q. Pardon me. And the search warrant was so you could go in
24 and search the residence?

25 A. Right.

1 Q. And when did you get that search warrant?
2 A. We had it drawn up and then on the same day had it signed,
3 on April 25th of 2000.
4 Q. And then you took the warrant and went to the residence?
5 A. Yes.
6 Q. And what did you do when you got there?
7 A. We executed the search warrant at the residence. Nick
8 Kaiser was there with his girlfriend.
9 Q. Do you know her name?
10 A. Yes, Shauna Daniels.
11 Q. Does she have a family name that you know of?
12 A. Yes, she's also known as Loki.
13 Q. And so she was arrested and he was arrested?
14 A. Yes.
15 Q. And what was the nature of that arrest?
16 A. For possession and delivery of LSD.
17 Q. Okay, how were they arrested?
18 A. Shauna Daniels was arrested in the residence as we
19 entered, and then Nick Kaiser was arrested after he fled
20 out a side door. Officers on the perimeter tackled him
21 outside in the brush.
22 Q. Okay, and what was Mr. Kaiser in the process of doing?
23 A. At that time he was cutting the concentrated form of LSD
24 and thinning it out, diluting it, to make it ready for
25 marketing.

1 Q. For resale?

2 A. Yes.

3 Q. And so did that happen on-- What day did that happen on?

4 A. This was April 25th of 2000.

5 Q. Same day the warrant was issued?

6 A. Yes.

7 Q. After he was arrested, what happened?

8 A. Mr. Kaiser was taken away to the Island County Sheriff's

9 Office, and then we proceeded to process the residence as

10 a crime scene.

11 Q. And while you were processing the crime scene, what was

12 going on?

13 A. People were arriving to-- at the same scene to-- Well,

14 they were saying they just came by to visit.

15 Q. What are we-- When is this taking place, by the way?

16 A. Pardon me?

17 Q. When is this taking place?

18 A. While we are processing the residence.

19 Q. What time of day?

20 A. This is in the early afternoon to late afternoon. All

21 afternoon long.

22 Q. And what happened to some of those people?

23 A. Some of them were arrested when they arrived and were

24 found to have controlled substances with them.

25 Q. Would that have-- Would that type of action on your part

1 facilitate the dissemination of information?

2 A. Oh, yes.

3 Q. Did you subsequently talk to Nick Kaiser that night?

4 A. Yes.

5 Q. And what came of those discussions?

6 A. Well, Nick wanted to cooperate with us. He wanted to know
7 what he could do to cut his losses, if you will.

8 Q. And what type of agreement did you make with Nick Kaiser?

9 A. Well, we supplied him with a waiver form that he read and
10 signed, and said if you're willing to cooperate we can let
11 the U. S. Attorney know that you're willing to cooperate
12 and are trying to, and they will consider that.

13 MR. WETLE: I'd ask the bailiff to hand the witness
14 what's been marked as Exhibit 100.

15 Q. I'd ask if you can identify that.

16 A. This is a copy of the waiver of rights form, it's two
17 pages, which Nick Kaiser signed, and I signed as a witness
18 and another Task Force officer also signed it.

19 Q. And what day does it say it was signed on?

20 A. Four-twenty-five of 2000.

21 MR. WETLE: Your Honor, we'd offer State's Exhibit 100.

22 MR. SIMEONE: No objection.

23 THE COURT: Exhibit 100 is admitted.

24 MR. WETLE: I'd ask you to hand that to the witness,
25 please, Mr. Bailiff.

1 Q. Detective Dogeagle, I'd direct your attention to the last
2 two paragraphs and ask if you could read those to the
3 jury.

4 A. Sure.

5 I understand that at a future date I will be
6 charged with an offense or offenses as a
7 consequence of the activity which lead to my
8 arrest. No promises have been made concern-
9 ing the nature of those charges or their
10 disposition. I have been told, however,
11 that my cooperation will be brought to the
12 attention of the United States Attorney's
13 office for their consideration.

14 No threats have been made to me regarding
15 the waiver of my rights or my decision to
16 cooperate. My decision rests solely on the
17 hope that my cooperation will benefit me in
18 connection with the prosecution and disposi-
19 tion of the criminal charges to be brought
20 against me.

21 Q. And when was that particular waiver done? You dated it
22 the 25th. Do you recall when on the 25th?

23 A. Probably right around dusk. Probably around 5:00 o'clock
24 or 6:00 o'clock in the evening, I believe.

25 Q. Okay, after the statement was given, what did you proceed
to do?

A. Debrief Nick, and then he said--

Q. That means you got statements from him?

A. Yes.

Q. And then?

A. And then we took him with us and started to work on a
couple of deals.

Warren Dogeagle - Direct (by Mr. Wetle)

1100.

1 Q. Okay, now, is time of the essence in these matters, or--
2 A. Yes.
3 Q. And why is that?
4 A. Because sooner or later the word is going to get out that
5 he'd been arrested and might be cooperating with law
6 enforcement.
7 Q. And so what did you do?
8 A. We set up-- The first thing we did was call the fellow
9 that he dealt to and set up a reverse for \$10,000 worth of
10 LSD. And this was set up in the Tacoma area, and it was
11 concluded two days later with an arrest.
12 Q. And after that, what happened then?
13 A. Then we also started working on his source of getting LSD,
14 trying to make a-- set up a meeting where Nick said he
15 owed this guy, I think, about \$3,000, and then if we could
16 set up that meeting and witness the exchange of the cash,
17 we would arrest this next fellow.
18 Q. Which would have been his source?
19 A. Yes.
20 Q. And so that was money that Nick already owed him?
21 A. Right.
22 Q. From prior deals?
23 A. Drug debt, yes.
24 Q. Was he taken before any magistrates or court proceedings
25 at this time?

Warren Dogeagle - Direct (by Mr. Wetle)

1101.

- 1 A. Yes, he was.
- 2 Q. And what proceedings did he go through?
- 3 A. First he had an arraignment. I think it was that Friday
- 4 of that same week, and he had hearings where he was
- 5 released on conditions that he report to pre-trial
- 6 services, and maintain contact with us.
- 7 Q. Given the nature of the industry, is that-- is that risky
- 8 when a person gets released after an arrest?
- 9 A. It can be, yes.
- 10 Q. And how do you deal with that?
- 11 A. Well, we try to make it as safe as possible. Like I say,
- 12 he's required to keep in contact with us daily, and
- 13 that'll often either have him, or whoever it is, calling
- 14 us and/or us calling them.
- 15 Q. What would-- Did he have a story that he was going to be
- 16 able to tell other people?
- 17 A. Yes.
- 18 Q. And what is the story?
- 19 A. The story was going to be that he was only arrested for a
- 20 marijuana violation.
- 21 Q. And by who?
- 22 A. By the Island County Sheriff's office.
- 23 Q. The local Sheriff's Office?
- 24 A. Yes.
- 25 Q. Does that seem to be an okay thing?

Warren Dogeagle - Direct (by Mr. Wetle)

1102.

1 A. Yeah. That would not make, you know, the _____ dealers
2 quite as nervous or worry about it.

3 Q. So that was his cover?

4 A. Yes.

5 Q. After he's arraigned and then subsequently released the
6 first part of May, what happens then during the month of
7 May?

8 A. We tried to arrange a meeting with his source for getting
9 LSD, and it just did not work out where we could set up a
10 situation where we could monitor it and keep it a safe
11 operation.

12 Q. And by trying to set up the deal, can you tell the jury
13 what you did?

14 A. Well, he would call and page his source and try to arrange
15 a meeting some place saying, you know, I can only get this
16 far, my ride can only get me here and can you come meet me
17 at this city or this town or this location. And sometimes
18 he wasn't always able to make the contact.

19 Q. When he did make contact, what was the response from the--
20 I'll say the target.

21 A. Okay. As time went on the target was getting a little
22 antsy, and then Nick started to become-- became a little
23 bit worried about it, and he goes:

24 I don't know, it's-- his attitude is chang-
25 ing.

1 And then he said:

2 Well, it sounds-- you know, sounds like
3 it's getting-- he's getting hinked up, so
4 let's just put it aside for now until we
 come up with a better plan.

5 Q. So that person never was arrested and to your knowledge
6 has not been to this day?

7 A. Correct.

8 Q. On April 25th, when Nick Kaiser was arrested, what
9 happened to his girlfriend, Loki, or Shauna?

10 A. Well, we-- At the time she was going to be held by the
11 State. State charges. Island County was going to-- had
12 arrested her, and then I think they released her the next
13 day.

14 Q. Could you tell the jury the methodology that Nick Kaiser
15 used to get his LSD from his source?

16 A. He would contact his source, and then the source would
17 tell him: Okay, go down to San Francisco Bay area, get a
18 motel and page me, call me after you've got it, and then
19 I'll meet you there. And this his source-- Nick would do
20 this, he'd fly down, take his cash with him, get a motel--

21 Q. Or take his-- He'd take the drugs with him? Oh, he's
22 going to buy drugs.

23 A. Right.

24 Q. He's taking the cash with him. I'm sorry.

25 A. Right. And this other fellow, his source, would show up

1 in the Bay area as well and come visit him at his motel,
2 and Nick would front him the money for the LSD, and then
3 the source would take off with the cash and say well, I'll
4 be back. And he'd go off and maybe revisit without
5 delivering any dope a couple times. Call Nick. And
6 eventually he would deliver to Nick the quantity of LSD
7 and then leave. And then Nick would take his LSD and
8 bring it back up to his home on Whidbey Island, and then
9 dilute it out and make his sales.

10 Q. How often was that occurring?

11 A. About every two weeks.

12 Q. How many transactions did Kaiser complete through his
13 source?

14 A. He said ten to fifteen.

15 Q. And how much-- What are we talking about, involving what
16 dosage units?

17 A. He said he had done deals anywheres from 10,000 doses to
18 70,000 doses at a time.

19 Q. And what would be the price per 10,000 doses?

20 A. Forty-five hundred dollars.

21 Q. So for 70,000 you'd take seven times 4500?

22 A. Yes.

23 Q. For that transaction?

24 A. Right. And then he mentioned that the next price break
25 would be at 100,000 doses or more.

Warren Dogeagle - Direct (by Mr. Wetle)

1105.

1 Q. So the price would come down?
2 A. As the quantity went up.
3 Q. Have you subsequently learned that this similar methodolo-
4 gy is used by other people trafficking in the LSD market?
5 A. Yes. Yes, it is.
6 Q. On May 15th did the Grand Jury act in Mr. Kaiser's case?
7 A. Yes, they did.
8 Q. And what did they do?
9 A. They indicted him for delivery and possession of LSD.
10 Q. And what happened in the month of May? Could you describe
11 his cooperation with you?
12 A. Yes. He basically was cooperating, maintaining his
13 obligations to pre-trial services and to us.
14 Q. And what happened in June?
15 A. In June he stopped calling us. I think the last time I
16 talked with him was, I believe, June 9th, and then that
17 weekend-- that was the last time we heard from him.
18 MR. WETLE: Thank you very much, Detective Dogeagle.
19 I have no further questions at this time, your Honor.
20 THE COURT: All right, Mr. Simeone?
21 MR. SIMEONE: Thank you.
22
23
24
25

1 WARREN DOGEAGLE

2 CROSS EXAMINATION

3 BY MR. SIMEONE:

4 Q. Detective Dogeagle, you remember that we were in the
5 courtroom last week at maybe around this time, don't you?

6 A. Yes.

7 Q. Okay, and we discussed at that time whether or not you
8 considered yourself an expert with regards to this
9 organization called the Rainbow Family.

10 A. Right.

11 Q. And do you say that you are considered an expert?

12 A. Not on, I believe, the Rainbow Family.

13 Q. The investigation you did here centered upon-- You're
14 interested in what happened upstream of Nick Kaiser,
15 really, weren't you?

16 A. Well, the ultimate goal would be to break up the organiza-
17 tion, the manufacturers and the first line distributors.

18 Q. But it's important to you to know what's happening
19 upstream, right? The seller to him?

20 A. Yes.

21 Q. Because that's really a way to try to constrict this flow
22 of drugs, is to stop it from the higher sources, right?

23 A. Right.

24 Q. Okay. Now, you said that during the course of your
25 investigation you tried to arrange to have Mr. Kaiser go

Warren Dogeagle - Cross (by Mr. Simeone)

1107.

1 about his business with that person who was at the next
2 level above, right?

3 A. Right.

4 Q. And he got close to doing that with you, correct?

5 A. Yes.

6 Q. Because there was-- there was-- It sounds to me like,
7 from your testimony, that there was probably seven or
8 eight different attempts between him and his supplier to
9 try to get this transaction consummated. Is that right?

10 A. Right.

11 Q. Okay. Now, that would have been, of course, after time,
12 and Mr. Kaiser on April 25th would have signed that
13 release agreeing that he was going to cooperate with you,
14 correct?

15 A. Yes.

16 Q. Okay. Now, do you know-- Just to digress for a moment,
17 do you know when this barter fair here in Northport, the
18 spring barter fair, took place?

19 A. I believe that weekend of June 10th.

20 Q. No, I'm talking about the spring barter fair that's in
21 April. Do you know when that occurs? If you know, sir.

22 A. No, not right off the bat I don't.

23 Q. Okay, let's go back to what I was talking about. This
24 would have been information that he was giving you, or
25 arranged buys that were attempted after April 25th, right,

Warren Dogeagle - Cross (by Mr. Simeone)

1108.

1 because that's when he signed his release?

2 A. Okay, I'm not sure what-- which arranged buys you mean.

3 Q. Your-- The buys that would be upstream of him.

4 A. Okay, trying to get this fellow that he owed money to?

5 Q. Right, that he owed money to, and I thought I misunder-

6 stood you. Did you say he owed seven or \$8,000?

7 A. No.

8 Q. Did you say three or \$4,000?

9 A. I said about three is what he said.

10 Q. Wasn't it your testimony last week that it was around

11 seven or \$8,000?

12 A. No.

13 Q. No? You recall three or four?

14 A. I remember three.

15 Q. Okay, that's fine. This is an individual who apparently

16 would have been talking then to Nick on those occasions

17 when the buy was being attempted, correct?

18 A. Yes.

19 Q. He never did put him off, did he? I mean to say that he

20 wouldn't talk to him, would he?

21 A. Well, sometimes he, like I say, didn't answer the phone or

22 the page. I guess you'd say that would be putting him

23 off.

24 Q. Or it might be that a person in that line of business is

25 very busy, correct?

1 A. Yes.

2 Q. Okay, so we don't really know that he's putting him off
3 because he didn't answer. Is that right?

4 A. I suppose.

5 Q. But more to the point, he had eventually got to a position
6 where he was going to have Nick come over to his house,
7 isn't that right?

8 A. Right.

9 Q. How is that any different in exposing himself to potential
10 arrest for a crackdown than if he arranged a buy in a
11 hotel room or something to that effect?

12 A. We can control a hotel room or a place in the public. We
13 can't control this guy's house.

14 Q. But wait a minute. Wouldn't he be buying the substance
15 with money?

16 A. Yes.

17 Q. Doesn't the DEA have an ability to, or your organization,
18 have an ability to mark money or somehow identify it?

19 A. Yes.

20 Q. So I mean you can control that transaction too, can't you?

21 A. To a certain extent.

22 Q. Okay, so really, whether it's a hotel room or home or the
23 park or some other place, there's a method by which you
24 can arrest this individual if the deal is going to be
25 consummated.

Warren Dogeagle - Cross (by Mr. Simeone)

1110.

1 A. Yes.

2 Q. Okay. So now let me understand. It's your-- Is it your
3 belief that the individual would-- or individuals would
4 have known that Nick was an informant at that-- I don't
5 even like to use the word nark. I want to use the word
6 informant. Is that okay with you?

7 A. Yeah.

8 Q. Okay, is it your belief then that people knew that Nick
9 was an informant?

10 A. I think some did or had strong suspicions and probably
11 were voicing them.

12 Q. But you don't have any-- You don't-- You believe that
13 and you're speculating about that in particular, aren't
14 you, sir?

15 A. No, because I had heard some things back from other law
16 enforcement that, for one, Shauna Daniels was down in the
17 Vancouver/Portland area within a week or so saying that
18 Nick was a nark.

19 Q. Okay, but that's his girlfriend.

20 A. Right.

21 Q. So did you ever hear it from anybody else to that effect,
22 that he was an informant?

23 A. Not that I can recall.

24 Q. Okay. Now just let me digress so I don't lose my train of
25 thought, but I do want to ask you that question. Shauna

Warren Dogeagle - Cross (by Mr. Simeone)

1111.

1 Daniels never got killed, did she?

2 A. Not that I know of.

3 Q. She's alive right now, isn't she?

4 A. I don't know. I don't know where she is.

5 Q. You'd have heard, wouldn't you?

6 A. Eventually.

7 Q. And she got released a day or two after her arrest, isn't
8 that right?

9 A. Yes, I believe so.

10 Q. With the same kind of fear that people, you're saying or
11 at least indicating to the jury, people would have of
12 Nick Kaiser being an informant because of his early
13 release, people would have that same kind of a fear of
14 Loki, wouldn't-- wouldn't they?

15 A. They could.

16 Q. Okay.

17 A. Sure.

18 Q. Now, in the course of your investigation, and I asked you
19 this last week, I want to make sure that I understand your
20 testimony, did Nick Kaiser ever give you any information,
21 any information, that there was drug dealing going on with
22 an individual named Rob Schultz?

23 A. Not that I recall.

24 Q. And you would know that, though, Mr. Dogeagle, wouldn't
25 you? I mean this is an important fact in this case. You

Warren Dogeagle - Cross (by Mr. Simeone)

1112.

1 would know that, wouldn't you?

2 A. If he had come out and said that my source is Rob Schultz.

3 Q. Right. I mean that would be a big hit here, wouldn't it?

4 Wouldn't that be a big kind of a bell that's rung?

5 A. Sure, that'd be important.

6 Q. Okay, so he didn't then? Isn't that the right answer? He

7 didn't.

8 A. Correct.

9 Q. Ditto with regards to an individual named Shadow, isn't

10 that correct?

11 A. I believe so.

12 Q. Because you've heard these two names come up in the course

13 of this murder investigation wherein Mr. Grange is

14 charged, right?

15 A. Yeah.

16 Q. Likewise with regards to John Grange. Did he ever give

17 you information that he was involved in drug trafficking?

18 John Grange?

19 A. No.

20 Q. Or his other name which he goes by, Chewy? Did that name

21 come to your attention?

22 A. Not that I recall.

23 Q. The answer is no, isn't it, sir? He would-- You would

24 have known that name too.

25 A. The answer is not that I recall.

Warren Dogeagle - Cross (by Mr. Simeone)

1113.

1 Q. Isn't it fair to conclude that if Gabe is agreeing to meet
2 with him, whether it be in a park or a restaurant or a
3 hotel or his home, Gabe is not of the belief that he is an
4 informant?

5 A. That Gabe is an informant or--

6 Q. That Nick is an informant.

7 A. Okay.

8 THE COURT: Would you restate the question?

9 MR. SIMEONE: Sorry, your Honor.

10 Q. Isn't it true-- Isn't it circumstantially true that if
11 he's agreeing to meet-- that is, if Gabe is agreeing to
12 meet with Nick-- I don't care where it is now, sir,
13 whether it's a restaurant or a park or a motel or his
14 house, isn't it fair, circumstantially, to conclude that
15 he doesn't think Nick is a nark? Gabe does not think Nick
16 is a nark, informant?

17 A. Well, I don't know. I didn't get to meet Gabe and ask him
18 or talk with him.

19 Q. I understand that, but you-- you say that there were
20 attempts and there were plans for him to meet with him,
21 isn't that right?

22 A. Right.

23 Q. Wouldn't it-- Wouldn't the safer course of conduct for
24 this individual who is was obviously somebody who's a
25 higher echelon now of this drug trafficking pyramid that

1 you brought out in your direct testimony, wouldn't the
2 safer course of conduct for him be to say no, I'm not
3 meeting with you, our relationship is severed?

4 A. Yes.

5 Q. Now, I want to go back to some of the other testimony that
6 you had, Mr. Dogeagle. We talked about the fact that--We
7 discussed this last week too--that generally these are
8 clandestine kinds of arrangements between bigger sellers
9 and bigger buyers, isn't-- Do you agree with that?

10 A. Uh-huh. Yes.

11 Q. And that generally what they-- that is, people who are
12 trafficking in the higher levels here, try to keep their
13 business secret from others. Is that also true?

14 A. Yes.

15 Q. So if an individual is trafficking with another individual
16 who's fairly higher up in the organization, he would have
17 to be within that other individual's confidence, wouldn't
18 he?

19 A. Yes.

20 Q. So, for example, if an individual in this matter, Dane
21 Williams, knew one Rob Schultz, and assuming further that
22 that Rob Schultz is alleged to be a higher level traffick-
23 er, he would have to be pretty confident with him,
24 wouldn't he?

25 A. Okay, you're talking about who now?

Warren Dogeagle - Cross (by Mr. Simeone)

1115.

1 Q. Rob Schultz.

2 A. Okay, I-- At that time those names were not known to me.

3 Q. I know, but do you know about them now?

4 A. Just heard bits and pieces.

5 Q. And was it brought to your attention by Mr. Wetle or your
6 discussion with the Stevens County Sheriff's officers that
7 Rob Schultz figures into this whole case somehow?

8 A. Yes, I've heard some different things.

9 Q. Okay, thank you. And the way he figures in is that he's
10 supposed to be a higher level kind of a distributor?
11 Isn't that right?

12 A. I don't know about higher, but somehow involved in there.

13 Q. So if one Dane Williams knew him, then there had to be
14 that kind of a privity in their relationship to where
15 there was a confidential-- a confidential kind of
16 connection, wouldn't there? Wouldn't that be true?

17 A. Well, I've not talked with Dane Williams or Rob Schultz,
18 and so I don't know what they've said or what their
19 relationship is or was.

20 Q. I know, but assuming-- I understand that, but assuming
21 hypothetically now, based upon your experience as an
22 expert in this area, and your experience with people who
23 traffic in drugs, but one-- you can pretty much overlap
24 or overlay the one belief you have into this situation.
25 That is that a higher level--

1 MR. WETLE: Objection, your Honor. I just want him to
2 ask the question, instead of the narrative.

3 MR. SIMEONE: Kind of hard for me to get it all out in
4 one breath, your Honor.

5 THE COURT: I can see that's the case. Go ahead and
6 restate it then. Start from the top and I'll see whether
7 the objection is--

8 Q. Generally--

9 MR. SIMEONE: Okay. I'm sorry.

10 Q. Generally speaking, we already know what your belief is
11 about the secrecy between one individual and another in
12 these higher level buys. Right? That is that--

13 MR. WETLE: Objection, your Honor. It's just narrative
14 statements. I'd ask him to ask a question.

15 MR. SIMEONE: I was trying to lay a basic foundation,
16 your Honor.

17 THE COURT: Why don't you ask it, though, in the form
18 of a question instead of prefacing it with a statement.

19 MR. SIMEONE: Okay.

20 Q. Is it true then, Detective Dogeagle, that as we were
21 discussing, that people try to keep their business secret
22 on these higher level drug transactions?

23 A. Yes.

24 Q. They generally try to keep the names to themselves of who
25 it is they're buying from or selling to?

Warren Dogeagle - Cross (by Mr. Simeone)

1117.

1 A. Yeah.

2 Q. Okay, so in this case you've heard of the name of Rob
3 Schultz, isn't that correct?

4 A. Yes.

5 Q. Okay. Assuming for the moment that he's figured in as a
6 distributor here, wouldn't it be fair to say that if Dane
7 Williams were considered to be a supplier of his, that
8 there would be a secrecy and a confidentiality in their
9 relationship?

10 A. I think so, yes.

11 Q. And if there's that kind of a secrecy, that kind of
12 clandestine activity going on, you're probably talking
13 about drug related transactions at a higher level, aren't
14 you?

15 A. Okay, could you state that again, please?

16 Q. Well, there's that kind of a secrecy that you just
17 identified for me. There's that kind of secrecy. We're
18 probably talking about drug transactions at a higher
19 level, aren't we?

20 A. If you're talking about just a business relationship--

21 Q. That's right.

22 A. Okay. There are some that are just strictly a business
23 relationship where there is this: I'll meet you this
24 time, this date, we'll transaction, that's it. But then
25 if you've got a relationship where, say, these people are

1 friends, when they hang out together, whatever, and he
2 deals through his friend, then you've got a little differ-
3 ent relationship.

4 Q. Well, let's just talk about the business relationship then
5 that you first discussed.

6 A. Okay.

7 Q. Am I probably right in assuming that this is a higher
8 level kind of an arrangement that's going on? Higher
9 level drug trafficking?

10 A. Well, that's-- Actually, that kind of relationship is
11 what they all would want all the way through, whether
12 they're a high level or lower level dealer.

13 Q. You talked originally in your testimony with Mr. Wetle
14 about some monitoring going on. You also talked about the
15 trafficking occurring by way of FedEx packages. Do you
16 remember that?

17 A. Yes.

18 Q. Now, with regards to the FedEx packaging, you know-- or
19 have no evidence to the effect that the kind of drug
20 dealing that was going on with Mr. Kaiser occurred that
21 way, do you?

22 A. I have information from the fellow that gave up Nick
23 Kaiser.

24 Q. You have information that?

25 A. He was with Nick like some time before this when that was

1 how Nick was doing some business, was utilizing FedEx.

2 Q. How about the monitoring? Do you know of any monitoring

3 that went on?

4 A. Regarding?

5 Q. Well, regarding Nick.

6 A. Okay, monitoring by whom?

7 Q. Well, any kind of monitoring by you in the course of the--

8 the information you're trying to get him to give you? Did

9 that happen?

10 A. Well, there was a debriefing the first day, and then

11 subsequent meetings and phone conversations with him.

12 Q. Do you know whether or not the people he was dealing with

13 were monitoring him at all?

14 A. Well, to some extent--

15 Q. No, I'm not asking-- I'm just asking if you have any

16 knowledge right now that anybody monitored him?

17 A. Well, from the conversations I guess he had with Gabe,

18 Gabe wanted him to bring his court papers about his arrest

19 so that he could look at them.

20 Q. That's not what I'm talking about in terms of monitoring.

21 I'm talking about any kind of sound devices or anything

22 like that that people use to try to monitor his conversa-

23 tions or his activity.

24 A. I don't know.

25 Q. Okay. And again, just so that I can clarify this, the

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person that was arrested was arrested in the Tacoma area--
The person that was arrested as a result of any informa-
tion Nick provided you was arrested in Tacoma, isn't that
right?

A. Yes.

Q. And as we discussed last week, you know of no arrests in
the Bay area as a result of any information Nick Kaiser
gave you?

A. Correct.

MR. SIMEONE: I have no further questions for you.
Thank you.

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

1 **WARREN DOGEAGLE**

2 **REDIRECT EXAMINATION**

3 **BY MR. WETLE:**

4 Q. Detective Dogeagle, you talked about whether or not you
5 wanted to go into the house of Gabe to deliver the money,
6 and made a decision not to do that. What-- What factors
7 do you consider when you are making that decision?

8 A. Well, that was a safety issue. We talked with Nick about
9 it and he said, well-- Nick voiced his concerns. He said
10 Gabe's attitude has shifted or changed, and Nick felt
11 uneasy and uncomfortable about doing that. I says, well--
12 I said, well, we do too, I don't think that's safe or wise
13 so we're not going to do that.

14 Q. So even though you have, you know, certain ways to
15 sometimes go into people's homes, this was--

16 **MR. SIMEONE:** Your Honor, I'm going to object to
17 leading.

18 **THE COURT:** Sustained.

19 Q. With respect to people finding out whether he was an
20 informant or had strong suspicions, what role did Loki
21 play in this?

22 A. She was telling people down in the Vancouver/Portland area
23 that Nick was a nark working for the feds.

24 Q. And is she a member of the family?

25 A. I don't know.

Warren Dogeagle - Redirect (by Mr. Wetle)

1122.

1 Q. Did she have a nickname?

2 A. Yes, she did.

3 Q. Was she helping prepare the LSD?

4 A. Yeah, she was there.

5 MR. SIMEONE: Your Honor, I'm going to object to the
6 hearsay. I don't think that's part of the conspiracy, or
7 it's not a conspiracy statement.

8 THE COURT: I'm sorry. You were asking for what Nick
9 told you or what he observed at the--

10 MR. WETLE: What he observed. What was she doing at
11 the residence.

12 THE COURT: Okay. Overruled, if it was his personal
13 observation. You may testify.

14 A. Well, she came out of the back area where Nick was, and we
15 confronted her first in the hallway.

16 Q. In the house?

17 A. Yes, in the residence.

18 Q. And what was going on in the residence at the time?

19 A. Well, Nick was preparing blotter acid and liquid vials of
20 acid, LSD.

21 Q. And how could you tell that he was doing that?

22 A. Well, he was arrested, he had rubber gloves on and we
23 found a work table with various paraphernalia needed for
24 making-- diluting the LSD out and making the blotter
25 acid, which would be the paper form, and the liquid form

1 in the vials. They found all the materials necessary.
2 Empty vials. We found the water colored paper that had
3 been printed on the computer with a logo design of Timothy
4 Leary that had been impregnated with LSD and was drying in
5 a closet. And they found the cuttings from those papers
6 on the floor. A paper cutter. Found a table setup. And
7 most of the stuff tested positive for LSD residue.

8 MR. WETLE: May I approach the bench, your Honor, with
9 Mr. Simeone?

10 THE COURT: Yes.

11 UNRECORDED SIDEBAR

12 MR. WETLE: Thank you, your Honor.

13 Q. Detective Dogeagle, when you were working with Nick Kaiser
14 to set up a meeting with his source, you mentioned
15 something about papers that he wanted to see. What are we
16 talking about in terms of the papers that Gabe wanted him
17 to bring?

18 A. He wanted him to bring his court arraignment papers
19 showing the charge for the marijuana violation.

20 Q. Because that was the cover story, that he had been
21 arrested for marijuana?

22 A. Yes.

23 Q. And so he was going to have Nick prove that?

24 A. Right.

25 Q. And did that put a stop to being able to carry on with the

1 cover?
2 A. Yes, that definitely ended it.
3 Q. Because there were no papers--
4 A. Correct.
5 Q. --showing arrest for marijuana.
6 A. Right.
7 Q. And I don't know if you can remember this, but do you know
8 when that happened or where that request for the actual
9 charging paperwork, when that was made?

10 MR. SIMEONE: Your Honor, I'm going to object to going
11 beyond the scope of my cross examination.

12 THE COURT: Overruled. Go ahead.

13 MR. WETLE: And I'm not sure you even remember that,
14 Detective Dogeagle, so I'll strike the question, your
15 Honor.

16 THE COURT: All right.

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

19 THE COURT: All right, Mr. Simeone, any recross?

20 MR. SIMEONE: No recross.

21 WITNESS STEPS DOWN BUT IS NOT EXCUSED

22 MR. WETLE: Are we taking a recess, your Honor?

23 THE COURT: No, we'll forge on and have you call your
24 next witness.

25 MR. WETLE: Thank you, your Honor. Would you please

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pass that to the jury, Mr. Bailiff?

THE COURT: Exhibit 100?

MR. WETLE: We'd call Ed Robinson.

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WITNESS IS SWORN

THE COURT: If you'll state your name, please, sir?

MR. ROBINSON: Edward L. Robinson.

THE COURT: And the spelling on your last name?

MR. ROBINSON: R-O-B-I-N-S-O-N.

ADJUSTMENT TO MICROPHONE

THE COURT: And if you could give us your current address? A business address will be fine.

MR. ROBINSON: It's 1100 West Mallon in Spokane, Washington. That's the Public Safety Building, Room 100.

THE COURT: Thank you. Mr. Wetle?

MR. WETLE: Thank you, your Honor.

EDWARD L. ROBINSON

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

DIRECT EXAMINATION

BY MR. WETLE:

Q. Good afternoon, Mr. Robinson.

A. Afternoon.

Q. Can you please state your occupation to the court and the jury?

A. I'm a firearms and tool mark examiner for the State of Washington Forensic Services Bureau, and I'm currently assigned to the Spokane Crime Lab.

Q. And would you please state what a firearms and tool mark examiner does?

Edward L. Robinson - Direct (by Mr. Wetle)

1127.

1 A. That discipline examines fired bullets and cartridge
2 cases; firearms that are suspected of firing those bullets
3 and cartridge cases; distance determinations; how far a
4 muzzle of a firearm is away from a target when it's fired;
5 tool mark examinations. Did this channel locks open this
6 doorknob? Some crime scene analysis involving trajecto-
7 ries, serial number restoration. And that's probably
8 pretty close to it.

9 Q. Could you please state your employment background?

10 A. I've been a full time firearms and tool mark examiner for
11 20 years, the last eight of which I've worked for the
12 State of Washington. My original trainers in the disci-
13 pline of firearms and tool mark identification provided me
14 with the opportunity to read and become familiar with the
15 literature pertaining to that field; provided me with the
16 opportunity to tour and have study periods with the major
17 manufacturers of firearms and ammunition on both the east
18 and west coasts; attend seminars presented by the FBI,
19 both on the advanced techniques of firearms identification
20 and gunshot residue analysis; and seminars presented by
21 the California Department of Justice pertaining to the
22 field of firearms identification. Those examiners were
23 responsible for providing the training on the instrumen-
24 tation utilized in the discipline and the criteria for
25 identification or elimination of suspect tools, to tool

Edward L. Robinson - Direct (by Mr. Wetle)

1128.

1 marks, firearms, to fired bullets and cartridge cases.

2 Q. Thank you, Mr. Robinson. How many times have you testi-
3 fied as a firearms examiner?

4 A. A little over 400.

5 Q. On November 7th, did you respond to the Stevens County
6 evidence building?

7 A. I did.

8 Q. And what was the purpose of that visit?

9 A. To examine a free-standing wood burning stove for the
10 possibility of bullet impacts or strikes of lead bullets.

11 MR. WETLE: I'd ask the bailiff to hand Exhibit 54,
12 it's a photograph, to Mr. Robinson.

13 Q. Mr. Robinson, have you ever seen that photograph before?

14 A. No.

15 Q. Have you seen that particular green metal hood before?

16 A. It's the same shape and color as the stove that I examined
17 in the-- at the storage facility at the Colville Airport.

18 Q. With respect to that green metal hood, what were you asked
19 to do?

20 A. To perform some chemical tests on spots on the hood or the
21 stove where the impact of a bullet might have taken place.

22 Q. And what did you do?

23 A. I did a spot test called sodium redisonate (sp?) test on
24 five different locations where the paint was missing and
25 obtained a positive reaction for lead in two of those.

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1 Q. How do you test for lead residue? You talk about a sodium
2 redisonate?

3 A. It's just a spot color test. You make the lead soluble in
4 acidic acid, put the sodium redisonate fluid on it, and if
5 it turns a pink color then it's lead.

6 Q. And is that practice generally accepted in the scientific
7 community?

8 A. It is.

9 Q. And that test showed that two of the five areas tested
10 positive for lead residue?

11 A. Yes.

12 Q. Could you show the jury the areas in that photograph that
13 you were examining for lead residue, if they're pictured
14 there?

15 A. Well, only two of the spots that I--

16 Q. Actually, you may want to step to the jury box, Mr.
17 Robinson.

18 A. Only two of the five spots that I tested are visible in
19 the photograph. I numbered them from top to bottom. To
20 the right of the scene, this area Number 1, it tested
21 positive for lead. The second defect, lower to the right
22 of that, was another defect that I tested, and it was
23 negative for the presence of lead. There were three other
24 defects present, one to the left of the scene, two more to
25 the right, and I got a positive reaction on one more

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1 defect to the right of the scene.

2 Q. And that would have been down toward the bottom of the
3 hood?

4 A. Yes.

5 Q. I'd ask the bailiff if-- I'm sorry, Mr. Robinson. If you
6 could stay up-- If the bailiff could hand you what's been
7 marked as Exhibit 55.

8 THE COURT: You want him down by the jury rail there?
9 Is that what you said?

10 MR. WETLE: Yes. We had one more picture I was hoping
11 would-- I only gave him one.

12 THE COURT: Okay.

13 Q. Did that picture happen to cover the area, or not, Mr.
14 Robinson?

15 A. It's hard for me to tell. The defect where the paint is
16 missing in the photograph closely resembles the two-part
17 or two-defect area that I labeled as Number 4, but
18 there's-- I can't tell from the photograph.

19 Q. I'm sorry. Okay. You may retake the stand, please.
20 Maybe it would be better if you could diagram on this
21 easel the-- just the shape of the hood and where the two
22 that tested positive for lead were found.

23 A. This is--

24 WITNESS DRAWS DIAGRAM

25 Q. Thank you, Mr. Robinson. Could you please describe for

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1 the jury the drawing that you've just drawn?

2 A. This is what I describe in my notes as the back of the
3 stove, with a perpendicular line from the bottom being the
4 seam that I mentioned. And the numbered areas, one
5 through five, the areas that I tested for the presence of
6 lead. Number 1 was positive. The spot within the broken
7 lines of Number 5 is a positive reaction. Number 2, 3 and
8 4 were all negative.

9 Q. Could you initial that diagram?

10 MR. WETLE: I'd ask the Clerk to mark that. I believe
11 it's Exhibit 103.

12 THE CLERK: That would be 108.

13 MR. WETLE: One-o-eight? Sorry. Your Honor, we'd
14 offer Exhibit 108.

15 THE COURT: Any objection?

16 MR. SIMEONE: For demonstrative purposes or what are
17 we talking about?

18 THE COURT: Well, I never make much of a distinction
19 between demonstrative exhibits and other exhibits. In
20 other words, they'll all go into the jury room if they're
21 admitted. So if this will assist the trier of fact, then
22 I guess you can call it demonstrative, but it would go
23 into the--

24 MR. SIMEONE: You wouldn't distinguish between the ones
25 that go back and others then?

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THE COURT: Correct.

MR. SIMEONE: Okay, then I have no objection.

THE COURT: All right, Exhibit 108 is admitted.

MR. WETLE: Thank you, your Honor.

Q. Based on your training, experience and the results of your test for lead residue, were you able to form an opinion as to the cause of the impacts of-- Is it one and five?

A. One and five.

Q. The cause of the impacts of areas marked one and five? Were you able to form an opinion as to the cause of the impacts on those?

A. Yes. I reported that as consistent with the impact of a bullet.

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

A. The outside, it's a padded mailer that says invoice enclosed, and it's from the Washington State Patrol to Stevens County Sheriff's Department.

Q. Could you open that and--

A. I'm opening the padded mailer and removing from inside a plastic baggie that's sealed on the top with red tape, on the bottom with blue crime laboratory tape that has my initials and the date that I sealed it.

Q. And what were you asked to do with that?

A. It was a caliber determination on a fired bullet.

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1 Q. And is that in substantially the same condition as when
2 you received it?

3 A. It's in the same condition as when I sent it back.

4 MR. WETLE: We'd offer State's Exhibit 11-- Maybe--
5 I believe it's already offered.

6 THE COURT: It's already been entered.

7 MR. WETLE: Thank you, your Honor.

8 Q. Would you-- You were asked to examine it for what
9 purposes?

10 A. To determine, if I could, if it was a bullet; if so, what
11 caliber, and if I could determine what type of firearm or
12 firearms could have fired it.

13 Q. And with those requests, what were you able to determine?

14 A. That it was a fired-- or that it was a .22 caliber
15 bullet. That it was lead, copper-washed design, and that
16 it was distorted to the extent of obliterating the general
17 rifling characteristics or family characteristics that I
18 would need to generate a list of firearms that it could
19 have been fired from.

20 MR. SIMEONE: Your Honor, may we approach the bench for
21 a minute, please?

22 THE COURT: All right.

23 UNRECORDED SIDEBAR

24 Q. Thank you, Mr. Robinson. Now, when you're talking about
25 the-- Should we call that a bullet fragment? What do you

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1 call it? Or is it just a bullet?

2 A. It probably is correctly called a fragment because it's
3 not the total weight of a .22 long rifle caliber bullet.

4 Q. Could you step to the jury box and show them the fragment,
5 or what we're talking about here?

6 A. It's actually sealed in a bindle inside of the plastic
7 bag.

8 Q. Could we take that out and look at that?

9 A. Yes. I'm cutting the edge of the sealed plastic bag and
10 removing a bindle that had my tape and initials on it, and
11 there's a fired bullet fragment in that bindle.

12 Q. Can you please take that to the jury box so that they can
13 see that?

14 A. The bullet fragment is on the cloth or napkin, tissue,
15 whatever you want to call it.

16 THE COURT: Do you want to just pass it around so the
17 people in the back-- Go ahead and hand it off to Jurors
18 1 and 2 here and they can hand it back to the next row.
19 Do you need the witness down here close to point something
20 out on it?

21 MR. WETLE: I think we're okay, your Honor. You can
22 retake the stand, Mr. Robinson.

23 THE COURT: Okay.

24 Q. Now, when you say that the bullet was too obliterated to
25 tell what kind of firearm had fired the gun or what kind

- 1 of firearm it came from?
- 2 A. What type of firearm could have fired the bullet.
- 3 Q. By that are you talking a 30/06 could not have fired that
- 4 bullet?
- 5 A. No. One of the various brands of .22.
- 6 Q. So it would be a brand of a .22 rifle, and you couldn't
- 7 tell which brand?
- 8 A. That's correct.
- 9 Q. But you can tell that a .22 rifle did fire that bullet?
- 10 A. Well, I can tell that a twenty-- it's a fired .22 bullet.
- 11 I can't tell whether it was a revolver or a pistol or a
- 12 rifle.
- 13 Q. So it was a .22 caliber?
- 14 A. Yes, and more specifically, .22 rim fire caliber.
- 15 Q. And what is rim fire?
- 16 A. It's just an ignition system. It's the .22 that most
- 17 people are familiar with. There is a .22 center fire
- 18 that's normally associated with varmint hunting and that
- 19 type of thing, which is a totally different bullet design
- 20 than that one.
- 21 Q. So on this particular bullet all class and individual
- 22 characteristics that you would ordinarily look for have
- 23 been obliterated?
- 24 A. Yes.
- 25 Q. So even if you had the gun that fired this particular

Edward L. Robinson - Direct (by Mr. Wetle)

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1 bullet, you couldn't make the connection?

2 A. No, I couldn't.

3 Q. Mr. Robinson, could you explain to the jury how a .22
4 semi-automatic rifle with a ten cartridge clip works?

5 THE COURT: A what? I'm sorry.

6 Q. A .22 caliber rifle, semi-automatic, with a ten cartridge
7 clip. How-- How would that work in terms of firing--
8 Without having one in your hand, I suppose it's a little
9 harder.

10 A. Well, in general, a semi-automatic pistol is going to be
11 fed--

12 Q. Not a pistol.

13 A. A rifle, is going to be fed by a tubular magazine or some
14 type of a magazine, detachable magazine device, regardless
15 of the number of cartridges that it will hold. That
16 loaded magazine is inserted into the firearm, and the bolt
17 has to be either mechanically released from a hold open
18 position, or moved back and forth so that it's able to
19 strip off the top round of ammunition from the magazine.
20 The cartridges in the magazine are under spring tension so
21 that when the firearm is discharged, the extractor grabs
22 the rim of the cartridge case that just held the bullet
23 that was fired down the barrel, pulls it out of the
24 chamber and extracts it. Once-- And it does that
25 collapsing a spring. Once the bolt has moved to the rear

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1 as far as it can go under the spring tension, the spring
2 relaxes and causes the bolt to race forward again, which
3 causes the firearm to be cocked and for the bolt to strip
4 the next available cartridge off the top of the magazine.
5 Hence you have the name semi-automatic, and equally
6 correct is self-loading firearm. For every pull of the
7 trigger, you have a shot fired and the firearm reloads
8 itself. Self-loading firearm.

9 Q. Thank you. How fast can that semi-automatic fire?

10 A. Without malfunction, as fast as the operator can pull the
11 trigger.

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

14 THE COURT: All right, Mr. Simeone?

15 MR. SIMEONE: Just some bookkeeping-- housekeeping
16 matters here.

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1 EDWARD L. ROBINSON

2 CROSS EXAMINATION

3 BY MR. SIMEONE:

4 Q. Could you see the bullet in the exhibit, Mr. Robinson,
5 when it was handed to you, from just outside the package?

6 A. No, I couldn't.

7 Q. It was wrapped inside of something?

8 A. Yes.

9 Q. It was wrapped inside of some kind of a napkin or some-
10 thing?

11 A. It looked like a napkin, but it had blue tape on it where
12 I had handled it before.

13 Q. And you actually had to physically tear open a bag to get
14 to it?

15 A. Well, I did. I didn't see any other opening, so I cut the
16 plastic bag open.

17 Q. But that plastic bag wasn't opened before?

18 A. I don't know. I'd have to look at it to see--

19 Q. I mean from where-- from what you saw. Was it opened
20 before or did it look like it needed to be cut?

21 MR. WETLE: Your Honor, may we approach the bench?

22 THE COURT: Excuse me a moment. Let me just clarify.

23 Are you asking about--

24 MR. SIMEONE: I'm asking about just now--

25 THE COURT: --now or when he received it?

Edward L. Robinson - Cross (by Mr. Simeone)

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1 MR. SIMEONE: Just now when he opened the bag.

2 THE COURT: Okay, Mr. Simeone, it was already identi-
3 fied by Detective Erdman, and he opened the bag before.

4 MR. SIMEONE: Well, your Honor, I'm thinking the
5 witness just opened the bag, and he couldn't see it.
6 When I examined the exhibit I could see the bullet.

7 THE COURT: Madam Clerk, did you reseal the bag at some
8 point?

9 THE CLERK: Last night I did so that we wouldn't lose
10 the cartridge.

11 THE COURT: Okay.

12 MR. SIMEONE: And rewrapped it there in the napkin?

13 THE CLERK: I didn't touch what was inside. I put tape
14 over whatever opening _____.

15 MR. SIMEONE: Well, that's why I was inquiring.

16 THE COURT: Okay, do you still need to approach the
17 bench?

18 MR. WETLE: I think it's clarified a little bit. I
19 just didn't know we needed to do it in front of the jury.

20 THE COURT: Well, Mr. Simeone, do you still need to ask
21 some questions? If you do, go right ahead.

22 MR. SIMEONE: I have no further questions I need to ask
23 him about that, but I have others.

24 THE COURT: Okay, go ahead.

25 Q. Mr. Robinson, your experience is extensive here in the

Edward L. Robinson - Cross (by Mr. Simeone)

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1 area of firearms and ballistics, isn't it?

2 A. Well, I have-- Yes, I have some experience.

3 Q. And you're an expert in the area?

4 A. Yes.

5 Q. Are you able to tell us precisely from how far away from
6 that stove those bullets were fired from the marks you
7 see?

8 A. No.

9 Q. Are you able to tell us what kind of a gun, what caliber
10 of gun, actually made the impressions on that stove?

11 A. No.

12 Q. You don't know why or when those bullets were fired at
13 that stove hood, do you?

14 A. No, I don't.

15 Q. Or whether the impressions from that-- on that stove
16 would have anything to do with the guns that were fired at
17 individuals who were killed at the scene of this incident?
18 Is that correct?

19 A. That's correct.

20 Q. Are you aware that there was target shooting that was
21 taking place in the area where this was located?

22 A. Not directly. I'd heard stories.

23 Q. Okay, do you have any knowledge of what the angle of the
24 line of fire was for the bullet that hit the stove awning,
25 or the stove hood?

1 A. No, not for Number 5. Number 1 is a pretty-- pretty
2 uniform circular defect, so based on my past experience I
3 would say it was pretty much perpendicular.
4 Q. That one was perpendicular anyway. You don't know where
5 the stove was when the bullet impressions were made on it,
6 do you?
7 A. No, I don't.
8 Q. Or whether it was even in the state, do you?
9 A. No, I don't know where the stove was.
10 Q. Now, a rim shot shell can be used for varmint hunting,
11 can't it?
12 A. A rim fire cartridge?
13 Q. Rim fire cartridge.
14 A. It can be, yes.
15 Q. Now, I'm not being insulting, but is there any value in
16 the testimony you give us here today as to whether or not
17 my client, the defendant here, is involved in this
18 incident resulting in the deaths of these two decedents?
19 A. I don't believe that's up to me to say.
20 Q. Do you know of any?
21 MR. WETLE: Objection, your Honor. Outside the scope.
22 THE COURT: If you're calling for hearsay, Mr. Simeone,
23 I'll have to sustain the objection.
24 MR. SIMEONE: It wasn't hearsay. I'm asking him if he
25 knows of any value of his own that would lead him to

1 conclude any more persuasively that Mr. Grange is involved
2 in this incident.

3 MR. WETLE: Objection.

4 THE COURT: On the basis of?

5 MR. WETLE: It's not relative to his testimony as to
6 being one part of a person testifying about--

7 MR. SIMEONE: Your Honor, then why did they bring him
8 here to testify?

9 MR. WETLE: A bullet--

10 THE COURT: I think you're asking for a conclusion, Mr.
11 Simeone. I'm going to sustain the objection.

12 MR. SIMEONE: No further questions. Thank you.

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

14 MR. WETLE: No, your Honor.

15 **WITNESS IS EXCUSED**

16 **BAILIFF INDICATES NEXT WITNESS CALLED BY PLAINTIFF**
17 **IS NOT IN HALLWAY**

18 **JURY IS RECESSED**

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Edward L. Robinson - Cross (by Mr. Simeone)

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1 THE COURT: All right, first of all, the sidebar confer-
2 ence that we had concerned a question that you wanted to
3 perhaps pose to Detective Dogeagle?

4 MR. WETLE: Yes, your Honor.

5 THE COURT: And do you still wish to try to elicit that
6 from him, or are you going to do that through a different
7 witness?

8 MR. WETLE: Actually, I do need to find out what he knows.
9 He may not know that information, and then if he does know
10 about it, then the question would be what is the source of his
11 information.

12 THE COURT: And whether it's admissible, et cetera. Okay.
13 So was there another issue then that you wanted to resolve
14 prior to calling Ms. Kerpin?

15 MR. WETLE: Well, the issue--

16 THE COURT: I mean on the record.

17 MR. WETLE: The issue, just to alert the court, is that I
18 think that Mr. Simeone opened the door when he was questioning
19 Detective Dogeagle about the fact that they let Loki, or
20 Shauna Daniels, go and that, you know, how the other people
21 may have found out about Nick Kaiser, and the speculation was,
22 I suppose, other people were arrested coming to his house, he
23 burned a buyer, he was trying to get his source, and his
24 girlfriend, who was arrested and released, was telling people
25 in Vancouver that he was a nark. And so then Mr. Simeone goes

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1 to show that she wasn't killed when she got released, and so
2 shouldn't she have this-- shouldn't there be the same fear of
3 Loki, that the family would have the same fear of her narking
4 on them as Mr. Kaiser. And so the question was that they're
5 out to get him but they're not out to get her, and why. And
6 it just seems that she was released and she wasn't killed,
7 therefore that same-- she should-- they should have the same
8 fear of her. It turns out that she was threatened, and the--
9 that she was threatened with a gun, she got a gun put to her
10 head in Portland. The people said, that threatened her, that
11 if you ever-- if you're ever with Nick you're going to die.
12 And she also mentioned that-- This is Loki. She said that
13 she would-- Shauna said more of what Nick was doing and how
14 scared she was about the gun. And so it just seems to me that
15 this-- there were things done to Shauna Daniels to threaten
16 her to get her to either cooperate or to not cooperate with
17 any investigation in this area.

18 Now, I understand that she subsequently was contacted by
19 the detectives and recanted that she had-- to the detectives
20 that she had told other people that they had contacted her and
21 put a gun to her head.

22 So before we started down that path, I wanted to alert the
23 court and Mr. Simeone that I thought the door had been opened
24 here and that, in fact, she was threatened.

25 THE COURT: Okay. Well, I need to get clear on what it is

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1 that you're offering as testimony and from whom.

2 MR. WETLE: It could come from Kim Kerpin as to what--
3 she was told this by Shauna Daniels.

4 THE COURT: And what are you relying on in the way of a
5 hearsay exception, if you're trying to offer that to prove the
6 truth of the matter asserted, just for sake of argument.

7 MR. WETLE: Well, actually, I'm trying to-- I'm trying to
8 rebut the fact that the statement on direct by Mr. Simeone
9 that there should be the same--

10 THE COURT: I know, but-- I know what your relevance is,
11 we'll get to that in a minute. I'm talking about your hearsay
12 exception, if any.

13 MR. WETLE: Let's see--

14 THE COURT: In other words, if it's not coming from Shauna
15 Daniels, and it's offered to prove--

16 MR. WETLE: I think it comes under--

17 THE COURT: --the truth of the matter asserted.

18 MR. WETLE: I think it comes under the 801, in furtherance
19 of a conspiracy. He's still-- He's still-- Nick's still out
20 there and, you know, this is telling her that she-- if she's
21 seen with him, given his situation, that she's going to die.
22 And that's the typical, you know, threat and coercion that
23 you'd get in terms of what the--

24 THE COURT: So Shauna Daniels, being a part of the
25 conspiracy--

1 MR. WETLE: Absolutely. She's at the house--

2 THE COURT: Making a statement to someone.

3 MR. WETLE: Kim Kerpin, who also is, you know, involved in
4 the LSD trafficking down in Oakland with her paramour, Josh,
5 and was arrested.

6 THE COURT: And that is in furtherance of-- during the
7 course and in furtherance of the conspiracy?

8 MR. WETLE: Yes.

9 THE COURT: An unusual twist to that. Okay, before I hear
10 from Mr. Simeone, your relevance is--I think I understand
11 that--simply to rebut, or that is to say to explain what Mr.
12 Simeone brought up with Agent Dogeagle that they let her go,
13 she was arrested and released quickly, shouldn't she have had
14 the same ostracism, et cetera, as Mr. Kaiser?

15 MR. WETLE: That's correct.

16 THE COURT: And you're offering this to show that she had
17 a different technique--

18 MR. WETLE: Used against her.

19 THE COURT: --applied to her?

20 MR. WETLE: Yes.

21 THE COURT: But still in furtherance of the conspiracy?

22 MR. WETLE: That's correct.

23 THE COURT: Okay. All right, Mr. Simeone?

24 MR. SIMEONE: Your Honor, I don't agree with him. I think
25 this is traditional hearsay and it's not-- it should not be

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1 accepted under this 801 (d)(2)(v) that he's got a lot of
2 mileage out of here so far, I think unjustly in a lot of ways.

3 First of all, I didn't open any door to that kind of
4 response. All I asked Detective Dogeagle, or whatever his
5 title is, Deputy Dogeagle, was whether or not she was dead.
6 And that was it. And she's still alive. That's what I asked
7 him. That doesn't open up the door. What I was asking for is
8 whether or not there was any retribution here in the way of
9 retribution they alleged Nick Kaiser had for what he did. And
10 that's not-- If he's saying there are threats, that's
11 different from anything that I said. I said was she killed,
12 and he said no.

13 Secondly, I never got a shred of discovery to the effect
14 that there was any kind of threat that this girl had. That
15 never--

16 MR. WETLE: Yes-- Yes, he does, your Honor, and I'll give
17 you the cite and the page of his discovery.

18 MR. SIMEONE: Well, I'll show you some different discovery
19 that I got from the State too, while we're on-- while we're
20 on that discussion, that said that she never got-- she never
21 got any kind of threat. She was asked by Deputy Caruso about
22 that and she said no--

23 MR. WETLE: That was--

24 MR. SIMEONE: --that she'd never been threatened.

25 MR. WETLE: That's exactly right. When the officer went

1 back to confirm the threat, at that time she recanted. But
2 Mr. Simeone has the--

3 THE COURT: Hold on now. You're saying that-- that the
4 officer went-- She stated to the officers initially that she
5 had this--

6 MR. WETLE: No, no. She stated to Kim Kerpin.

7 THE COURT: Okay.

8 MR. WETLE: And Kim Kerpin then told the officers. The
9 officers then followed up with it, went to Loki and said you--

10 THE COURT: Directly to Ms. Daniels.

11 MR. WETLE: What's this deal? We're worried about you,
12 are you going to get killed here too? And at that time she
13 said oh, it never happened.

14 MR. SIMEONE: So--

15 MR. WETLE: So what I've got is when the officers come, a
16 recantation, but that does not have anything to do with the
17 initial statements to Kim Kerpin.

18 MR. SIMEONE: So where's the preponderance then, your
19 Honor? If we're going to get on this road, trying to shovel
20 in this evidence that he's been using over and over again
21 here, where's the preponderance that that really happened? I
22 have an unequivocal statement, I'll give an offer of proof
23 right now to the court based upon Sergeant Caruso's investiga-
24 tion that she said she didn't even know that he--talking about
25 Nick--was involved in the drug culture, and it came as a

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1 surprise to her when they were arrested. And furthermore, she
2 said in response to the question had she ever been threatened
3 by anyone to cause her harm due to her relationship with
4 Kaiser, she said she was never threatened, never heard anyone
5 else threaten Nick while she was there. So that to me sounds
6 like we're in about a wash if you're talking about the kind of
7 hearsay, or non-hearsay, I should say, that they're giving as
8 a conspiracy exception in 801 (d)(2)(v).

9 MR. WETLE: And I would say, your Honor, that that
10 statement by itself shows that her fear of the situation when
11 she says that she had no knowledge of this drug transaction
12 going on in her house, and you heard Detective Dogeagle
13 explain at length the various LSD packaging, processing,
14 rubber gloves on, Nick Kaiser running out the back door. For
15 her to live in the house and be his girlfriend and not know
16 anything about it is incredible.

17 MR. SIMEONE: That's a huge jump of speculation on his
18 part, your Honor.

19 THE COURT: Okay. Well, I think we have the traditional
20 problem that we have with some of these things, similar to the
21 prior bad acts problem, similar to-- and certainly the case
22 with these admissions or statements of co-conspirators. We
23 have the trial within a trial, and it's considered non-hearsay
24 if it can be established by a preponderance. I think you have
25 a problem, Mr. Wetle, when you have a direct denial of the

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1 statement. I recognize that there are reasons that you would
2 like to go into, why she would deny it, and we can go off on
3 that primrose path, but my thought is that, like some 404 (b)
4 evidence, or 404 (a) evidence, character evidence, or admissi-
5 ble for another purpose evidence, the problem is that we have
6 an argument over whether or not it occurred, in fact. And I
7 don't want to spend an eternity determining whether or not it
8 occurred.

9 What we can do is hear-- I want you to meet with Ms.
10 Kerpin over the noon hour. I want you to clarify your offer--
11 Not the noon hour. Over the recess, clarify what it is
12 exactly that she has to say, and my thought is it may or may
13 not be quite as definite. Yes, it may be admissible as 801
14 (d)(2)(v), statement of a co-conspirator. It's a little
15 attenuated. Yes, Mr. Simeone did open the door with that
16 question, because he's-- he's saying well, gee, no, was she
17 killed? Well, no, she wasn't, no. The answer to that was no.
18 They dealt with her in a different way. Fine. Yes, maybe
19 she's going to deny it later because she's going to say that
20 she doesn't want to get her head blown off. But first we have
21 to make a determination whether or not it actually can be
22 shown by a preponderance of the evidence to have been a
23 statement that was actually made.

24 MR. WETLE: May I make a little clarification, your Honor?

25 THE COURT: All right.

1 MR. WETLE: Apparently as I read carefully through here,
2 'cause it just happened.

3 THE COURT: Yeah.

4 MR. WETLE: This statement comes out of a statement from
5 Brian Murphy. Remember the roommate--

6 THE COURT: Yes.

7 MR. WETLE: --that testified here? Brian tells Kerpin
8 that Nick had tried to commit suicide two weeks ago, that's
9 why he brought him to his house, he had no one else. He was--
10 This is Kerpin's words. He was living in Oak Harbor with
11 Shauna.

12 THE COURT: Kerpin's words, or Brian Murphy's words?

13 MR. WETLE: This is Kerpin's words.

14 MR. SIMEONE: That he's quoting?

15 MR. WETLE: No, this is Kerpin's words. Kerpin is saying
16 this.

17 THE COURT: To whom?

18 MR. WETLE: To the Sheriff here.

19 THE COURT: Okay. Kerpin says that Brian Murphy says
20 that--

21 MR. WETLE: Right, right. Brian also said the reason
22 Shauna wouldn't talk to Nick was because she got a gun put to
23 her head in Portland.

24 THE COURT: Wait. Hold on. Kerpin says that Brian Murphy
25 said that Nick said--

1 MR. WETLE: No, that Shauna.

2 THE COURT: That Shauna said.

3 MR. WETLE: Wouldn't talk to Nick. This is Kerpin saying
4 that Brian said Shauna would not talk to Nick because she got
5 a gun put to her head in Portland; that people said that if
6 you are ever with Nick, you are going to die.

7 THE COURT: Okay, well--

8 MR. WETLE: She had a-- Let me-- Let me just--

9 THE COURT: That makes it easier in some ways, Mr.--

10 MR. WETLE: No. Well, let me go on.

11 THE COURT: Go ahead.

12 MR. WETLE: There's a little bit more, your Honor. Let's
13 see.

14 So Brian gave me Shauna's mom's number,
15 Terri Daniels, in Vancouver, Washington. I
16 called and spoke with her mom, Terri. She
17 knew everything that was going on and could-
18 n't believe that Nick would bring Josh into
this. She said that she would have Shauna
call me. Then Shauna told me more of what
Nick was really doing and how scared she was
about the gun.

19 She thought Nick was going up to the Barter Fair to do a deal,
20 and she couldn't believe she got Josh into the mess. So
21 what's happened is you got Brian Murphy saying that Shauna
22 wouldn't talk to Nick because of the people in Portland put a
23 gun to her head and said if you talk to him you're dead. And
24 then when Shauna-- or Kim calls Shauna herself, Shauna then
25 says that she was--

1153.

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Told me what Nick was really doing and how scared she was about the gun.

So those are the statements that I think are important and characteristic of what we're doing here, and I think it shows it by a preponderance, and explains why--

THE COURT: Well, are you recalling Mr. Murphy? You're not recalling Mr. Murphy? Correct?

MR. WETLE: I hadn't thought that far down the road. We're just--

THE COURT: So we're talking about what Shauna Daniels told Kim Kerpin after she got this word from Mr. Murphy--

MR. WETLE: Yes.

THE COURT: --which she won't be able to testify about because it'll be hearsay.

MR. WETLE: So Mr.-- Well, she could testify what Shauna Daniels told her that--

THE COURT: Yes, but she can't testify to what Brian Murphy told her because--

MR. WETLE: Brian Murphy would have to come in and testify as to--

MR. SIMEONE: Your Honor, don't we still need some identification of who it was that allegedly put this gun to her head, if that were to happen, in going to the weight of whether or not they've got a preponderance of the evidence here? I think that that's the kind of hearsay that you're

1 talking about trying to admit, or non-hearsay, that you're
2 talking about trying to admit who it is that said that or did
3 that.

4 THE COURT: I disagree with you there, Mr. Simeone, but I
5 do think we still have the sidetrack problem that we always
6 have with these kinds of issues. Whether they can be estab-
7 lished to have occurred, by a preponderance of the evidence,
8 before the jury even gets to hear them and decide whether or
9 not it's too farfetched and/or too-- well, I guess not far-
10 fetched. Too attenuated to take into account, or too attenu-
11 ated to be of probative value.

12 MR. WETLE: _____ down to two people, independent
13 sources, I'd--

14 THE COURT: Well, when you say two people--

15 MR. WETLE: Yeah, Brian Murphy--

16 THE COURT: --independent sources. Brian Murphy is out of
17 the pictures.

18 MR. WETLE: Well, if he-- Unless he comes back, yes.

19 THE COURT: Unless you're going to recall him, and you're
20 telling me you're not. Correct?

21 MR. WETLE: No, I'm not. I'm sorry, your Honor. I just
22 discovered this, so--

23 THE COURT: Well, I think probably--

24 MR. WETLE: If you told me that would be the only way that
25 it could come in as to Brian Murphy's statement--

1 THE COURT: I'm not going to rule in advance one way or
2 the other. I'm going to ask you what it is that you're going
3 to put on, and then we'll take it from there.

4 MR. WETLE: Well, that would be--

5 THE COURT: So why don't you clarify with Ms. Kerpin what
6 it is that she can testify to, since she's here, and then
7 we'll take a recess--

8 MR. SIMEONE: I would like--

9 THE COURT: --while you do that while the jury's taking
10 their recess. Yes, Mr. Simeone?

11 MR. SIMEONE: I'd like to be present for that first
12 interview so I can hear what it is that she says.

13 MR. WETLE: I don't think so, your Honor, but--

14 THE COURT: Well--

15 MR. SIMEONE: Well, I think it's important, your Honor,
16 because she's going to be hit with first impression here and
17 there could be a lot of suggestion that goes on here that
18 makes her say one thing or another.

19 THE COURT: Well, no, Mr. Simeone. Mr. Wetle can take the
20 witness aside and see what it is that she's going to say. If
21 you want to clarify anything you'll have a chance to do so as
22 well. And it is a State's witness, as I understand it, but
23 we'll let Mr. Wetle talk to her and--

24 MR. SIMEONE: Well, I subpoenaed--

25 THE COURT: --be ready when we get back from the recess to

1 tell the court whether or not he wants to go down this path or
2 not. It may dissolve in the course of the discussion.

3 As I indicated, my concern is whether or not this can be
4 established by a preponderance through Ms. Kerpin's testimony
5 alone, if that's what Mr. Wetle's relying on.

6 Mr. Simeone, I'm sorry. What?

7 MR. SIMEONE: She was my witness too, your Honor. That's
8 all I want to say.

9 THE COURT: And that's fine. I'll let you talk to her.
10 Let Mr. Wetle have a chance to talk to her, since it's his
11 case first. So court will be at recess.

12 **COURT RECESSED**

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COURT RECONVENED WITH JURY SEATED

THE COURT: Mr. Wetle, your next witness?

MR. WETLE: Thank you, your Honor. The State would call Jimmy Nailor.

WITNESS IS SWORN

ADJUSTMENTS TO MICROPHONE

THE COURT: If you'll state your name, please?

MR. NAILOR: Jimmy Nailor.

THE COURT: And your spelling on your last name?

MR. NAILOR: N as in Nancy, A-I-L-O-R.

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

MR. NAILOR: Is 810 Highway 395 North, Colville, Washington.

THE COURT: Thank you. Mr. Wetle?

MR. WETLE: Thank you, your Honor.

JIMMY NAILOR

Being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. WETLE:

Q. Good afternoon, Mr. Nailor.

A. Good afternoon.

Q. I would ask you to state for the court and the jury your occupation?

A. My occupation is sales clerk at Wal-Mart in Colville,

Jimmy Nailor - Direct (by Mr. Wetle)

1158.

1 sporting goods department.

2 Q. And how long have you been so employed?

3 A. Be five years this October.

4 Q. And you say you work in the sporting goods department?

5 A. Yes, sir.

6 Q. Have you spent most of your time working in that particu-

7 lar department?

8 A. Yes, sir.

9 Q. Mr. Nailor, if someone wants to purchase a firearm, is

10 there a form that they have to fill out--

11 A. Yes.

12 Q. --in order to do that?

13 A. Yes, sir, there is.

14 Q. And what is that form?

15 A. It's known as a 4473. It's an ATF Firearms Acquisition

16 form.

17 Q. And when is that form to be filled out and signed?

18 A. At point of purchase.

19 Q. Is identification required when you're filling out that

20 form?

21 A. Yes, sir, it is. Picture I.D.

22 Q. On June 4th, year 2000, did you wait on a customer under

23 transaction number 5352?

24 A. Yes, sir.

25 Q. I'd ask the bailiff to hand you what's been marked as

Jimmy Nailor - Direct (by Mr. Wetle)

1159.

1 Exhibit 99.

2 A. Yes, sir, this is the form.

3 Q. And I'd ask if you can identify that particular form.

4 A. Yes, sir, this is a 4473 Firearms Acquisition Transaction

5 record, page 1, over the counter. This is the one we

6 fill-- that a customer fills out when they want to

7 purchase a firearm.

8 Q. And are you the custodian of the firearms transaction

9 records?

10 A. Yes, sir.

11 Q. And is this record made at or near the time of purchase?

12 A. Yes, sir.

13 Q. And are these records maintained under your care, custody

14 and control?

15 A. Yes, sir.

16 Q. And is this record made in the regular course of your

17 business?

18 A. Yes, sir.

19 Q. Is this a copy-- a true and accurate copy of the origi-

20 nal?

21 A. Yes, sir, it is.

22 Q. And did the customer sign this particular record?

23 A. Yes, sir. Right here at the bottom on the front.

24 Q. And how did he identify himself?

25 A. Picture I.D., Oregon driver's license.

Jimmy Nailor - Direct (by Mr. Wetle)

1160.

1 Q. Were you the one that made this record, Mr. Nailor?

2 A. Yes.

3 Q. Did you actually fill this out with the customer?

4 A. No, the customer has to fill them out by themselves.
5 We're not allowed to help the customer. But this is the
6 form we hand them, they fill out the front, and then we
7 take the information as far as the rest of the transaction
8 goes.

9 Q. Okay, and did you take the rest of the information there?

10 A. Yes, sir.

11 Q. So you personally handled this particular transaction?

12 A. Yes, sir.

13 Q. And is this record a correct and accurate reflection of
14 that transaction?

15 A. Yes, sir.

16 Q. And have there been any alterations or changes made on it
17 since the time it was made?

18 A. No, sir.

19 MR. WETLE: Your Honor, we'd offer-- I believe it's
20 Exhibit 99.

21 THE COURT: All right. Would you hand that, please, to
22 Mr. Simeone?

23 MR. SIMEONE: There would be no objection to that.

24 THE COURT: All right, Exhibit 99 is admitted.

25 Q. I'd ask the bailiff to hand you what's been marked as

Jimmy Nailor - Direct (by Mr. Wetle)

1161.

- 1 Exhibit 23, and ask if you can identify that.
- 2 A. Yes, sir. This is the same form filled out by-- excuse
3 me. Last, first. Douglas John, form Number 5354.
- 4 Q. So that's filled out by Doug Grange?
- 5 A. Correct.
- 6 Q. And the other form was filled out by John Grange?
- 7 A. Correct.
- 8 Q. All right, so this form now is Doug Grange?
- 9 A. Correct.
- 10 Q. Now, I just asked you a series of questions-- Well, maybe
11 I'll go through the foundation again. Are you the
12 custodian of the firearm transaction records?
- 13 A. Yes, sir.
- 14 Q. Is this record made at or near the time of purchase?
- 15 A. Yes, sir.
- 16 Q. And are the records maintained under your care, custody
17 and control?
- 18 A. Yes, sir.
- 19 Q. And is this record made in the regular course of business?
- 20 A. Yes, sir.
- 21 Q. And is this copy a true and accurate copy of the original?
- 22 A. Yes, sir.
- 23 Q. And did the customer sign the record?
- 24 A. Yes, sir.
- 25 Q. On this one? And how did he identify himself?

Jimmy Nailor - Direct (by Mr. Wetle)

1162.

1 A. Picture I.D., Oregon driver's license.

2 Q. And since you made this record, do you have personal
3 knowledge of the transaction reflected by the record?

4 A. Yes, sir.

5 Q. And is this record a correct and accurate reflection of
6 the transaction?

7 A. Yes, sir.

8 Q. And have there been any alterations or changes made since
9 the time it was made?

10 A. No, sir.

11 MR. WETLE: We'd offer Exhibit 23, your Honor.

12 MR. SIMEONE: No objection.

13 THE COURT: Exhibit 23 is admitted.

14 Q. Mr. Nailor, can you explain to the jury-- Maybe if the
15 bailiff could hand you those documents

16 THE COURT: I'll hand this over. This is Number 1--
17 Excuse me, 99.

18 MR. NAILOR: Thank you.

19 Q. And ask you to take Exhibit 99, which is transaction
20 Number 5352, and ask if you can explain to the jury the
21 process you went through in filling out that particular
22 form?

23 A. What we do is when a customer comes in to buy a firearm,
24 they decide which one they want to purchase, and then we
25 hand them the 4473 and there's much personal information

Jimmy Nailor - Direct (by Mr. Wetle)

1163.

1 here on the front they fill out, and then there's a series
2 of questions that they answer either yes or no to. For
3 example, are you the actual buyer, are you under indict-
4 ment for ____ any court, crime, et cetera, your state of
5 residence. And then we take-- On the back side we
6 determine which type of firearm they're going to purchase,
7 have their I.D. number on here. Then there's a-- We put
8 the date on there that the transaction takes place, and
9 then we make a phone call to the NICS background check.

10 Q. And so when you made this phone call, what happened?

11 A. They have three basic responses. We give them the same
12 information that comes off the front of the form here.
13 They have three basic responses. Either proceed, deny or
14 delay it. This particular one right here was delayed.

15 Q. And how long was it delayed for?

16 A. I believe it was delayed three days. Two days-plus.

17 Q. Until the 7th of June?

18 A. Correct.

19 Q. And what happens then on the 7th of June?

20 A. They-- The NICS background people call us back and we got
21 a proceed on it. I have the operator's number right here
22 and their number. It's on the form.

23 Q. And so then do you contact the purchaser?

24 A. Right. We contact the purchaser and let them know to come
25 on in and we can go ahead and complete the transaction.

Jimmy Nailor - Direct (by Mr. Wetle)

1164.

1 Q. And so the purchaser came in to complete the transaction?

2 A. That's correct.

3 Q. What happened at that point?

4 A. We went ahead and filled out the rest of the paperwork we
5 needed. There was a second spot on here where they sign
6 if it's not-- If the transaction's not completed on the
7 same day it's signed right here and dated for that
8 particular date. We fill out in the manufacturer, model,
9 serial number and type of firearm it is.

10 Q. And what was in that particular section, Mr. Nailor?

11 A. This one right here, it's a Savage Arms Model 62-F .22
12 rifle. Would you like the serial number?

13 Q. No. Could you just tell the jury in plain English what
14 the gun--

15 A. It's a .22 semi-automatic rifle, clip-fed.

16 Q. Okay, thank you. And then-- So you got all this filled
17 out, and then what happened?

18 A. Then we go ahead and proceed with the sale, either ring it
19 up or whatever we have to do as far as that goes. I went
20 ahead and proceeded with the sale, to ring this up. When
21 everything was all rung up on the cash register I asked
22 for the-- how they were going to pay for it. Was handed
23 a credit card, and went to run the credit card through and
24 then I noticed that the name on the credit card was not
25 the same as on the name on the 4473. The first name and

Jimmy Nailor - Direct (by Mr. Wetle)

1165.

1 middle name were reversed.

2 Q. So then you get into the actual buyer issue?

3 A. Correct.

4 Q. And what is that?

5 A. That's what-- We're trained that is a-- it's what's
6 called a straw purchase. In other words, the person who
7 fills out the form has to be the same person that pays for
8 the rifle. In other words, if somebody else fills out the
9 form and somebody else pays for it, that's what's known as
10 a straw purchase, and that's not legal. We can't do that.

11 Q. So at that point what did you do?

12 A. I informed the purchaser that we can't continue with the
13 transaction, and we had one of our CSM's come back and
14 void the transaction out.

15 Q. Okay, and the purchaser under that particular form was
16 John Douglas Grange?

17 A. Correct.

18 Q. And identified by picture I.D.?

19 A. Correct.

20 Q. And so at that point what did you do?

21 A. Well, since it was not his credit card, I asked the person
22 whose credit card it was, if they wanted to purchase the
23 rifle, 'cause that's perfectly legal. They can-- If
24 they're the ones that fill out the form, they can purchase
25 the rifle. Since he didn't have-- He explained he didn't

Jimmy Nailor - Direct (by Mr. Wetle)

1166.

1 have the money to buy the rifle. So we offered a 4473 to
2 the-- I believe it's the father, John Doug-- or Douglas
3 John, excuse me. He went ahead and filled out a 4473 and
4 we called right there on the spot for a NICS background
5 check and he got a proceed.

6 Q. And so then you filled out the form and he made the
7 purchase?

8 A. Correct.

9 Q. And that was of the same .22 rifle that they tried to
10 purchase--

11 A. Same exact rifle.

12 MR. WETLE: Your Honor, we'd offer-- We already
13 offered this.

14 THE COURT: Yes, they're already in. Ninety-nine and
15 23 have been admitted.

16 Q. And to your recollection, was anything purchased with that
17 rifle?

18 A. Yes, sir, there was a box of .22 ammunition, a cleaning
19 brush, and a cleaning kit.

20 Q. And you don't recall how much ammo?

21 A. I believe it was 550 rounds.

22 Q. I'd ask the bailiff to hand you what's been marked as
23 Exhibit-- I think it's 92. No, I'm sorry, it's 24. I'm
24 going to ask if you can identify that?

25 A. Yes, sir. This is the receipt. A copy of the receipt for

Jimmy Nailor - Direct (by Mr. Wetle)

1167.

1 JIMMY NAILOR

2 CROSS EXAMINATION

3 BY MR. SIMEONE:

4 Q. You have any recollection of any discussion between Mr.
5 Grange and Mr. Grange regarding the transaction?

6 A. As far as?

7 Q. The purpose of the purchase?

8 A. No, sir, I don't. I believe it was-- No, I don't, to
9 tell you the truth.

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

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

12 MR. WETLE: No, your Honor.

13 THE COURT: All right, thank you, Mr. Nailor. You may
14 step down, and thank you for your testimony.

15 MR. NAILOR: Thank you.

16 THE COURT: Does this witness need to remain in
17 attendance?

18 MR. WETLE: No, Your Honor. That witness can be
19 excused.

20 THE COURT: All right, thank you, Mr. Nailor. Your
21 subpoena, then, is complete.

22 MR. NAILOR: All right.

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

25 MR. WETLE: The State would call Andrea Cameron, your

Jimmy Nailor - Cross (by Mr. Simeone)

1170.

1 Honor. I think Detective Baskin went to get her.

2 THE COURT: Okay. Ladies and gentlemen, we're going to
3 keep you until-- perhaps as late as 5:00 this evening,
4 just so you'll kind of have a notion. I'm going to try
5 tomorrow to give you more of an idea of where we are in
6 terms of time projections so that you can make some plans.
7 Obviously, we're going to run over the Wednesday that we
8 thought maybe we would be complete. And I'll have a
9 better update for you in the morning so that maybe in the
10 noon hour you can make whatever phone calls that you might
11 need to make.

12 And, counsel, I'm going to probably ask that-- that
13 the one witness we were discussing be here at 8:00 in the
14 morning. Is that going to be possible, do you think?

15 MR. WETLE: Eight-thirty? The witness has a child and
16 will make arrangements for that, but--

17 THE COURT: Okay. Well, see if you can swing it for
18 8:00, and then we can--

19 MR. WETLE: Okay.

20 THE COURT: Maybe you could ask Detective Baskin to go
21 communicate that to your office the next time we send
22 somebody for a witness.

23 MR. SIMEONE: Your Honor, I'm not sure whether or not
24 to this point we actually invoked witness exclusion, so I
25 asked Mr. Doug Grange to come in. But if there is witness

1170-A

1 exclusion, then I would agree that he has to go out of the
2 courtroom, but so would all other testifying witnesses.

3 THE COURT: Well, I think we discussed that. We
4 indicated there were a few-- a few witnesses that-- that
5 could remain in for-- since they were so pro forma, but
6 yes, there is a witness exclusion order, so anyone who has
7 been subpoenaed or called or indicated that they will be
8 a witness needs to take a seat outside the courtroom,
9 please.

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1170-B

Judy Americk
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WITNESS IS SWORN

THE COURT: Give your name and spell your last name for the record.

MS. CAMERON: Okay. My name is Andrea Cameron, C-A-M-E-R-O-N.

ADJUSTMENTS TO MICROPHONE

THE COURT: And then, Ms. Cameron, your current address, please?

MS. CAMERON: 3514 Lael Road, Kettle Falls.

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

MR. WETLE: Thank you, your Honor.

ANDREA CAMERON

Being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. WETLE:

Q. Good afternoon, Ms. Cameron. First, I'd ask, by having you tell the court and jury your occupation. What you normally do?

A. I'm a housewife and part-time housekeeper.

Q. And do you have a family?

A. I do.

Q. And who would that be?

A. I have a son, Dane Williams; a son-- daughter, Liza Cameron; and a son, Jake Cameron.

Q. And are you familiar with Lou Ash's cabin at Crown Creek?

Andrea Cameron - Direct (by Mr. Wetle)

1171.

1 A. I am.

2 Q. And how-- Where do you live in relation to that cabin?

3 A. I live about two miles south.

4 Q. Could you--

5 MR. WETLE: Mr. Bailiff, could you get Exhibit 21?

6 It's a-- Hand that to the witness.

7 Q. And I'd just ask, if you like, Ms. Cameron, you can pick
8 that up and examine it, just to try to orient yourself.

9 I don't know if you can see the Lou Ash cabin up there?

10 A. Yeah.

11 Q. Can you-- And what's-- Is it marked in some way? Is
12 there a mark?

13 A. It's got a circle around it.

14 Q. Okay, and also can you go down and find where your home
15 is?

16 A. This is really deceiving. Oh, okay, I see the distance.
17 I'm here.

18 Q. Okay, and so that would be directly down from the Lou Ash
19 cabin?

20 A. (No audible response)

21 Q. And where in relation to that would the Hamlet Road cabin
22 be that Dane was caretaking?

23 A. Oh, this way.

24 Q. Thank you very much. How long have you lived there?

25 A. Fourteen years.

Andrea Cameron - Direct (by Mr. Wetle)

1172.

1 Q. And do you recall when Dane moved back to your-- to that
2 area?
3 A. Yeah, two years ago.
4 Q. Would it be in '98, '99?
5 A. Ninety-eight.
6 Q. And who did he live with when he first moved back?
7 A. He lived with me.
8 Q. And what happened after he stayed with you for awhile?
9 A. A caretaking position came up and he took that, in this
10 cabin.
11 Q. And then how long had he been caretaking that cabin then?
12 A. A year and a half.
13 Q. Do you know Maija Soucie?
14 A. I do.
15 Q. And when did you meet her?
16 A. A year-- a year and a half ago.
17 Q. So spring of '99?
18 A. Spring of '99.
19 Q. Where did she live?
20 A. She lived in the Ash cabin.
21 Q. And who did she live with up there?
22 A. She lived with Jeff Cunningham and a fellow named Wade.
23 Q. Did you know Jeff Cunningham?
24 A. Yes.
25 Q. And when did you meet him?

Andrea Cameron - Direct (by Mr. Wetle)

1173.

- 1 A. Same time as Maija.
- 2 Q. So did they come together or--
- 3 A. Together.
- 4 Q. So that would have been in May of '99 as well?
- 5 A. Right. Uh-huh.
- 6 Q. Did Maija work with you?
- 7 A. Yes.
- 8 Q. And doing what, basically?
- 9 A. She helped me in my garden, weeding. She braided garlic
10 for me. Just little odd things here and there.
- 11 Q. And did you pay her or provide her with other things?
- 12 A. Yeah, I provided her with food and some cash. Hardly ever
13 cash. Usually we traded food for the work.
- 14 Q. And how long did she stay?
- 15 A. She was only there about three months.
- 16 Q. So basically for the summer of '99?
- 17 A. Yeah.
- 18 Q. After she left, what did Jeff do?
- 19 A. He just lived there.
- 20 Q. Off and on or-- Basically that was his base?
- 21 A. Yeah. It was his base home.
- 22 Q. During that winter time, where did Jeff Cunningham stay?
- 23 A. I think he went back to Portland where he had friends.
- 24 Q. Okay, during the summer-- During the winter time he spent
25 some time in Portland. Did he ever stay with Dane?

Andrea Cameron - Direct (by Mr. Wetle)

1174.

- 1 A. Yeah, he did in the spring.
- 2 Q. Up until the snow melted?
- 3 A. Yeah. Yes.
- 4 Q. So part of the winter he's living with Dane, and then in
- 5 the--
- 6 A. Yeah, about three weeks.
- 7 Q. And then he moved up to the Crown Creek cabin?
- 8 A. To the cabin.
- 9 Q. Were there other people living up there when he was
- 10 staying with Dane?
- 11 A. Yes, there was. Yeah.
- 12 Q. And who were they?
- 13 A. Their name-- Josh Runyon and Stephanie Morris.
- 14 Q. And they left in the spring, then, of--
- 15 A. Yeah, before Jeff moved back.
- 16 Q. --2000? March or so of 2000?
- 17 A. Yeah. They left.
- 18 Q. They leave. And then who moved into that Crown Creek
- 19 cabin with Jeff Cunningham then in spring of 2000?
- 20 A. A fellow named Chewy.
- 21 Q. And when did you first meet Chewy?
- 22 A. I met him in April at the Northport Barter Fair.
- 23 Q. And how were you introduced to him?
- 24 A. Jeff introduced me to him.
- 25 Q. And he introduced you to-- at your booth, or--

Andrea Cameron - Direct (by Mr. Wetle)

1175.

1 A. Yeah.

2 Q. What were you selling at the Barter Fair?

3 A. I sell plant starts from my garden, and that's all I was
4 selling at that time.

5 Q. So that would have been in April of 2000?

6 A. Uh-huh.

7 Q. Do you remember when you saw Chewy next after that?

8 A. I believe it was some time middle of May, end of May.

9 Q. Okay, and where was Chewy living?

10 A. In the Ash cabin with Jeff.

11 Q. Did you meet Mr. Grange, or Chewy's dad--

12 A. Yes.

13 Q. --during that period of time?

14 A. Uh-huh.

15 Q. And what was the nature of that meeting?

16 A. He just wanted to meet the neighbors of where his son was
17 going to be living.

18 Q. And do you recall when you met Mr. Grange, Douglas Grange,
19 the father?

20 A. I believe it was the first week of June that he was there.

21 Q. So the Barter Fair is the 8th, 9th, 10th, 11th, in that
22 area? Would have been that first week?

23 A. Uh-huh.

24 Q. And so who was then living at the Ash cabin at the time of
25 the barter fair on June 10th and 11th?

Andrea Cameron - Direct (by Mr. Wetle)

1176.

- 1 A. Jeff and Chewy.
- 2 Q. Just the two of them?
- 3 A. Uh-huh.
- 4 Q. What type of vehicle did Chewy drive?
- 5 A. It was a Bronco, '87 perhaps. Brown and yellow or tan.
- 6 Q. And is Chewy in the courtroom here today?
- 7 A. Just a minute. Yes.
- 8 Q. And is he sitting at counsel table?
- 9 A. Yes.
- 10 Q. And Chewy's not his real name, is it?
- 11 A. No. I believe that you told me it was John.
- 12 Q. John.
- 13 A. Uh-huh.
- 14 Q. Did you only know him as Chewy?
- 15 A. Uh-huh.
- 16 Q. Did you go to the barter fair, the summer barter fair, on
17 June 9th, 10th or 11th?
- 18 A. No.
- 19 Q. Did you see Dane on that weekend of the barter fair?
- 20 A. I saw him on Friday of that weekend.
- 21 Q. Okay, and did you see him on Saturday?
- 22 A. No.
- 23 Q. Who was there then when you saw Dane over at his cabin?
- 24 A. Dane.
- 25 Q. Do you remember any arrangements made with Janell Clark

Andrea Cameron - Direct (by Mr. Wetle)

1177.

1 and Dane?

2 A. I think they were going to go to the barter fair together.

3 Q. Do you remember whether that was done on Friday or

4 Saturday?

5 A. I wasn't there. I don't recall what day.

6 Q. So after the June barter fair, that 10th and 11th, that

7 weekend, who was living at the Crown Creek cabin?

8 A. Apparently no one.

9 Q. Did you go up to the Crown Creek cabin after the barter

10 fair?

11 A. I went up about three weeks after that.

12 Q. How did you know that no one was living there after that

13 weekend?

14 A. Because they had a couple of dogs and they came to my

15 home, and--

16 Q. The dogs did?

17 A. Yeah.

18 Q. So how many-- Do you remember how many dogs Chewy had?

19 A. Four. Four dogs. He had four.

20 Q. Those were four dogs that were living up there at the

21 cabin?

22 A. They were just living everywhere. I don't know if they

23 were really staying there.

24 Q. Was anyone caring for them?

25 A. No.

Andrea Cameron - Direct (by Mr. Wetle)

1178.

- 1 Q. So when they left, they left the dogs?
- 2 A. Uh-huh.
- 3 Q. And what-- After awhile did that cause you to go up to
- 4 the cabin?
- 5 A. Uh-huh. And--
- 6 Q. And what were you thinking at that time?
- 7 A. I was wondering where they might be, or-- and when they
- 8 were coming home.
- 9 Q. And had you continued to care for the dogs?
- 10 A. Yes. Uh-huh. At that-- They were staying at my home by
- 11 then.
- 12 Q. They were now living at your house?
- 13 A. Yeah.
- 14 Q. Why didn't you go up there right away?
- 15 A. I didn't go up there right away.
- 16 Q. And why not? Can you tell the jury?
- 17 A. Yeah, because of their lifestyle, and it was the same time
- 18 as the Rainbow gathering that was happening in Montana.
- 19 I assumed that that's probably where they had gone off
- 20 with since-- it was the barter fair and they perhaps met
- 21 up with some friends and had gone off to the Rainbow
- 22 gathering.
- 23 Q. How did you feel about them leaving their dogs at your
- 24 place?
- 25 A. I was going to give them a time about it.

Andrea Cameron - Direct (by Mr. Wetle)

1179.

1 Q. Did you see any-- Were there any notes left at your house
2 about what to do with the dogs or--
3 A. No.
4 Q. Not that you recall?
5 A. Huh-uh.
6 Q. So after awhile, what did you do with the dogs?
7 A. I called Maija Sousa (sic) and I-- she took three of
8 them, and I kept the other two.
9 Q. So there was-- Was one of-- There were two puppies, and
10 did--
11 A. There were three puppies.
12 Q. Three puppies.
13 A. And Jeff's dog also was included.
14 Q. So Jeff's dog was there?
15 A. Yeah.
16 Q. And then three puppies?
17 A. And three puppies and another adult dog.
18 Q. That would have been Drexler?
19 A. Drexler.
20 Q. A dog named Drexler?
21 A. Yes.
22 Q. And was there a dog named Bear?
23 A. Uh-huh.
24 Q. So you got Jeff's dog, three puppies-- no, two puppies,
25 Drexler and Bear?

Andrea Cameron - Direct (by Mr. Wetle)

1180.

1 A. No, three puppies.
2 Q. Three puppies all together?
3 A. Yeah. Drexler, and Bear was my son's dog.
4 Q. That's Dane's?
5 A. Dane.
6 Q. And Drexler, whose dog was that?
7 A. Chewy's dog.
8 Q. And Jeff's dog is?
9 A. Merle.
10 Q. Merle? And then the puppies. What happened to Drexler?
11 A. Drexler stayed with me until, oh, after Christmas, and
12 then I took him to the Humane Society in Spokane where
13 they keep animals till they can get them a good home.
14 Q. So from June until after Christmas?
15 A. Yeah, I kept Drexler.
16 Q. Nobody came back to get Drexler?
17 A. No.
18 Q. I'd ask the bailiff to hand to you what's marked as
19 Exhibit 8.
20 A. I'm supposed to open--
21 THE COURT: He may be asking you to open it here in a
22 second. I'm just anticipating--
23 MR. WETLE: Yes.
24 THE COURT: You want her to open it?
25 MR. WETLE: Please.

1181.

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THE COURT: Okay.

Q. And can you identify that? Do you know what that is?

A. Yeah, it's the collar Drexler wore.

Q. And what did you do with that collar?

A. It-- I just-- I think he chewed it off, 'cause I found

1181-A

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

1 it in the yard. In my yard.

2 Q. And then did you give that to someone at a later date?

3 A. Yes. LaVonna Webb.

4 Q. LaVonne Webb?

5 A. Uh-huh.

6 Q. Okay. Did you ever hear from Dane after the barter fair?

7 A. I did.

8 Q. And how soon after the barter fair did you hear from him?

9 A. About-- Approximately two to three weeks.

10 Q. And what did he want you to do?

11 A. He wanted me to take care of Bear and watch his cabin
12 while he worked in Vancouver, Washington.

13 Q. Was he going to plan on coming back to the cabin, or did
14 he say that--

15 A. I thought at that time he might have been, but I-- He had
16 a full time job.

17 Q. And so what did he say to do with the cabin?

18 A. That I should probably call the landlord and let him know
19 it was vacant.

20 Q. And he, in fact, didn't come back?

21 A. No.

22 Q. But at least maintained some contact?

23 A. Yes.

24 MR. WETLE: Thank you, Ms. Cameron. I have no further
25 questions, your Honor.

Andrea Cameron - Direct (by Mr. Wetle)

1182.

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THE COURT: All right, Mr. Simeone?

MR. SIMEONE: Thank you, Ms-- Thank you, your Honor.

1183.

1 ANDREA CAMERON

2 CROSS EXAMINATION

3 BY MR. SIMEONE:

4 Q. Ms. Cameron, first of all, I want to know, are you
5 available to bring your son Dane-- Jake, to court
6 tomorrow?

7 MR. WETLE: Objection, your Honor. Not have anything
8 to do with the testimony.

9 THE COURT: Sustained. Mr. Simeone, you can make those
10 arrangements otherwise.

11 Q. Was Jake subpoenaed today?

12 A. Yes.

13 Q. Okay. Now, you had an interview with one of the police
14 officers--that would have been Captain Webb--in October
15 last year, right?

16 A. Uh-huh.

17 Q. Okay. Now, I want to go back and I want to recreate and
18 discuss with you the events that took place some time
19 surrounding the weekend, plus I have some other questions
20 for you. Do you recall the weekend that the summer barter
21 fair, that is the June barter fair--

22 A. Uh-huh.

23 Q. That began June 9th? Is that right? June 9th being--

24 A. I believe so.

25 Q. June 9th being a Friday, and then Saturday and Sunday,

Andrea Cameron - Cross (by Mr. Simeone)

1184.

1 10th and 11th?

2 A. Uh-huh.

3 Q. Okay. Do you remember incidents occurring that weekend
4 right now as a result of your present recollection or
5 having discussed them with others?

6 A. That weekend?

7 Q. Yeah. Are you able to recall--

8 A. Yes, my husband and I took a trip to Idaho.

9 Q. Okay, and that would have been starting on Saturday, is
10 that right?

11 A. Saturday. Uh-huh.

12 Q. Okay. Now, you have a-- your vehicle at your house,
13 don't you? A truck of some kind?

14 A. I-- Yes, we have two.

15 Q. And what kind of truck did you have at that time, around
16 June 9th or 10th of--

17 A. I drive a 1993 Toyota Four-Runner.

18 Q. Okay. Do you recall whether or not Dane borrowed your
19 truck that Monday? That would be the 12th-- June 12th?

20 A. No, he didn't.

21 Q. Did not? Now, Crown Creek Road is a-- it's a relatively
22 quiet road, isn't it?

23 A. Except for during hunting season.

24 Q. Right. June not being hunting season though, right?

25 A. Right.

Andrea Cameron - Cross (by Mr. Simeone)

1185.

1 Q. So it's a relatively peaceful road, un-traffic?
2 A. Uh-huh.
3 Q. Okay. Do you recall the Monday night following the barter
4 fair? That would be Monday, the 12th, again?
5 A. Uh-huh.
6 Q. Did you-- Do you recall a great deal of traffic late at
7 night? I shouldn't say a great deal, but four SUV's--
8 A. Yeah.
9 Q. --running all together?
10 A. Yes, I do.
11 Q. Was that an unusual event, in your mind?
12 A. Yes.
13 Q. You have any way of explaining why that would have
14 happened that night?
15 A. At first I thought perhaps a party was happening in the
16 cabin.
17 Q. Uh-huh.
18 A. And then I thought not, because of the newer make and
19 model of the cars.
20 Q. You were actually able to see them close enough--
21 A. I saw two of them.
22 Q. --to know that they were newer cars?
23 A. Yes.
24 Q. Okay. And then that occurred to you to be strange,
25 didn't it, that they were there running all together like

Andrea Cameron - Cross (by Mr. Simeone)

1186.

1 that?

2 A. Yeah, because I had to stop and pull off the road so they
3 could go by me.

4 Q. And about how late was that, Mrs. Cameron?

5 A. I was working pretty late. It was probably between
6 midnight and 1:00 o'clock in the morning.

7 Q. Okay, now, we're trying to orient ourselves here. The
8 Crown Creek Road runs basically north/south, doesn't it?

9 A. Uh-huh.

10 Q. Were they running in a northerly or a southerly direction?

11 A. Southerly.

12 Q. So they were running towards Flat Creek?

13 A. Right.

14 Q. Did they appear to be coming from the Crown Creek cabin
15 that you've discussed so far?

16 A. I-- I couldn't know that.

17 Q. But were you between Flat Creek and the Crown Creek cabin,
18 I should say?

19 A. I was-- I was between the two cattle guards.

20 Q. So you are south of the Crown Creek cabin?

21 A. Yeah.

22 Q. So they were north of you and prob-- they were coming
23 from the direction of the Crown Creek Cabin anyway, is
24 what I should say.

25 A. Right.

Andrea Cameron - Cross (by Mr. Simeone)

1187.

- 1 Q. Okay. Was one of those SUV's-- Do you know if it was a
2 red Jeep Cherokee and the other a blue Ford Explorer?
- 3 A. That's what I saw.
- 4 Q. Okay, it sounds like you are able to identify models and
5 vehicles pretty well.
- 6 A. Yeah.
- 7 Q. Okay.
- 8 A. Yes.
- 9 Q. And you didn't associate those with the kind of vehicles
10 that kids coming from the Crown Creek cabin might drive,
11 did you?
- 12 A. No.
- 13 Q. Okay. And how fast would you say they were moving? Just
14 your estimate, if you're able.
- 15 A. Forty miles an hour.
- 16 Q. And what would you say about that speed for that road? Is
17 that relatively fast or a slow speed? What would you say?
- 18 A. It's pretty fast.
- 19 Q. Now, you've identified Mr. Grange, and you say you had
20 been introduced to him that summer.
- 21 A. Uh-huh.
- 22 Q. Do you agree that he only had been to your cabin a couple
23 of times?
- 24 A. Yes.
- 25 Q. Once with his dad? You met him through--

Andrea Cameron - Cross (by Mr. Simeone)

1188.

1 A. Yes.

2 Q. --John, I guess.

3 A. Yeah.

4 Q. Okay. Now, your husband is Ken Cameron, right?

5 A. Uh-huh.

6 Q. And is he friendly with an individual known as Rob
7 Schultz?

8 A. I-- I do not know.

9 Q. Do not know? Do you know if they ever have any phone
10 calls together?

11 A. I don't know.

12 Q. Would there be any reason for Rob Schultz to call Ken?

13 A. Not that I know.

14 Q. Okay. Now, it's your understanding that your son, Dane
15 Williams, met John at the April barter fair? April of
16 2000?

17 A. I don't know.

18 Q. And did you ever tell that to Officer Webb?

19 A. I don't think so.

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

21 THE COURT: All right.

22 Q. Ms. Cameron, I wanted to hand you a document that might
23 help you refresh your memory. Could you identify for us
24 what this appears to be, starting from the top?

25 MR. SIMEONE: May I move this exhibit?

Andrea Cameron - Cross (by Mr. Simeone)

1189.

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THE COURT: Yes.

A. I don't understand what you mean. What do you-- What do I think it is?

Q. Can you at least identify what this is, from reading the top?

A. It's a case number of a homicide.

Q. Stevens County Sheriff's Office, Additional Information Report?

A. (No audible response)

Q. Okay, I want to address your attention to page 146 of that and see whether or not this recollection-- or refreshes your memory as to whether or not you know when it was that--

MR. WETLE: Your Honor, I'd just ask if Mr. Simeone could just ask the question.

MR. SIMEONE: I did. I'm trying to refresh her memory.

MR. WETLE: What was the question?

Q. The question is when it is that she thinks that Dane met John Grange, and I asked her whether or not you thought he met him at the April, 2000 barter fair.

A. Uh-huh.

Q. And do you recall having a discussion with Detective Webb at that time? Asked about when it was that you thought he was introduced to John, and I could maybe direct your attention to this paragraph to see whether or not that

Andrea Cameron - Cross (by Mr. Simeone)

1190.

1 refreshes your memory.

2 MR. WETLE: What paragraph are you talking about, Mr.
3 Simeone?

4 MR. SIMEONE: That'd be one, two-- third full para-
5 graph.

6 A. Yeah, I-- I don't know.

7 Q. Does that refresh your memory at all as to what--

8 A. No.

9 Q. --what time frame it was that John met Dane?

10 A. No.

11 Q. Well, does April of 2000--

12 A. I really--

13 Q. --barter fair sound--

14 A. I don't know when--

15 Q. --right to you?

16 A. --he met him. I only know when I did.

17 Q. Okay. Do you know of any-- Do you know-- You don't know
18 the introduction date then of those two people?

19 A. No.

20 MR. WETLE: She's already asked-- answered that
21 question, your Honor.

22 THE COURT: That's fine. The answer may stand.

23 Q. Now, in your statement to Detective Webb-- Or do you
24 recall whether or not Dane had spent Saturday, the 11th of
25 June, at your cabin?

Andrea Cameron - Cross (by Mr. Simeone)

1191.

1 A. I wasn't there.

2 Q. Well, do you recall whether-- You were-- You got there
3 Sunday night though, right?

4 A. Uh-huh.

5 Q. Okay, you have no knowledge-- Do you recall telling
6 Detective Webb that he didn't spend Saturday night there
7 when she interviewed you?

8 A. I wasn't there, so I wouldn't have known.

9 Q. And the last time you saw Dane was on Friday or Saturday--

10 A. Friday.

11 Q. --before you left?

12 A. Saturday.

13 Q. And at that time, is it correct that you took-- that you
14 saw-- or you took your son, Jake, up to play games?
15 Would those be video games, at Dane's cabin?

16 A. Uh-huh.

17 Q. Okay, that was Saturday, right?

18 A. Uh-huh.

19 Q. You're pretty clear about that?

20 A. Uh-huh.

21 Q. And was Jake at Dane's cabin on Sunday when you got back?

22 A. No, he was home.

23 Q. Is it correct that Jake did not go to Dane's cabin on
24 Sunday?

25 MR. WETLE: Objection, your Honor. Calls for a--

Andrea Cameron - Cross (by Mr. Simeone)

1192.

1 A. I don't know.

2 MR. WETLE: She doesn't know.

3 MR. SIMEONE: Well, to her know--

4 MR. WETLE: She'd have to speculate.

5 MR. SIMEONE: To her knowledge.

6 A. I do not know.

7 Q. Did you see him go there?

8 MR. WETLE: She said she did not know, your Honor.

9 A. I wasn't there.

10 MR. SIMEONE: Your Honor, I want to clarify the
11 question that I'm asking. I'm not asking whether or not
12 she saw him go or not-- or whether or not she knows he
13 actually went there. I'm asking whether or not she saw
14 him go there.

15 A. No.

16 THE COURT: And she's saying no, she didn't.

17 MR. SIMEONE: Okay.

18 Q. Now, did--

19 THE COURT: For what it's worth, I'm not sure it's been
20 clarified when Ms. Cameron actually returned from Idaho.

21 Q. When did you return? Was that Sunday?

22 A. Late Sunday night.

23 Q. Okay. Do you know how far the Hamlet Creek cabin that
24 Dane lives in is from the Ash (sic) Creek cabin?

25 A. Probably close to five miles.

Andrea Cameron - Cross (by Mr. Simeone)

1193.

1 Q. And the approximate time from the one to the other, do you
2 know?

3 MR. WETLE: Approximate time to do what, your Honor?

4 A. Yeah.

5 THE COURT: Driving time, you mean?

6 Q. To drive from one to the other.

7 A. Five minutes.

8 Q. Five minutes for five miles?

9 A. You have to go through gates and rough road. Fields.

10 Q. Well, assuming that five minutes for five miles would mean
11 60 miles an hour, does that help you maybe with your
12 answer?

13 A. I've never done it. I don't know.

14 Q. Okay. Now, did you know-- I understand your testimony to
15 be that Mr. Grange and you met around the spring barter
16 fair, 2000. Is it correct that the purpose of Mr.
17 Grange's moving up to the area was to do some work around
18 the Lou Ash cabin?

19 MR. WETLE: Objection, your Honor.

20 A. I don't know.

21 MR. WETLE: I'm sorry. She--

22 THE COURT: We knew-- When there's an objection, and
23 I know it came in a little late, but when there's an
24 objection if you could hold off on your answer until we
25 get a ruling on the objection.

Andrea Cameron - Cross (by Mr. Simeone)

1194.

1 MR. WETLE: Calls or speculation as to why Mr. Grange
2 went there, your Honor.

3 THE COURT: Sustained, unless you want to clarify in
4 your question what you're asking.

5 Q. Do you know whether or not he was doing any work for Mr.
6 Ash at the cabin?

7 A. No, I don't know.

8 Q. You don't know? Do you know whether or not he was looking
9 for work around the area?

10 MR. WETLE: Objection. Call-- Strike the objection.

11 THE COURT: You may answer.

12 A. I don't know.

13 Q. To your knowledge, was he looking for any work harvesting
14 garlic?

15 A. I don't know.

16 Q. Is there somebody around there who has a garlic harvest
17 going on?

18 A. Lots of folks do.

19 Q. Okay, but that's work that people do up around _____?

20 A. Pardon?

21 Q. Specially in the summer time? That's work that people do
22 around there, especially in the summer time?

23 A. Some. Uh-huh.

24 Q. Now, I thought your testimony was, with regard to these
25 dogs, that they were Mr. Grange's dogs, but you identified

Andrea Cameron - Cross (by Mr. Simeone)

1195.

1 only one as being his, after all?

2 A. I assumed three of the puppies were his, and the adult
3 dog, Drexler.

4 Q. How is it that you think they were his puppies?

5 A. I think Maija told me that he acquired them at the barter
6 fair.

7 Q. Do you have any personal knowledge of him acquiring them
8 at the barter fair?

9 A. I don't know.

10 MR. SIMEONE: I would ask that the witness' answer as
11 to how it was that she knows the dogs were his that she
12 heard be stricken.

13 MR. WETLE: No, your Honor. It's been asked and she
14 answered it to the best of her knowledge.

15 THE COURT: The answer will stand.

16 Q. Now, you said that the individuals at the cabin left to go
17 to the Rainbow gathering. Is that the reason why the dogs
18 stayed there?

19 A. That was an assumption on my part.

20 Q. Okay, do you know when the Rainbow gathering was?

21 A. No, I don't.

22 Q. So you don't know when it is relative to when the people
23 left the cabin then?

24 A. No.

25 Q. Okay, so you could be wrong about that point?

Andrea Cameron - Cross (by Mr. Simeone)

1196.

1 A. Of course.
2 Q. Okay. Can you be wrong about whose puppies they were, too?
3 A. I could of been.
4 Q. Bear was Dane's dog, is that right?
5 A. Yes.
6 Q. And are you aware of a dog that Jeff had the year before
7 that? Jeff Cunningham, that is.
8 A. He had three dogs.
9 Q. Was it Mishu or Misha? Does that sound right?
10 A. Mishu.
11 Q. Do you know the fate of that dog?
12 MR. WETLE: Objection.
13 A. She got ran over by a car.
14 MR. WETLE: Not relevant.
15 MR. SIMEONE: Your Honor, we were talking about dogs in
16 his direct examination. It sounds like it was relevant to
17 him.
18 MR. WETLE: What dogs one person had three years ago,
19 or two years ago, is not relevant to this trial.
20 THE COURT: I'm a little bit concerned about getting
21 off on a tangent, Mr. Simeone, but go on to your next
22 question now, unless you're-- You have some other
23 question about that dog?
24 Q. Well, I want to ask you about the dog that you kept for
25 John. That would be Drexler. Isn't-- You said that you

Andrea Cameron - Cross (by Mr. Simeone)

1197.

1 brought him to the pound. Is that right?

2 A. Uh-huh.

3 Q. Well, isn't it correct that John asked you if he could
4 come and get the dog? You don't recall--

5 A. No, that's not correct.

6 Q. You don't recall that conversation? You don't recall
7 refusing to let him come and get the dog from you?

8 A. I never talked to him.

9 Q. How about with any other members of the household? Is it
10 possible that he made attempts to get him back from
11 anybody else there?

12 A. I don't know.

13 Q. Now, with regards to why it is that Dane had you take care
14 of Bear, is it because he was arrested?

15 A. No.

16 Q. And the-- Well, what was the reason you had to take care
17 of him?

18 A. He was out of town working.

19 Q. But Dane has a pretty spotty work history, doesn't he?

20 A. I don't know.

21 Q. Well what have his jobs been?

22 A. I don't know.

23 Q. So you don't know of any jobs that he's ever had then?

24 A. I don't know.

25 Q. Okay. That means is it difficult for somebody who doesn't

1 have a job then to finance a Porsche, would you say?

2 MR. WETLE: Objection. Speculation. No foundation.

3 THE COURT: Sustained.

4 Q. Do you know of any way that your son can finance the
5 purchase of a Porsche?

6 A. No.

7 Q. But you know that he bought one, don't you?

8 A. I know that he had one.

9 Q. And that would have been after the June barter fair of
10 2000, wouldn't it?

11 A. Yes.

12 Q. Not too long thereafter either, was it?

13 A. I don't know.

14 Q. Does your memory fail you, Ms. Cameron, or do you just not
15 know these things from the beginning?

16 A. He didn't tell me what kind of car he drove. And I don't
17 ask.

18 Q. Isn't it correct that your husband was upset at the fact
19 that he bought the Porsche?

20 MR. WETLE: Objection.

21 MR. SIMEONE: Sorry. Ex-husband.

22 MR. WETLE: How her husband felt. He can ask the
23 husband.

24 THE COURT: Well, but that would not-- If you're
25 making an objection on hearsay, it's state of mind, if she

Andrea Cameron - Cross (by Mr. Simeone)

1199.

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knows it, but is there some relevance to whether or not the husband was upset?

MR. SIMEONE: I'm trying to-- Yeah, your Honor. I'm trying to locate for her in time when it was that this Porsche would have been purchased. She seems not to have that information and I'm trying to help her with that.

THE COURT: All right, I'll allow some of this questioning to proceed, if you can remember if your husband was upset about the purchase of the Porsche.

A. No.

Q. Is that your ex-husband?

A. No.

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

THE COURT: Yes.

Q. Again I want to direct your attention to the conversation and interview you had with Ms. Webb, and I'll direct your--

THE COURT: Excuse me, Mr. Simeone. Are you handing her Captain Webb's report or something?

MR. SIMEONE: That's correct. It's for the purpose of refreshing her memory, your Honor.

THE COURT: Well, I don't think that she can have her memory refreshed by a document that she didn't generate.

MR. SIMEONE: Your Honor, can we approach the bench?

THE COURT: All right.

1 UNRECORDED SIDEBAR

2 Q. Ms. Cameron, do you recall--

3 MR. WETLE: _____

4 Q. Do you recall when you spoke to Detective Webb that you
5 discussed with her whether or not the purchase of the
6 Porsche offended or bothered your husband?

7 A. I don't remember.

8 Q. Do you recall discussing it with her at all?

9 A. No, I don't remember.

10 Q. You never said to her at the time that it offended your
11 husband and that he was going--

12 MR. WETLE: Objection, your Honor. She said she didn't
13 remember and he's reading into the record a statement.

14 MR. SIMEONE: I think I'm allowed to exhaust her
15 memory.

16 THE COURT: Hold on. Let's hear the whole objection.

17 MR. WETLE: Oh, I said he's already asked the question,
18 she said she doesn't remember, and now he's going to read
19 it into the record.

20 THE COURT: No, it's proper cross examination at this
21 point. Go ahead.

22 Q. Do you remember telling her at that time that your husband
23 said-- your ex-husband said that his dad had kicked him
24 in the butt for buying it?

25 A. The first time you said my husband, now you've said my ex-

Andrea Cameron - Cross (by Mr. Simeone)

1201.

1 husband.

2 Q. Okay, I'm not sure, 'cause I don't know the history of
3 your marriage, and I'm sorry. I apologize.

4 A. I don't speak to my ex-husband, so I wouldn't know what
5 his reaction would have been.

6 Q. Okay, isn't it true that there was supposed to be some
7 mention of his dad's-- Let's just clarify. His dad's
8 unhappiness that he had purchased the Porsche and he was
9 going to kick him in the butt for buying it.

10 MR. WETLE: Objection, your Honor.

11 A. No.

12 Q. Don't remember that?

13 MR. WETLE: This calls--

14 A. I don't remember that.

15 THE COURT: Excuse me one second. When you say--

16 MR. WETLE: Some mention of his unhappiness. She's
17 supposed to talk about--

18 THE COURT: What is the basis of your objection?

19 MR. WETLE: It's not relevant and it is her speculation
20 on unhappiness or happiness of a husband or an ex-husband.
21 I'm not sure which at this point.

22 THE COURT: Okay, would you clarify what it is that you
23 are exactly asking her, please?

24 MR. SIMEONE: And again, the whole-- So we can figure
25 out what ballpark we're in here, I'm trying to locate her

1 as to time when it was that the Porsche was purchased, and
2 I'm hoping that this would refresh her memory.

3 MR. WETLE: Objection as to the narrative statement.

4 THE COURT: That's in response to your objection, Mr.
5 Wetle, and that is in response to the relevancy objection,
6 and therefore the relevancy objection is overruled. And
7 so your question exactly, Mr. Simeone, is what?

8 Q. The question exactly, Ms. Cameron, do you remember any
9 conversation, or would it refresh your memory that you may
10 have told Detective Webb that your ex-husband, Dane's
11 father, was going to kick him in the butt for buying that
12 Porsche, the red Porsche?

13 A. I didn't say that.

14 Q. Didn't say it?

15 A. I don't remember saying that.

16 Q. Okay. So is it your testimony that your husband's
17 friend-- your husband is not friendly with Rob Schultz?

18 A. I don't know.

19 Q. You don't know the name?

20 A. I don't know Rob Schultz. I don't know.

21 Q. You don't know that name?

22 A. I don't know who my husband associates with always.

23 Q. Okay, that's not my question. My question is do you know
24 if your husband is acquainted with Rob Schultz?

25 A. No, I don't know.

Andrea Cameron - Cross (by Mr. Simeone)

1203.

1 MR. SIMEONE: No further questions. Thank you.

2 THE COURT: Any redirect, Mr. Wetle?

3 MR. WETLE: No, your Honor.

4 MR. WETLE: All right, thank you, Ms. Cameron, for your
5 testimony. Does this witness need to remain in attendance?

6 MR. WETLE: No, Your Honor.

7 THE COURT: All right, you're excused from your subpoena
8 then, Ms. Cameron, and you may step down and are free to go at
9 this time.

10 And, ladies and gentlemen, we have made it to 5:00
11 o'clock, and so we'll go ahead and recess court, or adjourn
12 court, for the day. Again, my admonishment to you about not
13 reading, viewing or listening to any newspaper, television, or
14 radio reports on this matter, if any, and that's a very
15 important instruction. In addition, no discussion among
16 yourselves or with anyone else while this matter is pending.
17 I'll have you folks appear tomorrow, if you would, please, at
18 9:30, and we'll hopefully keep your waiting to a minimum.
19 And, counsel, if you'll remain for just a few minutes we'll
20 talk about some issues, scheduling issues, before you take off
21 for the evening. And so, ladies and gentlemen, the bailiff
22 will escort you out of the courtroom at this time.

23 ~~JURY IS ESCORTED OUT OF THE COURTROOM~~

24 THE COURT: Let me go ahead, Mr. Simeone, and put your
25 objection, if you would, please--

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MR. SIMEONE: Your Honor, my objection--

THE COURT: --on the record in regard to-- We were talking about Rule 613-- No, excuse me, not 613--

MR. SIMEONE: Six-twelve.

THE COURT: Six-twelve, using a writing to refresh memory.

MR. SIMEONE: Your Honor, you recall the colloquy there. I was trying to ask the witness whether or not the transcript of Captain Webb's interview report would help her or refresh her memory as to what it was she discussed with Captain Webb. And it's my opinion, and I told the court so too, that we can use anything we want to refresh a witness's memory to see whether or not their present recollection is refreshed. I was not using it for purposes of trying to impeach her memory. The court, I think, acknowledged that I was allowed to exhaust her recollection, which is in accordance with the rule, to see whether or not she had such a memory of buying a red Porsche, whether or not her ex-husband or Dane's father would have

1 recalled-- she would have recalled her ex-husband saying that
2 he was angry with Dane for that. The whole purpose of that
3 drill was to see if she could locate in time when that Porsche
4 was purchased. She disavowed any information about when.
5 Well, the information in the report, I thought, was going to
6 be able to refresh her memory, and that's the reason why I
7 wanted to present it to her, and think I should have been able
8 to do so.

9 THE COURT: All right, I'm reading here from the comments
10 to 612, and first of all, it is required that the witness's
11 memory be exhausted and the witness indicate a need for the
12 writing before the use of it can be made. We usually see this
13 the other way, where it's one's own witness that is-- that is
14 needing refreshment, perhaps, on their memory. Their present
15 recollection refreshed, essentially. But I think, Mr.
16 Simeone, you're correct that it can be anything. It doesn't
17 have to be a writing per se that they generated, which was my
18 first concern, but my main concern, getting beyond that, is
19 that you hadn't really confronted her with what it was that
20 you were-- that you were concerned about; that is, a state-
21 ment to Captain Webb. I think it's clear that she doesn't--
22 she doesn't recall making the statement to Captain Webb and
23 that being confronted with the written statement from Captain
24 Webb would not have refreshed that memory either, so-- But
25 your objection is noted.

1205.

1 Mr. Wetle, did you want to put anything else on the record
2 in that regard?

3 MR. WETLE: Yes, your Honor. I think that that was a very
4 interesting way to get around the fact that she didn't know
5 when the Porsche was purchased, that that was the purpose of
6 him asking that question. The question was just when was the
7 Porsche purchased. And I don't think she knew when the
8 Porsche was purchased. And then to go in and try to say that
9 somebody else was upset about it, to refresh her memory as to
10 the time it was purchased, I don't think it's connected very
11 well.

12 MR. SIMEONE: Your Honor, I'll liken it to what we had
13 this morning, and I'll go no farther with this. I don't want
14 to beat it into the ground. We had Captain-- Detective
15 Dogeagle for-- I forget the other witness's name, look at a
16 document to see whether or not he could remember what date in
17 April it was that thus and such a thing happened, or when it
18 was that an arrest occurred. He looked at it and said that
19 didn't help him and it didn't refresh his memory. That's
20 exactly what we had here. She could have looked at it and she
21 could have said no, it doesn't refresh my memory. Then at the
22 same time, she could have said yeah, it does; as a matter of
23 fact, now that I look at that and I see the writing and I see
24 the sentences and the structure and everything, yeah, that
25 does, it rings a bell, and that's what happened. So that's

1206.

1 why I wanted to show it to her.

2 THE COURT: All right. ~~Well, I think when all is said and~~
3 ~~done, yes, I think ultimately I probably should have allowed~~
4 ~~you to confront her with the writing, Mr. Simeone, now that I~~
5 ~~look further at the comments here. On the other hand, as to~~
6 ~~the error of it, which I think it probably was, I think it~~
7 ~~was, hopefully, harmless error and that she was adamant that~~
8 ~~she had no recollection of her conversation to that effect~~
9 ~~with Captain Webb.~~ And furthermore, the previous writing
10 which you were able to confront her with, didn't have any
11 similar effect either.

12 The relevancy concern, Mr. Wetle, I think is-- ~~I think~~
13 ~~there is relevance as to when the Porsche was purchased, to~~
14 ~~her knowledge.~~ However, I, in my notes, had indicate-- I
15 indicated that she did testify she knew that it was purchased
16 some time after the barter fair in June. So to the extent you
17 were trying to get that testimony out of her, I think she
18 ~~directly answered that, Mr. Simeone.~~

19 Now, we need to deal with the issue of Ms. Kerpin and her
20 testimony, the Evidence Rule 104 hearing that I've indicated
21 I'm going to need to have in regard to this issue of whether
22 or not-- whether or not this silencing effect of Mr. Kerpin
23 will be admitted into evidence through-- the silencing of Ms.
24 Daniels, excuse me, this alleged silencing of Ms. Daniels by
25 the use of a threat of a gun to her head will be allowed to be

1207.

1 introduced through the testimony of Ms. Kerpin.

2 Is there anything the parties want to put on the record
3 now about that, beyond what's already been put on the record?
4 My thought, based on what I've heard thus far is that I'm
5 going to have to hear what Ms. Kerpin exactly says and how she
6 says it to know whether or not it can be established to have
7 been-- to have occurred beyond-- by a preponderance of the
8 evidence. If so, I do think that it is relevant, based upon
9 Mr. Simeone's opening the door to that with his question to
10 Detective Dogeagle.

11 MR. SIMEONE: I understand the court's ruling on that
12 point, your Honor. I disagree that it's _____ because I
13 asked only if she's dead right now, and I don't think that
14 opens the door to any discussion about whether or not she's
15 threatened. But I understand the court's ruling. But if I
16 ever were down to an issue of whether or not this is an 801
17 (d)(2)(v) exception, we have to have the hearing that you're
18 contemplating on the preponderance of the evidence. I would
19 suggest, however, that we're going to need the testimony of
20 Detective Caruso, but we'll also need the testimony of Jeff
21 Cunningham. The reason for that is that Jeff Cunningham has
22 some information that bears on the issue. He, in his report,
23 is quoted as saying that Rob Schultz attempted to put her--
24 that is, Loki--in a safe home. And if that's the case, then
25 the issue becomes whether or not she's threatened as a result

1208.

1 of anything that he did or the people that are tied in to this
2 alleged conspiracy did. So--

3 THE COURT: I'm sorry. Would you run that by me again?

4 MR. SIMEONE: It's late-- late in the day. It's alleged
5 that-- We're trying to weigh the preponderance here, whether
6 or not this threat really occurred, and whether or not there's
7 a bona fide fear in her on her part.

8 First of all, I think we need Detective Caruso, because as
9 the court's identified earlier, she told Detective Caruso that
10 there was no threat, nobody threatened her. She also said in
11 her report-- in her statement to Detective Caruso that she
12 didn't even know that Nick Kaiser was involved in a clandes-
13 tine drug trafficking kind of an operation. So that was--
14 That would be one witness I think we need at this hearing,
15 because I think it directly refutes what the State says about
16 her being intimidated by these alleged threats, or what any
17 other witnesses might say about the alleged threats.

18 And Jeff Cunningham would also be a witness I'd ask for,
19 your Honor. He's here, he's downstairs, there's no problem
20 with that. His evidence is that Rob Schultz put Loki, or
21 wanted to put Loki in a safe home.

22 THE COURT: I'm sorry. That Jeff-- Say that again, about
23 the--

24 MR. SIMEONE: Jeff Cunningham says that Rob Schultz
25 attempted to put her, that is, Loki, in a safe home.

1209.

1 THE COURT: And what's that got to do-- I'm sorry, I'm
2 missing what that has to do exactly with--

3 MR. SIMEONE: Well, the idea is that if he's supposed to
4 be somebody who is the initiator of a threat here, or some
5 kind of a conspiracy to hurt her, that that's contradictory to
6 a suggestion that he put here in a safe home to try to protect
7 her from any kind of harm. It doesn't-- It just doesn't--
8 It doesn't add up, and I think it's further evidence that the
9 court needs to consider in making its decision about whether
10 there's a preponderance that there was this threat that was
11 mentioned or uttered.

12 THE COURT: Okay. All right, thank you. Mr. Wetle, what
13 do you know about that last part?

14 MR. WETLE: If it was a safe home, it was-- First of all,
15 Mr. Schultz is-- Mr. Simeone makes the connection that Mr.
16 Schultz is the one that's doing all this, and he may or may
17 not be. And it may be somebody else. It may be Mr. Grange's
18 friends that are doing this. I mean to tie Mr. Schultz to it,
19 I don't know. So Mr. Schultz has nothing to do with it. The
20 fact that we've got an over-arching conspiracy and whether
21 they're trying to shut down a witness is what 801 goes to, and
22 so what Mr. Schultz may or may not have done in terms of a
23 "safe home" is not relevant to whether the statement comes in,
24 or whether it was ever made. That's another collateral issue
25 that is far afield, off on another tangent that really has no

1210.

1 basis for the exception.

2 THE COURT: Okay. And in regard to the overall issue,
3 anything else that you want to bring up before we proceed
4 further on that issue?

5 MR. WETLE: I guess we'll have to deal with it tomorrow,
6 your Honor, with the hearing.

7 THE COURT: Okay, Mr. Simeone?

8 MR. SIMEONE: Briefly, your Honor. There-- It hasn't
9 become apparent to the court yet, probably, in the testimony
10 that's come out, but it may have been-- it may have been
11 hinted at in Mr. Wetle's opening statement. But their whole
12 theory here is that Mr. Schultz is somehow the sparkplug and
13 the one who inspired this plan to have this boy hurt. And
14 now he's backing off of that position by saying that we don't
15 know that Rob Schultz-- It's a very disingenuous position
16 that he takes here to say that we don't know that Rob Schultz
17 is the _____ of the conspiracy. That's their whole case.
18 That's their whole theory. That he's the sparkplug, he made
19 the suggestion, a call came in. Somehow Mr. Grange is
20 supposed to have taken that call and acted upon it. Now he's
21 backing off from that because he doesn't like the fact that
22 I'm trying to use Mr. Cunningham's statement in the informa-
23 tion that the officers have available to them that he's--
24 here he is trying to provide a safe home. How is that
25 consistent with his conspiring to plot against her?

1211.

1 MR. WETLE: Your Honor, Mr. Schultz-- Mr. Simeone is
2 trying to tie Mr. Schultz into the murder of these two
3 individuals. You have to back up and go back to the April
4 25th arrest of Shauna Daniels and Nick Kaiser. This whole
5 issue is about the arrest of Kaiser and Daniels and rolling on
6 various people involved up and down the line. It has nothing
7 to do with Mr. Grange being charged here for murder. And to
8 try and connect Mr. Schultz into the background for the murder
9 has nothing to do with the arrest and rolling on various
10 family members in April 25th. What, a month and 10 or 12 days
11 prior to the murder. This is a totally separate issue dealing
12 with the typical drug trafficking operations and intimidation.

13 THE COURT: So you're saying that-- Again, back to the
14 issue that the conspiracy is the drug trafficking conspiracy,
15 not the conspiracy to murder. A conspiracy to murder.

16 MR. WETLE: Absolutely. This is way before the murder.
17 I mean the murder's June 11th. We're talking April 25th,
18 April-- end of April, first of May, when the people are
19 starting to head for cover.

20 THE COURT: Okay. All right, here's what I, at least at
21 this point, provisionally want to do with the ER 104 hearing.
22 We've got to have an ER 104 hearing on, I believe, one other
23 thing, don't we, on Mr. Cunningham still? Don't we, counsel?

24 MR. SIMEONE: That goes to the offer of proof that Mr.
25 Wetle's making here for the introduction of those statements,

1212.

1 your Honor, that we've been discussing.

2 THE COURT: The--

3 MR. WETLE: Oh, the colder and colder issue?

4 THE COURT: Yeah, the colder and colder each time state-
5 ment, allegedly. I mean I guess we have two issues associated
6 with that. Number 1, whether it was stated; Number 2, you
7 know, whether it was stated by a preponderance of the evi-
8 dence, before I can even let it in. Number 2, even if was,
9 it's--

10 MR. WETLE: An admission?

11 THE COURT: No. Obviously, it's an admission, but whether
12 it's evidence of prior bad acts that would make it inadmissi-
13 ble for-- because of the prejudicial effect of the intro-
14 duction for the wrong purpose, namely, action and conformity
15 with prior bad acts. A reference to a prior bad act, even if
16 out of the defendant's mouth. So that's a separate issue as
17 to that. But since we have to have Mr. Cunningham here for
18 that issue, I'm not sure I agree with Mr. Simeone at all as to
19 whether I'm going to need Mr. Cunningham's testimony. I may
20 be able to resolve this just on the basis of what Ms. Kerpin
21 says, and I don't think-- I don't think I'm that interested
22 in what Mr. Cunningham has to say, other than, obviously, if
23 Mr. Simeone wants to ask him that when he's on the witness
24 stand later, if I do let this in about Ms. Kerpin's testimony
25 about Ms. Daniels, then that's obviously something that he can

1213.

1 do. But I'm not going to need it for the ER 104 issue. What
2 I need is Ms. Kerpin's testimony.

3 So when we're talking scheduling here, we do have the ER
4 104 issue on Mr. Cunningham to do. We have the ER 104 issue
5 on Ms. Kerpin to deal with. Do you want to just handle Ms.
6 Kerpin tomorrow morning, or do you want to try to get Mr.
7 Cunningham's in as well?

8 MR. WETLE: No, your Honor. Ms. Kerpin only. I'm not
9 sure if the court wanted to go to Mr. Cunningham and require
10 him to come and testify at the 104 hearing. Probably ____.

11 THE COURT: No, I don't want him-- I don't need him at
12 the 104 hearing on the Kerpin issue.

13 MR. WETLE: I understand, but even for the colder and
14 colder issue.

15 THE COURT: Right.

16 MR. WETLE: That's-- That would probably foreclose that
17 option. So if the court needs that in testimony from Mr.
18 Cunningham, in all likelihood that ____ be here to testify
19 about that.

20 THE COURT: In all likelihood what?

21 MR. WETLE: He may not be here-- We may not call him to
22 testify if the court needs that direct testimony from him on
23 the colder and colder issue. If the State--

24 THE COURT: So in other words you're going to withdraw
25 that from your evidence?

1214.

1 MR. WETLE: If he's needed to testify about it, I'd be--
2 THE COURT: Ahead of time.
3 MR. WETLE: --I'd be inclined to do it, and I'll have to
4 maybe talk to him about that. But that's--
5 MR. SIMEONE: We're leaning--
6 MR. WETLE: I'll know tomorrow.
7 MR. SIMEONE: Leaning towards not using that then?
8 THE COURT: Is that what you're saying?
9 MR. WETLE: Yes. If we have to call him.
10 THE COURT: I thought that's what I heard.
11 MR. SIMEONE: If we do use it, we need to hear him. Is
12 that right?
13 THE COURT: Right.
14 MR. SIMEONE: Okay.
15 THE COURT: And so in other words, you will not use it
16 until and unless we have that ER 104 hearing.
17 MR. WETLE: That's correct.
18 THE COURT: Okay. So--
19 MR. WETLE: And you want--
20 THE COURT: --scheduling-wise--
21 MR. WETLE: You want him at the hearing?
22 THE COURT: At-- I will require--
23 MR. WETLE: Require him to testify.
24 THE COURT: Before I would admit the colder and colder
25 issue, I would want an ER 104 on that.

1215.

1 MR. WETLE: Thank you.

2 THE COURT: With live testimony from Mr. Cunningham alone.
3 Now, I don't think that would be very lengthy, so, I mean, if
4 you wanted to do it right before he was put on the stand, I
5 suppose we could do that if you're worried about logistics or
6 something. But in terms of this Kerpin issue, I just need Ms.
7 Kerpin. Kerpin/Daniels issue, I just need Ms. Kerpin. And so
8 can you have her here at 8:30?

9 MR. WETLE: Yes.

10 THE COURT: Can you have her at 8:00?

11 MR. WETLE: Ah-- 8:30 is--

12 THE COURT: What's the problem with 8:00?

13 MR. WETLE: It's just everybody-- Well, it could happen
14 at 8:00. I would hope that--

15 THE COURT: But you can't be sure that you can get her
16 here at 8:00?

17 MR. WETLE: I'm going to go back and-- It's 5:30, almost,
18 or 5:15 now, and I'm just--

19 THE COURT: Okay, let's say 8:30 then. Now, jury instruc-
20 tions, Mr. Wetle, do you have some to let me look at this
21 evening?

22 MR. WETLE: I'll go down and see if they're ready.

23 ~~THE COURT: Okay. Mr. Simeone, are you going to have any~~
24 ~~additional, do you suppose?~~

25 MR. SIMEONE: Well, I suppose--

1 THE COURT: ~~You and Mr. Wetle have conferred, I assume,~~
2 ~~about your jury instructions to a certain extent?~~

3 MR. SIMEONE: Well, insofar as I know, he's ~~going to be~~
4 ~~proposing~~ a standard set of instructions regarding the
5 charges. I might have some additional instructions. I found
6 in the past that it's a waste of time for me to duplicate
7 instructions that he has, so I'm thinking if I submit my
8 package of instructions, it would only be those that would be
9 in addition to his.

10 THE COURT: Okay. And you have included, probably, things
11 like impeachment for the-- the prior convictions only for
12 impeachment. Of course, that doesn't apply if Mr. Grange
13 takes the stand, but are you going to be wanting a-- Well, I
14 guess if ~~you had a proposal, Mr. Simeone-- It's late and my~~
15 ~~brain is fried, but about some of this ER 404 testimony that~~
16 ~~I am allowing in for the limited purpose of showing premedi-~~
17 ~~tation, I think you're entitled-- The case law says that~~
18 ~~you're entitled to an instruction limiting it to that purpose~~
19 ~~and not to prove action and conformity therewith, or some-~~
20 ~~thing.~~

21 MR. SIMEONE: Right.

22 THE COURT: So if you wanted to work up an instruction to
23 that effect, if it-- if you don't think it would do more harm
24 than good, basically, for your situation, I think you're
25 entitled to that.

Issue
Direct Appeal

1216-A

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THE COURT: Okay, any other housekeeping matters before we call it a day?

MR. SIMEONE: Well, yeah. So as to avoid a minor colli-

1216-B

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1 sion later--

2 THE COURT: Okay.

3 MR. SIMEONE: --that I might anticipate here, I would like
4 to have Detective Webb for the purpose of impeaching what Ms.
5 Cameron just testified to, and I think I'm entitled to do
6 that.

7 THE COURT: I saw her on the witness list. Do you have
8 her?

9 MR. SIMEONE: Yes, she's subpoenaed, and I actually had a
10 telephone discussion with her about her availability and she
11 said she'd be available if I were to choose to call her. Much
12 of her testimony can be covered by some of the other State
13 witnesses, and I didn't think I'd have to keep her cooling her
14 heels in the hall, and I told her that, and we had an under-
15 standing--

16 THE COURT: Okay.

17 MR. SIMEONE: --that if I did need her that she'd be here,
18 so I expect I can have her.

19 THE COURT: Okay.

20 MR. WETLE: Well, your Honor, does this goes to the date
21 of the purchase of the Porsche again?

22 MR. SIMEONE: More than that. More than that.

23 MR. WETLE: Is that what we're doing here? Because, I
24 mean, Dane Williams is going to testify that he went down, and
25 we have the receipts on the day that he purchased the Porsche.

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1 So there's not going to be any question on the fact, I think
2 it's four days later, the time he gets to Portland, that he
3 purchases the Porsche.

4 MR. SIMEONE: Your Honor, it's more than that. First of
5 all--

6 THE COURT: Okay, you're trying to prove something
7 different?

8 MR. SIMEONE: Well, first of all, she said she didn't know
9 anything about whether or not he was intending to get a job.
10 That was discussed. Second of all, there is the detail about
11 the Porsche, and she said it, and I think that the jury
12 deserves to see that her testimony is not credible in that
13 regard. And there's the other issue about whether her father
14 was unhappy about whether-- I'm sorry, his father, Dane's
15 father, was unhappy about the purchase of the Porsche, going
16 to the issue of whether or not there was something that he did
17 here that's totally inconsistent with his financial capabili-
18 ties. So I think that all of that is relevant.

19 MR. WETLE: I think it's absolutely impeachment by a
20 collateral matter.

21 THE COURT: I think it borderlines on impeachment on a
22 collateral matter, Mr. Simeone. But we'll leave that to
23 another day. You know, if you're just impeaching someone to
24 show that they are lying when they say they don't recall some
25 inane fact that is not directly relevant to the issues, you

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1 know, that is impeachment on a collateral matter.

2 MR. SIMEONE: What about with regards to his job or his
3 intentions to get a job not being reason for him to be up
4 here, your Honor.

5 THE COURT: What is the direct relevance of that?

6 MR. SIMEONE: Well, your Honor, it's important because he
7 has a-- Part of the State's position here is that he's up
8 here because he's got this clandestine purpose, and we're
9 showing that there's other reasons for him being up here.

10 MR. WETLE: Who's he?

11 MR. SIMEONE: Mr. Grange.

12 THE COURT: Oh, I thought you meant Mr. Williams.

13 MR. WETLE: I thought we're talking Mr. Williams.

14 MR. SIMEONE: No, I'm not talking about Mr. Williams at
15 all.

16 MR. WETLE: We're talking-- Well, I thought this whole
17 discussion's on Mr. Williams.

18 MR. SIMEONE: Well, the Porsche part of it is, yes.

19 THE COURT: So like the garlic farming thing was--

20 MR. SIMEONE: That's right.

21 THE COURT: --was part of the statement given to Captain
22 Webb?

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

24 THE COURT: Oh, okay. Well, I think that's relevant.
25 That'd be not a collateral matter. That pertains directly to

1219.

1 Mr. Grange and what his purposes were for being up here, et
2 cetera, I suppose. You know, as corroboration for that.

3 But let's leave that to another day. I assume that if you
4 have her to testify, you know, that she'll be available.

5 Scheduling-wise, Mr.-- By my count, Mr. Wetle, we've been
6 through-- I quit numbering them. Nineteen witnesses, and how
7 many more do you have?

8 MR. WETLE: Somewhere I have the--

9 THE COURT: I had 32 count that you-- you know, of your
10 witness list. Now, this was counting Mr. Simeone's four, and
11 not counting any testimony from Mr. Grange himself, and not
12 counting any recalls, so to speak, of witnesses. But all the
13 people that you had crossed off and that Mr.-- and adding
14 back in those that you'd crossed off that Mr. Simeone indicat-
15 ed he independently wanted to call, there were 32 witnesses in
16 all. That's not counting calling people double, like Mr.
17 Simeone probably wants to do with a few. So you want to just
18 take a minute to go through the list here?

19 Kim Kerpin, you need to call yet.

20 MR. WETLE: Your Honor, I have seven left to call.

21 THE COURT: Seven left to call.

22 MR. WETLE: Yes.

23 MR. SIMEONE: And are those going-- Do we anticipate that
24 they will all be called tomorrow?

25 MR. WETLE: I think so. I mean--

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1 MR. SIMEONE: That would include Williams and Cunningham,
2 then, tomorrow?

3 MR. WETLE: I think so.

4 THE COURT: Okay. All right, so--

5 MR. WETLE: Oh, actually eight. I guess there's eight,
6 so-- and--

7 THE COURT: Can you just tell us who they are, please?

8 MR. WETLE: Sure.

9 THE COURT: Just so we know.

10 MR. WETLE: Kim Kerpin.

11 THE COURT: Okay.

12 MR. WETLE: Maija Soucie.

13 THE COURT: All right.

14 MR. WETLE: Douglas Grange. Dane Williams. Jeffrey
15 Cunningham. Kez Young. Troy Phillips, and Janell Clarke.

16 MR. SIMEONE: Do we have a proposed order?

17 MR. WETLE: No, I don't.

18 THE COURT: I didn't hear-- Kaz Young, you said?

19 MR. WETLE: It's Mekazedek (sp?).

20 THE COURT: Oh, Mekazedek Young

21 MR. WETLE: They call him Kez because--

22 THE COURT: Kez Young. Okay. You're not calling Mr.
23 Roberts?

24 MR. WETLE: No.

25 THE COURT: Okay, so he's off your list. Is he back on

1220-A

1 your list?

2 MR. SIMEONE: No.

3 THE COURT: Okay. And Meeka (sp?) Frank?

4 MR. WETLE: No.

5 THE COURT: No. Ed Robinson was called today. And Mr.
6 Schaefer's been called. And Mr. Kaiser's been called. Mr.
7 Hart already got called. And Detective Baskin is finished for
8 your case, right, Mr. Wetle?

9 MR. WETLE: Yes.

10 THE COURT: And Detective Caruso is finished. Detective
11 Paramore. We have covered some ground. Okay. And you're not
12 going to call Detect-- or Deputy Blackman?

13 MR. WETLE: No.

14 THE COURT: Captain Webb?

15 MR. WETLE: No.

16 THE COURT: For your purposes.

17 MR. SIMEONE: Your Honor, I may well be calling Mr.
18 Roberts then, if they're not.

19 THE COURT: Okay. And--

20 MR. SIMEONE: Similarly, I have subpoenaed also Jake
21 Cameron.

22 THE COURT: Okay, that's the son of Mrs. Cameron--

23 MR. SIMEONE: Of Mrs. Cameron, that's right.

24 ~~THE COURT: --that just testified. And I thought you had~~
25 ~~Ken Cameron on your list, but you're not calling Ken Cameron?~~

1 ~~MR. SIMEONE: Yeah, I have him, Your Honor, but I got the~~
2 ~~Sheriff's notice today that my subpoena to him has not been~~
3 ~~served.~~

4 THE COURT: Okay. All right. Let's see, have we heard
5 from DEA Agent Cummings and/or are we expecting to hear from
6 him?

7 MR. WETLE: No, we aren't going to call him, Your Honor.

8 THE COURT: Okay. One, 2, 3, 4, 5, 6, 7, 8. Okay. Eight
9 from the State, which is probably going to take up the day, I
10 would assume.

11 MR. WETLE: Probably could, especially if we get into
12 _____ witnesses.

13 THE COURT: Gentlemen downstairs. Okay, and then, Mr.
14 Simeone, then to the extent that we have any time left
15 tomorrow to have-- to start in on your case, who are you
16 going to have available to testify tomorrow?

17 MR. SIMEONE: Some of the police officers, Your Honor.

18 THE COURT: Okay, and then you'd start in with Jake
19 Cameron and the others--

20 MR. SIMEONE: Yeah. I'm a little worried, and I'm not
21 quite sure what I want to do with Mr. Cameron, whether or not
22 I need to apply for a material witness warrant. The feeling
23 I was getting from him today is that he's not going to show
24 up. I think he avoided the subpoena, I think he avoided
25 service of process.

1220-C

1 THE COURT: Would that be Jake or Ken?

2 MR. SIMEONE: Ken. I think he avoided service of process,
3 and I'm bothered by that.

4 THE COURT: Okay. Well, do some more checking and see
5 what you can find out from the Sheriff. Try to get an
6 affidavit of not found or whatever.

7 MR. SIMEONE: That's what I have--

8 THE COURT: Some clarification about what their problems
9 were.

10 MR. SIMEONE: That's what I have.

11 THE COURT: Do you know who was trying to serve him?

12 MR. SIMEONE: You know, I caught it at that one 15 minute
13 recess we had. The Sheriff-- My secretary put it in front of
14 my face; I didn't really get a good opportunity to review it
15 that closely.

16 THE COURT: Okay. All right.

17 MR. SIMEONE: Do you know anything about it?

18 MR. WETLE: I don't.

19 MR. SIMEONE: Dave?

20 MR. BASKIN: No, I don't.

21 THE COURT: Okay. And Dr. Jorgenson is going to testify?

22 MR. SIMEONE: Right. He's going to testify as to this--
23 the impairment that the alcohol, the recent ingestion of
24 alcohol or other mind-altering drugs such as the LSD and the
25 marijuana would have on his ability to accurately recollect

1220-D

1 events.

2 THE COURT: In a generalized way, basically?

3 MR. SIMEONE: Well, yeah, but he's going to-- he's going
4 to get down to specifics with regards to Jeff Cunningham,
5 because he's got information as to what drugs he ingested and
6 how recently. And lack of sleep.

7 THE COURT: Okay, so you're going to be posing a hypothet-
8 ical, though, to him, based upon--

9 MR. SIMEONE: That's right.

10 THE COURT: --whatever information will be coming out--

11 MR. SIMEONE: That's true.

12 THE COURT: --otherwise in the evidence.

13 MR. SIMEONE: Right.

14 THE COURT: So you're-- He hasn't examined Mr. Cunning-
15 ham, I take it?

16 MR. SIMEONE: No, no. He's strictly a--

17 THE COURT: It will be based on Mr. Cunningham's or
18 someone else's testimony that comes in?

19 MR. SIMEONE: Information that he has, information that
20 he's obtained from me as a result of reports, the statements
21 that Mr. Cunningham gave to the police officers as to the
22 quantity of drugs that he ingested, other statements from
23 other people about how he was. And he's going to hypothesize
24 based upon that.

25 THE COURT: And those facts that he's going to be assuming

1220-E

1 will be coming into evidence in some way?

2 MR. SIMEONE: Yes.

3 THE COURT: In other words?

4 MR. SIMEONE: Yes, they would.

5 THE COURT: All right. And then you're still going to be
6 calling Ralph Paquin or Pacquin?

7 MR. SIMEONE: Questionable, Your Honor. He might be-- He
8 might be an impeachment witness. He might be a witness as to
9 distances and times down that road. But I don't-- I don't
10 see him as a witness in my case in chief right now. You know,
11 my crystal ball says no.

12 THE COURT: Okay, and then Richard Brisbois?

13 MR. SIMEONE: Yes, I think so, and I think he would be an
14 impeachment witness too.

15 THE COURT: When you say impeachment witness, impeachment
16 in your case in chief, though?

17 MR. SIMEONE: Right.

18 ~~THE COURT: Okay. All right. And so-- All right. Well,~~
19 so it's looking like the evidence is going to go through
20 Thursday. Right? I mean realistically?

21 MR. WETLE: I think so.

22 MR. SIMEONE: Right. At least.

23 THE COURT: Okay. Well, I have a concern about one of the
24 jurors. I think Juror Number 5, the young man from the
25 casino, about-- And I thought maybe I would allow him to--

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1 We'll break the news to them tomorrow that the evidence is
2 going to take us through Thursday, with deliberations,
3 obviously, then beyond that, presumably. Maybe even closing
4 arguments beyond that. So do they need-- I'll ask them.
5 I'll just kind of expect them to make their arrangements, and
6 then I'll-- I'm thinking I'll ask you folks your ideas about
7 what we should do about Mr.-- about Juror Number 5, in
8 particular, just because he did alert us that that was going
9 to be a hardship to him to go beyond Wednesday. I don't think
10 it would be-- Frankly, I don't think it's the kind of
11 hardship I pay much attention to, sadly enough, if it were to
12 go just Thursday, for example, or even Friday. But if there's
13 some danger of going into next week with the deliberations, et
14 cetera, with the holiday, you know, weekend coming up, et
15 cetera, we got to resolve all that about when they're going to
16 deliberate, if they want to go beyond a certain point. So be
17 thinking--

18 MR. WETLE: Would it be possible, Your Honor, if it goes
19 into Saturday, that we just continue to Saturday, instead of
20 trying to break until-- what? That would be the following
21 Tuesday. We got a holiday on Monday.

22 THE COURT: You mean the trial?

23 MR. WETLE: Well--

24 THE COURT: Let's hope the trial is over with.

25 MR. WETLE: But--

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1 THE COURT: You're talking about the deliberations, I
2 hope.

3 MR. WETLE: Both. Well, hopefully, if we end up late
4 Friday finishing, it could go into Friday-- or Saturday, and
5 I would just ask the court if that's--

6 THE COURT: I don't even want to think about that, Mr.
7 Wetle.

8 MR. WETLE: Okay.

9 THE COURT: But I do want to think about what-- You know,
10 obviously people have plans for the three-day holiday, at
11 least most people do. You know, I don't happen to, but most
12 people have plans for that holiday. I bet six out of ten of
13 these-- six out of 13 or 14, however many we have left, of
14 these folks do, and I would most likely expect them to come
15 back the following week for their deliberations, if anyone
16 has, you know, some plan for the weekend, because we did not
17 inquire about that in voir dire, and that puts a whole
18 different cast on it. So--

19 MR. WETLE: I would just hope that we don't have a three-
20 day holiday after the whole trial, and then come back to try
21 to do deliberations. But--

22 THE COURT: Well, yeah, but I would rather do that than
23 have jurors that want to get out of Dodge, so to speak, and
24 interfere with their deliberations just because they want to
25 get to the ski slopes sooner on the weekend than they other-

1220-H

1 wise would. I'd rather have them go ahead with their ski
2 slopes and come back on Tuesday and be fresh for their
3 deliberations on a case of this kind. So be thinking about
4 that and we'll talk about it, but that's all the more reason
5 why we need to move ahead with this, get our evidence in, and
6 get our arguments done, and get the thing submitted.

7 So if you can-- If you can go see if those instructions
8 are on your desk, Mr. Wetle, and bring them back up, or have
9 someone bring them back up to me yet this evening, I can get
10 that part looked at this evening. And hopefully move that one
11 ahead.

12 Anything else then, Mr. Simeone?

13 MR. SIMEONE: Not that I can think of right now, Your
14 Honor.

15 THE COURT: Mr. Wetle?

16 MR. WETLE: No, Your Honor.

17 THE COURT: Okay. All right, court will be adjourned.

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

1220-I