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

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

No. 20138-4-III

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

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CLERK OF COURT OF APPEALS
STATE OF WASHINGTON III

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

BEFORE: Hon. REBECCA M. BAKER, Judge.

APPEARANCES:

For the Plaintiff:

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

For the Defendant:

ROBERT A. SIMEONE
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VOLUME 11 of 17
February 14, 2001
(Pages 1221 through 1330)

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EXHIBITS

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1 FEBRUARY 14, 2001

2 COURT RECONVENED WITHOUT THE JURY

3 THE COURT: Good morning. All right, Mr. Wetle, are you
4 ready to call Ms. Kerpin for our evidence rule hearing?

5 MR. WETLE: Yes, your Honor. We had-- I know there was
6 some question that the court had as to the source of informa-
7 tion for Mr. Murphy.

8 THE COURT: Right, but if you're not going to call Mr.
9 Murphy, I'm not going to consider that.

10 MR. WETLE: Actually, his statement wouldn't be consid-
11 ered, but the fact of the statement in the overall context, I
12 think, goes to the preponderance. But because I thought
13 that-- As the court looks at the whole picture, you're going
14 to need to make a decision on whether there's a preponderance
15 and how that came about, I thought might be helpful to the
16 court.

17 THE COURT: I think I have to do that though on competent
18 evidence. That is to say, non-hearsay evidence.

19 MR. WETLE: For a 104 hearing?

20 THE COURT: I think so. Well, you're right. The evidence
21 rules don't apply to that, do they?

22 MR. WETLE: No.

23 THE COURT: All right. Is that something that Ms. Kerpin
24 is going to be testifying about then?

25 MR. WETLE: Yes. She'll testify that she had contacted

1221.

1 Brian Murphy and that was sort of the beginning, and then the
2 court had the-- The preliminary question in your mind
3 yesterday was just how did Brian Murphy get that information.
4 You know, how did he get in the loop. And then what happened
5 was then Kim Kerpin--

6 THE COURT: Does Ms. Kerpin know-- I mean, in other
7 words, did he tell her?

8 MR. WETLE: I don't believe he told her how he knew that,
9 but he might have, I don't know. I'll have to ask her.

10 Yes, she says that she does know how he learned it.

11 THE COURT: Okay. All right, then, we'll just hear from
12 her, just to save some time then.

13 MR. WETLE: All right.

14 WITNESS IS SWORN

15 MICROPHONE IS ADJUSTED

16 THE COURT: Give us your name, please, and spell your last
17 name for the record.

18 MS. KERPIN: It's Kimberly Kerpin, K-E-R-P-I-N.

19 THE COURT: All right, and your current address?

20 MS. KERPIN: 10730 Thornmint Road, San Diego, California
21 92127.

22 THE COURT: Thank you. Mr. Wetle?

23 MR. WETLE: Thank you, your Honor.
24
25

1222.

1 KIMBERLY KERPIN

Being first duly sworn, on
oath testified as follows:

2
3 DIRECT EXAMINATION

4 BY MR. WETLE:

5 Q. Ms. Kerpin, after June 11th, the year 2000, did you begin
6 to search for and inquire about the whereabouts of Josh
7 Schaefer, the man you were living with and the father of
8 your child?

9 A. Yes.

10 Q. And in the course of trying to locate him, did you contact
11 a Brian Murphy?

12 A. Yes, I did.

13 Q. And had you ever met Brian Murphy, or do you know who he
14 is, or--

15 A. No.

16 Q. How did you know to contact him?

17 A. Joshua's father, Tom, actually found out from the police
18 in Seattle that Nick was living with Brian, ~~and we got the~~
19 ~~number and I actually called him to see what was going on,~~
20 ~~and he started to tell me, you know, about Nick and what~~
21 ~~Nick was really doing. And I, you know, mentioned about~~
22 ~~the girlfriend, his girlfriend Shauna, and I said Nick had~~
23 ~~told us it was-- he had gotten in trouble for a marijuana~~
24 ~~charge.~~

25 Q. ~~That's what he told you and Josh?~~

Kimberly Kerpin - Direct, ER 104 hearing (by Mr. Wetle)1223.

1 A. ~~Yes. Uh-huh.~~

2 Q. And his girl--

3 A. ~~Local cops for marijuana. So he said his girlfriend--~~
4 ~~And he had been calling us for like a month, and he was~~
5 ~~really upset, and we only had voice mail, so he was~~
6 ~~leaving us messages saying, you know, I'm really upset~~
7 ~~about this. My girlfriend broke up with me over this~~
8 ~~marijuana charge, I'm really upset, you know. I mean we~~
9 ~~were like praying for him because we felt bad, and== I'm~~
10 ~~sorry.~~

11 THE COURT: Wait for a question, if you would.

12 Q. And so you finally-- Josh then decided to go up to
13 Seattle?

14 A. Uh-huh.

15 Q. And to be with Nick?

16 A. Right.

17 Q. And then you'd been in regular contact with Nick for--
18 I mean Josh on a daily basis?

19 A. Yeah.

20 Q. When he left?

21 A. I left like two days before Josh came up here to meet Nick
22 to go to my parents' house, and Josh was actually supposed
23 to come with me, but he didn't, and he was going to come
24 a week later. ~~And all of a sudden he called me, he's~~
25 ~~like, well, Nick really needs me, I'm going to go up and~~

Kimberly Kerpin - Direct, ER 104 hearing (by Mr. Wetle)1224.

1 go to this barter fair. I was like okay, you know, if
2 that's really what you want to do, go ahead, I'll see you
3 in a couple days. ~~And he was actually going to fly out~~
4 ~~from up here. So that's what they did.~~

5 Q. So he--

6 A. ~~And then he called me like every day on Nick's phone, on~~
7 ~~Nick's cell phone. He called me like three times a day.~~

8 Q. And then the last time you heard from him was Saturday,
9 June 10th?

10 A. Uh-huh. Like 8:00 in the morning.

11 Q. And then--

12 A. Eight-twenty.

13 Q. --what happened? And then on Monday, June 12th, you
14 didn't hear-- you hadn't heard from him since?

15 A. Huh-uh.

16 Q. And so at that time you get ahold of Mr. Schaefer and--

17 A. I actually waited like till Tuesday to contact them,
18 'cause I thought maybe-- You know, I just gave him a
19 couple days. Mainly thought they were just hanging out,
20 whatever. But yeah, after like two days I started to
21 worry, 'cause he, you know-- Like that's the first time
22 we'd ever been apart. _____.

23 Q. Okay. And after-- From then you and Mr. Schaefer were
24 able to get ahold of Mr. Murphy?

25 A. Uh-huh.

Kimberly Kerpin - Direct, ER 104 hearing (by Mr. Wetle)1225.

1 ~~going to die. And she was really scared at that point.~~

2 Q. Did you ever-- So that was the first time that you talked
3 to her?

4 A. Yes.

5 Q. And did you then talk to her at a later date?

6 A. I did. Uh-huh.

7 Q. ~~And what were the circumstances for that call? Do you~~
8 ~~recall?~~

9 A. ~~Well, yeah. I asked her if she thought there was any~~
10 ~~reason that they could possibly-- you know, if somebody~~
11 ~~was really after them. You know, if they could have been~~
12 ~~in-- if Nick was really in trouble, and if she thought~~
13 ~~that there was a possibility that something could happen,~~
14 ~~and she was like, well, yeah, you know, and then-- Well,~~
15 ~~actually that was the first time we talked. And then we~~
16 ~~talked again--~~

17 Q. ~~By somebody really after them, you mean after them from~~
18 ~~the people in the drug industry?~~

19 A. ~~Yeah. Uh-huh.~~

20 MR. SIMEONE: What was that question? I'm sorry, I
21 didn't that.

22 THE COURT: I didn't get it either.

23 MR. WETLE: ~~By people being after them, was it people~~
24 ~~in the drug industry that were after them? And I think~~
25 ~~she responded yes.~~

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THE COURT: Okay.

A. Yeah, because I had no idea. I thought he was just on a marijuana charge. That's the first time I had learned that he had actually been in trouble for LSD.

Q. So you had a chance to talk to her later?

A. Yeah. Uh-huh.

Q. And I don't know if you remember how much later it was or not?

A. Yeah, it was a couple days.

Q. And what--

A. ~~I had to wait for her to call me, 'cause I had-- The only contact I could have was to call her mom, and then her mom would have her call me.~~

Q. So--

A. And my mom and her mom talked also. And my mom also knows about, you know, everything.

Q. Okay.

A. ~~Like her mom was telling my mom like all the details and stuff like that.~~

Q. Did-- ~~So then when you called her back a couple of days later, or she-- Did you call her or did she call you?~~

A. ~~She called me. I could only call and talk to her mother, and Shauna had to call me.~~

Q. And when--

A. 'Cause she was already gone somewhere else. Thank God.

Kimberly Kerpin - Direct, ER 104 hearing (by Mr. Wetle)1228.

1 Q. So in that conversation-- What was the nature of the
2 second conversation?

3 A. ~~She started to say-- Her mother actually called and told~~
4 ~~my mom first that they weren't going to say anything about~~
5 ~~the gun in Portland because--~~

6 MR. SIMEONE: Your Honor, I know that-- Excuse me. I
7 know that the Rules of Evidence don't apply here, but I
8 think that when you start talking about double hearsay
9 that the court still has it within its discretion to deny
10 that kind of testimony. And I think it's a place where it
11 should be--

12 THE COURT: You know, I would rather, Mr. Wetle, that
13 you cut to the chase of what we're going to actually be
14 able to hear and present to the jury.

15 MR. WETLE: Okay.

16 THE COURT: So if Ms. Kerpin could be asked to testify
17 about what she and Ms. Daniels talked about, that's what
18 I'm interested in.

19 MR. WETLE: Thank you, your Honor.

20 Q. So after the parents were finished talking, did you have
21 a chance to talk to Shauna?

22 A. Yes. Uh-huh.

23 Q. And what was the nature, then, of your conversation with
24 Shauna that second time?

25 A. She told me that she wasn't going to say anything about
Kimberly Kerpin - Direct, ER 104 hearing (by Mr. Wetle)1229.

1 ~~that, and she's like, well, I'm just going to pretend it~~
2 ~~didn't happen because I'm really scared and I don't want~~
3 ~~to deal with it. And she--~~

4 Q. Did she say why she couldn't-- why she couldn't say that?

5 A. ~~She said she was really scared. And then I told her, I~~
6 ~~was like, well, look, you know, maybe if you know who~~
7 ~~these guys are, if you seen who put this, you know, thing,~~
8 ~~to your head, maybe that would help catch whoever these~~
9 ~~people are. Like you really need to like say something,~~
10 ~~like we really need you, and like we were having, you~~
11 ~~know, a little conversation about this and she was like,~~
12 ~~no. She's like I'm not going to say it. She's like it~~
13 ~~didn't happen. And then she changed her story, said it~~
14 ~~didn't happen.~~

15 Q. Was that the last time that you talked to her?

16 A. Huh-uh. We talked a couple more times, just about like,
17 you know, different things that were going on, and I just
18 kept asking her if she thought they could really be in
19 trouble, in any kind of danger, like a lot, and she just
20 kept saying yeah, they could be, but I don't know.

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

22 THE COURT: All right, Mr. Simeone?
23
24
25

Kimberly Kerpin - Direct, ER 104 hearing (by Mr. Wetle)1230.

1 **KIMBERLY KERPIN**

2 **CROSS EXAMINATION**

3 **BY MR. SIMEONE:**

4 Q. So she at one time told you, Ms. Kerpin, that it didn't
5 happen to her, right?

6 A. What's that?

7 Q. She at one time told you that what she said happened
8 didn't happen?

9 A. Yeah.

10 Q. Now where did-- Where did all of these conversations
11 occur?

12 A. At my parents' house.

13 Q. And where was she?

14 A. I don't know.

15 Q. She was on the phone?

16 A. She was already hiding. Her mom had said she was gone,
17 like they put her up somewhere.

18 Q. But it was all-- It was all on the telephone, right?

19 A. Yeah.

20 Q. Who is it that put her up? You said they put her up?

21 A. Her mom, I guess. Her friends, or-- I'm not sure. She
22 was hiding because she was scared.

23 Q. You don't--

24 A. She said she was really scared--

25 Q. You don't really know--

Kimberly Kerpin - Cross, ER 104 Hearing (Mr. Simeone) 1231.

1 A. --of what was going on.

2 Q. Excuse me. You don't really know who it was then who put
3 her up? You never clarified that with her?

4 A. Oh, no. They wouldn't tell me. I don't know. I have no
5 idea.

6 Q. Now, did you even know for sure that the individual you
7 were speaking to was Brian Murphy?

8 A. Do I know for sure?

9 Q. Yeah.

10 A. Yeah.

11 Q. You met him?

12 A. He said he was Brian on the phone.

13 Q. He said-- He said he was Brian?

14 A. Yeah.

15 Q. But you never met him before that?

16 A. No.

17 Q. He just introduced himself as Brian Murphy?

18 A. Yes.

19 Q. Would it surprise you that Brian Murphy said that Nick
20 didn't have any fear of any retribution from any people?

21 A. What? I'm sorry.

22 Q. Would it surprise you to know that Nick said he didn't
23 have any fear of retribution--

24 A. No.

25 Q. --from anybody?

Kimberly Kerpin - Cross, ER 104 Hearing (Mr. Simeone) 1232.

1 A. He actually had told Brian that he was really scared, and
2 that he was afraid that he could never go to another
3 barter fair. Brian told me that the day before he went to
4 this barter fair that he was afraid there were people
5 after him, and that he was crying to him, saying he could
6 never go to another barter fair. And Brian said well,
7 don't go to the barter fair, and he was like okay. Left
8 Brian a note and said I have a friend coming up from San
9 Francisco, we're going to a concert. Brian said he was
10 not there when they took off for the barter fair, or he
11 would not have let him go. He said he left him a note
12 that they were going to a concert. I have no idea why.

13 Q. So the fact that he went probably meant he wasn't in any
14 fear?

15 A. I guess.

16 Q. Now, the report about the marijuana charge, that was
17 false, right? She reported to you that they were arrested
18 for marijuana?

19 MR. WETLE: Who's she, your Honor?

20 A. Who's she?

21 Q. I'm sorry. Brian reported--

22 A. No.

23 THE COURT: I'm sorry, what's your question now?

24 A. Yeah.

25 Q. I want to clarify. Was it Loki, was it Shauna, who said

Kimberly Kerpin - Cross, ER 104 Hearing (Mr. Simeone) 1233.

1 that she was arrested for a marijuana charge, or that Nick
2 was arrested for a marijuana charge?
3 A. No. Nick told us that.
4 Q. And so that was false?
5 A. Right.
6 Q. You never heard that from Shauna as well?
7 A. No. Shauna told me the story, like when I finally talked
8 to her she-- you know, they were missing at that point,
9 so she proceeded to tell me what was really going on
10 because I was really upset and trying to figure it out.
11 Q. Now, you said Josh was calling you three times a day?
12 A. Oh, yeah, at least.
13 Q. When was that?
14 A. Let's see, I left him on Tuesday, he called me that night,
15 he called me Wednesday morning. He called me a bunch of
16 times, 'cause my mom was like wow, you know, he really
17 calls you a lot. And that was the first time we had been
18 apart in two years. We had our baby and--
19 Q. And now--
20 A. And he didn't-- You know.
21 Q. The arrest you had was for a methamphetamine lab, is that
22 right?
23 A. Right.
24 Q. Was the baby in the same house where the methamphetamine
25 lab was?

Kimberly Kerpin - Cross, ER 104 Hearing (Mr. Simeone) 1234.

1 A. He was. Uh-huh.

2 MR. SIMEONE: Do you have the phone records for Nick
3 Kaiser? I'm sorry. Yeah, the phone records for Nick
4 Kaiser's cell phone?

5 MR. WETLE: We have some of those records, maybe. I
6 don't know how far back they go.

7 MR. SIMEONE: Well, we're just talking about the
8 weekend there. Did you have those?

9 MR. WETLE: Well, the last day--

10 THE COURT: Mr. Simeone, hold on.

11 MR. WETLE: Sorry, your Honor.

12 THE COURT: I need you to just go ahead and question
13 this witness now on this hearing. If you're talking about
14 locating an exhibit, you need to locate those yourself.

15 Q. Was it your testimony that he was calling on Nick's cell
16 phone?

17 A. Uh-huh.

18 MR. SIMEONE: Your Honor, can I approach the witness?

19 THE COURT: All right.

20 Q. I'll show you some records on Nick Kaiser's cell phone.
21 Could you identify there where the multiple calls were
22 made, starting out-- I think you said the 8th?

23 A. _____

24 Q. That's your parents' house right there?

25 A. Uh-huh. _____

Kimberly Kerpin - Cross, ER 104 Hearing (Mr. Simeone) 1235.

1 THE COURT: Ms. Kerpin, I'll need you to speak up, if
2 you would, please.

3 A. I'm sorry. What was the question again?

4 Q. Well, how many-- Could you show where the multiple calls
5 made-- that are made to you from Nick Kaiser's phone for
6 this very limited record of phone calls that we have?

7 A. Yeah, they were made to Missouri to my parents' house.

8 Q. Okay, but how many of them can you identify there?

9 A. One, two--

10 Q. For the 9th you see how many?

11 A. The 9th?

12 Q. _____ begins the 9th.

13 A. I see one for the 9th.

14 Q. How about the 10th?

15 A. One. One.

16 Q. Are those two of the days when he was calling you three
17 times a day?

18 A. Yeah. Oh, yeah.

19 Q. Are you surprised that it's not registered on the phone?

20 A. You know, he could have called me from anywhere. I mean
21 they called me on the way to the barter fair, he actually
22 called me on Friday from the barter fair and it cut off.
23 The phone cut off and he called me back. I don't know if
24 it was from the cell phone. He called me Saturday
25 morning, and that call, that was at 8:00 o'clock in the

Kimberly Kerpin - Cross, ER 104 Hearing (Mr. Simeone) 1236.

1 morning, he called me and the phone cut off.

2 Q. Okay.

3 A. Which it had done the same thing the day before, so I just
4 figured he was going to call me back, and he never called
5 me back.

6 Q. Well, if there's no phone at the barter fair, would you
7 agree that it's probably coming from the cell phone?

8 A. Well, they didn't get to the barter fair until Friday.
9 When he was calling me before he even came up to Washing-
10 ton, he called me a bunch of times. I don't know if every
11 time was from Nick's cell phone. He wasn't with Nick
12 until Friday morning, so--

13 Q. Well, is there any reason why on those-- on these
14 occasions he-- that you know of that he wouldn't be using
15 a cell phone that he has available to him, where he's been
16 making these other calls?

17 A. Well, probably 'cause up here it doesn't really work that
18 good. That's probably why it cut off two times.

19 Q. But you just said he wasn't at the barter fair until
20 Friday.

21 A. I'm sorry, you're confusing me.

22 Q. He wasn't at the barter fair until Friday, isn't that
23 right?

24 A. Right.

25 Q. That would have been the 9th?

Kimberly Kerpin - Cross, ER 104 Hearing (Mr. Simeone) 1237.

1 A. Right. So other than that he wasn't with Nick and they
2 wouldn't have had a cell phone to call me from.
3 Q. Wait. When did he leave to go to the barter fair? I
4 thought you said he left on--
5 A. He left Thursday morning.
6 Q. So he would be with Nick then, wouldn't he?
7 A. No. He had to drive down-- He came from San Francisco
8 and drove up, and he didn't call me actually until he got
9 up here. He called me one time from a pay phone and said
10 the car was having trouble, and then he called me on the--
11 when they met in Seattle, and then they were headed to the
12 barter fair.
13 Q. What was the day he called you from the barter fair and
14 you got cut off?
15 A. Saturday morning, at 8:00 o'clock in the morning. It was
16 like 8:20, I thought, but that says 8:48.
17 Q. Did you say Friday as well?
18 A. Yes.
19 Q. Okay, so you didn't see that on the-- on this list of
20 phone calls, did you?
21 A. Yes.
22 Q. You saw one.
23 A. Right. And then it cut off on me and he called me back
24 from somewhere. I have no idea where he called me back
25 from. I don't know.

Kimberly Kerpin - Cross, ER 104 Hearing (Mr. Simeone) 1238.

1 Q. But didn't you say he called you back from the barter
2 fair?

3 A. Yeah.

4 Q. So that would mean that he's calling you from that phone,
5 wouldn't it?

6 A. That's what I thought, but--

7 Q. Because there are no--

8 A. --it doesn't show a record of it, so I guess not.

9 Q. Well, assume there's no--

10 A. He must have figured out another way to call me. That's
11 why I figured he was going to call me Saturday, and he
12 never did. I don't know.

13 Q. Is it possible that's the only-- that's the only call he
14 made to you that day?

15 A. Sure.

16 MR. SIMEONE: I have no further questions.

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

18 MR. WETLE: No, your Honor.

19 WITNESS STEPS DOWN

20 THE COURT: And then, Mr. Wetle, I'll hear from you, then,
21 on argument, if any.

22 MR. SIMEONE: Your Honor, I was-- I was expecting to call
23 Deputy Caruso.

24 THE COURT: Well, no, I was indicating I didn't need to
25 hear from Deputy Caruso. You know, these ER 104 hearings are
Kimberly Kerpin - Cross, ER 104 Hearing (Mr. Simeone) 1239.

1 whatever the court feels is necessary. As I indicated
2 yesterday afternoon, my concern was hearing from Ms. Kerpin as
3 to whether or not I-- what exactly she had to say and whether
4 or not her story basically hung together. It's immaterial to
5 me, Mr. Simeone, what-- It's not immaterial. I think it's
6 agreed and stipulated what Detective Caruso or Sergeant
7 Caruso's going to say about it, namely, that she denied that
8 it ever happened.

9 MR. SIMEONE: Well, your Honor, what I'm thinking-- I
10 don't mean to interrupt you, but what I'm thinking is that he
11 could give the court some indication as to the believability,
12 the tone of her voice, those kinds of things that bear on
13 credibility.

14 THE COURT: All right. Well, and I thank you for that
15 offer, but I'm not going to find it necessary at this point.
16 I would like to hear the argument, though, on the basis of
17 what we have heard. Mr. Wetle?

18 MR. WETLE: Thank you, your Honor. The State would submit
19 that the overall circumstances show the motivation for her to
20 be tracking down Josh Schaefer, her calls to the residence
21 where he was living, the information from Brian, the follow-up
22 to get ahold of the girlfriend, the girlfriend's relaying her
23 information about what really was happening, and sharing with
24 her, I think the circumstances are realistic, and I think that
25 at that time she did hear that she had been threatened with a

1240.

1 gun by some guys. And I think the fact that she called back
2 later and got a change of story because she was really scared
3 is realistic as well. And I think that's about the time that
4 Sergeant Caruso would get the retraction story, and feel that
5 the State has proved by a preponderance that the statement was
6 made, and that she be allowed to testify-- she should be
7 allowed to testify that as to the furtherance of the conspir-
8 acy.

9 THE COURT: All right, thank you. No, Mr. Simeone?

10 MR. SIMEONE: Thank you, your Honor. As I indicated
11 yesterday, and as I continue to indicate now, I don't believe
12 that there's enough here to say that that's a preponderance.
13 What we have, probably, is about a wash here for the evidence.
14 We've got-- I know the Rules of Evidence don't apply, and the
15 court certainly is and certainly did listen to-- is entitled
16 to and certainly did listen to a great deal of hearsay. But
17 even at that, you still go back to the basic reason why we
18 have the hearsay rule, and that is to make sure that we have
19 reliability in testimony. Just because the hearsay rule goes
20 away doesn't mean that we no longer pay heed to the very real
21 purpose for it. What we've got is hearsay from a person who's
22 talking to this--I call her Loki--Shauna on the phone, so
23 she's not seeing facial expression, she doesn't see body
24 language, she's getting, I think, kind of a sketchy account.
25 And at one time she says well, she's not threatened, and she

1241.

1 admits that she told her that. And she says well, I'm just
2 going to say that. So we really don't know. And I think that
3 that being the case, you're in a situation where this is about
4 a wash, and I don't think that's a preponderance, based upon
5 the very real statement that we got from Deputy Caruso on that
6 interview. And I'm looking for that now--somehow it seems
7 that I've misplaced it--because I'd like to read that into the
8 record. I beg the court's pardon, your Honor. Again, your
9 Honor, I apologize, but it's important that I locate this.

10 THE COURT: That's all right. Go ahead.

11 MR. SIMEONE: Sorry, your Honor. That's a report of
12 September 28th of 2000, so that's after those phone calls. He
13 says:

14 I was contacted--

15 This is Deputy Caruso, Sergeant Caruso now.

16 I was contacted by Shauna Daniels. She's
17 the ex-girlfriend of Nick Kaiser. She was
18 calling me back because Deputy Harbolt had
19 contacted her mother and asked her to call
20 us. Shauna said she last saw Nick when they
21 were arrested together on Whidbey Island.

22 So that matches up.

23 She said didn't know that he was involved in
24 the drug culture, and it came as a surprise
25 to her when they were arrested. This oc-
curred April some time. She couldn't remem-
ber exactly when. The last time she spoke
to him was on the phone, some time during
the first of May. Nick had called her and
told her he tried to commit suicide by
taking an overdose of pills. Shauna called

1 the police to report this, and had not
2 spoken to Kaiser since.

3 Next paragraph:

4 I asked Shauna if she had ever been threat-
5 ened by anyone to cause her harm due to her
6 relationship with Nick. I also asked her if
7 she had ever heard anyone threaten Nick in
8 her presence. She said she was never threat-
9 ened and never heard anyone else threaten
10 Nick while she was there. Shauna said she
11 accompanied Nick to a barter fair in the
12 fall of '98 or '99. She said they drove
13 with friends, and that she does not even
14 know where the barter fair was. She did
15 remember there was a big river, and she
16 remembered seeing the Northern Lights in the
17 sky. She said they camped in a tent by the
18 stage and she sold items she'd sewn. She
19 thought they were maybe in the Northport
20 area, but couldn't remember for sure.

21 Last paragraph:

22 I asked Shauna where she was living at. She
23 said she really didn't want to tell me as
24 she's scared about what happened to Nick.
25 She gave her parents' phone number of 360-
693-9971, and she said they could get a
message-- her a message and she would call
me back. Shauna told me her birth date, our
conversation ended at--

It looks like that would be 3:35.

Your Honor, he doesn't indicate anywhere in there that
she's misrepresented. And to me, unless-- if a trained
investigator says something to that effect, if he thinks
something's up, especially since he was making that phone
call, he's up information that he'd got from Ms. Kerpin, he
would have noted that, and he doesn't. So I think that weighs
against it, and I think in a close situation here a better

1243.

1 course of conduct for the court is this. I made a comment
2 yesterday, it was made in good faith. What I said was that
3 she's still alive, and he said so far as he knows. I don't
4 know that it opens the door. The court has said it does. I
5 think a better way to handle it is to have me not bring that
6 up any further in the trial, whether it be in testimony or in
7 closing argument, because I don't know that that detail is
8 that important to the jury at this time, and I think the
9 prejudicial value of what we do here, if we start talking
10 about the threats to her now, overwhelms and supersedes
11 whatever impact that statement that I made, or the questions
12 and answers that were spoken yesterday would have.

13 THE COURT: All right. Mr. Wetle, I don't think I need to
14 hear from you, unless you want to put something more on the
15 record.

16 MR. WETLE: No, your Honor.

17 THE COURT: Okay. This is a really important issue
18 because, again, the whole reason that the State wants this in
19 is because of the suggestion made by the evidence from Mr. Tom
20 Schaefer in response, obviously, to a question by Mr. Simeone
21 that Ms. Daniels was not afraid, was not dead, and so why
22 wouldn't she be dead if she was with Nick Kaiser and as big a
23 threat to the furtherance of this alleged drug trafficking
24 conspiracy.

25 Well, the State wants to respond to that suggestion with

1244.

1 this evidence, and admittedly this gets a little bit off the
2 subject, somewhat, but-- and it does bring up a whole area of
3 perhaps 404 (a) evidence, character evidence, about what kind
4 of people Mr. Grange has associated himself with, et cetera,
5 who would allegedly threaten people with guns to keep them
6 quiet. If they'll threaten people with guns to keep them
7 quiet, then won't they also kill them to keep them quiet.
8 That kind of action and conformity therewith is generally not
9 admissible, but as I've previously ruled, this kind of
10 evidence is clearly relevant to the proof of motive. The
11 existence of the alleged drug trafficking conspiracy has
12 already been-- I've already ruled that the alleged drug
13 trafficking conspiracy can be introduced into evidence because
14 I have already found that it has been established pre-trial by
15 a preponderance of the evidence, under Evidence Rule 104, in
16 previous hearings.

17 Whether Ms.-- There's another issue. Whether Ms. Daniels
18 is a co-conspirator of a party, of Mr. Grange. And again, I
19 think that by a preponderance, it is established that she is,
20 and by the testimony of Ms. Kerpin that she-- that Ms.
21 Daniels, rather, and Nick Kaiser were involved in drug
22 trafficking, caught in the process, in fact, of cutting the
23 LSD. This is corroborated by Detective Dogeagle, who actually
24 was an eyewitness to the two of them being caught in the
25 progress in the house, in the process of preparing the LSD for

1245.

1 redistribution. So I think that there's a preponderance of
2 the evidence indicating that she is a co-conspirator of Mr.
3 Grange in regard to this drug trafficking.

4 During the course of and in furtherance of the conspiracy,
5 is there an indication that this statement by Ms. Daniels to
6 Ms. Kerpin was during the course of and in furtherance of the
7 conspiracy? And I think I have to find by a preponderance of
8 the evidence that it is established that it was in furtherance
9 of the conspiracy. ~~Why? Because obviously the conspiracy's~~

10 ~~aim is to traffic in drugs,~~ A side task, a necessary task
11 associated with that dangerous business, is to obfuscate its
12 illicit activities and to stem the flow of information to law
13 enforcement.

14 We've had testimony of the ways in which such drug
15 trafficking organizations silence members who, as part of the
16 ordinary course, do get arrested, and this fits-- Ms.
17 Kerpin's testimony fits in with that expert testimony that
18 we've had.

19 So the final question then is did this happen? Did this
20 statement from Ms. Daniels to Ms. Kerpin actually occur? And
21 I think that by a preponderance of the evidence I would find
22 that it did. That doesn't mean that the jury will find that
23 it did, but-- And obviously Mr. Simeone is going to have to
24 call Sergeant Caruso for his testimony about what Ms. Kerpin
25 told him. But I think because of that being left hanging in

1246.

1 the air, that issue of well, gee, why wouldn't Ms. Daniels be
2 afraid, why wouldn't she be-- why wouldn't she be someone who
3 was killed. Well, because she was-- The response is then she
4 was dealt with in a different way and it was effective and
5 that's all that was necessary, would be the response to that.

6 So I do find that it is relevant, that it has been estab-
7 lished by a preponderance of the evidence, and that it is
8 admissible under Evidence Rule 801 (d)(2)(v) as a statement by
9 a co-conspirator of a party during the course and in further-
10 ance of the conspiracy. ~~Again, not the conspiracy to commit~~
11 ~~murder, but the drug trafficking conspiracy.~~

12 So that's my ruling on that issue, and miraculously we
13 have five minutes before the jury is going to be here. I
14 can't believe we actually have timed something right.

15 MR. WETLE: Thank you, your Honor.

16 THE COURT: Mr. Wetle, anything else preliminarily before
17 we take a quick five minute recess ourselves here?

18 MR. WETLE: No, your Honor.

19 THE COURT: Mr. Simeone, anything else?

20 MR. SIMEONE: No, your Honor.

21 COURT RECESSED
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COURT RECONVENED WITH THE JURY SEATED

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

MR. WETLE: Thank you, your Honor. The State would call Bonnie McDonald.

WITNESS IS SWORN

THE COURT: If you would give us your full name, please?

MS. McDONALD: Bonnie Marie McDonald.

THE COURT: And your spelling on your last name, please?

MS. McDONALD: M-C-D-O-N-A-L-D.

THE COURT: All right, and your current address, please?

MS. McDONALD: 3823 23rd West, Seattle, Washington.

THE COURT: Thank you. Mr. Wetle?

MR. WETLE: Thank you.

BONNIE MARIE McDONALD Being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. WETLE:

Q. Good morning, Ms. McDonald. First, I would ask you to state to the jury and the court your occupation.

A. I work for Qwest Communications in the security department.

Q. And what are your duties?

- 1 A. I am custodian of the records.
- 2 Q. I would ask the bailiff to hand you what's been marked as
3 Exhibit 110, and I would ask if you can identify what's
4 been marked as Exhibit 110.
- 5 A. Do you-- All right. This is a phone record for a
6 customer for area-- for the phone number 509-732-4590, a
7 Ken R. Cameron. These are toll records.
- 8 Q. Okay, thank you. Are you the custodian of those records?
- 9 A. Yes.
- 10 Q. And is this record made in the regular course of business?
- 11 A. Yes.
- 12 Q. Is this a business record you're familiar with?
- 13 A. Yes.
- 14 Q. Is this record a true and accurate copy of the billing
15 statement for phone number 509-732-4590 with a subscriber
16 named Ken Cameron?
- 17 A. Yes.
- 18 Q. And is this record made at or near the time of the
19 transaction?
- 20 A. Yes.
- 21 Q. Is this record a part of the permanent records of the
22 company?
- 23 A. Yes.
- 24 Q. And have you-- Have there been any alterations or changes
25 made on it since the time it was made?

Bonnie Marie McDonald - Direct (by Mr. Wetle)

1249.

1 A. I would say no.

2 Q. Have there been any highlights on the copy that you have
3 there?

4 A. You mean made by yourself?

5 Q. Yes.

6 A. Yes.

7 Q. And those are just a marker highlight?

8 A. Yes.

9 Q. Other than that, have there been any changes with respect
10 to the record?

11 A. I don't see any.

12 MR. WETLE: Your Honor, we'd offer State's Exhibit 110.

13 THE COURT: All right.

14 MR. SIMEONE: No objection.

15 THE COURT: One-ten is admitted.

16 Q. I'd ask, Ms. McDonald, if you could step to the jury box.
17 Come down and get in front of the jury and bring your
18 exhibit with you.

19 A. This?

20 Q. Yes. And I would ask you to step over to the microphone,
21 and I would direct your attention to the highlighted call,
22 and would ask if you can talk to the jury about all the
23 various columns in that highlighted area and what they
24 mean.

25 A. All right. This is a call that was made on June 10th at
Bonnie Marie McDonald - Direct (by Mr. Wetle) 1250.

1 7:50 P.M. The call was from this number to Portland
2 number 503-351-3219. The rate is the night rate.
3 Q. So N stands for night rate?
4 A. Night.
5 Q. Because the jury will have this and be able to look at
6 that.
7 A. Night. Okay, the next item is five minutes, duration of
8 the call.
9 Q. And that just has the number five?
10 A. Yes.
11 Q. And then there's-- What's next?
12 A. The next is a serial number that we use to identify what
13 long distance carrier was used.
14 Q. And that's just a number of--
15 A. A number of digits.
16 Q. Number of digits?
17 A. Yeah.
18 Q. And then the last--
19 A. Is the price of the call.
20 Q. So from that record you can say that a call was placed
21 from what number?
22 A. It was made from 509-732-4590.
23 Q. And is that the Ken Cameron residence?
24 A. Yes.
25 Q. And the call went to?

Bonnie Marie McDonald - Direct (by Mr. Wetle)

1251.

1 A. It went to a Portland number, which is 503-351-3219.

2 MR. WETLE: Thank you very much, Ms. McDonald. If you
3 want to hand that to Juror Number 6 here, and retake the
4 stand, please.

5 Ms. McDonald, thank you very much. I have no further
6 questions of this witness, your Honor.

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

8 MR. SIMEONE: No questions, your Honor.

9 WITNESS IS EXCUSED

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

11 MR. WETLE: I would call Tim Navratil.

12 THE COURT: Tim Navratil?

13 MR. WETLE: Yes, your Honor.

14 THE COURT: Okay.

15 MR. WETLE: May I approach the bench with counsel, your
16 Honor?

17 THE COURT: Yes.

18 UNRECORDED SIDEBAR

19 THE COURT: Ms. McDonald, if you wouldn't mind stepping
20 back up to the witness stand for just a couple more
21 questions. You're still under oath, so we'll just let Mr.
22 Simeone ask a couple questions.

23

24

25

Bonnie Marie McDonald - Direct (by Mr. Wetle)

1252.

1 **BONNIE MARIE McDONALD**

2 **CROSS EXAMINATION**

3 **BY MR. SIMEONE:**

4 Q. Ms. McDonald, are those-- I don't know how you call them.
5 Do you refer to them as retrievals?

6 A. No.

7 Q. Is that what you--

8 A. The record?

9 Q. Yeah, that record.

10 A. You could.

11 Q. Is that a pretty thorough readout of what the activity on
12 that line was?

13 A. Yes.

14 Q. It should contain all the calls that were made then from
15 it?

16 A. Long distance calls.

17 Q. Long distance calls? And collect calls as well?

18 A. To that number?

19 Q. Yes.

20 A. Yes, they would show.

21 **MR. SIMEONE:** Okay, I have no further questions.

22 Thank you.

23 **WITNESS IS EXCUSED**

24 **THE COURT:** Now Mr. Navratil?

25 **MR. WETLE:** That's right, your Honor. The State would

Bonnie Marie McDonald - Cross (by Mr. Simeone)

1253.

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call Tim Navratil.

Bonnie Marie McDonald - Cross (by Mr. Simeone)

1254.

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

1 **WITNESS IS SWORN**

2 THE COURT: Would you start, first of all, by pulling
3 up to that microphone, and giving us your name, please,
4 and spelling your last name?

5 MR. NAVRATIL: Timothy Kirk Navratil, N-A-V-R-A-T-I-L.

6 THE COURT: Thank you, and your current address? Your
7 business address will do.

8 MR. NAVRATIL: I'll pull it out real quick here. _____
9 that business address is here. 3350 161st Avenue South-
10 east, Bellevue, Washington 98008.

11 THE COURT: Thank you. Mr. Wetle?

12 MR. WETLE: Thank you, your Honor.

13 **TIMOTHY KIRK NAVRATIL**

Being first duly sworn, on
oath testified as follows:

14 **DIRECT EXAMINATION**

15 **BY MR. WETLE:**

16 Q. Good morning, Mr. Navratil. Could you please state your
17 occupation for the court and jury?

18 A. Custodian of records for Verizon Wireless.

19 Q. And what are your duties?

20 A. Fighting fraud and going to court for anything that gets
21 subpoenaed.

22 Q. And you've been subpoenaed here?

23 A. Yes, I have.

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

Timothy Kirk Navratil - Direct (by Mr. Wetle)

1255.

1 Exhibit 109, and ask if you can identify that.

2 A. This is a bill for a Robert Schultz for a phone number of
3 503-351-3219.

4 Q. And what billing period is that for?

5 A. This looks like a billing period for July.

6 Q. Would that include June phone calls?

7 A. Yes, June phone calls. Correct.

8 THE COURT: You need to clarify what year that would
9 be.

10 A. Two thousand.

11 THE COURT: Thank you.

12 Q. And you may have said it, but who's the subscriber for
13 that number?

14 A. Robert E. Schultz.

15 Q. And you've also said you are the custodian of the records
16 for Verizon?

17 A. Correct.

18 Q. And is this record made in the regular course of business?

19 A. Yes.

20 Q. And is this a business record that you are familiar with?

21 A. Yes.

22 Q. Is this record a true and accurate copy of the billing
23 statement for Number 503-351-3219 with a subscriber named
24 Robert E. Schultz?

25 A. Yes.

Timothy Kirk Navratil - Direct (by Mr. Wetle)

1256.

1 Q. And is this record made at or near the time of the
2 transaction?

3 A. Yes.

4 Q. And is this record part of the permanent record of the
5 company?

6 A. Yes.

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

9 A. Other than some highlighting on here, no.

10 Q. And is there also a copy stamp on it?

11 A. Yes, there is.

12 MR. WETLE: Your Honor, we'd offer State's Exhibit 109.

13 MR. SIMEONE: No objection.

14 THE COURT: All right, Exhibit 109 is admitted.

15 Q. Mr. Navratil, I'd ask if you could take that particular
16 exhibit and step to the microphone over here by the-- in
17 front of the jury, and I would direct your attention to
18 Page 13 of that particular billing statement, and I would
19 refer you to a call made-- or received around 7:51. And
20 then I would ask you to go through with the jury the
21 various columns and what they mean in that particular
22 record.

23 A. Okay, what you have here is you've got the incoming phone
24 call made at 7:51 P.M. on 6/10 of 2000. What you have is
25 you've got the subscriber, _____. You've got your date,

Timothy Kirk Navratil - Direct (by Mr. Wetle)

1257.

1 your time and the city the call was made in, or where the
2 phone was at that time. So the call was an incoming phone
3 call. In Olympia is where the phone was located, or the
4 nearest area where the phone was located at that time.
5 The strongest signal it picked up. It was an incoming
6 phone call. An incoming phone call will show the sub-
7 scriber's number again. The call lasted five minutes.
8 There's your minute column right there. If there was a
9 charge for the phone call it would be right there, if it
10 was outside of their normal price plan. A service
11 charge, and then a toll charge. Below it, since this is
12 a subscriber who was outside of his home area, he's
13 charged a toll for an incoming phone call, so it will have
14 here-- it will have a toll charge line, and it'll have a
15 number right here that that is system-assigned to him.
16 Give you an example. I'm from Seattle, Washington. While
17 I'm here visiting your town of Colville, if someone were
18 to call my cell phone, they're calling Seattle, Washing-
19 ton. The call gets automatically forwarded to me out
20 here. I'm going to pay toll for that charge from Seattle
21 to Colville. And the Colville system will assign me a
22 temporary phone number so I will receive that phone call,
23 hidden to me as a subscriber, but it's there for billing
24 purposes. That's what you're seeing here. This phone
25 number, 503-351-3219 number, was visiting in the Taco-

Timothy Kirk Navratil - Direct (by Mr. Wetle)

1258.

1 ma/Olympia area, and that was what you see right there.
2 Q. And then I would direct your attention to page 12-B.
3 Well, practically speaking, just to sum up on the call to
4 Mr. Schultz, that was a call that he received for five
5 minutes?
6 A. Correct.
7 Q. At that time?
8 A. That is correct.
9 Q. And then I'd direct your attention to Page 12-B and ask
10 what happened at 10:57 A.M. on that particular day..
11 A. There was a phone call placed to the Northport, Washing-
12 ton, area, to a number of 509-732-4590, and it was placed
13 for one minute with a toll charge of ten cents.
14 Q. So that would be coming from--
15 A. That was--
16 Q. Who's making the call?
17 A. That would be coming from the 503-351-3219 belonging to
18 Robert Schultz.
19 Q. And then it would be going to the Northport number of 732-
20 4590?
21 A. Correct.
22 Q. And what's the listing for that number?
23 A. I believe that was a listing for a Cameron. Okay.
24 Q. And what does that call show in terms of time?
25 A. One minute or less.

Timothy Kirk Navratil - Direct (by Mr. Wetle)

1259.

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MR. WETLE: Thank you, Mr. Navratil. Your Honor--
And you may hand that to the first juror here. I have no
further questions. You may re-take the stand, please.

THE COURT: And, Mr. Simeone, are you going to have any
questions of this witness?

MR. SIMEONE: Yes.

THE COURT: Okay.

Timothy Kirk Navratil - Direct (by Mr. Wetle)

1260.

1 TIMOTHY KIRK NAVRATIL

2 CROSS EXAMINATION

3 BY MR. SIMEONE:

4 Q. Now, the five minute phone call, that's to the same number
5 as the other one, is it-- isn't it correct, sir?

6 A. To the 503, to the subscriber?

7 Q. Right.

8 A. Yes. It was an incoming phone call.

9 Q. Do you have the-- Do you have the remainder of the
10 records for June there?

11 A. On that bill?

12 Q. Yeah.

13 A. Yes.

14 Q. Did you see any other phone calls to that number-- or
15 from that number? From the Schultz number to the 4590
16 number?

17 A. To the Cameron number? Is that what you're referring to,
18 sir?

19 Q. Right.

20 A. I'm not sure how far you want me to go back, but I have
21 another one so far.

22 Q. Is there any way-- You haven't done it. Is there any way
23 to establish the source of the--

24 THE COURT: I'm sorry. You have or haven't?

25 MR. NAVRATIL: I have. I found one more so far.

Timothy Kirk Navratil - Cross (by Mr. Simeone)

1261.

1 Q. Okay, where is that?
2 A. That would be on 5/15 of 2000 at 8:46 P.M.
3 Q. Five-fifteen?
4 A. Uh-huh.
5 Q. And what time was it, 8:40?
6 A. Eight-forty-six P.M.
7 Q. So that's May, right?
8 A. Correct.
9 Q. And what are the details of that call?
10 A. Once again, it's a call being placed to 509-732-4590. The
11 call lasted for one minute.
12 Q. Is there any way to know with regards to the incoming call
13 which you testified about, sir, on June 10th, where it's
14 from?
15 A. No. Those call records are-- Those kind of records are
16 not kept. Not on the Verizon Wireless side they're not
17 kept.
18 Q. Is there any-- Didn't you say that that was from Ken
19 Cameron?
20 A. I've got two different tabs here that we're talking about.
21 We've got an incoming phone call that I testified about.
22 Q. Yeah, that's the June 10th call, right? That's an
23 incoming call?
24 A. The incoming phone call. Then we're also talking about a
25 call being placed out to a 732-4590.

Timothy Kirk Navratil - Cross (by Mr. Simeone)

1262.

1 Q. And you can't identify where the collect call came from
2 then?

3 A. The incoming phone call on the 10th? No, I cannot.

4 Q. Yeah, that's another way to say collect, right?

5 A. Correct.

6 Q. Do you have July's there as well?

7 A. I'm not certain. Do we-- Not in this bill, no.

8 ~~THE COURT: While Mr. Simeone's looking at his notes,~~
9 ~~would you just highlight the second number that you ran~~
10 ~~across there, so that if anybody wants to find it they~~
11 ~~won't have to search quite as hard as you did.~~

12 Q. What's the latest date in June we have then, sir?

13 A. The 10th.

14 THE COURT: Could you clarify whether your question
15 meant the latest day on the bill period--

16 Q. I'm talking about 351-3219 now. Don't you have records
17 there through the 12th?

18 A. I've got calls up till the 10th of June on this.

19 Q. In the records there that you have, now, what do you see
20 for calls placed to California, or any other out-of-state
21 calls? How many?

22 A. You want me to go through and count them?

23 Q. Well, that would be what I'd prefer, yes.

24 A. There's approximately 36 calls that are placed outside of
25 the State of Oregon. And when I say outside the state,

1 those are calls-- He's placing calls to numbers that are
2 located outside of the State of Oregon.

3 Q. You know, I'm going through this and I didn't see them,
4 sir.

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

6 THE COURT: Yes.

7 Q. _____ see so that we're on the same page.

8 A. This is your state right here. You're asking me for calls
9 that are being placed _____.

10 MR. WETLE: I don't think it can be-- I'm sorry, your
11 Honor. I'm sure that the recorder cannot pick up the
12 conversation.

13 THE COURT: Yes, that's true.

14 A. If I understood correctly, you're asking for calls that
15 were placed to numbers that are located outside of Oregon.

16 Q. Right.

17 A. So here would be one right here. You go by the State of
18 Washington, so it would be on 5/12 on page 4-B. So on 4-B
19 you've got a call being placed to Northport, which would
20 be to our 509-732-4590. You go down a few more lines and
21 you've got a call being placed to Upland, California, and
22 then we've got another call to Northport, Washington down
23 here. So there's three so far on this page. Come down
24 here and there's two more to Washington. There's five,
25 six. One to Nevada. Seven, to Northport. Two more to

1 the Northport number. Here's a call to Houston, Texas.
2 Actually that was a call-- That was actually an incoming
3 phone call in Houston, Texas, but that was an automatic
4 call _____ that I explained earlier about the toll charges
5 while you receive an incoming phone call. Here's two
6 calls in Washington.

7 THE COURT: Can the jury hear the witness?

8 THE JURY: (No audible response)

9 THE COURT: Okay.

10 A. Two more calls placed to Washington. Another two more
11 placed to Washington. Another one placed to Washington.
12 Washington again on 5/26. Five-twenty-seven again to
13 Washington. Again. Washington. A call to New Orleans,
14 Louisiana on 5/31.

15 Q. How do you-- How is it that you see that that's to New
16 Orleans?

17 A. LA stands for Louisiana.

18 Q. Oh, okay.

19 A. And New Orleans would be the city. It shows your destina-
20 tion right there. There's the phone number that was
21 dialed, and that was a number that belongs in New Orleans,
22 Louisiana.

23 Q. I see.

24 A. We've got Orange, California on 5/31. Vancouver, Washing-
25 ton. Vancouver, Washington. Vancouver, Washington five

1 more times on that page. Upland, California. Two more to
2 Orange, California on 6/7. Here's our call to Northport
3 again right here.
4 Q. That's the 4590 number you're talking about in Northport?
5 A. Uh-huh.
6 Q. When you say the Northport number, that's what you're
7 referring to?
8 A. Yeah. _____ one call being placed to Northport would be
9 the 509-732-4590.
10 Q. Okay.
11 A. And there you go.
12 Q. Okay, so I tally that four to California and one to Texas,
13 one to New Orleans, and the rest of the long distance
14 calls are to Washington?
15 A. Uh-huh. Correct.
16 Q. Those calls to Orange County were the 6th and the 7th,
17 were they not?
18 A. They were on the 7th. I've got two calls on the 7th to
19 Orange, California. Correct.
20 Q. Sixth and 7th?
21 A. On the 6th. I have no calls to California on the 6th.
22 Q. Just the 7th then?
23 A. Correct.
24 Q. My record's a little bit different than yours, but I want
25 to make sure that I understand that there is one showing

Timothy Kirk Navratil - Cross (by Mr. Simeone)

1266.

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for-- to the Northport number on 6/9. That would be page 12-B, and that's a minute.

A. Correct, 6/9 at 10:57 A.M. to Northport.

Q. There's no time change there that we're talking about? Is that correct? So Portland time's the same as our time?

A. Correct.

MR. SIMEONE: Okay, I have no further questions. Thank you.

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

MR. WETLE: Yes, your Honor.

1 **TIMOTHY KIRK NAVRATIL**

2 **REDIRECT EXAMINATION**

3 **BY MR. WETLE:**

4 Q. Mr. Navratil, on the Rob Schultz monthly activity detail
5 records, you can't-- or can you tell who or what number
6 is calling in to him?

7 A. No, you cannot.

8 Q. And you can't tell whether those incoming calls are from
9 out of state or not?

10 A. I cannot.

11 Q. All it lists on the record would be incoming?

12 A. Yeah. All it says will be incoming and the subscriber's
13 phone number.

14 Q. Which would be his number?

15 A. Which would be his number, correct.

16 Q. So you have no way to know how many of those incoming
17 calls are from California, Washington, Texas?

18 A. I have no way of knowing.

19 Q. Okay.

20 A. Not on the Verizon Wireless records, no, I do not.

21 Q. I would ask you to-- Are the exhibits back from the--
22 Exhibits 100 and 110?

23 THE COURT: One-ten is here, 109 the witness has.

24 THE COURT: Could I ask the bailiff to hand the witness
25 Exhibit--

Timothy Kirk Navratil - Redirect (by Mr. Wetle)

1268.

1 THE COURT: One-ten?

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

3 Q. Now, having 110 and 109 in your hand, I'd ask you to
4 compare the two bills for the June 10th call at 7:50 on
5 the Qwest record, and your--

6 MR. SIMEONE: What's the reference again, counsel? I'm
7 sorry.

8 MR. WETLE: That would be Exhibit 110.

9 Q. And the same time period on the Verizon Exhibit 109. Tell
10 me, what does that tell you?

11 A. What it appears to me as I'm looking at a Qwest bill--

12 Q. Maybe you could show the jury, because they're going to
13 have to make that connection.

14 A. May I step down?

15 Q. Yes, please.

16 A. What I see here on the Qwest bill is I see a call on June
17 10th, 7:50 P.M., Portland, to our subscriber here, Robert
18 Schultz, 503-351-3219. The call lasts one minute. Pardon
19 me. Five minutes. What we have here, approximately the
20 same time frame, at 7:51 P.M., same time, is an incoming
21 phone call lasting for five minutes.

22 Q. And the notation on the Verizon bill is incoming?

23 A. Correct.

24 Q. So you have-- Unless you have that--

25 A. I have no idea.

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Q. Unless you had that other phone bill, you could never make the connection as to who made that call?

A. That would be correct.

Q. Because you do have that phone call, and you see that there's one minute difference, is that unusual to you?

A. That is not unusual between billing systems. Different carriers may be about one minute off, ~~so that would be-~~
This appears to me, without reasonable doubt, that this is a phone call that this number on this bill placed to this phone right here.

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

MR. SIMEONE: Nor do I, your Honor.

WITNESS IS EXCUSED

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

MR. WETLE: I'd call Kim Kerpin, your Honor.

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WITNESS IS SWORN

THE COURT: If you'll start by giving us your full name, please, for the record?

MS. KERPIN: It's Kimberly Kerpin.

THE COURT: And your spelling on your last name, Ms. Kerpin?

MS. KERPIN: K-E-R-P-I-N.

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

MS. KERPIN: 10730 Thornmint Road.

THE COURT: And the city and state?

MS. KERPIN: San Diego, California 92127.

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

MR. WETLE: Thank you, your Honor.

KIMBERLY KERPIN

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

DIRECT EXAMINATION

BY MR. WETLE:

Q. Good morning, Ms. Kerpin.

A. Morning.

Q. Could you please state what you do for work and your regular occupation?

A. I'm a mother, and I also babysit. I've done that since I've been young. I'm 23 now and I've always worked like day camps and day care since I was like 15.

Kimberly Kerpin - Direct (by Mr. Wetle)

1271.

1 Q. And what was your relationship to Josh Schaefer?

2 A. He was my boyfriend. We always said-- We'd call each
3 other husband and wife. We weren't technically married,
4 but we were in love, and we were planning on getting
5 married.

6 Q. And do you have a child by him?

7 A. Yes.

8 Q. Were you able to examine some of the items recovered from
9 the Kaiser vehicle?

10 A. Yes.

11 Q. I'd ask the bailiff to hand you what's been marked as
12 Exhibit 76.

13 MR. WETLE: Has that been re-sealed?

14 THE CLERK: (Inaudible)

15 MR. WETLE: Okay, if we could--

16 THE COURT: We had a little discussion and decided that
17 just for preservation of the record the Clerk would put
18 her initials when she re-seals one of the evidence bags
19 that's cut open in open court. There's a record of it
20 being cut open in open court; there's not necessarily a
21 record of her re-sealing unless she puts her initials.

22 MR. WETLE: That's correct, Your Honor. Then do we
23 need scissors to--

24 THE COURT: Yes.

25 MR. WETLE: --re-open the bag? Jack-- Mr. Bailiff,

1272.

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would you open it for the witness?

THE COURT: Ms. Kerpin, are there some Kleenex right there? Okay. And if you need a glass of water, there's a cup for you there.

MR. WETLE: Could you take the exhibit out of the bag, Mr. Bailiff?

Q. Ms. Kerpin, I would ask if you can identify that?

A. Yes.

Q. And what is that?

A. It's Josh's crystal. Our crystal.

Q. And how long have you had that?

A. Like a year and a half.

1 Q. What was-- What was his relationship to that crystal?
2 A. We bought it together at one of our favorite shops, before
3 Seclea [spelled phonetically] was born, and it was our
4 family crystal. It symbolized like our love for each
5 other.
6 Q. Would he--
7 A. He would never go anywhere without it. He carried it all
8 the time. When we put it in our car, like it-- it would
9 sit right between us, and if we ever got out of the car he
10 would put in his pocket. Oh, my God.
11 Q. I'd ask the bailiff to hand you what's marked as Exhibit
12 44. Ms. Kerpin, there is a picture of a bead in that
13 particular picture.
14 A. Uh-huh.
15 Q. And can you identify that bead?
16 A. Yes.
17 Q. And what is that?
18 A. It's Josh's bead. Our friend made it for him, before
19 Seclea was born, for a present.
20 Q. I'd ask the bailiff to hand you what's been marked as
21 Exhibit 7.
22 MR. WETLE: Mr. Bailiff, you may need to open that as
23 well, and show Ms. Kerpin those exhibits.
24 Q. Ms. Kerpin, you've been handed Exhibit 7, and I would ask
25 if you can identify those.

Kimberly Kerpin - Direct (by Mr. Wetle)

1273.

1 A. Yes.

2 Q. And what are they? Just tell what they are.

3 A. It's Josh's nose ring.

4 MR. SIMEONE: Is there _____?

5 MR. WETLE: I think there was a broad silver ring.

6 Q. And do you recognize that ring at all?

7 A. Yeah.

8 Q. Is that a ring similar to one that he would wear or did
9 wear?

10 A. Uh-huh.

11 Q. And was that on a finger or--

12 A. It was in his dreadlock. Another dreadlock. But it was
13 pretty fine there. Like I never-- I could only see a
14 part of it before.

15 MR. WETLE: Thank you very much. If you want to take
16 the exhibits, Mr. Bailiff.

17 THE BAILIFF: _____ crystal?

18 MS. KERPIN: Can I hold the crystal?

19 THE COURT: Is there any problem with the witness
20 keeping the one exhibit for her testimony?

21 MR. WETLE: No, your Honor.

22 THE COURT: Then we'll have to have you give it back,
23 of course, Ms. Kerpin, when you're finished.

24 MS. KERPIN: Okay.

25 ~~MR. WETLE:~~ But go ahead with your questions, Mr.

The Court

Kimberly Kerpin - Direct (by Mr. Wetle)

1274.

1 Wetle.

2 Q. Ms. Kerpin, where did you and Josh live?

3 A. Mendocino, California.

4 Q. And did you know Nick Kaiser?

5 A. Yes, I did.

6 Q. And how long have you known Nick Kaiser?

7 A. For about two years. We met him in the summer of '99.

8 Q. Were Nick and Josh in the Family?

9 A. Yes.

10 Q. What was the relationship between Josh and Nick?

11 A. They were friends. They had met like a month before I met
12 Josh at a Rainbow gathering. Josh's first Rainbow
13 gathering. And I think they hung out for a little bit,
14 and then we met and we started hanging out. And then
15 exactly a year later, he was at a concert that we were at,
16 and that's when I met him. And Josh said this is my
17 friend, you know, that I met a year ago.

18 Q. What caused Josh to go to Seattle to see Nick Kaiser?

19 A. Well--

20 THE COURT: I'm sorry, what time frame are you--

21 Q. In June of 19-- or June of 2000.

22 A. He actually went up to be a friend to him. Nick had told
23 us that he got a marijuana charge from local cop-- local
24 police, and so he was calling us in May and the beginning
25 of June, and all we had is voice mail, 'cause we were

Kimberly Kerpin - Direct (by Mr. Wetle)

1275.

1 living out in the woods and we didn't have a phone. And
2 he was telling us-- like he was crying on our voice mail
3 and saying how upset he was 'cause his girlfriend broke up
4 with him over this marijuana charge. And we were praying
5 for him and he was--

6 Q. So he went to Seattle?

7 A. Yeah. I actually left to go to my parents' house. We
8 were both supposed to leave, and Josh stayed, and he was
9 going to come a week later. And he called me two days
10 after I'd been at my parent's house and said, you know,
11 Nick called, there's a barter fair, and he really needs me
12 to come up. So he said, Do you care if I go? And I said
13 no. We'd never been to a barter fair and we were going to
14 go together for the first time, but he asked if I cared,
15 and I said no. And he was just going to be a friend.

16 Q. So then he left to be with Nick Kaiser?

17 A. Uh-huh.

18 Q. Do you know what vehicle that Josh drove up to Seattle?

19 A. Our '89 Chevy Blazer.

20 Q. And who was that registered to?

21 A. Josh and I.

22 Q. And what address is that vehicle registered to?

23 A. It's actually registered to Nick's, because we bought it
24 up here and we couldn't smog it in California. And we
25 don't really know anybody up here, so we asked Nick if we

Kimberly Kerpin - Direct (by Mr. Wetle)

1276.

1 could use his address.

2 Q. So it was registered to the Oak Harbor-- Donald Avenue in
3 Oak Harbor address?

4 A. Yeah.

5 Q. When did you last hear from Josh?

6 A. Like 8:00 o'clock, 8:20, on June 10th, on Saturday.

7 Q. Saturday morning, the year 2000?

8 A. Uh-huh.

9 Q. And do you know where that call was coming from?

10 A. Yeah.

11 Q. Where do you believe it was coming from?

12 A. He said they were at the barter fair. He had called me
13 the night before, on Friday night, and said they were at
14 the barter fair. And he called me Friday morning and said
15 they were on their way to the barter fair, and they were
16 in Spokane and they were getting some supplies and stuff.

17 Q. Do you know how much money Josh had to go up to Seattle?

18 A. Just like a couple hundred dollars.

19 Q. Some time back in February, specifically on February 9th
20 of year 2000, were three of you arrested?

21 A. Yes.

22 Q. And was that in Oakland?

23 A. Yeah.

24 Q. And what-- And were you charged with possession of LSD?

25 A. No.

Kimberly Kerpin - Direct (by Mr. Wetle)

1277.

1 Q. Were you arrested for that?
2 A. We were arrested, but we weren't charged.
3 Q. So you were never charged with the crime?
4 A. Huh-uh.
5 Q. And was Josh?
6 A. We were there, but--
7 Q. Was Josh ever charged with the crime?
8 A. No.
9 Q. Did the officers ask to give you any-- ask you to give
10 statements?
11 A. Yes, they did.
12 Q. And you didn't know what Josh had said in his statement?
13 A. Huh-uh. No. I knew a little.
14 Q. Okay. After Josh did not call you on Sunday, June 11th,
15 did that cause you any concern?
16 A. Yes, it did.
17 Q. When Josh did not call you on Monday, June 12th, did that
18 cause you any concern?
19 A. Yeah.
20 Q. And where were you at this time?
21 A. I was at my parents' house. And he was supposed to fly
22 out in like two days, and he had been calling me-- 'Cause
23 that was the first time we were ever apart since we met,
24 and he had been calling me a couple times a day when I was
25 at my parents' house, 'cause my mom was like, you know, he

Kimberly Kerpin - Direct (by Mr. Wetle)

1278.

1 sure calls you a lot. And so it was weird, like-- 'cause
2 he called me on Nick's-- from the barter fair Friday, and
3 the phone cut off, and he called me back, and he called me
4 on Saturday and the phone cut off and he never called me
5 back. So I just figured maybe they were goofing around.
6 And I gave it a couple days. I didn't know where he was.
7 I thought maybe they'd got in an accident.

8 Q. Okay, when did you contact Josh Schaefer's dad?

9 A. Tuesday, the 13th. The day he was supposed to fly in to
10 my house.

11 Q. And what was the purpose of contacting him?

12 A. To ask-- To find out if Josh had contacted them, and to
13 tell them that I hadn't heard from him.

14 Q. And had he-- After you talked to him, did you know at
15 that time where they were?

16 A. No.

17 Q. Did you subsequently, in trying to locate Josh or what
18 might have happened, did you make a call to a Shauna
19 Daniels?

20 A. Actually, we called Brian. Tom got the number from the
21 police in Seattle about Nick--

22 Q. Okay, and from that number--

23 A. For-- To Brian. To Brian Murphy.

24 Q. And from Brian Murphy's number did you then get Shauna
25 Daniels' number?

1 A. Yeah, he gave it to me. He gave me her mom's number.
2 Q. And who was Shauna Daniels?
3 A. Nick's girlfriend.
4 Q. Then once you got that number, did you then-- Were you
5 able to contact her?
6 A. Actually, I called her mom, but I wasn't able to speak
7 with her, 'cause she had already been in hiding, and so
8 her mom said that she would have to call me back, and she
9 did.
10 Q. Okay, and when she called you back, were you able to talk
11 to her?
12 A. Yes.
13 Q. And what did she tell you?
14 A. I asked her-- Well, after what Brian had told me that
15 they were in danger, and what he knew--
16 Q. Just-- Just what Shauna told you now.
17 A. Okay. Shauna told me-- I asked her if they could
18 truthfully be in any danger, and she said yes, you know,
19 and then she told me what had happened and--
20 Q. Did she tell you the story of what happened?
21 A. Uh-huh.
22 Q. And what was the-- Did she tell you the real story or did
23 she tell you-- What did she tell you?
24 A. She told me that they were-- they got caught with a bunch
25 of LSD, and they were actually making it.

Kimberly Kerpin - Direct (by Mr. Wetle)

1280.

1 Q. At the time they got caught?

2 A. Uh-huh. And she told me that-- I asked her if there were

3 people that could really be after him and that would be

4 mad enough to go after Nick, and she said yes, and she

5 told me that, you know, he had been helping-- helping--

6 Q. The federal people?

7 A. Yeah.

8 Q. So you knew that he was working with the feds?

9 A. Uh-huh.

10 Q. And did she say anything--

11 A. And I didn't-- You know, we didn't know anything till

12 that point, so--

13 Q. That was the first time you had heard that?

14 A. Oh, no. Brian told me first, and then Shauna.

15 Q. And did Shauna say anything had happened to her--

16 A. Yeah.

17 Q. --after the bust?

18 A. She told me-- Well, I asked her, you know, I said, well,

19 Nick said you broke up with him over a marijuana charge.

20 And she was like well, no, I have a restraining order

21 against him because I got a gun put to my head in Port-

22 land. And she said they said if you're ever with Nick,

23 you're going to die.

24 Q. Is that the people that put the gun to her head?

25 A. Yes.

Kimberly Kerpin - Direct (by Mr. Wetle)

1281.

1 Q. And did she know who those people were?

2 A. She said she didn't. She didn't know. She said she was
3 really scared.

4 Q. Did you have occasion then to call her at a later time?

5 A. Uh-huh. Yes.

6 Q. And-- I should say, maybe you called her and she called
7 you back?

8 A. Uh-huh.

9 Q. And when she called you back, what happened?

10 A. Actually, she-- Her mom-- Her mother called my mom first
11 'cause they had been talking.

12 Q. Okay, now, you can only say what she told you.

13 THE COURT: What Ms. Daniels--

14 Q. What Ms. Daniels told you. So then did you subsequently
15 get on the phone with Shauna after your parent-- after
16 both your moms talked?

17 A. Yes.

18 Q. ~~And what did she say to you at that time? This second~~
19 ~~call?~~

20 A. ~~She told me that-- She changed her story, and she was~~
21 ~~like, you know;~~

22 I don't really want to have anything to do
23 with this, I'm really scared, so it didn't
happen.

24 And I was like:

25 What do you mean it didn't happen?

Kimberly Kerpin - Direct (by Mr. Wetle)

1282.

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And she said, you know-- It was like if you know who these guys are, if you can identify them, it'll probably help, you know, try to figure out what's going on. And she was like, I just don't want to deal with it. She's like, I'm already out of here, so it doesn't matter.

Q. How did she appear to you in those calls? What was her-- Why was she not--

A. She appeared concerned, like she said she was sorry. Like, I'm sorry, you know, that Josh needed to be involved.

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

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

MR. SIMEONE: Yes, thank you, your Honor.

1 KIMBERLY KERPIN

2 CROSS EXAMINATION

3 BY MR. SIMEONE:

4 Q. You-- Good afternoon-- or good morning, Ms. Kerpin.
5 Your phone call was cut off on Saturday, is that right?

6 A. Uh-huh.

7 Q. And that's the last time you heard from Josh?

8 A. Right.

9 Q. You're assuming he was calling you on Nick's cell phone,
10 is that right?

11 A. Yeah.

12 Q. Is it possible then that if the information shows that he
13 was killed the next day, that he would have called you
14 between that night and the next day, wouldn't he?

15 A. Yeah. I know.

16 Q. Is it very possible that something happened to him at that
17 time _____ he didn't call you back on Saturday?

18 A. I guess anything's possible, you know.

19 Q. But see, if I understand your testimony correctly, he's
20 keeping in pretty good contact with you.

21 A. Right.

22 Q. Didn't you say several times a day?

23 A. I know, that's why-- I mean something-- I don't know.
24 Yeah. I'm not sure.

25 Q. Okay. Now, I want to clarify. You said Family, and that

Kimberly Kerpin - Cross (by Mr. Simeone)

1284.

1 word came out of your mouth pretty fast like you're
2 familiar with the phrase. When you say Family, in your
3 testimony, are you referring to the Rainbow Family?

4 A. Yeah.

5 Q. Okay. It's an organization you're familiar with?

6 A. Uh-huh.

7 Q. And we assume Josh was associated with it, Nick as well?

8 A. Uh-huh.

9 Q. Okay.

10 A. Yeah. Josh went to his first gathering like two years
11 ago. And he was just a sweet guy, you know. A lot of
12 people liked him.

13 Q. And my condolences to you for your loss, as well, ma'am.
14 Is it correct that Nick got Josh to come to Seattle?

15 A. What's that? I'm sorry.

16 Q. Is it correct Nick got Josh to come to Seattle then?

17 A. Yes.

18 Q. And was there-- You think that's based upon a misrepre-
19 sentation about why? I mean it sounded to me like he--
20 Am I right about the sense I'm getting about your testimo-
21 ny?

22 A. For sure. Yeah, he was telling us it was a marijuana
23 charge. I don't know why he would have lied, because I
24 thought they were-- You know, they didn't know each other
25 too well, but they were pretty good friends.

Kimberly Kerpin - Cross (by Mr. Simeone)

1285.

1 Q. Yeah, I--
2 A. And they would consider each other friends.
3 Q. I think I got a feel for what their relationship was then.
4 A. Uh-huh.
5 Q. Did--
6 A. I don't know why he would lie. I don't know.
7 Q. Well, neither did I. Do you think--
8 A. I think he just needed somebody so bad, like he sounded so
9 sad on these thing-- on his messages.
10 Q. Uh-huh.
11 A. And Josh is a good friend of his, and he knows it.
12 Q. Were you aware--
13 A. Josh would help him.
14 Q. --that there were suspicions that, as a result of--
15 strike that. As a result of Josh's arrest, did he-- Do
16 you know of any suspicion that was heaped upon him that he
17 was cooperating with authorities?
18 A. No. No, he made one statement while we were there, and
19 that's it.
20 Q. He was released from custody pretty fast though, wasn't
21 he?
22 A. Uh-huh. I mean they realized that, you know, it wasn't
23 our thing. It was theirs, and so--
24 Q. But it was your house, wasn't it?
25 A. Well, it was actually a friend of ours house, and we'd

Kimberly Kerpin - Cross (by Mr. Simeone)

1286.

1 only been staying there like a month. Like we moved in in
2 the middle of December, we left for Christmas and New
3 Year's, and then we came back like a week into January.
4 So really like a month and a half.

5 Q. And it was a meth laboratory? Is that how you would
6 categorize it?

7 A. I guess, yeah.

8 Q. You didn't know anything about it--

9 A. Huh-uh.

10 Q. --from the smells or anything else that were emanating
11 from it?

12 A. No. There were no smells. I mean they said they found
13 things in the closet, but there wasn't like anything going
14 on in the house that we would know. Like I didn't go
15 through these people's closets. They were re-- Like they
16 were re-doing the house, like our friend did construction,
17 so, you know, a lot of the house-- the bottom part was
18 tore up and there were bedrooms on the top, and we just
19 stayed up in our bedroom.

20 Q. But in addition to that, didn't they find LSD in your
21 house?

22 A. Yeah.

23 Q. And that was linked to you and Josh, wasn't it?

24 A. Well, a lit-- Some of it. They found like a tiny bit
25 that was Josh's, that he said was his, that he, you know,

Kimberly Kerpin - Cross (by Mr. Simeone)

1287.

1 did every once in awhile.

2 Q. When you say a tiny bit, what do you mean by that?

3 A. What do I mean by that?

4 Q. Yeah, I mean how much, when you say tiny bit?

5 A. Well, they said they found a vial and it had like barely

6 anything in it. And they did find other, you know, LSD in

7 the house, and that wasn't ours. Our friend, you know,

8 claimed that and said it was his, and they right away

9 said, you know, these guys don't have anything to do with

10 it.

11 Q. Did Josh give the authorities information that led them to

12 Nick Kaiser?

13 A. Excuse me?

14 Q. Did Josh give the authorities information--

15 A. Oh.

16 Q. Did he inform on Nick?

17 A. No, he didn't inform on anybody. He just gave a statement

18 about what was going on in the house. No, he didn't have

19 to. I mean they didn't need him to help with anything

20 or--

21 Q. And do you know-- Are you aware that his statement led to

22 the arrest of an individual?

23 A. No, not-- How could that-- How is that related?

24 Q. I'm just asking you whether or not you know that informa-

25 tion Josh gave the authorities led to the arrest of an

1 individual? And is your answer to that no?
2 A. Of a individual, or--
3 Q. Right.
4 A. --Nick the individual?
5 Q. No, not necessarily Nick.
6 A. Oh.
7 Q. An individual.
8 A. Yes.
9 Q. But we don't know who that is though?
10 A. Okay.
11 Q. It's not Nick, is that what your testimony is?
12 A. No, I thought that's what you were asking me.
13 Q. You don't think that's why Nick lured Josh to Seattle?
14 A. No way. Nick didn't-- Like we don't know hardly any of
15 Nick's friends. We never came up here, you know, like he
16 only came to visit us a couple of times. He didn't even
17 know any of our friends hardly.
18 Q. I want to touch briefly on--
19 A. Like he was a basic-- You know. I mean he was a good
20 friend of Josh's, but they didn't know each other like a
21 lot.
22 Q. They didn't know each other a lot, but they were good
23 friends?
24 A. Just from, you know, like if you meet somebody, you know
25 that they're a friend of yours or they're not a friend of

1 yours. And he would consider him a friend.

2 Q. Well, it's possible, I think, from your testimony that

3 Nick had a motive to take revenge against Josh, because we

4 don't really know who the arrested individual was, do we?

5 A. I'm sorry, I don't understand the question.

6 Q. I'll strike the question.

7 A. Okay.

8 Q. About the threats, I want to touch briefly on your

9 testimony here.

10 A. Okay.

11 Q. About the threats that you talked or given-- talked about

12 were given to Shauna. You don't know who the person

13 threatening her was, do you?

14 A. No.

15 Q. Okay. And Shauna-- Shauna said as well, she didn't tell

16 you, is that your testimony? That she didn't know who it

17 was? Are you aware--

18 A. Right.

19 Q. Are you aware that she knows my client, Mr. Grange?

20 A. No. I've never seen him before in my life.

21 Q. You don't know where the threats came from, either?

22 A. (No audible response)

23 Q. I guess a follow-up question to that would be you don't

24 know who had put the gun to her head, because she never

25 told you that?

1 A. Right. She didn't know.
2 Q. She didn't know?
3 A. But I told her if she could, you know, tell somebody and
4 maybe try to identify him that that could help a lot. You
5 know, if something had happened and she might know
6 something.
7 Q. But she didn't know who it was?
8 A. No.
9 Q. She didn't know the person that did that, she didn't know
10 the voice either?
11 A. Huh-uh. I mean, yeah, maybe she did, but she didn't tell
12 me.
13 Q. Well she told you other things, though, at first, didn't
14 she?
15 A. Yeah. Well maybe she didn't know the people that did it.
16 You know, I don't know.
17 Q. Right, it's a speculative thing. Now, lastly, are you
18 aware that Shauna gave a statement to the sheriffs wherein
19 she said that there were no threats to her at all?
20 A. Yes. Uh-huh.
21 Q. Okay.
22 A. Well, she changed her statement, you know, two days after
23 I talked to her. She said, you know, I'm not going to say
24 that because I don't want to be involved. And she was
25 already so far away I don't think she, you know, wanted to

Kimberly Kerpin - Cross (by Mr. Simeone)

1291.

1 deal with it.

2 Q. Yeah, but she had a little track record of giving you the
3 wrong information there, didn't she? First she said it
4 was a marijuana bust? Is that right?

5 A. Shauna? Shauna said this? No. I don't understand what
6 you're asking me.

7 Q. Was Nick giving you-- You were getting some misinforma-
8 tion from them. I'm not talking about just Shauna.

9 A. Yeah. We didn't know Shauna.

10 Q. What I was saying-- I know. What I was saying, I think
11 it came from that source. You were getting some misin-
12 formation.

13 A. Uh-huh.

14 Q. And she gave you misinformation too?

15 A. No, she told me right away what was going on, like what
16 the real story was and what is the real story. Exactly
17 what Brian told me. He said, you know, call Shauna. This
18 is what happened, she'll tell you. I called her and she
19 told me, you know, they got in trouble for LSD, he was
20 working, you know, helping out, and--

21 Q. Right.

22 A. I mean that's not misinformation.

23 Q. No, that isn't. She corrected that story. But then she
24 told you about a threat and then she said there wasn't any
25 threat.

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A. Yeah.

MR. SIMEONE: Okay, I have no further questions. Thank you.

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

MR. WETLE: Yes, your Honor.

1 KIMBERLY KERPIN

2 REDIRECT EXAMINATION

3 BY MR. WETLE:

4 Q. And why did she change her story?

5 MR. SIMEONE: Your Honor, I'm going to object as to
6 speculative.

7 THE COURT: Sustained.

8 Q. The people that got arrested out of the arrests in-- at
9 your house, was one of the people that was living with
10 you?

11 A. Yes.

12 Q. And so the statements were as to Mr. Watkins' involvement?

13 A. Uh-huh.

14 Q. And also as to the other person, Mr. Ashworth, and he
15 has--

16 MR. SIMEONE: Your Honor, the question's ambiguous. I
17 don't know what reference he's making right now.

18 THE COURT: I know. It's true, Mr. Wetle.

19 MS. KERPIN: Yours are too.

20 THE COURT: You have way more background than any of
21 the rest of us on this issue. I don't know what you're--

22 MR. WETLE: The question was a follow-up of cross, your
23 Honor.

24 THE COURT: I realize that, but I can't tell what
25 you're asking, so maybe you could break it down.

Kimberly Kerpin - Redirect (by Mr. Wetle)

1294.

1 MR. WETLE: Okay.

2 Q. Were other people arrested as a result of that seizure of
3 the items in the house?

4 A. Yes.

5 Q. And were those people also partially prosecuted because of
6 statement that Josh made?

7 A. Yes, but he already knew his involvement.

8 Q. Mr. Watkins?

9 A. Uh-huh.

10 Q. And as to Mr. Ashworth? The statements made about Mr.
11 Ashworth? Were they made by Josh that incriminated Mr.
12 Ashworth?

13 A. No. They had already-- You know, they already knew what
14 Mr. Ashworth was up to. Like they had been watching him
15 for awhile.

16 Q. And you didn't know whether Josh had made statements,
17 further statements, incriminating Mr. Ashworth?

18 MR. SIMEONE: Your Honor, I'm going to object to the
19 hearsay part of that.

20 MR. WETLE: That would be a declaration against
21 interest, possibly, your Honor.

22 THE COURT: Well, I'm not sure it's hearsay in that
23 it's not offered to prove the truth of whatever Mr.
24 Schaefer said but, in fact, whether or not he said
25 anything, if this witness knows. So I'll overrule the

1 objection. Ms. Kerpin-- Would you clarify with the
2 witness whether or not she even knows there was any
3 information given about an Ashworth?

4 MR. WETLE: Thank you, your Honor.

5 THE COURT: By Mr. Schaefer.

6 Q. Do you know if in the statement that Josh gave to the DEA
7 people down there that he made any incriminating state-
8 ments about Mr. Ashworth?

9 MR. SIMEONE: Wait a minute, your Honor. I thought the
10 clarification was supposed to be whether or not she even
11 knew that there was a statement.

12 THE COURT: That's true, Mr. Wetle. You want to
13 restate your question-- rephrase your question, please?

14 Q. Was a statement given by Josh to the DEA?

15 A. Yes.

16 Q. And do you know if in the statement there were incriminat-
17 ing things about Mr. Ashworth that Josh said?

18 A. Yeah.

19 Q. There were?

20 A. Uh-huh. But it was about things, you know, that they
21 already had-- they already knew.

22 MR. WETLE: Thank you, your Honor.

23 A. Like he was right there. You know, he was right there.

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

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MR. SIMEONE: Your Honor, I do.

THE COURT: All right.

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KIMBERLY KERPIN

RE CROSS EXAMINATION

BY MR. SIMEONE:

Q. Would it surprise you to know that a DEA agent said that Josh gave information that was directly related to the arrest of an individual down there? And I'm not talking about your roommate.

A. I'm sorry. What was the question?

Q. Would it surprise you to know that a Drug Enforcement agent said that Josh gave information that was directly related to the arrest?

A. The only statement I know that he made was against Watkins and Ashworth.

Q. So that would surprise you to hear that then from the DEA agent, wouldn't it?

A. Sure.

MR. SIMEONE: No further questions.

WITNESS STEPS DOWN BUT IS NOT EXCUSED

COURT RECESSED

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COURT RECONVENED WITH JURY SEATED

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

MR. WETLE: Thank you, your Honor. We would call Janell Clarke.

WITNESS IS SWORN

THE COURT: And if you'll give us, speaking right into that microphone, your full name, please, for the record?

MS. CLARKE: Janell Clarke.

THE COURT: And, Ms. Clarke, I'm going to ask you spell your first and last names, please.

MS. CLARKE: J-A-N-E-L-L C-L-A-R-K-E.

THE COURT: Thank you, and your current address, please, for the record?

MS. CLARKE: P. O. Box 1322-- Actually, you probably have another address.

THE COURT: Whatever your current address is at this point.

MS. CLARKE: P. O. Box 1322, Kettle Falls, Washington.

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

MR. WETLE: Thank you, your Honor.

JANELL CLARKE

Being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. WETLE:

Q. Good morning, Ms. Clarke. Could you please state your

Janell Clarke - Direct (by Mr. Wetle)

1299.

1 occupation for the court and for the jury?
2 A. Housecleaner and landscape person. Gardener.
3 Q. And where did you live before coming to Stevens County?
4 A. Vashon, Washington.
5 Q. And when did you arrive in Stevens County?
6 A. June 1st, last--
7 Q. You--
8 A. Two thousand.
9 Q. Two thousand? And where did you stay when you came?
10 A. At Ken and Andrea Cameron's, Kettle Falls.
11 Q. And was Dane Williams living at home then?
12 A. No. He had his own cabin.
13 Q. And was that-- Was that close or near or far or--
14 A. Yes, within one to two miles.
15 Q. Were you aware that there was a barter fair being held on
16 the weekend of June 10th and 11th?
17 A. Yes.
18 Q. And did you go to that barter fair?
19 A. Yes.
20 Q. And when did you go to the barter fair?
21 A. On Sunday.
22 Q. And who did you go to the barter fair with?
23 A. With Dane Williams.
24 Q. Had you-- Were you thinking about going on Saturday, the
25 10th?

Janell Clarke - Direct (by Mr. Wetle)

1300.

1 A. Yes.

2 Q. And what happened on Saturday?

3 A. Just-- I had asked Dane to go with me. I was new to the
4 area and wanted someone to go with me, and we were going
5 to go on Saturday afternoon. It just got too late and
6 decided to go on Sunday instead.

7 Q. And the reason that you asked Dane to go with you was
8 what?

9 A. Friendship, companionship. Just to spend a little time
10 with him.

11 Q. Had you ever been to the barter fair before?

12 A. Once or twice before.

13 Q. And who drove to the barter fair?

14 A. I did.

15 Q. Do you remember what time that you left the Camerons',
16 about?

17 A. The best that I can remember, about noon-ish.

18 Q. And did you go directly then to the barter fair?

19 A. Yes.

20 Q. When you arrived at the barter fair with Dane, can you
21 recall what happened?

22 A. Yes. We-- We drove into the parking lot, took a left,
23 parked my car. We got--

24 Q. Now, is the parking lot before you would go into the-- Is
25 there a gated area or is there a--

Janell Clarke - Direct (by Mr. Wetle)

1301.

1 A. Yes.

2 Q. You don't drive into the actual--

3 A. No.

4 Q. --barter fair?

5 A. No. It would be like going to any sort of a fair where

6 there is a gated entrance. So there's a parking lot, and

7 so I-- For the day people, who are there just for the day

8 use. Park the car, and then you have a-- you know, an

9 entrance gate up, you know, so far from the parking lot.

10 Q. Is there a fee, then, to pay to get in?

11 A. Uh-huh.

12 Q. Okay. So let's just go back to when you pulled into the

13 parking lot. What did you do as you pulled into the

14 parking lot?

15 A. Pulled into the parking lot, parked my car, got out. Both

16 Dane and I got out. I went to open up my-- the back of

17 my car to get my things out to take to the barter fair,

18 and-- and Dane saw someone, which was Chewy, and they--

19 he said that he had forgot his money and would hook up

20 with me later. And they took off.

21 Q. Okay, so this all happens in the parking lot at the barter

22 fair?

23 A. Yeah, with just-- within the first few minutes. And I

24 didn't pay much attention to it. I-- At first I was a

25 little disappointed because I-- I invited Dane to go with

Janell Clarke - Direct (by Mr. Wetle)

1302.

1 me and I would pay his way, and then I thought oh, well,
2 you know, it's just a kid being a jerk, and so I kinda
3 just dismissed it and I thought I'd see him later, and I
4 went and paid and went into the barter fair.

5 Q. Okay, when you say then he went with Chewy, do you know
6 where they went or what they did?

7 A. No.

8 Q. Do you know if they left the barter fair?

9 A. Well, they never came in to the barter fair. That's--

10 THE COURT: One moment.

11 MS. KERPIN COMES INTO COURTROOM AND IS ASKED
12 BY THE COURT TO REMAIN OUTSIDE

13 THE COURT: Go ahead. I'm sorry, Mr. Wetle. Would you
14 restate your question so the witness can restate her
15 answer?

16 MR. WETLE: Oh, boy. Was it--

17 Q. Did you-- Oh, yes. How did you know-- Did you see them
18 then in the barter fair after that?

19 A. No.

20 Q. And did you see Dane any time after that?

21 A. No.

22 Q. And did you see Chewy any time after that?

23 A. No.

24 Q. Did you know what vehicle Chewy drives?

25 A. A Ford Bronco.

Janell Clarke - Direct (by Mr. Wetle)

1303.

1 Q. What was going on at the barter fair when you arrived?

2 A. Well, it was Sunday afternoon and people were starting to
3 pack up, though it was still going on. There wasn't-- It
4 had that feel of starting to die down a bit, I guess.

5 Q. Had you ever met Jeff Cunningham prior to the barter fair?

6 A. Yes.

7 Q. And how about John Grange, nicknamed Chewy?

8 A. Yes.

9 Q. And do you remember when you met them?

10 A. Say that again?

11 Q. Do you remember when you met them?

12 A. Jeff I met last winter. Chewy I met the day that I
13 arrived at Ken and Andrea's.

14 Q. So the first part of June?

15 A. Uh-huh.

16 Q. Do you know who was living at the Crown Creek cabin the
17 week leading up to the June 10th, 11th barter fair?

18 A. As far as I know, it was Jeff and Chewy.

19 Q. At the time-- When you went into the barter fair, do you
20 recall how long you stayed there on Sunday, June 11th?

21 A. Approximately four or five hours, leaving there about 5:00
22 or 6:00.

23 Q. And did you meet anybody at the barter fair before you
24 left? A friend that gave you a ride from the barter
25 fair?

Janell Clarke - Direct (by Mr. Wetle)

1304.

- 1 A. Yes, I gave Maija a ride.
- 2 Q. And who is Maija?
- 3 A. Who is Maija?
- 4 Q. What's her last name?
- 5 A. I don't know Maija's last name. Ceecee or something like
- 6 that.
- 7 Q. Close. And did you give Maija a ride from the barter
- 8 fair?
- 9 A. Yes. I saw her at the barter fair and recognized her, and
- 10 she recognized me, and she asked me if I could give her a
- 11 ride. She wanted to go up to the Crown Creek cabin, and
- 12 I was more than happy to take her and her dog up there,
- 13 since I was going there, close by.
- 14 Q. Okay, so what happened when you got up near the Crown
- 15 Creek cabin?
- 16 A. Well, we got to a certain point on the road and she
- 17 advised there's kind of a turn around place that I stop
- 18 there because she didn't think that my car would make
- 19 that, the rough ride into the cabin, so I turned around
- 20 and she walked onto a little path across-- I guess
- 21 across the creek, up to the cabin.
- 22 Q. Okay, now, that's down below from the actual driveway?
- 23 A. Yeah.
- 24 Q. You never went up to the driveway?
- 25 A. Yeah, the-- the driveway continues-- I guess that would

Janell Clarke - Direct (by Mr. Wetle)

1305.

1 be north a little bit, and curves around, and there's--
2 on Crown Creek Road is where it's still fairly flat and
3 easy to drive on. There's a little turn-around, or place
4 that you can turn your car around, and that's where I
5 dropped her off.

6 Q. And that would be, based on where the Crown Creek Road
7 goes, probably one of the closest spots to the cabin, when
8 you're on the Crown Creek Road, where that turn-around is?

9 A. The closest spot?

10 Q. To the cabin. Because if you go up to the driveway, you
11 have to go further up the Crown Creek Road, don't you?

12 A. I'm not sure on that.

13 Q. Okay.

14 A. But I do know that that is a place to turn around.

15 Q. And then she walked up to the cabin from there?

16 A. Uh-huh.

17 Q. Could you see--

18 A. Yes.

19 Q. Can you see the cabin from the road?

20 A. No.

21 Q. Do you know approximately what time that would have been,
22 based on your recollection?

23 A. If we left the barter fair between 5:00 and 6:00, then it
24 would make it between 6:30 and 7:00. Somewhere close to
25 that time that I dropped her off. Somewhere between that

Janell Clarke - Direct (by Mr. Wetle)

1306.

1 time.

2 Q. And those are-- that's an estimate?

3 A. Yes.

4 Q. Then where did you go after you dropped her off?

5 A. To the Camerons' house.

6 Q. And just-- What did you do after you got to Camerons'?

7 A. I went to bed. I was not feeling well.

8 Q. When you say then you went to bed, how far is your--

9 where you were staying away from the Cameron house proper?

10 A. I had a little room in the barn, and from their house to

11 the barn would be-- Approximately from the house to the

12 gate, I'm going to guess a 150 yards. And then from the

13 gate down into the barn, almost that much distance again.

14 Q. So could someone come into the Camerons' or Dane's, going

15 up the Hamlet Road to Dane's, could they get there without

16 you knowing that they had gone to either place? The

17 Cameron house or Dane's cabin?

18 A. Yes.

19 Q. When you're at the barn?

20 A. If one is paying attention, yes, you can-- you can see

21 activity. In my condition, in bed, no.

22 Q. Did you go to the Crown Creek cabin after the barter fair?

23 A. Yes.

24 Q. And why did you go there?

25 A. Out of concern of what happened to these kids.

Janell Clarke - Direct (by Mr. Wetle)

1307.

1 Q. And can you elaborate on that?

2 A. Yes. Andrea and I went up there wondering why Dane, Chewy
3 and Jeff had disappeared, and we-- we went up there out
4 of curiosity.

5 Q. Did you have to assume any responsibilities when they
6 left?

7 A. I'm not--

8 Q. Were you caring for any of their animals?

9 A. Yes.

10 Q. What happened with respect to that?

11 A. There were two puppies and each boy had a dog, so there
12 were five dogs that were left. I mean that was-- that
13 was where we first became concerned. Here's these dogs
14 wandering the neighborhood and no one taking care of them,
15 and so two of the dogs, Chewy and Dane's dogs, stayed with
16 Ken and Andrea and were cared for by Ken and Andrea and
17 myself, and Maija took Jeff's dog. And the two puppies,
18 I can't remember. I think that they were taken to the
19 pound or found homes.

20 Q. What did you think about the cabin when you got up there?
21 What did you observe?

22 A. It had a very cold, awful feeling.

23 Q. Why?

24 A. To me it just felt like a place that hadn't been cared for
25 in many, many years. Lots of garbage laying around and--

1 Q. Were there items there at the cabin?

2 A. Were there personal items? Yes, that was-- That was the
3 first thing that alerted or, you know, concerned me, was
4 that these boys had left items, personal items, in the
5 home, in their cabin.

6 MR. WETLE: Thank you, Ms. Clarke. We have no-- I
7 have no further questions, your Honor.

8 THE COURT: All right, Mr. Simeone?

9 MR. SIMEONE: Thank you.

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Janell Clarke - Direct (by Mr. Wetle)

1309.

1 JANELL CLARKE

2 CROSS EXAMINATION

3 BY MR. SIMEONE:

4 Q. Ms. Clarke, good morning. If I understand your statement
5 today correctly, you saw Dane and John, is that right,
6 when you got to the fair?

7 A. I was with Dane.

8 Q. And then you saw him with John?

9 A. As I stated earlier, I-- I arrived at the barter fair, we
10 parked the car-- Do you want me to repeat this?

11 Q. No, but you saw him with John. That's the only question
12 I want you to answer.

13 A. Yes.

14 Q. Now, you made a statement to the police on October 12th,
15 didn't you?

16 A. Yes, I did.

17 Q. And that was to Captain Webb, LaVonne Webb?

18 A. Uh-huh.

19 Q. And you also had discussed at that time your trip to the
20 barter fair, right?

21 A. Yes.

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

23 THE COURT: Yes.

24 MR. SIMEONE: Let's mark this _____.

25 Q. In the meantime, why don't you look at this _____.

Janelle Clarke - Cross (by Mr. Simeone)

1310.

1 Showing you what's marked as Defendant's Exhibit 111, Ms.
2 Clarke, would you identify what that document says it is?

3 A. Please be clear what you're asking me.

4 Q. Can you identify the top of the document, what it says it
5 is? What does it say that it is?

6 A. There's many things. What are you asking me to say?

7 Q. Does it say that it's Stevens County Sheriff's Office
8 Additional Information Report?

9 A. It says Stevens County Sheriff's Office Additional
10 Information Report.

11 Q. And it's dated there, is it, Ms. Clarke, October 12th?

12 A. Yes.

13 Q. Okay, is that-- and that's the date you did your inter-
14 view with Captain Webb?

15 A. Yes.

16 Q. Okay, I want you to briefly look down at the dialogue that
17 you appear-- that appears on the following pages and see
18 whether or not that seems to you to be a transcription of
19 the interview you had with Detective Webb, or Captain
20 Webb, I should say.

21 MR. WETLE: Your Honor, may I voir dire the witness?

22 THE COURT: All right.

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1 JANELL CLARKE

2 VOIR DIRE EXAMINATION

3 BY MR. WETLE:

4 Q. Ms. Clarke, was this a tape recorded statement or is this
5 just Captain Webb's handwritten notes that got tran-
6 scribed? Do you know?

7 A. They were handwritten notes.

8 Q. So there was no tape recorder?

9 A. No.

10 MR. WETLE: Your Honor, we'd say that the document
11 itself is just Captain Webb's recollection of those
12 questions and answers.

13 MR. SIMEONE: Your Honor, I haven't even tried to move
14 it into evidence yet.

15 THE COURT: Right. He's not offered the exhibit. Go
16 ahead and review the exhibit, if you would, Ms. Clarke,
17 and we'll have you review it and then we'll wait for the
18 next question from Mr. Simeone.

19 All right, Mr. Simeone?
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1 JANELL CLARKE

2 CONTINUATION OF CROSS EXAMINATION

3 BY MR. SIMEONE:

4 Q. Does that appear to be a review of the conversation you
5 had with Detective Webb that day? Captain Webb?

6 A. Yes.

7 Q. Okay. Do you remember that day that she asked you what
8 time you went to the barter fair, you told her you went
9 there probably around noon-ish?

10 A. Uh-huh.

11 Q. Is that right? And on the second page, which is dates
12 marked 1092, that is the second page of the interview, do
13 you see about--

14 MR. SIMEONE: Can I approach the witness again, your
15 Honor?

16 THE COURT: Yes.

17 Q. There's a discussion there on the very top of the page
18 where you were living. That's consistent with what you're
19 saying now. You weren't live-- Dane was living at that
20 house. I'm sorry, strike that question. That Dane was
21 living-- wasn't living at that house at that time. Is
22 that right?

23 A. Dane was living in his own cabin.

24 Q. Okay, and you said Sunday--I'm reading down through the
25 transcript--you went to the barter fair around noon-ish.

Janell Clarke - Cross (by Mr. Simeone)

1313.

1 A. Uh-huh.

2 Q. Do you see that on page 2?

3 A. Yes.

4 Q. And you also-- Detective Webb asked you,

5 What did you do once you got to the barter
6 fair?

7 Do you see that line?

8 A. Yes.

9 Q. And was your answer there that:

10 I parked my car, he went one way, and I went
11 the other?

12 Is that correct?

13 A. This is to the best of my knowledge. All of it.

14 Q. _____ asking, is that what you said at that time?

15 A. Yes.

16 Q. You said:

17 I got out of the car and can't remember if
18 he saw a friend. I just went and paid and
19 did my thing.

20 Is that also true?

21 A. Yes.

22 Q. Okay, now, the next line there, did Detective Webb ask you

23 whether or not you saw-- he saw friends? He, she's

24 referring to Dane there, wasn't she?

25 A. Yes.

Q. And you said:

25

1 I don't remember; I just remember pulling
2 in, getting out of the car, he was talking
3 to somebody. Someone, possibly the parking
lot. That's my best recollection. I never
saw him again.

4 A. I never saw him again.

5 Q. But you also said:

6 He went one way and I went the other.

7 THE COURT: Is that a question?

8 Q. Is that right? He (sic) said he went one way and I went--
9 I went the other?

10 A. That is right.

11 Q. And at that time, on the next page you'll see that she
12 also asked you questions about whether or not you knew
13 Chewy. And you said-- What was your answer to that?

14 A. Yes, I said that. Did you see Jeff and Chew-- well, I
15 mean, what are-- what are you asking me?

16 Q. I'm just asking you if you said you know Jeff and Chewy.
17 You knew them well enough to identify them. Is that
18 right?

19 A. Yes.

20 Q. But you never at that time said that Jeff met Chewy, did
21 you? I'm sorry, that Dane met Chewy, did you? You want
22 to take a minute to look at your statement again? Are we
23 going back to your testimony, ma'am, that this is all to
24 the best of your recollection?

25 A. Yes.

1 Q. Now, you said that Dane would come by frequently to the
2 cabin, that is to the Cameron's cabin, to use the phone.
3 Is that correct?

4 A. Yes.

5 Q. And you really can't distinguish one particular incident
6 when he came by to use the phone from another, can you?

7 A. Yes, I can.

8 Q. You can recall all the incidents and all the occasion upon
9 which he went to the--

10 A. Ask me something specific.

11 Q. Do you remember all specific days that he went to the
12 cabin, is what I'm asking you.

13 A. I feel like you're confusing an issue here.

14 Q. I'm not trying to do that, ma'am, and I apologize if you
15 think I am. I'm just trying--

16 A. Ask me a specific question.

17 Q. Yeah, the specific question--

18 THE COURT: All right, now, Ms. Clarke, hold on a
19 second. The question is do you remember all the specific
20 times that Mr. Williams came to the Cameron home.

21 A. No.

22 Q. Okay, because they were numerous. That's what you said,
23 isn't it?

24 A. This is Andrea's son. Do you remember how many times your
25 child comes to visit you?

1 MR. SIMEONE: Your Honor, I'd ask for an instruction to
2 the witness.

3 THE COURT: All right, Ms. Clarke, you just need to
4 answer the questions.

5 Q. There were numerous occasions, weren't there, Ms. Clarke?

6 A. Yes.

7 Q. Okay. Now, specifically, going back to the interview,
8 look on page 3, if you would, and your question was
9 whether or not you saw Jeff and Chewy at the barter fair.
10 That's the question she asked you. Was your answer to
11 that question no?

12 A. Yes, it is.

13 Q. And going farther into the interview, if you'll look on
14 page 1097, the question was:

15 When did you last see them?

16 The reference to them being Jeff, Dane and Chewy. And
17 your answer to that was:

18 Last seen Dane at the barter fair. Jeff and
19 Chewy, probably somewhere around that time.

20 Is that correct?

21 A. Yes.

22 Q. And I think you said to the detective at that time that,
23 what did the person look like-- In answer to her ques-
24 tion:

25 What did the person look like that he, Dane,
talked to?

Janell Clarke - Cross (by Mr. Simeone)

1317.

1 And what is your answer to that, if you could share that
2 with the jury, please, ma'am?

3 A. What are you asking me?

4 Q. What is your answer to that question:

5 What did the person look like that he, Dane,
6 talked to?

7 A. I said:

8 I don't even remember a person, if it was a
9 person. Something distracted him and caused
10 him to go a different direction.

11 Q. Now, you have a 25 year relationship with the Camerons,
12 don't you?

13 A. Yes.

14 Q. And you have an allegiance to them based upon that long
15 term friendship, don't you?

16 A. (No audible response)

17 Q. Is that yes?

18 A. I have an allegiance to tell the truth.

19 Q. Well, did you lie to Detective Webb?

20 A. I told to the best of my knowledge what I remembered.

21 Q. And that was four months after the barter fair, right?

22 A. To you remember-- I mean, do you remember what you did
23 four months from today?

24 Q. No, my question is that statement was given four months
25 after the barter fair.

A. That's right. Do you recall a private investigator--

1 THE COURT: Ms. Clarke, unfortunately sometimes, only
2 certain people get to ask the questions here. So--

3 Q. Is your memory--

4 THE COURT: --Mr. Simeone?

5 Q. Is your memory better now, eight months after the barter
6 fair, than it was then?

7 A. Yes, I would say so.

8 Q. And what made your memory change?

9 A. My memory has not changed. At the time of this whole
10 incident, if this really matters to you, I will describe
11 in brief detail. I lost a mother in April. I almost lost
12 my father in January. I came to the Camerons to try to
13 have some time to take care of myself. I had my own
14 health issues, serious health issues. This can all be
15 documented. Within ten days of arriving, of my own trauma
16 and upset, I'm faced with another trauma. And I think
17 it's very normal to want to just block it out. Chewy, I'm
18 speaking the truth, and it's all documented. This doesn't
19 come out in an interview with detectives because it
20 doesn't seem appropriate for me to share about my personal
21 situation. I did my very best, under a stressful situa-
22 tion, to give them the very best I could.

23 Q. You were trying to tell them the truth at that time,
24 weren't you?

25 A. You certainly-- You're right, I was. And as I am still.

Janell Clarke - Cross (by Mr. Simeone)

1319.

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MR. SIMEONE: I have no further questions of the witness.

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

MR. WETLE: Thank you, your Honor.

1 JANELL CLARKE

2 REDIRECT EXAMINATION

3 BY MR. WETLE:

4 Q. Ms. Clarke, you had given that statement to Ms. Webb, and
5 then did the defense's investigator subsequently contact
6 you?

7 A. Yes, last Friday.

8 Q. And do you remember his name?

9 A. Ralph. I don't remember his last name.

10 Q. Okay, and was it during his questions to you about what
11 happened that you were able to be more specific in terms
12 of who you saw in the parking lot?

13 A. Yes.

14 MR. WETLE: Thank you very much.

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

16 MR. SIMEONE: MR. SIMEONE: Yes.

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Janell Clarke - Redirect (by Mr. Wetle)

1321.

1 JANELL CLARKE

2 RE-CROSS EXAMINATION

3 BY MR. SIMEONE:

4 Q. How is it that you knew that there was another trauma that
5 occurred ten days after you arrived?

6 A. I'm talking about having to go and talk to the police in
7 October.

8 Q. But that's not ten days after you arrived, though, is it?

9 A. The situation that we're referring to happened ten days
10 later.

11 Q. Yeah, but how is it that you were dealing with a trauma
12 ten days after you arrived?

13 A. I feel like you're picking at words here. I did my best
14 just now to describe a situation of what was going on for
15 me around that time.

16 Q. Right, but I want to clarify something, Ms. Clarke, and
17 that is that you did not know of any trauma that occurred
18 ten days after you arrived.

19 A. When I--

20 Q. Isn't that correct?

21 A. When I'm staying with the Camerons, and there are five
22 dogs running loose in the neighborhood, and these-- and
23 these three boys have not returned, it makes me wonder
24 what happened. It's an-- You know--

25 Q. Well--

Janell Clarke - Recross (by Mr. Simeone)

1322.

1 A. It's--

2 Q. Sorry. You're not answering my question. All that aside,
3 you didn't know of a particular trauma--

4 A. No, of course not.

5 Q. In fact, you gave Detective Webb that statement in
6 October, didn't you? That's not June. Isn't that right?

7 A. Yes.

8 Q. So there's not a trauma going on at the time you gave her
9 that statement, is there?

10 A. If you are stating that I should just be over what I was
11 feeling from my mother and my dad, I-- You know, I--
12 Don't make that judgment about me.

13 Q. Well, it's not a ten day trauma, then. You're talking
14 about something four months after your arrival, isn't that
15 right?

16 A. I'm talking about what happened in my personal life.

17 Q. Was there a phone call from Rob Schultz to the Camerons
18 that you're aware of around that time?

19 A. I don't know Rob Schultz.

20 Q. Was there a phone call from a person named-- I'm not
21 asking you if you know him. Was there a phone call from
22 a person named Rob Schultz to Ken Cameron's house saying
23 he's sorry that he brought heat down on the area?

24 A. I'm not aware of that.

25 Q. You never heard that?

1 A. I am not aware of that.

2 Q. Isn't that the trauma you're talking about, that informed
3 you, advised you, that there was a trauma?

4 A. I feel like you're using that-- that-- that word out of--

5 Q. I'm going with your testimony, ma'am.

6 THE COURT: And, Ms. Clarke, you can just answer yes or
7 no to that particular question.

8 A. Ask me the question again, please.

9 Q. Was that the trauma you were referring to, that Rob
10 Schultz called and said he-- sorry I brought heat down on
11 your area, and then a trauma arose as a result of that
12 awareness in the Cameron home?

13 A. I don't know how to answer this question.

14 Q. Well, you could answer it yes or no.

15 MR. WETLE: Your Honor, I'd object as to hearsay as to
16 what Rob Schultz said. Might have said.

17 THE COURT: Well, the witness may answer yes or no,
18 whether she was aware of any such phone call.

19 A. To the best of my memory, I'm not aware of the phone call.

20 MR. SIMEONE: No further questions.

21 WITNESS IS EXCUSED

22 THE COURT: Mr. Wetle, let's go ahead with a little bit
23 of one-- I do need to recess right at noon today, but if
24 we want to get started with someone, we could do that. Do
25 you have someone you could get started with?

Janell Clarke - Recross (by Mr. Simeone)

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MR. WETLE: I can call Troy Phillips.

COURT ADVISES JURY OF TRIAL SCHEDULE

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WITNESS IS SWORN

THE COURT: If you'd give us your full name, please?

MR. PHILLIPS: Troy Eugene Phillips.

THE COURT: All right, and, Mr. Phillips, how do you spell your last name?

MR. PHILLIPS: P-H-I-L-L-I-P-S.

THE COURT: Thank you. Mr. Phillips, I need, for the record, your address. P. O. Box is fine.

MR. PHILLIPS: 383, Northport, Washington.

WITNESS IS REQUESTED TO RAISE HIS VOICE

THE COURT: Mr. Wetle?

MR. WETLE: Thank you, your Honor.

TROY EUGENE PHILLIPS

Being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. WETLE:

Q. Good morning, Mr. Phillips.

A. Morning.

ADJUSTMENTS TO MICROPHONE

Q. Could you please state for the court and the jury your occupation?

A. Bartender at the White Bird.

Q. And how long have you been up there bartending?

A. Four years.

Q. Do you remember the weekend of June 8th to June 11th, the

Troy Eugene Phillips - Direct (by Mr. Wetle)

1326.

1 barter fair last summer?
2 A. Yeah, I do.
3 Q. And were you working that weekend?
4 A. Yes, I was.
5 Q. So what's your regular shift on the weekend?
6 A. Six to closing.
7 Q. On Friday, Saturday and Sunday?
8 A. Yes.
9 Q. And closing is?
10 A. Three o'clock in the morning, 3:30.
11 Q. Direct your attention to, specifically, Sunday, June 11th.
12 Were you working on that night?
13 A. Yes, I was.
14 Q. And what shift were you working?
15 A. Six to 3:00.
16 Q. Do you remember-- or do you know a Dane Cameron or Dane
17 Williams?
18 A. Yes, I do.
19 Q. And do you remember him coming into the White Bird Tavern
20 that weekend?
21 A. Yes.
22 Q. And do you have any specific recollection as to the day
23 that he came in?
24 A. Yes, it was Sunday, June 11th.
25 Q. Any-- Anything specific that reminds you about that, or--

Troy Eugene Phillips - Direct (by Mr. Wetle)

1327.

1 A. Yeah, we have free pool on that day.

2 Q. Free pool?

3 A. Yes.

4 Q. When he came in that night, did he have anybody with him?

5 A. Yes, there were three of them.

6 Q. There were three of them all together?

7 A. Yeah.

8 Q. So it'd be Dane and two others?

9 A. Yes.

10 Q. Do you remember what you did that night with any of those
11 individuals?

12 A. I played pool-- a game of pool with Dane.

13 ~~THE COURT: I'm sorry, I didn't hear that.~~

14 ~~A. I played a game of pool with Dane.~~

15 ~~THE COURT: You played a game of pool with-- I'm~~

16 ~~sorry.~~

17 ~~A. Dane.~~

18 ~~THE COURT: You did?~~

19 ~~A. Yes.~~

20 ~~THE COURT: Okay. Thank you.~~

21 Q. Do you remember whether it was a busy night or a non-busy
22 night that particular night?

23 A. Kind of slow.

24 Q. How long do you think that Dane and his friends stayed
25 that night?

Troy Eugene Phillips - Direct (by Mr. Wetle)

1328.

1 A. A couple hours. About two hours.
2 Q. And do you remember who paid?
3 A. Dane, I believe.
4 Q. Any particular thing that makes you remember--
5 A. He paid cash.
6 Q. Okay, does he--
7 A. He-- Guy come up and talked to me for a little bit, and
8 then they left.
9 Q. And can you identify who the other two males were?
10 A. They didn't look familiar to me. Never seen them before.
11 Q. Okay. Is that the extent of your involvement in this
12 particular incident?
13 A. Yes.

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

16 THE COURT: All right, Mr. Simeone?
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TROY EUGENE PHILLIPS

CROSS EXAMINATION

BY MR. SIMEONE:

Q. You knew Dane pretty well then, did you, Mr. Phillips?

A. Yeah.

Q. Okay, so no question about his identity?

A. No.

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

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

MR. WETLE: No, your Honor.

WITNESS IS EXCUSED

COLLOQUY REGARDING SCHEDULE

COURT RECESSED FOR LUNCH