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

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

No. 20138-4-III

(Stevens County
No. 00-1-00190-2)

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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:

For the Defendant:

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Prosecuting Attorney
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VOLUME 15 of 17
February 16, 2001
(Pages 1707 through 1905)

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February 16, 2001

EXHIBITS

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Df. #94	Plea Agreement, Jeff Cunningham	1803	1804

1 FEBRUARY 16, 2001

2 COURT RECONVENED WITHOUT THE JURY

3 THE COURT: Good morning. The one thing I wanted to do
4 outside the presence of the jury was to place on the record
5 any of the arguments that were made at sidebar in regard to
6 the tattoo demonstration that Mr. Simeone was asking of Mr.
7 Williams. So, Mr. Simeone?

8 MR. SIMEONE: Your Honor, I don't know exactly what the
9 tattoo would say. My information was that it was a tattoo of
10 someone having his brains blown out. The relevance there was
11 that Mr. Williams told the court in my examination that he
12 would never do such a thing like that, that he had never
13 considered killing somebody, that those kinds of thought are
14 alien to his consciousness, or words to a similar effect, and
15 there he has emblazoned on his shoulder a fairly sizeable
16 tattoo of somebody with his brains being blown out. Well, his
17 information or his testimony was that well, it's somebody
18 committing suicide or something to this effect. Well, my--
19 First of all, I don't know that that's what it is, that it's
20 somebody committing suicide. It could be that it's just
21 somebody having his brains blown out.

22 Two, I still think that it goes to show his propensity for
23 that kind of a violent action, and I think it contradicts
24 his-- his testimony, and for that reason I wanted to display
25 it.

1707.

1 THE COURT: All right, Mr. Wetle?

2 MR. WETLE: Thank you, your Honor. The tattoo came as a
3 surprise to me. I didn't know about it, would say that there
4 was testimony that got out from Mr. Simeone leading the
5 witness as to the tattoo and describing the tattoo on his
6 back, including the size of the tattoo, and it had a gun to a
7 head. I didn't know they had any brains being blown out, but
8 there was a gun pointed to a head. Mr. Williams's testimony,
9 I believe, was that he didn't kill people. And I don't think
10 that that would go so far as to open up a door to a tattoo
11 demonstration. I think that the inquiry by Mr. Simeone was
12 more than sufficient. I didn't think it should be brought up,
13 period, but it came in quickly, and to have him get up and
14 bare his back would be like me having the defendant stand up
15 and bare his back to show the Irish Mafia tattoo on his back,
16 and I think the court has ruled on that, and properly so, and
17 that this goes far afield of the relevance to this particular
18 issue.

19 THE COURT: All right. Well, if the witness had testified
20 that it was a tattoo showing a man shooting someone else's
21 brains out, or something to that effect, then that would be
22 one thing. But the witness's testimony was that it was a
23 suicidal type tattoo. He also added that it was done in a
24 drunken state, et cetera. But the fact was that his testimony
25 was a man with a gun being held to his own head. That doesn't

1708.

1 rise to the level of meeting-- First of all, it's not
2 relevant to Mr. Simeone's point that it shows that he is,
3 contrary to his stating that he doesn't kill people, it's not
4 relevant to show that he does, in fact, kill people. That's
5 a different issue than-- It would be relevant, I think,
6 when-- if it were someone killing someone else. But a
7 suicidal gesture of some sort, and particularly under the
8 circumstances the witness described, I don't have any rele-
9 vance. So I will-- I have, and did, sustain the objection.
10 So that was my ruling on it.

11 Mr. Simeone, anything further?

12 MR. SIMEONE: Yes, if I might make one further comment,
13 your Honor. One, the information about the tattoo was gained
14 as a result of the discovery I got from the State, the police
15 officers' investigations. They're the ones who made me aware
16 of the fact the tattoo is there.

17 Secondly and most crucial, I think, in connection with
18 your ruling here, is that this is a tattoo of somebody
19 committing suicide, which I have never seen the tattoo, so I
20 don't know, but my understanding of it is that it is not a
21 suicide attempt at all. It is somebody having his brains
22 blown out. And third, it goes to show his propensity to
23 consider such things and to have that kind of thought in his
24 mind. Now, we being of the position that we do not know who
25 the perpetrators of these murders were, casts, I think, some

1709.

1 pretty bright light and some suspicion on Mr. Williams. For
2 that reason I think it is very relevant and the display would
3 be important.

4 THE COURT: All right. Well, I've made my ruling and it
5 was based on the witness's testimony and the fact that at the
6 time the offer of proof was that-- that you did not know what
7 the tattoo was, and I think probably still don't know what
8 it-- what it says. And my thought is that we get off on a
9 tangent with this kind of a thing, and it is irrelevant, if it
10 is as the witness has indicated.

11 Now, if you're trying to impeach him with the actual
12 tattoo on his back, and if you have actual-- something
13 actually that you can demonstrate that the tattoo is someone
14 blowing someone else's brains out, then perhaps that would
15 have some relevance. So-- But I didn't gather that from your
16 original offer of proof, and certainly not at sidebar.

17 And so the-- Is there anything else that we need to deal
18 with on the record, Mr. Wetle?

19 MR. WETLE: No, your Honor.

20 THE COURT: Mr. Simeone?

21 MR. SIMEONE: I have nothing further, your Honor.

22 THE COURT: All then-- then would you go ahead and bring
23 the jury in? We'll just get started right up. My under-
24 standing was you're going to have Mr. Cunningham on the stand
25 first?

1710.

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MR. SIMEONE: That's right, your Honor. Could I talk to Mr. Cunningham for a second?

THE COURT: All right.

JURY IS SEATED

COURT ADVISES JURY OF SCHEDULE

THE COURT: With that, we'll go ahead and start right in on the defendant's case. Mr. Simeone, you may call your first witness.

MR. SIMEONE: Your Honor, we would call Jeff Cunningham.

1 **DEFENDANT'S CASE IN CHIEF**

2 **WITNESS TAKES THE STAND AND IS REMINDED**
3 **BY THE COURT HE IS STILL UNDER OATH**

4 THE COURT: Mr. Simeone, you may inquire.

5 MR. SIMEONE: Thank you.

6 **JEFFREY CUNNINGHAM**

Having been previously sworn,
on oath testified as follows:

7 **DIRECT EXAMINATION**

8 **BY MR. SIMEONE:**

9 Q. Good morning, Mr. Cunningham. Your friend, Nick Kaiser,
10 had a very large LSD operation going, didn't he?

11 A. Yeah.

12 Q. And he was arrested in Seattle, is that right?

13 A. That's what I heard, he was arrested in Seattle.

14 Q. And it was your understanding that the people in San
15 Francisco, who are drug affiliated people, wanted to see
16 that Nick was killed, or wanted to see that Nick was hurt?
17 What is your testimony there?

18 A. They wanted him dead.

19 Q. But you have said that just because people in San Francis-
20 co were mad at Nick, that wouldn't necessarily imply that
21 the people in Portland were mad at him. Isn't that right?

22 A. Yeah.

23 Q. And you so stated that in your-- in your discussions with
24 the police, haven't you?

25 A. Yeah.

Jeffrey Cunningham - Direct (by Mr. Simeone)

1712.

1 Q. Now, when did Rob Schultz, whose name figures largely into
2 this, when did Rob Schultz inform you that Nick had been
3 arrested?

4 A. I-- I couldn't say the day.

5 Q. Well, how about if we get close to a time of year.

6 A. April or May.

7 Q. Isn't it true you told the police officers Christmas-time,
8 '99?

9 A. I said some time after Christmas. They asked me before
10 Christmas or after Christmas, and I said after Christmas.

11 Q. Now, you told the detectives that at the time of the
12 April, 2000 barter fair, and I think it was your testimony
13 here as well, that the people at the party were talking
14 about Nick's arrest, isn't that right?

15 A. I think so.

16 Q. Your testimony was pretty clear the other day that that
17 was the scuttlebutt going around the party at the April
18 barter fair. And the party surrounding it, I mean.

19 A. I don't remember.

20 Q. Now you don't remember?

21 A. No.

22 Q. Now, you'd agree that the fair was under discussion the
23 other day, wouldn't you, when we had your testimony?

24 A. In April?

25 Q. Right. The April fair.

Jeffrey Cunningham - Direct (by Mr. Simeone)

1713.

1 A. Yeah.

2 Q. Well, what's-- What's changed your thinking on this
3 issue?

4 A. I don't remember the discussion.

5 Q. But don't you remember the question that was asked you on
6 direct examination, whether or not there was any discus-
7 sion about Nick's arrest at the April barter fair?

8 MR. WETLE: Objection, your Honor, as to been asked and
9 answered as to those questions, and now we're re-hashing
10 them on direct.

11 THE COURT: Well, it's proper cross examination to
12 probe, so you may inquire.

13 MR. WETLE: This is direct examination, your Honor.

14 THE COURT: Well--

15 MR. SIMEONE: I disagree with that.

16 THE COURT: He's-- No, I wouldn't characterize it that
17 way, given the circumstances, Mr. Wetle.

18 MR. WETLE: Okay.

19 Q. You don't remember that discussion the other--

20 A. I don't remember that question.

21 Q. To Jeff, saying that the-- there was a discussion? I
22 mean you were very clear about that, weren't you?

23 A. I don't remember that question.

24 Q. You don't remember that it was asked of you whether or not
25 you discussed that, or whether people were discussing it

1 at the party?

2 A. No.

3 Q. At the April barter fair?

4 A. No.

5 Q. Do you remember telling that to Detective Erdman, who
6 interviewed you on June 11th, 2000?

7 A. I may have. I mean-- It was around that time.

8 Q. I'm sorry.

9 A. I don't remember the specific--

10 Q. On 1/30-- The date of the interview was 1/30/2001. I'm
11 sorry about that. You don't remember that?

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

13 Q. Well, would you agree that your recollection of what was
14 discussed at the party in April was fresher then than it
15 is now?

16 A. I remember it was around that time, some time. It might
17 have been at the party, it might have been just afterwards
18 when I went to Portland, like just after that.

19 Q. Did you have any discussion with Mr. Wetle between your
20 testimony two days ago and today?

21 A. No.

22 Q. About this?

23 A. No.

24 Q. Now, you agree that the fair is in the second weekend of
25 April, right? The April-- The spring barter fair in

Jeffrey Cunningham - Direct (by Mr. Simeone)

1715.

1 Northport?

2 A. I-- It-- Right.

3 Q. So it's before April 14th, then, every year, wouldn't it
4 be?

5 A. They were up there for the fair, and I broke my ankle on
6 the 14th and they were there, so the fair's some time
7 around then.

8 Q. Okay. Nick was at the barter fair that weekend, wasn't
9 he?

10 A. I don't remember. I don't think he was. He might have
11 been, though, and I just don't remember. I don't-- I
12 don't remember him being at Dane's house. He might have
13 been at the fair, though. I don't-- I don't know.

14 Q. How was it that you broke your ankle, Mr. Cunningham?

15 A. I was--

16 Q. Maybe this will-- Maybe this will help with your
17 recollection.

18 A. I was high on nitrous and I--

19 Q. Wasn't that a tank that Nicky brought to the fair?

20 A. No. That was another-- That was another-- another fair.
21 That was the June fair, the tank that came up was in the
22 back of the school bus.

23 Q. You're talking about the 2000 fair?

24 A. Yeah.

25 Q. Now we know about that one, but did Nicky bring a tank to

Jeffrey Cunningham - Direct (by Mr. Simeone)

1716.

1 the April barter fair too? And that's the one you tripped
2 over.

3 A. No, that came up in the back of the school bus with the
4 people from Portland. Or that's where it was anyway at
5 the party. It might have come up with Nick in a car and
6 then they put it in the school bus and brought it to the
7 cabin. I don't-- I don't remember--

8 Q. Wasn't it--

9 A. --if Nick was at the fair. I don't know.

10 Q. Are you having trouble with that point?

11 A. Yeah.

12 Q. But you agreed, though, that the barter fair in April
13 would have been before Nick's arrest in April of-- April
14 25th. Correct?

15 A. If that's when he was arrested, then yeah, the fair
16 happened before then.

17 Q. Now, I think your testimony was that because people in San
18 Francisco were out for Nick's demise didn't mean that the
19 people in Portland were out for his demise. Is that
20 right?

21 A. Yeah. People in San Fran-- Half the people in San
22 Francisco might not have even cared either.

23 Q. You agree that Shadow and Rob, whom we've discussed here
24 at length, they're from the Portland area and not from the
25 San Francisco area, is that right?

Jeffrey Cunningham - Direct (by Mr. Simeone)

1717.

1 A. Yeah.

2 Q. And did you say that the people in San Francisco are mad
3 at Nick because he got some people down there busted?

4 A. What I heard was that-- Yeah.

5 Q. Is that right, Jeff? I'm sorry, I didn't get your answer.

6 A. I heard that.

7 Q. You know of any such arrests down there as a result of
8 information that Nick gave?

9 A. No.

10 Q. Know of any arrests down there as a result of information
11 Josh Schaefer gave?

12 A. No.

13 Q. Would you disagree that there were some arrests down there
14 as a result of information Josh Schaefer gave?

15 MR. WETLE: Asked and answered it, your Honor. Said he
16 didn't know.

17 THE COURT: Sustained.

18 Q. Now, is it correct that the way people in Portland, the
19 Portland Family, prefer to deal with people who've been at
20 odds with them for whatever reason is to ostracize them?

21 A. Yeah.

22 Q. And that's what you said to the police, isn't it?

23 A. Right.

24 Q. And Mr. Grange wanted Nick to leave the fair when he found
25 out he was there, isn't that right?

Jeffrey Cunningham - Direct (by Mr. Simeone)

1718.

1 A. Yeah.

2 Q. And you even testified or made statements to the authori-
3 ties that that's what he said, right? He wanted Nick to
4 leave?

5 A. Yeah.

6 Q. Did he say he really didn't care that he was there after
7 that?

8 A. I'm sure he thought the same as I did, like why would
9 Nicky come to a lot after he just got in trouble with the
10 law and knows that people are mad at him.

11 Q. Because it was your assumption that he told Nick to leave,
12 right? You were never in the presence of him when that
13 conversation occurred?

14 A. When John told Nick to leave?

15 Q. Right.

16 A. Well, he told me to tell him as well. I know John went
17 and talked to him for a minute. I'm sure he told him
18 himself there that as well. I don't really know the
19 conversation, but--

20 Q. You don't know the conversation because you weren't there?

21 A. Right.

22 Q. Isn't the real reason he warned him to leave that day is
23 because he thought he might get harassed from people at
24 the fair?

25 A. It's possible.

Jeffrey Cunningham - Direct (by Mr. Simeone)

1719.

1 Q. So he was playing a protective kind of a role there,
2 wasn't he?

3 A. It's possible, yeah.

4 Q. You yourself never really told Nick that people from San
5 Francisco wanted him dead, did you?

6 A. Yeah, when I was in the truck with him.

7 Q. I'll refer you to page 1797 of your first statement, Mr.
8 Cunningham, which should be before you.

9 A. Seventeen-ninety-seven?

10 Q. Bates' page 1797.

11 A. Okay.

12 Q. That would be the bottom of 1796 to the top of 1797. Do
13 you remember that questioning with Detective Baskin then,
14 about whether or not you ever told Nick that the kids from
15 San Francisco wanted him dead?

16 A. I don't see that here.

17 Q. Look at the bottom of page 1796, Mr. Cunningham.

18 A. Seventeen-ninety-six?

19 Q. Yes.

20 A. All right. You said 97.

21 Q. Sorry.

22 A. Okay. Do you remember that question by Detective Baskin?

23 Q. Did you ever directly tell Nick the
24 kids from San Francisco wanted him
dead?

25 A. Okay.

Jeffrey Cunningham - Direct (by Mr. Simeone)

1720.

1 Q. What did you say then in answer to that?

2 A. I said:

3 No, not in those direct words.

4 Q. And Detective Baskin asks you,

5 What did you tell him?

6 I told-- And then what was your answer?

7 A. Told him that those kids wanted him-- maybe wanted him
8 for what was happening.

9 Q. You never said that they wanted him dead though, did you?

10 A. Not in this statement, no.

11 Q. Now, let's go to the fair itself. This is the summer
12 barter fair of 2000. When you got to the fair you had a
13 backpack with some marijuana in it, is that right?

14 A. Yeah.

15 Q. You got that marijuana from Dane.

16 A. Yeah.

17 Q. Is that right? So you're selling marijuana all weekend
18 for Dane Williams? Correct?

19 A. Okay.

20 Q. And then Nick came to the barter fair that day.

21 A. Uh-huh.

22 Q. Is that right?

23 A. Uh-huh.

24 Q. You saw him there? Is that right?

25 A. Yeah.

Jeffrey Cunningham - Direct (by Mr. Simeone)

1721.

1 Q. Spent quite a bit of time with him, did you?
2 A. Yeah.
3 Q. He's a pretty good friend of yours, right?
4 A. Yeah.
5 Q. But you hadn't seen him for awhile, even though it's
6 possible you saw him at the spring barter fair in April,
7 two months prior to that?
8 A. Maybe so.
9 Q. Okay. And you were ingesting quite a few different drugs
10 that weekend, weren't you?
11 A. Uh-huh.
12 Q. Anything besides the LSD, marijuana and the nitrous?
13 A. Maybe had a couple drinks or something.
14 Q. Okay. What is the effect of nitrous oxide, if you could
15 share that with us and the jury?
16 A. It's like sweet air from the dentist.
17 Q. Is it true it deprives your brain of oxygen?
18 A. I don't know.
19 Q. Is it correct that you stayed with John at the fair
20 Saturday night?
21 A. Yeah. We were playing music at the gate for awhile.
22 Q. Yeah. You only had a few hours of sleep that night, is
23 that correct?
24 A. Yeah.
25 Q. You saw John on Saturday around 5:00 or 6:00? Is that

Jeffrey Cunningham - Direct (by Mr. Simeone)

1722.

1 right?

2 A. (Inaudible)

3 Q. Do you remember that?

4 A. No, I don't remember.

5 Q. Well, let's look at page 2612.

6 A. Okay.

7 Q. Your second transcript.

8 A. There's no 2612.

9 Q. You don't have 2612?

10 A. Yeah, I do.

11 Q. Look down around-- Do you have it yet? I could help

12 you find it if you don't.

13 A. Okay.

14 Q. Got it? Just prior to that you were talking about how

15 much money Nicky was making selling acid. Do you see

16 that on 2611? Bottom.

17 A. Okay.

18 Q. How much money did you say that Nicky was making?

19 A. I didn't say that Nicky was making any amount of money.

20 Q. You see the second line from the bottom?

21 A. It's a possibility.

22 Q. What did you say?

23 A. You can make half a million dollars a month.

24 Q. Could usually make half a million a month. Isn't that

25 what you said?

Jeffrey Cunningham - Direct (by Mr. Simeone)

1723.

1 A. You could.

2 Q. Selling acid? Is that what you said?

3 A. If you had the right connections.

4 Q. Okay. And then the detective asked you:

5 What time was it that you left Nick's rig,
6 'cause you were in Nick's rig from the time
7 you met him, breathing the nitrous oxide
8 until later.

9 Right?

10 A. Right.

11 Q. And you told the detective that you left his rig at about
12 what time? Look on the fourth or fifth line down on 2612,
13 if that refreshes your memory.

14 A. Maybe 5:00 or 6:00 at night.

15 Q. Okay. And then when you left, you said you went and saw
16 John, is that correct?

17 A. Uh-huh.

18 Q. That's when you told John that Nick was there.

19 A. Okay.

20 Q. John really didn't know that Nick was going to be there,
21 did he?

22 A. Nobody knew Nick was going to be there.

23 Q. He really didn't have a comment when you told him he was
24 there, did he?

25 A. No.

Q. And what was his reaction to the fact that Nick was there?

1 A. He was like it was dumb that he should be here. Nothing
2 harsh or rash or nothing.

3 Q. But you didn't see any kind of an extreme reaction in John
4 at all when he found out that Nick was there?

5 A. No.

6 Q. You had very little sleep that night, is that right?

7 A. Probably so.

8 Q. You also say that John-- Well, you continued on with John
9 there. And then you remember talking to John at about--
10 a little later that night, is that right, and you see him
11 there around 8:00 or 8:30? I can direct your attention to
12 page 2620.

13 A. Okay. Okay, I see it.

14 Q. Okay, you had a conversation with him at about 8:00 or
15 8:30, isn't that right?

16 A. Uh-huh.

17 Q. You're talking about phone calls that were made at that
18 time, weren't you?

19 A. No. Oh, you mean were we talking about phone calls that
20 were made?

21 Q. Right.

22 A. Well-- I--

23 THE COURT: Can you clarify? Are you talking about in
24 his statement to the police was he talking about that,
25 or--

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MR. SIMEONE: Yeah. I'm sorry.

THE COURT: --in his discussion with Mr. Grange at 8:00 or 8:30 was he talking?

MR. SIMEONE: I'm sorry.

Q. At that time, when you were talking to the police, were you discussing with them phone calls that you had made to Rob Schultz?

A. Not on 2620.

Q. Well, is it correct that you had spoken to Rob at that time?

A. It was Saturday night?

Q. Right.

A. To my recollection, yeah.

Q. Well, let's try to-- Let me try to figure this out a little bit. You said you made a phone call at about 6:30 or 6:45. If I can direct your attention to page 2615, and see if we can straighten this out a little bit. Direct your attention to, one, two, three, four, the fifth line down, and Officer Erdman asked you:

I think you said earlier you met up with John around 5:00 or 6:00, so the phone call we're talking-- an amount of time that after-- after that time period would be what?

What did you say?

A. It takes awhile to get to town. Could have been 6:30, maybe quarter to 7:00.

1 Q. Okay, so that we have some kind of a bearing here, you
2 think you made the call somewhere around 6:30 or 6:45?
3 And did you--
4 A. I didn't have a watch or nothing. I have no concept of
5 what-- It was maybe-- maybe still daylight. I don't
6 know. I don't even remember.
7 Q. You called Rob's cell phone? Is that right?
8 A. Yeah.
9 Q. The call lasted about five minutes? Ten minutes?
10 A. Yeah, maybe less.
11 Q. You said five minutes or ten minutes though to the
12 detective, didn't you?
13 A. Probably.
14 Q. You could look at page 1798 to refresh your memory, sir.
15 A. Seventeen-ninety-eight?
16 Q. That's right. That would be the first--
17 A. Is that in this one?
18 Q. That would be your first statement.
19 A. Yeah. Five, ten minutes.
20 MR. SIMEONE: Could we have the phone records for Mr.
21 Schultz--I think that's Exhibit 109--handed to the juror?
22 Or the witness?
23 Q. I'll direct your attention to those listings for June
24 10th, Mr. Cunningham. I think it's chronological.
25 A. That's the-- Month six, right?

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1727.

1 Q. That's right.
2 A. June 10th?
3 Q. Right. Is that Exhibit 109 that you--
4 A. Okay.
5 MR. SIMEONE: May I approach, your Honor?
6 THE COURT: Yes.
7 A. I see it.
8 Q. What, if any-- Do you see the phone calls that are
9 incoming, first of all?
10 A. I don't know.
11 Q. To Rob's Portland line, on 6/10. Look at the one, two--
12 the third box.
13 A. Is that what this says-- that means?
14 Q. _____. Incoming. I want to see whether or not you
15 can see any-- any phone calls there that are within that
16 space of time, around 6:45, incoming to Rob.
17 A. There's two here.
18 Q. What time are those?
19 A. Six-forty-five, 6:28, 7:04.
20 Q. Where's the 6:45?
21 A. Right here.
22 Q. Is that an incoming call?
23 A. Oh, no. Seven-fifty-one.
24 Q. Okay, that's not 6:45 though, is it?
25 A. I don't have no concept of time. I don't have a watch.

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1728.

1 Q. Okay, do you see any that lasted five or ten minutes that
2 are incoming?
3 A. Uh, 7:51.
4 Q. Okay, now, if the State is saying that's a call from Ken
5 Cameron's house, that wouldn't be your call, would it?
6 A. Are you asking me that?
7 Q. Right.
8 A. Would it have been me?
9 Q. The State is saying that that's a call to Rob from Ken
10 Cameron's house. That wouldn't be your phone call, would
11 it?
12 A. No, I think I called him from a pay phone.
13 Q. Okay, we'll discuss that in a minute. Do you see any
14 other calls there that are a length of five to ten minutes
15 at around 6:45? That are incoming to Rob Schultz's phone?
16 A. No. Not until 9:30 or so, or later.
17 Q. Well, that's surely different than what you were talking
18 about though, 6:45, isn't it?
19 A. Yeah. Well, there's one at 6:27, for only like a minute
20 or so though.
21 Q. But your call lasted more than a minute though, didn't it?
22 A. Yeah, probably so.
23 Q. And can you be sure about that, Mr. Cunningham? When you
24 said five--
25 A. Was it more than a minute? Yeah, I'd say it was more

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1729.

1 than a minute.

2 Q. So it's not that call, is it?

3 A. No.

4 Q. Now, you think you called it on-- you think you called
5 him on a-- your mom's phone, isn't that right? Your
6 mom's 800 number, right?

7 A. It could have been done that way, yeah. I did a lot of
8 phone calls that way.

9 Q. Well, isn't that generally-- Isn't that essentially what
10 you told the police when you talked to them?

11 A. Yeah. It's either done like that or with my calling card.

12 Q. But--

13 A. I don't know. It was probably-- Most of my phone calls
14 were made through that 800 number.

15 Q. Yeah, look on page 2615 again, if you would, when the
16 Sheriff very specifically discussed this point with you.
17 That would have been Deputy Erdman.

18 A. Okay.

19 Q. Look on the bottom of that page, Mr. Cunningham, where
20 Deputy Erdman said:

21 Okay, we left off, you make the phone call
22 using a 1-800 number, a three-way patch.
23 Can you explain a little bit about how you
24 do that?

25 Now, I don't care if you read from there. Maybe you can
just tell the jury off the top of your head, how do we do

Jeffrey Cunningham - Direct (by Mr. Simeone)

1730.

1 that?

2 A. Call to Florida, and then call the number from Florida,

3 and then the phones connected like-- you know, just

4 like--

5 Q. Okay, you call her--

6 A. Right, and then she calls and--

7 Q. She puts you on hold?

8 A. Right.

9 Q. She makes another call with a conference call.

10 A. Right.

11 Q. She conferences you in to that party.

12 A. Right.

13 Q. Is that right? And then she goes away for a little while.

14 A. Right.

15 Q. And you talk. And, in fact, that's what you said here,

16 isn't it? She just-- Then she hangs up her side, or she

17 just leaves it--

18 She just leaves it there for awhile and then

19 she comes back and asks me if I'm done.

20 Is that what you said?

21 A. Yeah.

22 Q. Then Deputy Erdman--

23 A. I don't see it here, but--

24 Q. --asked you:

25 And is that what happened that night?

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1731.

1 I'm directing your attention to page 2616. Five or six
2 lines down.

3 A. I said yep.

4 Q. And you said yep, right?

5 A. Yeah.

6 Q. You weren't equivocal on that point, were you?

7 A. No.

8 Q. So you're very certain--

9 A. That's what I remembered, 'cause that's how I usually make
10 my phone calls.

11 Q. Okay, so then you're not-- If you--

12 A. So I--

13 Q. What?

14 A. So I just, you know, figured that's how I made it, because
15 that's how I made 90% of my phone calls.

16 Q. Okay, so if the Sheriffs have found no evidence that there
17 was any call from that phone booth in Northport-- Is that
18 where you said you made it, from the phone booth in
19 Northport?

20 A. Yeah, I think that's where it was.

21 Q. Clark's Hotel or the Exxon Station? Which one?

22 A. The phone booth one.

23 Q. It's a free-standing booth?

24 A. Right.

25 Q. That would be there at Clark's Hotel?

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1732.

1 A. Okay.

2 Q. If there is no evidence to the effect that that call was
3 made, would you agree that you didn't make that call?

4 A. No, I wouldn't agree I didn't make that call.

5 Q. Well, then, would you agree that it was made maybe some
6 other way?

7 A. I remember calling Rob. I don't remember if it was-- I
8 don't remember how I did it or where I did it. I think it
9 was at Northport. I might be wrong. I don't know.
10 That's what I remember, 'cause that's where I usually
11 called him from. But I-- I don't know.

12 Q. Now, you really can't-- You try to place Mr. Grange as
13 being with you at that telephone call, though.

14 A. Yeah, I thought we all went into town, and Dane went and
15 got some beers, and I was talking to Rob, and then John
16 talked to Rob, and then we left and went back to the fair.

17 Q. Jeff, you can't really place John at the phone call, can
18 you?

19 A. Like I just said, we all three went into town, made a
20 phone call to Rob, Dan went and got some beers, and then
21 we all went back to the fair.

22 Q. Okay, but that's about the extent of your recollection
23 there?

24 A. Yeah.

25 Q. Is it possible you maybe called Rob earlier that day from

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1733.

1 Nick's cell phone?

2 A. I don't remember using Nick's cell phone.

3 Q. Not at all?

4 A. No.

5 Q. I mean never, over the course of the whole weekend?

6 A. I don't remember it.

7 Q. Would Nick-- Would Nick Kaiser have any independent
8 reason to call your mom's 800 number?

9 A. No.

10 Q. If the call were made, it's probably from you, isn't that
11 right?

12 A. Yeah.

13 Q. Your mom's number?

14 A. Yeah.

15 MR. SIMEONE: Could I ask that the bailiff give the
16 witness Exhibit Number 110?

17 Q. Mr. Cunningham, we're showing you what's been admitted
18 into evidence as Exhibit 110.

19 A. Okay.

20 Q. That would be the account history for Nick-- Nicholas D.
21 Kaiser's phone number there at 453--

22 MR. WETLE: Objection, your Honor. May I see the
23 exhibit?

24 THE COURT: Sure.

25 MR. WETLE: Your Honor, this is the Ken Cameron phone

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1734.

1 bill.

2 THE COURT: I think that's what the Qwest lady intro-
3 duced it as. Maybe there's something additional.

4 Q. Mr. Kaiser-- Or Mr. Cunningham, I'm wondering if I could
5 maybe refresh your memory that a phone call would have
6 been made to your mom's phone that day.

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

8 THE COURT: Yes.

9 Q. Is there anything about that record there, Mr. Cunningham,
10 that refreshes your memory about whether or not you made
11 a phone call from Nick's cell phone to your mom's 800
12 number?

13 A. Well, it says I did here on this piece of paper.

14 Q. Do you remember it?

15 A. No.

16 Q. Would Nick do it by himself?

17 A. No.

18 Q. So you probably did?

19 A. Yeah.

20 Q. So if those calls were made at 1:39 and 11:35, that would
21 be a little bit before the time you saw John at the fair
22 that night and told him Nick was there, wouldn't it?

23 A. Yeah.

24 Q. And you probably patched through from your mom's number
25 to Rob's after you called her, wouldn't you have?

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1735.

1 A. If I was trying to get ahold of Rob, then I probably would
2 have, if she was home.

3 Q. No doubt I'm correct that that's the day you remember
4 talking to Rob on the phone?

5 A. Yeah.

6 Q. Okay, so the phone booth records, you'll agree that the
7 police have found no evidence that a phone call was made
8 to your mom's number at 6:45 that night. Do you agree
9 with that?

10 A. Yeah.

11 Q. You'll agree that probably you called your mom on Nick's
12 phone, cell phone, that day earlier.

13 A. That's what that piece of paper says.

14 Q. You'll agree that you talked to Rob Schultz that day? Is
15 that right?

16 A. Yeah, I think I did.

17 Q. And you also agree that you don't know that John was
18 necessarily in your presence when you spoke to Rob?

19 A. What I remember is giving John the phone at Northport.

20 Q. At the call that wasn't-- that we can't find was made?

21 A. Right. That's what I remember.

22 Q. Okay. Jeff, do you remember if you ever went to Dane's
23 cabin Saturday with John?

24 A. I don't think I left the fair. I left the fair to go get
25 wood some time in the-- it was either latter end of the

Jeffrey Cunningham - Direct (by Mr. Simeone)

1736.

1 evening or-- Well, it was still daylight out.
2 Q. Still daylight. But that's my understanding too. You
3 left and you got some firewood.
4 A. Yeah.
5 Q. How long did that whole trip last?
6 A. Maybe an hour.
7 Q. Where did you get the wood?
8 A. There was a slash pile down the road.
9 Q. Not too far away from the fair?
10 A. No.
11 Q. So the fair is about an hour away from the cabin, is that
12 right?
13 A. Yeah--
14 Q. Dane's cabin? Is it-- I mean more or less. I'm not
15 holding--
16 A. About that, I guess. Yeah.
17 Q. I'm not holding you to the minute, but it's about an hour
18 to the cabin?
19 A. Sure.
20 Q. What I'm trying to clarify with you is that if you recall
21 that you left to get wood from the slash pile-- Right?
22 A. Uh-huh.
23 Q. Slash pile's not too far from the fair?
24 A. Uh-huh.
25 Q. You believe that the whole trip back and forth for

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1737.

1 firewood was about an hour? Is that right?
2 A. Probably about that.
3 Q. You surely didn't have time in that hour to go back to
4 Dane's cabin and then return to the fair. Is that right?
5 A. Yeah.
6 Q. Okay. Remember about what time that was when you got the
7 firewood?
8 A. Day time.
9 Q. Day time? Now, you stated that you stayed away almost all
10 night Saturday, right?
11 A. Probably so.
12 Q. Where you actually slept, you're not sure?
13 A. No.
14 Q. You got up and you saw Nick again Sunday morning? Is that
15 correct?
16 A. Yeah.
17 Q. And Sunday the barter fair starts winding down, is that
18 right?
19 A. Yeah.
20 Q. And Nick-- Your friend Nick and Josh had plans to go to
21 California afterward, is that correct?
22 A. Uh-huh.
23 Q. And you-- At that time you decided that you would go to
24 California with them?
25 A. Something to do.

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1738.

1 Q. Okay. That's when the whole plan to buy the mushrooms was
2 conceived?
3 A. It was part of the reason.
4 Q. Okay, this-- There was an actual plan to buy the mush-
5 rooms, wasn't there?
6 A. Yeah.
7 Q. This wasn't just something that was a ruse or something
8 like that, was it?
9 A. Right.
10 Q. Okay, and you left the barter fair with Nick and Josh in
11 their truck, right?
12 A. Yeah.
13 Q. The plan was to go to the cabin?
14 A. Yeah.
15 Q. And so you left the fair with Nick and Josh in their truck
16 to go to the cabin to get mushrooms. Is that right?
17 A. Uh-huh.
18 Q. And you saw John at the gate?
19 A. Yeah.
20 Q. Now, according to you, John showed up at the Ash cabin
21 later, isn't that right?
22 A. He was there when we got there. Or his truck was.
23 Q. Well, really, what you saw was his truck, right?
24 A. Yeah.
25 Q. You saw his truck, and it was hidden?

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1739.

1 A. It was pulled to the side of the house.
2 Q. But you didn't see John?
3 A. No.
4 Q. Well, wasn't it-- Isn't it right that they were supposed
5 to have a meeting together? That is John and Nick, to
6 discuss the differences? At the cabin, right?
7 A. Yeah.
8 Q. So can you think of any reason why if he's going to the
9 cabin to have a meeting with Nick that he planned to have,
10 he's going to hide his truck?
11 A. Could I think of any reason?
12 Q. Yeah. I mean why would he want to hide his truck if he's
13 planning to be there to have a meeting with Nick about the
14 differences?
15 A. Well, the starter was out on the truck so he had to park
16 on a hill.
17 Q. But I thought you said he's hiding the truck?
18 A. It was on the side of the house.
19 Q. But didn't you say that that's an-- that's an unusual
20 place for it to be?
21 A. Usually. But if Nick's going to pull up the driveway
22 behind John's truck, then he wouldn't be able to roll to
23 start it. Nick would have to leave first.
24 Q. But didn't you say it was hidden? I mean isn't that what
25 you tried to say?

Jeffrey Cunningham - Direct (by Mr. Simeone)

1740.

1 A. No, I said it was on the side of the house. It was pulled
2 up unusually far behind the side of the house, yeah, but--
3 Q. But he could have parked it someplace else to pop start
4 the truck, couldn't he, without having to hide it?
5 A. I'm sure he could have.
6 Q. Okay, so the point is that if John's supposed to be there,
7 he has no reason to hide the truck. Isn't that right?
8 A. Okay.
9 Q. Now, did you see John's Bronco at the fair when you left?
10 A. Yeah. It was at the gate with him.
11 Q. Where was it at the fair?
12 A. Which time? It moved a couple different times.
13 Q. Well, let's say when you were leaving there with Nicky and
14 Josh that Sunday afternoon, which you've said is what,
15 about 1:00 o'clock in the afternoon, 12:00 o'clock in the
16 afternoon to 1:00?
17 A. Yeah.
18 Q. Where did you see John's truck?
19 A. I would say that it was near the gate, 'cause that's where
20 we parked it the night before.
21 Q. But you didn't-- You didn't-- You're not sure?
22 A. I couldn't tell you right now that it was parked right
23 there and I remember seeing it. No, I don't remember see-
24 ing it.
25 Q. You can't tell me right-- You can't tell me right now

Jeffrey Cunningham - Direct (by Mr. Simeone)

1741.

1 that you really remember seeing it, can you?

2 A. No.

3 Q. So isn't it possible that by that time Dane had already
4 borrowed that truck to drive it away from the fair?

5 A. Could have.

6 Q. I want to go over the chronology now. As you see John
7 when you leave the fair--

8 A. Uh-huh.

9 Q. You're driving to the Crown Creek/Ash cabin, right?

10 A. Right.

11 Q. You may not have seen John's truck, but now you-- you
12 stop at the Northport gas station, is that right?

13 A. Uh-huh.

14 Q. On the way back?

15 A. Uh-huh.

16 Q. And so that the jury understands, when you're driving to
17 your cabin from the fair, one would necessarily have to
18 drive by the gas station, wouldn't he?

19 A. No.

20 Q. But is it not the easiest way to get there?

21 A. No.

22 Q. How do--

23 A. The gas station's here, the turnoff's here, and the bridge
24 is here.

25 Q. How would you get there, to the Crown Creek cabin?

Jeffrey Cunningham - Direct (by Mr. Simeone)

1742.

1 A. I go down to the bottom of the hill.
2 Q. Yeah.
3 A. Make a right.
4 Q. Right.
5 A. Well, this is from the fair.
6 Q. I understand you.
7 A. All right. Go to the bottom of the hill, make a right and
8 go over the bridge.
9 Q. Go over the bridge.
10 A. And then make a hard left and take that down to Crown
11 Creek.
12 Q. But can't you see-- Can't you see that from the gas
13 station right there, the turnoff?
14 A. Can you see the turnoff?
15 Q. Yeah.
16 A. You could see the turnoff.
17 Q. You never saw John's truck go by the turnoff, did you?
18 A. Wasn't looking, paying attention.
19 Q. Now, you had no reason to believe that John wanted to kill
20 Nick, did you?
21 A. Do I have reason to believe it?
22 Q. ~~You never~~ said that you had any reason to believe that
23 Chewy would kill Nick. Isn't that right?
24 THE COURT: Can I clarify your question? You're saying
25 then or now did he have reason to believe?

Jeffrey Cunningham - Direct (by Mr. Simeone)

1743.

1 MR. SIMEONE: Then. When he spoke to the police.

2 Q. I'll direct your attention, to refresh your memory, to
3 page 1801, Mr. Cunningham.

4 A. I've never seen John be violent.

5 Q. And he may have wanted to contact Nick to see what was
6 happening, but that's about it so far as you could tell,
7 right?

8 A. Yeah.

9 Q. And that's what you told the police, isn't it?

10 A. I don't remember.

11 Q. Page 1801 might clarify that for you, sir. I'll refer you
12 to that page and page 1798.

13 A. Seventeen what?

14 Q. Seventeen-ninety-eight, and page 1801.

15 A. Okay.

16 Q. Bottom:

17 Did he say why?

18 A. What is this, 1798?

19 Q. Yes, sir.

20 A. Okay.

21 Q. When we were drive-- Deputy Caruso:

22 When we were driving back to the fair he
23 asked if I'd bring--

24 Or you, I'm sorry.

25 Jeffrey Cunningham: When we were driving
back to the fair he asked if I'd bring Nicky

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1744.

1 out to the cabin.

2 Deputy Caruso: Did he say why?

3 And what was your response?

4 A. He wanted to confront him.

5 Q. Like that's what you assumed.

6 A. What I assumed.

7 Q. And Deputy Caruso asked you:

8 Did you think he was going to kill Nick?

9 A. I said:

10 I didn't think he was going to kill him.

11 Q. And that conversation that you had with John there, that

12 took place after the alleged phone call in Northport,

13 right? That you said occurred at about 6:45?

14 A. Yeah. Yeah.

15 Q. I want to talk about the rifles, Jeff, the various rifles

16 that were around the cabin.

17 A. Okay.

18 Q. Now, you had a rifle at one point, didn't you?

19 A. I had a couple of them.

20 Q. You had a semi .22 automatic, or .22 semi?

21 A. Yeah.

22 Q. Dane also had a rifle at his cabin?

23 A. He had a shotgun.

24 Q. Did he also have a .22?

25 A. Not until later. The .22 that I had, someone that was

Jeffrey Cunningham - Direct (by Mr. Simeone)

1745.

1 living with me won it off of his roommate.
2 Q. Somebody that was living with you won that gun off of a
3 roommate?
4 A. Yeah.
5 Q. The one you had?
6 A. That Dane had.
7 Q. Was that the one with the wooden stock?
8 A. I don't remember.
9 Q. Well, what was yours?
10 A. Huh?
11 Q. Do you remember how Dane's looked? Was it a wooden stock,
12 or was it yours that had the wooden stock?
13 A. I don't remember.
14 Q. Don't remember it?
15 A. No.
16 Q. But you did trade the one that you had from Josh and
17 Stephanie, right? Those were your roommates?
18 A. No. Dane-- We traded when-- 'cause Dane didn't have a
19 gun at his cabin. Josh was leaving my cabin. He gave
20 Dane and I a gun at his cabin, and he took some chainsaws
21 and stuff with him.
22 Q. Okay, there are a couple of steps there. Sounds like
23 you got a gun as a result of some trading that you did
24 between your roommates and Dane.
25 A. Yeah. I never lived with 'em.

Jeffrey Cunningham - Direct (by Mr. Simeone)

1746.

1 Q. You never--
2 A. Our dogs didn't get along.
3 Q. Oh, that's right. They got there before-- They were
4 there before you?
5 A. They were there the winter.
6 Q. The winter. Okay. That rifle was similar to the one that
7 Mr. Grange purchased, right? Mr. Grange's dad?
8 A. They both had ten-clip-- you know, ten-round clips.
9 Q. Ten-shot clips? You don't remember that yours had the
10 wooden stock?
11 A. I think the one that my roommate beforehand, the summer
12 before that, the one that he won from a shooting contest
13 at Dane's house, I think that one was wooden, 'cause it
14 was older. But I don't know what the one was-- looked
15 like that in the latter end of winter, beginning of
16 spring.
17 Q. Uh-huh.
18 A. The one that Josh and Stephanie left when they traded, you
19 know, all them chainsaws or whatever.
20 Q. They traded--
21 A. I don't remember what that one looked like.
22 Q. They traded stuff for it? You discussed with the officers
23 why it was that there was another gun there, why it was
24 that Mr. Grange might have gotten his son a gun, isn't
25 that right?

1 A. I have no idea what you're asking me.

2 Q. Well, did you discuss with the police why it was that Mr.

3 Grange, that is, John's father, would have got another

4 gun?

5 A. Well, for shooting birds, and we didn't have a gun at the

6 cabin, so-- You know, the middle of the night and a

7 bear's going through your, you know, car or something like

8 that, you want to make a loud noise and scare 'em off or

9 something.

10 Q. Yeah. Why was it necessary to have two guns? You

11 explained that to the police, didn't you?

12 A. Well, so we could both hunt.

13 Q. In fact, you talked to them about that in your interview,

14 didn't you?

15 A. I don't remember.

16 Q. Well, look on page 1836 of your first transcript, Jeff.

17 A. Eighteen-thirty-six?

18 Q. Right.

19 A. Okay.

20 Q. The police officers were asking you:

21 Do you think Mr. Grange had any idea what

22 was going on with this, that that's why

23 Chewy wanted the gun?

24 And what did you say?

25 A. I said:

1 He used to be involved in things, but I have
2 no idea.

3 Q. And then Deputy Caruso said:

4 Well, why is it that if you already had a
5 .22 up there, why was it, do you think,
6 that, you know, Chewy was having his dad buy
7 him things? Why in the world would he have
8 him buy a .22 when you guys already had one?

9 Do you remember that discussion?

10 A. Now I'm reading it. I don't remember it, but I'm reading
11 it.

12 Q. But your answer there was similar to what you said, isn't
13 it?

14 'Cause when you go hunting, it's good to
15 have your own gun.

16 A. Right.

17 Q. So you admit that there were two .22's at the cabin?

18 A. For a little while.

19 Q. There are two .22's around this incident, aren't there?

20 A. No, Dane had his back at his house.

21 Q. Which is 25 or 30 minutes away from yours?

22 A. If that.

23 Q. If that. Now, John's .22, the one his dad bought him,
24 that had a black stock, right?

25 A. From what I remember it was black.

Q. Do you remember yet whether or not yours had the wooden
stock?

A. Like I said, the one that was first won in the shooting

1 match, I think was wooden. The one that was traded when
2 those-- when they left, I don't remember what that one
3 looked like. I remember it had a silver clip.
4 Q. Silver clip?
5 A. But I don't remember what the gun looked like.
6 Q. Okay, is there maybe more than two .22's running around?
7 There's the one that you told me about that was traded.
8 A. Right, and that was taken (sic) with the 30.06 as well
9 from my house.
10 Q. There was the .22--
11 A. When the guy left.
12 Q. There's a .22 that Dane had. I just want to talk about
13 the .22's now.
14 A. Okay.
15 Q. The .22 that was traded. There's a .22 that Dane had.
16 A. Right.
17 Q. And then there was also the .22 that John's father bought
18 him.
19 A. Right.
20 Q. Now, the first statement that you gave, you know, the ones
21 that I've been showing you there, that was made in
22 Lauderdale, right? That was given in Lauderdale?
23 A. Dade County, yeah.
24 Q. Why was it that you went to Lauderdale after all this
25 happened?

Jeffrey Cunningham - Direct (by Mr. Simeone)

1750.

1 A. I was going to leave the country, so I went there to say
2 goodbye to my family.

3 Q. And you were going to leave the country because you were
4 afraid of your criminal liability as a result of this?

5 A. Well, that and the fact that they threatened to kill my
6 mother, so I decided I'd go see her and stay with her for
7 a little while.

8 Q. Well, whether or not your mother was threatened, that
9 really wouldn't have any bearing on your leaving the
10 country, right?

11 A. Well, eventually I'd leave, yeah. After I felt she was
12 safe or moved and-- You know, I went down there and I
13 moved her from where she was living to another place.

14 Q. Uh-huh.

15 A. And put the phone in-- You know, all that stuff, and I
16 was getting ready to leave.

17 Q. I understand. Did you, at the time of the barter fair, do
18 you remember Nick showing people pictures of the Ash
19 cabin? That is the one you're living in?

20 A. No.

21 Q. You don't remember him telling people that the cabin was
22 part his?

23 A. No.

24 Q. You remember telling people where the cabin was that he
25 was living in?

Jeffrey Cunningham - Direct (by Mr. Simeone)

1751.

1 A. I didn't meet anybody when Nick and I and Josh were
2 sitting in the cabin, except for-- I mean in the truck,
3 except for Josh. And one time somebody came up and asked
4 if we could move the truck, and then one time in the
5 morning I asked somebody if they'd go get us breakfast.
6 Other than that, I don't remember talking to anybody.

7 Q. Well, I want to go to events now that follow, and I'm
8 sorry if I interrupted you, but you left the fair. Don't
9 remember if you see John's car there, but you remember
10 seeing-- that is, the Bronco there. You do remember
11 seeing John somewhere around the gate.

12 A. Uh-huh.

13 Q. You're on your way to the cabin.

14 A. Okay.

15 Q. You went via the Flat Creek Road, is that correct?

16 A. Right.

17 Q. Would you agree that that's probably the most efficient
18 way to get to the cabin, is down the Crown Creek Road and
19 then up the-- I'm sorry. Down the Flat Creek Road and
20 then up the Crown Creek Road?

21 A. Yeah.

22 Q. Want to show the jury the route there, please, Jeff, if
23 you could? From the fair to the cabin that you think is
24 most efficient.

25 A. Take this down here.

Jeffrey Cunningham - Direct (by Mr. Simeone)

1752.

1 Q. That's Flat Creek. Is that Flat--
2 A. _____
3 Q. I don't know. Is that from the fair?
4 A. I don't even see the road going this way.
5 Q. Okay, well--
6 A. There's a road that goes this way.
7 Q. Okay, start from the fair where you were. I'm sorry if I
8 interrupted you.
9 A. Here's the fair.
10 Q. Right.
11 A. Here's Northport.
12 Q. That descends--
13 A. _____ that road.
14 Q. That descends and goes down hill a ways, right?
15 A. Yeah, down hill, up hill, all that stuff. And here's the
16 bridge, and then here's a road. You take that road.
17 Q. That would be the Flat Creek Road?
18 A. Uh-huh.
19 Q. And you go out to the Crown Creek cabin. Continue, if you
20 would, please.
21 A. And then you go up the road.
22 Q. And that's the way you went that day?
23 A. Yes.
24 Q. Okay. You arrive at the cabin. You can retake your seat.
25 Thank you. Now, at that point you saw Dane Williams come

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1753.

1 walking across the lawn at the cabin. Is that right?

2 A. After we got there, when we were there for a few minutes.

3 MR. SIMEONE: Could I see Exhibits 49 through, let's
4 say, 58, please? May I approach the witness, your Honor?

5 THE COURT: Yes.

6 Q. I'm going to hand you, Jeff, some photographs here that
7 are demonstrative of the area, and see whether any of
8 those are meaningful to you. Do you recognize the scene?

9 A. Yeah.

10 Q. That's the Crown Creek-- We're looking at the Crown Creek
11 cabin here and the A-frame next to it?

12 A. Okay.

13 Q. Okay, the creek would be down this way from there in this
14 orientation. Is that right?

15 A. Down this way.

16 Q. Okay, straight down.

17 A. Right.

18 Q. Okay. You believe you saw Mr. Grange's vehicle parked
19 somewhere around here? Is that right?

20 A. Uh-huh.

21 Q. Okay. Now, you said-- Take a look at these, and look
22 through them, if you would, as you testify now, and see if
23 this is helpful to you, along with _____. Some are
24 going to be more helpful than others. I don't think that
25 is, or that, or that. This might be. Take a look at

Jeffrey Cunningham - Direct (by Mr. Simeone)

1754.

1 those in connection with the next question that I ask you.

2 THE COURT: And for the record, Mr. Cunningham, would
3 you look at the backs of those and see what numbers we're
4 looking at?

5 MR. CUNNINGHAM: Fifty, 51, 49.

6 THE COURT: Thank you.

7 Q. Now, you say you saw Dane come walking across the lawn at
8 the cabin, is that right?

9 A. Yeah.

10 Q. How soon after you arrived at the cabin was it that you
11 saw Dane?

12 A. Maybe--

13 Q. I'm sorry?

14 A. Ten minutes, maybe.

15 Q. Ten minutes, or so?

16 A. Yeah, maybe about that.

17 Q. Okay, where were you before that?

18 A. What do you mean, where was I?

19 Q. Well, I mean you got to the cabin, drove from the fair.
20 Nick and Josh in the truck, you got to the cabin. You
21 took the route that we discussed. What did you do for the
22 ten minutes while you're there? Is it correct that you--
23 you asked them if they wanted macaroni and cheese?

24 A. I was in the house for a little while.

25 Q. You went into the house for a little while. Asked them if

Jeffrey Cunningham - Direct (by Mr. Simeone)

1755.

1 they wanted macaroni and cheese.

2 A. Came back down.

3 Q. Came back down. Now, you're on your way, walking down to
4 the trail to the creek, isn't it correct, when you saw
5 Dane?

6 A. Yeah. Right before I left to go for water, yeah.

7 Q. About how far down the trail would you have been?

8 A. I didn't start going down the trail.

9 Q. How far away is the trail from the beginning of the cabin?

10 A. There's-- All right, there's this like road like this
11 wide, and then I was at the very top of it. It was before
12 I even went down to get water.

13 Q. Okay. And when you talked to the police at that time,
14 it's your test-- It was your statement that Dane told
15 you:

16 Chewy's underneath the house and it's going
17 to happen right now.

18 Is that correct?

19 A. That was on my way back up, after I got water.

20 Q. Because you didn't-- you didn't walk down with Dane to
21 the creek, right?

22 A. Right.

23 Q. But I want to be clear about this point. You saw Dane
24 after you had already descended--

25 MR. SIMEONE: Is there a picture of the stairs anywhere

1 there?

2 A. I was standing right here when I saw Dane.

3 Q. You're standing there. These are the stairways that you
4 would have descended, right?

5 A. Uh-huh.

6 Q. And you were standing here on your way down to the creek?

7 A. No, no. This is a totally different road. There's some
8 trees here, and then there's another road here. And then
9 I was standing probably right about here.

10 Q. And you descend this way to the creek? Is that about
11 right?

12 A. Yeah.

13 Q. Okay. So you're-- Just so the jury's clear and I am too,
14 you didn't see Dane when you're walking down these stairs?

15 A. No.

16 Q. And you are-- When you're coming down the stairs, you'd
17 already grabbed a pan from somewhere in the kitchen area
18 of the cabin?

19 A. No.

20 Q. Got it from the fire pit?

21 A. Uh-huh.

22 Q. So you weren't carrying the pan when you were walking down
23 the stairs, right?

24 A. No.

25 Q. Now, Dane-- What signal, if any, did you give Dane when

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1757.

1 you were coming down the stairs, to him? I mean, if I
2 understand your testimony, you didn't see him when you
3 were walking down the stairs, right?

4 A. No.

5 Q. So it goes without saying that you couldn't have given him
6 a signal to go over to the creek, something like this,
7 when you're walking down the stairs?

8 A. No.

9 Q. And you just stated, I think, that you went to the creek
10 by yourself. Is that right?

11 A. Yeah, after I introduced Nick and Josh to Dane.

12 Q. Okay, you made that introduction. And Dane stood there
13 and talked to Nick and Josh for a minute while you went to
14 get the water?

15 A. Right.

16 Q. So when Dane-- If Dane were to say that he followed you
17 down to the creek then, after you descended the stairs,
18 that would be wrong, wouldn't it?

19 A. He came down after I got down to the creek. So he--

20 Q. But he never-- He didn't walk down--

21 A. He followed--

22 Q. --with you to--

23 A. He followed me.

24 Q. He didn't walk down with you though, did he?

25 A. No.

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1758.

1 Q. You said you walked alone, right?

2 A. Yeah. It wasn't until I was coming back up the trail that

3 he came down. Or that's where I met him.

4 Q. It wasn't until after--

5 A. He could have been--

6 Q. After you came back up the trail, that's where you saw

7 him?

8 A. I got water in the pan and I made it about 30 feet from

9 the creek, and there's a fallen log in the trail there.

10 Q. Okay.

11 A. And right about there is where I saw him.

12 Q. Now, did it appear to you that Dane was coming out from

13 where you saw John's car parked?

14 A. He was coming from that way. He could-- He could have--

15 I mean I didn't see him until he came-- 'Cause the hill

16 goes like this. If you're standing up on-- on-- like

17 near the fire pit--

18 Q. Yeah.

19 A. The lawn goes like this. Right? So if you're standing

20 here, someone could probably get to just about the top of

21 the hill until you see 'em. Unless you are looking that

22 way on purpose, looking for something.

23 Q. Okay, but it's consistent with where you saw him, that he

24 was coming from where John's car was? John's Bronco?

25 A. He could have come from here, but he was walking up the

Jeffrey Cunningham - Direct (by Mr. Simeone)

1759.

1 hill.

2 Q. But it was from that direction, isn't that what you told
3 me in our interview on February 1st?

4 A. From that direction?

5 Q. Right.

6 A. What do you mean?

7 Q. From the direction where John's--

8 A. Well, the car-- Like if I'm standing here, and the car's
9 here, Dane was here.

10 Q. All right, demonstrate to the jury, if you would, on the
11 pictures that we have there.

12 A. It's not in here. Couldn't do it.

13 Q. You don't have one that would help you with that?

14 A. All right, maybe something similar.

15 THE COURT: And which one are you looking at?

16 MR. CUNNINGHAM: Fifty.

17 THE COURT: Okay.

18 A. All right. Say I'm this stump, right? I wasn't the
19 stump, though, I was more this way a little bit more. All
20 right? Say I'm this stump, and Dane's this stump.

21 Q. Yeah.

22 A. Okay.

23 Q. That's about where you saw him?

24 A. Yeah.

25 Q. That's consistent with the general location of the car,

Jeffrey Cunningham - Direct (by Mr. Simeone)

1760.

1 right?

2 A. The car's up here.

3 Q. Okay. So it's possible that he came down from that car
4 and walked in that direction, isn't it.

5 A. Well, if he came down on an angle this way, and then
6 walked back that way, it could be.

7 Q. Now, in the first statement you said you saw Dane coming
8 from back behind the house. Is that right?

9 A. (No audible response)

10 Q. And you agreed that you left the fair at about 1:00 to
11 come to the cabin. You said like 1:00-ish. You saw Dane
12 coming across the lawn. Would it be correct that you told
13 him at that time that you were there to scare the crap out
14 of Nick and Josh?

15 A. No.

16 Q. You didn't say that, did you?

17 A. No.

18 Q. Actually, you said in your statements that it was Dane's
19 statement to you. Dane's words to you, that:

20 Chewy's under the house and it's going to
21 happen right now.

22 Isn't that what Dane said to you?

23 A. Yeah.

24 Q. So that would be, then, the-- when you went down to the
25 creek. That'd be the last time that you saw Nick and Josh

Jeffrey Cunningham - Direct (by Mr. Simeone)

1761.

1 alive.

2 A. Uh-huh.

3 Q. And the last person you saw with them was Dane at the fire
4 pit, isn't that correct?

5 A. Uh-huh.

6 Q. When Officer Caruso asked you whether or not you gave Dane
7 a nod to come down to the creek with you, and you told him
8 you didn't, right?

9 A. I told him I what?

10 Q. You told him you didn't give him a nod to come down to the
11 creek. I mean did you make-- You didn't make that kind
12 of gesture to Dane, did you?

13 A. No.

14 Q. 'Cause you're already on your way down there, right, when
15 you saw him?

16 A. Yeah.

17 Q. And you claimed that it took you what, 30 or 40 seconds or
18 so to get to the creek from where you were?

19 A. Probably about that.

20 Q. And you were just there for a couple of moments filling up
21 the pot, is that right?

22 A. Yeah.

23 Q. So that maybe you walked 50 feet back up the hill at the
24 time you're standing there and finally met Dane?

25 A. Uh-huh.

Jeffrey Cunningham - Direct (by Mr. Simeone)

1762.

1 Q. Okay, and it was just a matter of seconds after that until
2 you heard the shots?
3 A. Yeah, maybe-- maybe five, ten seconds.
4 Q. You said you saw Dane half way up the hill?
5 A. Huh?
6 Q. Were you about half way up the hill? Is that what you're
7 saying, when you heard it?
8 A. No, I was still in the wooded trail that goes to the
9 creek.
10 Q. Okay, so if we add up the seconds, then, is it about 30,
11 40-- 30 or 40 seconds from where you first saw them
12 standing by the fire pit until you got down to the creek?
13 Is that right? And then--
14 A. It might have been that long, you know. I--
15 Q. A couple more moments?
16 A. I have-- My ankle still hurts, so I wasn't running or
17 nothing.
18 Q. So if we add the time it took you to fill the pot, which
19 is a couple of seconds, and the time it took you to get
20 however far you got from the creek until you stopped,
21 we're talking, what, about a minute and a half or so?
22 A. Maybe not even that long. Maybe-- Maybe a minute.
23 Q. Do you remember having a five minute conversation with
24 Dane on the trail?
25 A. No.

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1763.

1 Q. So if he said he had a five minute conversation with you
2 on the trail down there, where you two talked about
3 things, you were telling him that you were going to scare
4 the crap out of Nick and Josh, that would be incorrect,
5 wouldn't it?
6 A. Yes.
7 Q. Now, you're-- You have said, and I think it's still your
8 testimony, that Dane-- Strike that. I want to be sure
9 about this. You made it all the way down to the creek?
10 A. Yeah.
11 Q. Because you got the water. But if Dane says you didn't
12 make it all the way down to the creek, that would be
13 incorrect?
14 A. Well, he saw me coming back up the creek. Up from the
15 creek, so--
16 Q. But you actually got water in the pot?
17 A. Yeah.
18 Q. Now, when I heard you testify the other day, I think you
19 said that you ran up to the top of the hill after you
20 heard the shots, is that correct?
21 A. As fast as I could.
22 Q. And you got there before Dane or after Dane?
23 A. Dane was running up that way too. He was there maybe 20
24 feet ahead of me, if that.
25 Q. Okay. And you weren't sure in your testimony that I heard

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1764.

1 the other day whether or not John had the rifle in his
2 hands, is that right?

3 A. It was either in his hand or leaned up against the bottom
4 of the stairs.

5 Q. Okay, you would have remembered if it were in his hands if
6 he were waving it, wouldn't you?

7 A. If he was what, like--

8 Q. I mean if he were waving it--

9 A. Waving it, like a flag?

10 Q. That would certainly stand out in your mind, wouldn't it?

11 A. Yeah.

12 Q. And you don't remember that happening?

13 A. No.

14 Q. Or directing you with the gun or something like that, was
15 he?

16 A. No.

17 Q. Now, you stated that they were on their side, that is, the
18 bodies of these boys were on their side and in the fire
19 pit. Is that right?

20 A. Yeah.

21 Q. Told that much to Officer Caruso on November 3rd. Is that
22 right?

23 A. Uh-huh.

24 Q. So to say that Josh's body is laid outside of the fire pit
25 with his feet towards it, would be an inaccurate descrip-

Jeffrey Cunningham - Direct (by Mr. Simeone)

1765.

1 tion, wouldn't it? There being a difference between his
2 being outside the fire pit and in it. So it's an inaccur-
3 rate description to say that he's outside the pit with his
4 feet towards it, isn't it?

5 A. I remember them both side by side.

6 Q. Inside the pit?

7 A. Uh-huh.

8 Q. Is that yes, sir?

9 A. Yeah.

10 Q. And you've made statements to the effect that you used the
11 water that you got from the creek, in the pot that you
12 brought down there, to wipe Nick's face, is that right?

13 A. Why you got to ask me fucked up shit like that, man?

14 Q. I'm sorry, Jeff.

15 THE COURT: All right, Mr. Cunningham. Watch your
16 language, please, and this is proper cross examination.

17 Q. And there's a reason for my questions, I assure you, Mr.
18 Cunningham. Did you use that water later?

19 A. Yeah.

20 Q. And that's the water that you got from the creek?

21 A. Yeah.

22 Q. So you couldn't have dropped the pan when you started
23 running up the hill, isn't that right?

24 A. Yeah.

25 Q. Now, it was while you were with Nick that Josh got drug

Jeffrey Cunningham - Direct (by Mr. Simeone)

1766.

1 into the truck? Is that correct?

2 A. Yeah.

3 Q. Review for me, if you would, how it is that you think

4 those bodies were loaded into that Bronco.

5 A. What do you mean?

6 Q. The order in which they were loaded, where they were in

7 the Bronco. Both things.

8 A. Nick-- I think Nick was through the back door, and Josh

9 through the side.

10 Q. And who went first?

11 A. Nick.

12 Q. And Nick was on which side, did you say?

13 A. He was on the driver's side.

14 Q. And could you review page 1808 of your transcript, please?

15 There we went back to a question asked by Deputy Caruso.

16 It's about the same subject matter that you found dis-

17 tasteful here, but I'm going to have to touch on it again.

18 He asked you:

19 What happened as you were washing Nick's

20 face?

21 And you said what?

22 A. I don't see where you're talking about.

23 Q. Farther than half way down the page.

24 THE COURT: Page 1808?

25 MR. SIMEONE: Eighteen-o-eight, your Honor, yes.

Jeffrey Cunningham - Direct (by Mr. Simeone)

1767.

1 A. Josh got drug to the truck.

2 Q. So that means that Josh got loaded first?

3 A. No.

4 Q. Well, if you were washing his face, how did he not get
5 loaded first?

6 A. Because I was in the truck when he wasn't-- when he was
7 brought in there.

8 Q. And you're-- Where were you washing Nick's face?

9 A. In the fire pit.

10 Q. So if you're washing Nick's face at the fire pit, and Josh
11 got drug into the truck, then Josh would have got loaded
12 first, wouldn't he?

13 A. No.

14 Q. So was it a little bit different than what you said to the
15 officer then that day?

16 A. A different sequence, yeah. I mean he might have got
17 brought away from the fire pit at that time, but I was in
18 the truck with Nick when he was being brought through the
19 side door.

20 Q. Now, is it correct that you said that John asked you to
21 put Nick in the truck?

22 A. I don't remember.

23 Q. Could you look at page 1809 in your transcript? I'll
24 direct your attention to a little better than half way
25 down the page.

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1768.

1 A. Yeah, he asked me to help him to put Nick in the truck.
2 Q. So is that really what happened then?
3 A. What do you mean?
4 Q. Is that how it happened? He asked you to put Nick in the
5 truck?
6 A. He asked me to help him?
7 Q. Right.
8 A. Yeah--
9 Q. And you did--
10 A. --I guess so.
11 Q. And you did help him?
12 A. Yeah.
13 Q. And you claimed that John actually pulled Nick from-- out
14 from underneath you while you were washing his face, isn't
15 that correct?
16 A. Not from underneath me. I was separated from 'em and then
17 John brought 'em up to the side-- towards the side of the
18 house, or whatever. I don't know.
19 Q. I don't understand what you meant in that statement you
20 gave to Deputy Caruso, a little higher up than half way.
21 He said:
22 So what did he do,
23 was your (sic) question. You said:
24 He came and pulled him out from underneath
25 me and dragged him towards the side of the
 house.

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1769.

1 Is that wrong?

2 A. I was right there, and John grabbed him and pulled him up
3 the side of the house.

4 Q. But I mean you did go through a very specific kind of a
5 description there. He came and pulled--

6 A. I don't remember. This was like six months ago. I have
7 no idea, man.

8 Q. Well, would you agree that your memory about this incident
9 was a little better six months ago than it is six months
10 later?

11 A. Probably so.

12 Q. Well, if Mr. Williams says that he saw you dragging Josh's
13 body up the hill behind the cabin, that wouldn't be
14 correct, would it?

15 A. If he saw me?

16 Q. Right.

17 A. Dragging Josh's body--

18 Q. Josh's body--

19 A. --up the hill?

20 Q. Right.

21 A. No.

22 Q. Now, you never made any mention, and correct me if I'm
23 wrong, of Dane coming up and grabbing one of Josh's legs
24 and then dropping it down on the ground, did you? Did you
25 ever make that statement to the police officers?

Jeffrey Cunningham - Direct (by Mr. Simeone)

1770.

1 A. No.

2 Q. Do you ever even remember that event happening?

3 A. No.

4 Q. Now, am I correct that the location--

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

7 THE COURT: Yes.

8 Q. Nick's Bronco. You drove to the house in Nick's Bronco.
9 Where, in relation to the fire pit here, was the Bronco
10 parked?

11 A. Right about here.

12 Q. Right about here?

13 A. Yeah.

14 Q. Now, descending-- I guess this would be descending to the
15 creek this way, is that correct?

16 A. Like there's a road over here. Goes this way. _____

17 Q. Straight down. There is a lower garden there, isn't
18 there? Is that what you call the main garden?

19 A. Yeah.

20 Q. That's another place to park vehicles, right?

21 A. There's a van parked there, yeah.

22 Q. Okay. But this is where-- This is where Nicky's Bronco
23 is parked, right? It wasn't parked down there where the
24 van was, right?

25 A. No.

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1771.

1 Q. Okay. That van down below is a yellow van?
2 A. Uh-huh.
3 Q. It's all-- It's a vehicle hulk. It's not in very good
4 repair, right?
5 A. Runs fine.
6 Q. It does?
7 A. Yeah.
8 Q. But it's still down there.
9 A. Yeah.
10 Q. We're only talking about one yellow van that's down there,
11 right?
12 A. Uh-huh.
13 Q. Okay. So there would be no need to start Nick's Bronco
14 from down below and bring it up to the area by the fire
15 pit because it's already parked by the fire pit, isn't
16 that right?
17 A. Yeah.
18 Q. So any mention that the Bronco, Nick's Bronco, has been
19 started down by the lower garden there by that yellow van
20 and then brought up to the fire pit, that would be
21 incorrect, wouldn't it?
22 A. It's what I remember.
23 Q. Okay. Now, you're saying, I think, to the Deputy that
24 John covered the bodies before you or Dane ever got into
25 the Bronco, is that right?

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1772.

1 A. I don't really remember.

2 Q. Don't remember that point?

3 A. (No audible response)

4 Q. You never made any mention that I saw in your statements,
5 and maybe you can correct me if I'm wrong, that the bodies
6 were wrapped in a blanket. Do you remember making any--

7 A. I don't remember.

8 Q. Pardon me?

9 A. I don't remember.

10 Q. Whether or not-- Do you remember making-- whether they
11 were wrapped in a blanket today, or whether you made that
12 statement to the police?

13 A. Neither.

14 Q. Neither? Okay. In any event, you never covered them up,
15 did you, with a blanket then?

16 A. Not that I remember.

17 Q. But one time you told the police that you covered them up,
18 didn't you?

19 A. I don't know.

20 Q. Could you look at page 2641 of your transcript?

21 A. Twenty-six-forty-one?

22 Q. Correct. Question, Loren Erdman:
23 You covered up Nick and--

24 A. Yeah.

25 Q. First of all, he said:

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1773.

1 Did anybody wrap blankets around either
2 person?
3 Your answer was-- What was your answer there?
4 A. Covered them afterwards on my way out.
5 Q. You covered up Nick and, yeah, Josh, with
6 what?
7 A. Blankets.
8 Q. So is that probably correct?
9 A. Probably.
10 Q. So it was you who covered them up, according to that?
11 A. Okay.
12 Q. Now, I don't want to belabor this issue about the order in
13 which they were loaded again, but while you're carrying
14 the bodies, you say that Dane helped carry John-- helped
15 John carry Josh's body over to the Bronco and he loaded it
16 in the passenger's door. Do you remember that?
17 A. John passed me.
18 Q. Pardon?
19 A. Josh.
20 Q. Josh?
21 A. Yeah. While I was in the truck.
22 Q. That was in the-- You mentioned that in your second
23 statement, right?
24 A. I don't know. It's hard to remember things sometimes,
25 like that happened.
26 Q. I understand. Your statement to Officer Caruso, though,

Jeffrey Cunningham - Direct (by Mr. Simeone)

1774.

1 was that Dane helped get Josh into the truck and they
2 brought him to the passenger door. If you want to look on
3 page 2638, maybe that will help you.

4 A. Okay. Okay, I guess. I don't know.

5 Q. Chewy grabbed Nick and he pulled him away from
6 you up the hill?

7 No, he grabbed me.

8 He grabbed you?

9 That's Deputy Erdman's question, and you answered what?

10 A. I don't see where you're talking about.

11 Q. About half way down the page.

12 A. I don't see it.

13 THE COURT: What page are you on?

14 MR. SIMEONE: That's 2638, your Honor.

15 A. Oh, I see.

16 And then he grabbed Nick.

17 Q. Okay. Okay, so if there were testimony at the trial that
18 Dane didn't see either body loaded, and he just assumed
19 that the bodies had been loaded by either you or John,
20 wouldn't that be incorrect?

21 A. He was right there with us.

22 Q. Because he's right there with you, correct? And didn't
23 you even say that Dane opened the door?

24 A. He might have.

25 Q. I'm looking at the bottom--

Jeffrey Cunningham - Direct (by Mr. Simeone)

1775.

1 A. I might have said that.

2 Q. I'm looking at the bottom of 2638, Mr. Cunningham. Loren

3 Erdman asks you:

4 And the back of Nick's vehicle is open at

5 this point?

6 And you said, yeah. And he asked:

7 Who? Do you know who opened it?

8 And what did you say?

9 A. Said Dane did.

10 Q. Now, was there any time then that, in Officer's-- Officer

11 Caruso's conversation with you, that you were trying to be

12 dishonest with him?

13 A. No.

14 Q. So if there were testimony at this trial to the effect

15 that the back door of that Bronco didn't open, would that

16 be incorrect?

17 A. I don't know, man.

18 Q. Now, we're to the point where they're in the truck. Dane

19 helped you open the door-- Dane opened the door. The

20 bodies were loaded. Is it correct that Dane went through

21 Josh's pockets when he was in the truck and in the

22 fireplace too?

23 A. I don't know. I don't know.

24 Q. You told the officers that, however, didn't you?

25 A. I don't know.

Jeffrey Cunningham - Direct (by Mr. Simeone)

1776.

1 Q. Did you tell them that in the interview on page 2640, Mr.
2 Cunningham?
3 A. If it's on paper, I guess I did.
4 Q. And it's your testimony and you stated to the officers
5 that Nick was behind the driver's seat, and Josh was in
6 the middle, is that correct?
7 A. I don't know. I don't know, man. I can only assume.
8 Q. But you told the officers that, didn't you?
9 A. If it's in this piece of paper.
10 Q. I'll address your attention to page 2640. Question:
11 And to your knowledge was anything taken out
12 of anybody's pack-- pockets?
13 Not that I saw.
14 Okay, and to get back, after they put Nick
15 in the vehicle, where did they put him?
16 And your answer was what?
17 A. I don't know. I'm done doing this.
18 THE COURT: Let's take a brief recess, counsel.
19 COURT RECESSED
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COURT RECONVENED WITH JURY SEATED

THE COURT: All right, if we could have Mr. Cunningham, please? Mr. Cunningham, go ahead and retake the witness stand, please.

JEFFREY CUNNINGHAM

CONTINUATION OF DIRECT EXAMINATION

BY MR. SIMEONE:

Q. I think, Mr. Cunningham, when we left off we were talking about the order in which those bodies were loaded, and I want to understand this now clearly. You stated that Nick was behind the driver's seat and Josh was in the middle. Is that right?

MR. WETLE: Asked and answered, your Honor.

THE COURT: Sustained.

Q. Okay, so if Dane says that Nick is in the passenger side, Josh is in the driver's side, that wouldn't be the correct order of their loading, would it?

A. Maybe that's how he saw it. I don't know.

Q. But it's clearly inconsistent with your recollection, isn't that right?

MR. WETLE: Objection, your Honor. He said he didn't know. If that's how Dane saw it, that's how he saw it.

THE COURT: Overruled. It's proper cross examination. You can go ahead and answer that question.

Q. That's inconsistent with your--

1 A. If he says the opposite of what I said, then yeah.

2 Q. Okay. Now, we get to the point in the story where the car
3 is started and it's being driven away. In your first
4 statement to the police you first said that you were
5 driving with Nick's head on your lap, is that right?

6 A. Yeah.

7 Q. Josh's head was facing toward the back of the truck? Is
8 that correct?

9 A. Yeah.

10 Q. And you claim that the evidence shows-- what you're
11 saying is that Nick was shot in the head, is that right?

12 A. I guess.

13 Q. You threw some tools into the vehicle?

14 A. I don't remember.

15 Q. You threw a pickaxe and a shovel in, isn't that right?

16 A. If they were in the truck, I might have.

17 Q. You said the pickaxe came from the cabin and the shovel
18 was already in the vehicle. Is that correct?

19 A. That might be correct.

20 Q. You can't be sure?

21 A. Nope.

22 Q. You started pick-- digging the holes for the-- at the
23 burial site. I want to refer to these things now as the
24 burial site and I'll refer to the later site where the
25 vehicle finally came to rest as the burn site. Is that

1779.

1 okay, for purposes of our discussion?

2 A. Okay.

3 Q. You started digging holes there at the burial site, is
4 that right?

5 A. Yeah.

6 Q. Well, if Dane has said that he grabbed the shovel and you
7 grabbed the pickaxe, would that be incorrect?

8 A. I don't know. I don't remember.

9 Q. Well, you just said you know that the shovel was already
10 in the Bronco. Didn't you say that?

11 A. No. You said that.

12 Q. And you're not sure?

13 A. No.

14 Q. I'll direct your attention to page 2560. Never mind,
15 strike that question. Were you commanded to go and bury
16 them?

17 A. That's what I was going to do, yeah. Was I commanded,
18 like was I told to go do it?

19 Q. Right.

20 A. That's what was going to happen, yeah.

21 Q. And you agree that when you were digging you never
22 switched holes after you started digging?

23 A. I don't remember.

24 Q. I'll direct your attention to page 1814. Are you on that
25 page?

1780.

1 A. No.

2 Q. You admit that you were using the shovel, is that right?

3 A. It says that.

4 Q. Well, didn't Deputy Caruso ask you at that time:

5 Who was using the pick?

6 And what did you say?

7 A. Dane.

8 Q. Who was using the shovel?

9 A. I said I was.

10 Q. And you dug for about ten minutes, right?

11 A. Yeah.

12 Q. I'll address your attention to page 2644, wherein Deputy

13 Caruso asked you-- I'm sorry, Deputy Erdman asked you:

14 Can you tell me the location where those

15 graves were?

16 Was kind of a hill.

17 Can you tell me in relation to Dane, did you

18 dig above or below him?

19 What was your answer?

20 A. Below him.

21 Q. So you're digging with a shovel below, is that right?

22 A. I don't know if it was with a shovel or a pick. I have no

23 idea.

24 Q. Well, you did know then, though, didn't you?

25 A. No, I just put one of 'em in my hands. I couldn't tell

 you which one was which.

1781.

1 Q. Well, why did you tell Loren Erdman then that you remem-
2 bered that you were using a shovel?
3 A. I was using one of 'em, so I just picked that one.
4 Q. Now, who was it that said:
5 I don't want to do this any more, I'm not
6 doing this?
7 A. I said that?
8 Q. Yeah. Was that you or was that Dane?
9 A. We both came to an agreement at the same time. I know
10 those words came out of my mouth, and Dane might have said
11 something similar to that as well. I think he said yeah,
12 this is completely fucked up, or something like that.
13 Q. But do you recall hearing him saying that he wanted to
14 stop digging the holes before you said it?
15 A. I don't know. I don't think he did.
16 Q. You said you took a Sherlock pipe and some pot and a pen,
17 is that right?
18 A. Yeah.
19 Q. You were digging through the truck of-- Nick's truck,
20 right?
21 A. It was right up in front. Yeah.
22 Q. And you said the reason for taking the pot is-- or the
23 pot pipe is because that was a ceremonial thing?
24 A. Something along that line.
25 Q. You also took a bottle of liquor though, right?

1782.

1 A. Yeah.

2 Q. Was there any particular ceremonial significance to that
3 bottle of liquor?

4 A. Yeah.

5 Q. Like what?

6 A. Like I poured some of it out for the spirits in the
7 bottle, or spirits of the land, and then I drank the rest.

8 Q. Didn't Dane drink some of that?

9 A. He had a sip or two.

10 Q. I want to talk now about your relating the account to the
11 police officers of the efforts that were made to light the
12 vehicle on fire up at what we'll call the burn site.

13 A. Okay.

14 Q. Now you talked about both of those-- about that in both
15 of your statements, didn't you?

16 A. Probably.

17 Q. Your first statement, you said it would have been on
18 November-- That would have been on November 3rd, your
19 first statement.

20 A. Okay.

21 Q. And you talked about trying to finish it somehow, right?

22 A. Right.

23 Q. And the investigating officer asked you if you tried to
24 burn the rig before you left, and you told him no, didn't
25 you?

1783.

1 A. I don't remember.

2 Q. Look on page 1835 to 1838.

3 A. Eighteen what?

4 Q. Eighteen-thirty-five through 1838.

5 A. Okay.

6 Q. Investigating officer is asking you there whether or not
7 you ever tried to syphon any gas through a garden hose,
8 and what did you tell him there? That's about five lines
9 down from the top.

10 MR. WETLE: What page, your Honor?

11 MR. SIMEONE: It's-- I'm sorry. That's page 1837, and
12 then 1838.

13 Q. Five lines down from the top:

14 Did you ever attempt to syphon any gas
15 through a garden hose?

16 And you said no. Is that correct?

17 A. Yeah.

18 Q. The next page, Deputy Caruso said, or Baskin, said:

19 Did you make any attempt to light it on
20 fire, sticking something in the spout for
21 the gas, lighting it, or try and syphon gas
22 out so you can get gas inside the passenger
23 compartment and burn the rig before Chewy
24 came back up?

25 And what did you say?

I didn't do anything like that.

A. Right.

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Q. I don't know if Dane did, but I know I didn't.

A. Right.

Q. Is that correct?

A. Yeah.

Q. Now you changed that in your second statement, didn't you?

A. Yep.

Q. You talked to-- Was that Detective Baskin again that you talked to on the 4th of January of this year?

A. Yeah. Yeah, I think he was-- Yeah, he was there.

Q. And Detective Erdman as well?

A. Uh-huh.

Q. And then some time in that interview you started talking about the plan to bring the car back up to the top where the burial-- where the burn site was?

A. Right.

Q. And at that point you mentioned that Dane said it would be easier if you burnt the vehicle. Isn't that right?

A. It was something that we talked about before we went up the hill, yeah.

Q. You went on to explain how it was that you tried to do that by stuffing a rag in the gas tank, right?

A. Yeah.

Q. So then it's incorrect that you didn't try to do that the first time?

1785.

1 A. Yeah, I lied.

2 Q. Okay. You just burned the rag, is that right, when you
3 tried to do that?

4 A. Yeah.

5 Q. Now, what about the garden hose? In your first statement
6 you said you didn't remember seeing a garden hose outside
7 the rig. Is it correct now that you did?

8 A. Well, I was just being consistent with my lie.

9 Q. Okay. You didn't remember Dane trying to cut a piece of
10 hose or syphoning any gas? You said no to all those
11 things, right?

12 A. Yeah.

13 Q. And that changed in the second statement too?

14 A. Yeah.

15 Q. You agree now that Dane said it'd be easier to burn it?

16 A. Yeah.

17 Q. And you acknowledge that there was a garden hose, correct?

18 A. Yeah.

19 Q. And that you tried to syphon gas and that that didn't
20 work?

21 A. Uh-huh.

22 Q. Is your memory of this whole incident based in part or in
23 total upon what Dane has told you about it?

24 A. I don't know what you mean.

25 Q. Well, is your memory based upon what Dane has told you

1786.

1 occurred?

2 A. No.

3 Q. If Dane says you went through the Bronco looking for
4 money, would that be correct or incorrect?

5 A. If he says it, ask him.

6 Q. No, I mean you were looking through the Bronco for money.
7 Is that correct or incorrect?

8 A. Oh, if I was specifically looking for money?

9 Q. Yeah.

10 A. I don't know. I couldn't say that I was or I wasn't.

11 Q. You found money and stuff in their pockets though, is that
12 correct?

13 A. No.

14 Q. So if Dane said that, he's being untruthful?

15 A. Yeah.

16 MR. WETLE: Objection, your Honor, as to the--

17 MR. SIMEONE: I'm sorry.

18 MR. WETLE: --statement of counsel.

19 THE COURT: Sustained.

20 Q. Dane would be--

21 THE COURT: The--

22 MR. SIMEONE: I understand the court's ruling.

23 Q. Dane would be--

24 THE COURT: All right, I just have to--

25 Q. --inaccurate on that point?

1787.

1 THE COURT: Excuse me. I have to strike that previous
2 answer. Question and answer. You may ask your next
3 question.

4 MR. SIMEONE: I'm sorry, your Honor.

5 Q. Dane would be inaccurate if he made that statement then?

6 A. Which one?

7 Q. That you were looking through their pockets for money?

8 A. If that's what he thought I was doing.

9 Q. But is that what you thought you were doing?

10 A. I don't-- I don't know.

11 Q. Have you said to the police officers that it was Dane who
12 was doing that, grubbing around for money and things in
13 the truck?

14 A. At some point, we all-- we all did, like I said the other
15 day.

16 Q. And at some time then did you tell Dane that you were
17 going to blow the rig up?

18 A. No.

19 Q. Well, the first reason for going up to what I'm now
20 calling-- describing as the burn site, was to just
21 abandon the rig, right?

22 A. Yes.

23 Q. Because it really wasn't-- You weren't intending to burn
24 it up there at first, were you? I mean you tried to burn
25 it down below. That failed and you drove it higher?

1788.

1 A. Right.

2 Q. Okay, so that was just for the purpose of abandoning it?

3 A. Yeah.

4 Q. Was there any reason why you couldn't just abandon it down
5 where you were?

6 A. No.

7 Q. Well, you got to the burn site, and then you walked back
8 down to Lou Ash's cabin, is that right?

9 A. Right.

10 Q. And it was there that you saw John, you allege?

11 A. Yeah.

12 Q. And is it correct that you say you drank some of the rum
13 on the way-- Was it rum that you drank on the way down?

14 A. Uh-huh.

15 Q. And it took about a half hour to walk back, is that right?

16 A. Yeah, maybe.

17 Q. And are you pretty clear in your recollection that you
18 walked down the road to get back to the Ash cabin?

19 A. Yeah. I think so.

20 Q. Do you remember or not?

21 A. Yeah, probably walked the road.

22 Q. Okay. You don't remember running through the woods,
23 stumbling through brush, do you?

24 A. No.

25 Q. That's the kind of thing that would probably stand out in

1789.

1 your mind, wouldn't it, if you took a different route?

2 A. No.

3 Q. Now, did you smoke any of the-- Did you load the pipe up
4 on the way back?

5 A. Yeah.

6 Q. Smoke it?

7 A. No.

8 Q. If Dane said you were smoking it, would that be incorrect?

9 A. Yeah.

10 Q. He said you were smoking it and that was disgusting to
11 him, and he was-- actually started to get very upset with
12 you? Is that correct?

13 A. No, he told me it was fucked up for keeping it.

14 Q. So if he says you're smoking it, that's wrong?

15 A. Yeah.

16 Q. Okay, now, we get back to the Ash cabin after having gone
17 to the burial site, after having gone to the burn site.
18 You left the vehicle there, you've been-- you walk back
19 down to the cabin, encounter John. Now when you came to
20 the property you saw him sitting at the bottom of the
21 stairs that we saw in the photograph, is that right?

22 A. Yeah.

23 Q. Was that yes?

24 A. (No audible response)

25 MR. SIMEONE: Let the record reflect the witness is

1790.

1 shaking his head in a way that means yes.

2 Q. You claim that John was wearing the same clothes, is that
3 right?

4 A. I-- I guess so.

5 Q. Didn't you say that to the officer on page 2650 of your
6 report, of the interview?

7 A. If it's in there. I would assume he was wearing the same
8 clothes.

9 Q. Well, why would you say that if you didn't believe it at
10 the time?

11 A. I didn't see him change.

12 Q. And you never said to the officer:
13 I don't know.

14 A. I don't know-- I don't remember what he was wearing.

15 Q. Okay, but your answer wasn't I don't know to the officer
16 either, was it?

17 A. I don't know.

18 Q. You want to look on page 2650, please? He was wearing--
19 What did you say there, on the top of that page, in
20 response to Loren Erdman's question:
21 So was he wearing the same clothes as when
22 you last saw him?

23 A. As far as I knew.

24 Q. Yeah, and what did you say further?
25 His shirt still had blood on it.

1791.

1 Is that what you said?
2 A. Yeah. Right down here in this corner right here. I don't
3 remember that.
4 Q. So if Dane were to say that you came up from behind-- the
5 two of you came up from behind him, that you spooked him.
6 That would be a little different from your recollection
7 and your testimony today, wouldn't it?
8 A. What?
9 Q. You came up and you saw--
10 A. Came up behind who?
11 Q. John.
12 A. We came up behind John?
13 Q. Right.
14 A. Oh.
15 Q. That's wrong, isn't it?
16 A. He was sitting at the bottom of the stairs. He might not
17 have seen us walking up the driveway.
18 Q. You never said that though, did you, in your statement?
19 A. What? That we scared him?
20 Q. Right.
21 A. No.
22 Q. You just said you saw him at the bottom of the stairs.
23 A. Yeah.
24 Q. So now after you're saying you speak to John at that
25 point, John told you to go back and bury bodies. Is that

1792.

1 right?

2 A. No.

3 Q. You started to walk back? You walked back yourself? By

4 yourself, alone? Is that right?

5 A. Walked back where?

6 Q. Walking back to bury the bodies. Is that right?

7 A. No, Dane and I walked together.

8 Q. So you started-- Did you start on your way, is what I'm

9 saying. Did you start on your way without them at first?

10 A. I don't-- I don't remember doing that.

11 Q. You didn't hear any discussion between John and Dane that

12 was allegedly discussed-- or any discussion that was

13 allegedly held about going back and burning the car, did

14 you?

15 A. No.

16 Q. Do you remember jumping in the vehicle at some point, or

17 going back? Is that what you're saying happened?

18 A. No.

19 Q. Do you remember where you were sitting in the vehicle?

20 A. In the back seat.

21 Q. Dane was supposedly sitting where?

22 A. In the passenger seat.

23 Q. Do you-- Are you testifying, or do you remember, whether

24 or not you saw John allegedly get gasoline from the bottom

25 of the house, or from the generator or something at the

1793.

1 cabin?
2 A. Yeah.
3 Q. You don't remember that?
4 A. I do.
5 Q. Did you actually watch him grab gasoline?
6 A. I watched him come from out underneath the house with a
7 gas can in his hand. Yeah.
8 Q. But if Mr. Williams says that you were walking down the
9 road when gasoline was grabbed, how is it that you could
10 have seen him grabbing gasoline?
11 A. If that's what Dane says?
12 Q. Right.
13 A. Are you telling me that's what he's saying?
14 Q. Let's assume that that's what he's saying, for purposes of
15 your answer.
16 A. Okay.
17 THE COURT: And your question is what?
18 Q. How would you see him grabbing gasoline if you're walking
19 down the road at that time?
20 A. I wasn't walking down the road.
21 Q. Isn't it true that Dane told you that John grabbed
22 gasoline?
23 A. No.
24 Q. Now, isn't it-- I thought it was your version of this
25 incident that John is picking both you and Dane up after

1 John went back and got his vehicle.

2 A. Yeah, 'cause you have to drive it around the thing, like

3 that, and we were standing by the fire pit and he came

4 around the side of the house after pulling his car out.

5 So he drove to pick us up, 'cause we were in front of the

6 house and the car was on the side of the house.

7 Q. You don't-- You wouldn't agree, then, that both John and

8 Dane got the truck from the side of the house, then, would

9 you?

10 A. I-- I don't remember. I mean they might have, but I

11 couldn't tell you.

12 Q. Is it true that a lot of the reason you can't remember

13 this is because this is what Mr. Williams told you

14 occurred?

15 A. No.

16 Q. Are you sitting in the back of the truck or in the back

17 seat, Mr. Cunningham, when you're driving away?

18 A. The back seat.

19 Q. If Dane's saying that he's sitting in the back seat,

20 that's incorrect?

21 A. I was sitting in the back seat.

22 Q. With Dane in the passenger seat?

23 A. Yeah.

24 Q. But Dane is very specific that you left first and then he

25 and John picked you up. That's incorrect?

1795.

1 A. I don't remember that happening.
2 Q. You don't remember that?
3 A. Nope.
4 Q. The final step in the story that you've given here takes
5 place there when you go back to what we call the burn
6 site. You remember your-- in your first statement where
7 you started to talk, or you alleged that Mr. Grange took
8 a piece of paper and he lit it and he threw it on top of
9 Nick and Josh?
10 A. Umm--
11 Q. You remember that?
12 A. (No audible response)
13 Q. Was that yes?
14 A. Yeah. Something like that.
15 Q. Where in the vehicle did Mr. Grange throw that paper?
16 A. Towards the door.
17 Q. Which door is that?
18 A. The back door.
19 Q. Did you change that in your second statement of January
20 4th, Mr. Cunningham?
21 A. I don't think so.
22 Q. Didn't you say at that time that John took this much more
23 elaborate approach to start the vehicle on fire? I'll
24 direct your attention to page 2654.
25 A. Are you saying where he made a trail down the door?

1796.

1 Q. That's right.

2 A. Yeah, and then threw some flame toward it so he didn't

3 have to get so close.

4 Q. So that changes in your second story, doesn't it?

5 A. No.

6 Q. You never said that in the first story though, did you?

7 A. What, that he put a trail to it?

8 Q. Right.

9 A. No, I just said that he threw it towards the back of the

10 door.

11 Q. You said you threw-- he threw it in the vehicle.

12 A. I might have.

13 Q. Now you're saying that John poured gas in the back window

14 and then made a trail of gasoline down the side of the

15 truck.

16 A. Yeah.

17 Q. Is that what you're saying?

18 A. Right. Something right along those lines.

19 Q. Now, is it the back door or is it the side door?

20 A. The back door.

21 Q. Isn't it true the back window was up?

22 A. No.

23 Q. Isn't it true the back window doesn't operate?

24 A. No.

25 Q. Not true that the back window's non-functional?

1797.

1 A. That's where it went from.

2 Q. But if the fire analysis shows that it started-- the fire
3 started from the gasoline spout, would you change your
4 story about how this started?

5 A. No.

6 Q. Isn't that where you said he tried to start the fire at
7 first, is right from the gasoline spout?

8 A. Yes.

9 Q. You're on your way back to the Ash cabin now, according to
10 your account, and at that time you burnt your shirts with
11 Dane, right?

12 A. I don't remember if Dane did or not.

13 Q. Didn't you say that you and Dane burned them?

14 A. I don't know.

15 Q. If you look on page 2657 of your account, sir, maybe that
16 will refresh your memory. I'm looking at probably four or
17 five lines down from the middle of the page.

18 Okay, so you park in front of the house, you
19 guys all get out. You think you might have
20 burned the shirts at that point instead of
21 prior to going up?

22 Right.

23 Up the hill? And Dane burned his as well?

24 And what did you say?

25 A. I said yeah.

Q. Didn't have any blood on your pants?

1798.

1 A. I might have.

2 Q. It's true in your statement, you agree Mr. Grange didn't
3 burn anything, right?

4 A. Not that I saw.

5 Q. You only burned your shirt, right?

6 A. As far as I remember.

7 Q. Well, if you had blood on your pants, why wouldn't you
8 burn those?

9 A. I don't remember if I did or not.

10 Q. Well, if you had the boy's head in your pants, why
11 wouldn't you have blood in them?

12 A. Well, then maybe I did. I don't know. I don't know if I
13 burnt my pants. I don't know. I might have stripped down
14 naked and went and jumped in the creek and ran across the
15 field and wound up in Canada. I don't remember.

16 MR. SIMEONE: Your Honor, I would ask that the witness
17 be instructed not to answer frivolously.

18 THE COURT: Well, go ahead with your next question, Mr.
19 Simeone.

20 Q. Now, is it correct that you paid Dane everything you owed
21 him--

22 A. Yeah.

23 Q. --in terms of money?

24 A. As far as I remember, yeah.

25 Q. And you packed all your clothes at that time?

1799.

1 A. I was already packed.
2 Q. Would you disagree with the contention of other witnesses
3 that your clothes were packed the next day?
4 A. I remember that-- I always had everything I owned in a
5 backpack. Everything I own fits in a backpack. I lived
6 out of the backpack. So anytime I ever needed to leave,
7 I just picked up my bag and left.
8 Q. You didn't go to the White Bird after that time, did you?
9 A. I don't remember.
10 Q. Just don't remember?
11 A. No. I was pretty drunk.
12 Q. You got to Portland at some point the next day.
13 A. Uh-huh.
14 Q. Or late that Monday, is that right? Early Tuesday
15 morning?
16 A. Yeah, I think it was Monday night.
17 Q. Is it correct that Dane-- Who stayed at Rob's in Portland
18 that night?
19 A. I think we all stayed there that first night.
20 Q. Didn't you make a statement-- or didn't you tell the
21 police in one of your statements that John left a half
22 hour later after you got to Portland?
23 A. I don't know.

24 NOON SIREN RINGS

25 MR. SIMEONE: Your Honor, are we going to stop or do

1800.

1 you want me to continue?

2 THE COURT: Go ahead.

3 Q. You made a statement that Dane's interest in the whole
4 thing was collecting money for having killed Nick and
5 Josh, and you said that he was greedy. Do you-- Do you
6 ratify your previous statements right now at this trial?

7 A. What do you mean, do I change my mind?

8 Q. No, do you agree--

9 A. Do I think he's not greedy?

10 Q. Are you agreeing that that's the fact about Dane, that
11 he's greedy?

12 A. He loves money.

13 Q. And it was his interest in collecting money is why--
14 Well, strike that. He was interested in collecting money
15 as a result of Josh and Nick being killed, wasn't he?

16 A. He was.

17 Q. Well, doesn't that lead you to believe that all along Dane
18 wanted something or had something to do with the murder,
19 if he wants to collect the money?

20 MR. WETLE: Objection, your Honor. Calls for what he
21 believes Dane thought.

22 THE COURT: Sustained.

23 Q. Well, do you believe as a result of anything that you've
24 now seen that Dane is involved in this murder?

25 A. Was Dane there? Is that what you're asking me?

1801.

1 Q. No. Is he involved in the plotting of their deaths?

2 A. Ask him.

3 Q. You have a prior adjudication, Mr. Cunningham, for a theft
4 related burglary in Suffolk County in 1994? Is that
5 correct?

6 A. Yeah, I stole some fireworks once.

7 Q. And you pleaded guilty in this court to rendering criminal
8 assistance as a result of your involvement in this
9 activity, didn't you?

10 A. Uh-huh.

11 Q. And you've been promised a sentence of 12 to 14 months as
12 a result of your plea agreement with the Prosecutor? Is
13 that right?

14 A. Yeah.

15 MR. SIMEONE: Could we hand the witness Exhibit Number
16 94, please?

17 Q. Part of your agreement with the Prosecutor is that you
18 come here today and testify against Mr. Grange, isn't that
19 correct?

20 A. (No audible response)

21 Q. Can you identify what's been handed to you as Exhibit
22 Number 94?

23 A. There's no numbers on it. Oh, on the back, yeah.

24 Q. What is that?

25 A. It's my plea agreement.

1802.

1 Q. Does that bear your signature on the second page?
2 A. Yeah.
3 MR. SIMEONE: I'd move 94 into evidence, your Honor.
4 MR. WETLE: Would you hand that to Mr. Wetle, please?
5 Q. Did you know if that was your signature on the back of the
6 agreement, Mr. Cunningham?
7 A. On the second page?
8 Q. Yeah.
9 A. Yeah.
10 Q. Your sentencing won't happen until after this trial is
11 completed, isn't that correct?
12 A. I don't know.
13 Q. If you don't testify--
14 A. I think it's 30 days after the trial begins.
15 Q. And you're in jail right now for this offense, aren't you?
16 A. Yeah.
17 Q. You don't testify, the deal is off, isn't that correct?
18 A. I'm not sure how it would work. Probably.
19 MR. SIMEONE: Any objection to 94?
20 MR. WETLE: May I voir dire the witness, your Honor?
21 THE COURT: All right.
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25

1 JEFFREY CUNNINGHAM

2 VOIR DIRE EXAMINATION

3 BY MR. WETLE:

4 Q. Mr. Cunningham, it says here if you have an offender score
5 of one, then it's 12 to 14 months. If that prior adjudi-
6 cation is a juvenile adjudication, then you'd have an
7 offender score of zero?

8 A. Yes.

9 Q. And then the offender score, the range would be six months
10 to 12 months?

11 A. Yes.

12 Q. And I've recommended 12 months?

13 A. Yes.

14 THE COURT: Is that voir dire, Mr. Wetle?

15 MR. WETLE: Yeah, that's voir dire. Probably redirect,
16 your Honor. If that was the understanding of the exhibit,
17 I have no further questions, and do not object to the
18 exhibit.

19 THE COURT: Exhibit 94 is admitted.
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1 JEFFREY CUNNINGHAM

2 CONTINUATION OF DIRECT EXAMINATION

3 BY MR. SIMEONE:

4 Q. So your actual recommendation that you'll get is less than
5 what's stated on the plea agreement, isn't it?

6 THE COURT: Give it back to the--

7 A. No, it says in there as a stipulation if my points are
8 less than one, then I'll get what the guideline of the
9 State says.

10 Q. Is it true that you have stated that when you got to
11 Portland you didn't have any money left?

12 A. Yeah.

13 Q. You were supposed to have split up some money though
14 before you left, weren't you?

15 A. Well, they were going to give me some money to take the
16 train, after I dropped the truck off in Spokane, but that
17 didn't wind up happening.

18 Q. Who are they?

19 A. John and/or Dane. One of the two. It only costs twenty
20 bucks. I didn't have twenty bucks, so one of them was
21 going to give it to me.

22 Q. You saw Maija on the evening of June 11th at Dane's cabin.
23 Is that correct? That would be the evening-- That would
24 be Sunday evening.

25 A. Yeah.

Jeffrey Cunningham - Direct (by Mr. Simeone)

1805.

1 Q. She's your previous girlfriend?
2 A. Yeah.
3 Q. That was in the evening some time that she-- that you saw
4 her there?
5 A. Yeah.
6 Q. That's supposed to be after the incident that you're
7 describing here already, correct?
8 A. Uh-huh.
9 Q. You agree that you told her that only Nick Kaiser was
10 killed?
11 A. I don't remember.
12 Q. Why would you tell her that just one person was killed?
13 A. 'Cause that's the only one she knew.
14 Q. Why wouldn't you tell her two people--
15 A. Why tell her more?
16 Q. Why would you tell--
17 A. Why tell her more?
18 Q. Why would you tell her one person and not two people were
19 killed?
20 A. Well, she knew Nick, and it was hard enough to just have
21 on my conscious (sic).
22 Q. Did you tell her that we just had to do away with him?
23 A. I don't remember that. I-- I might-- I had a very
24 lengthy conversation with her for many hours, and I was
25 really drunk, so I-- What I remember, I told her every-

Jeffrey Cunningham - Direct (by Mr. Simeone)

1806.

1 thing that happened, but I might not have-- I might have
2 left out some things, I might have-- I might have told
3 her other things. I don't know.

4 Q. Was there ever any mention that these boys were killed
5 because you were afraid that-- Strike that question. Was
6 there ever any mention by you that you're afraid Dane was
7 going to blab everything to his mommy?

8 A. Huh?

9 Q. Ever any mention to you, or by you, to Maija that you were
10 afraid Dane was going to blab things to his mommy?

11 A. I don't know. I don't think so. I don't remember. I
12 remember in Portland I said that to John.

13 Q. You don't remember telling Maija that?

14 A. No.

15 Q. Lastly, did jailers find a device known as a shank in your
16 possession when you went to jail?

17 A. No.

18 Q. They didn't take a picture of a three-inch implement that
19 you had on you?

20 MR. WETLE: Objection, your Honor. May we approach the
21 bench?

22 THE COURT: All right.

23 UNRECORDED SIDEBAR

24 THE COURT: Ladies and gentlemen, that question is
25 stricken and you're to disregard it. Mr. Simeone,

Jeffrey Cunningham - Direct (by Mr. Simeone)

1807.

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anything further?

MR. SIMEONE: I have no further questions.

THE COURT: All right, Mr. Wetle, let's go ahead and try to finish with Mr. Cunningham's redirect, if any, prior to recessing for lunch.

1 JEFFREY CUNNINGHAM

2 CROSS EXAMINATION

3 BY MR. WETLE:

4 Q. Mr. Cunningham, you knew that the-- Did you know that the
5 San Francisco people were upset and said they wanted him
6 dead?

7 A. Yes.

8 Q. What about the Seattle people?

9 A. I'm sure that some of the people in Seattle would want the
10 same thing, but Nicky was kinda the person in Seattle that
11 kinda ran the show up there for that end of the business.
12 Most of the other people up there wouldn't have been able
13 to say anything to him about it.

14 Q. So when the police are talking to you about when Nick got
15 arrested, the reason that you said after Christmas was
16 why?

17 A. 'Cause they asked me was it before Christmas or after
18 Christmas.

19 Q. And had they asked you to be more specific, you could have
20 maybe narrowed that down?

21 A. I might have been able to.

22 Q. I'd direct you to page 2605. Counsel for the defendant
23 talked about-- asked you whether on page 1796, San
24 Francisco just wanted him. Does it say anything about him
25 being dead? I'd direct your attention to the bottom five

Jeffrey Cunningham - Cross (by Mr. Wetle)

1809.

1 or six lines, or statements, on 2605, and what happened
2 when you got in the truck, what did you say?

3 I got in the truck.

4 This is Saturday afternoon.

5 A. I talked with Nick and told him that the peo-
6 ple-- that what I heard was that the people
7 from San Francisco wanted to kill Nick because
8 he allegedly got arrested by the DEA and turned
9 people's names to the DEA, and was-- he was
10 supplying LSD to--

11 Q. And what was Nick's response?

12 A. He said:

13 That's not how it happened, and that he was
14 going on and he wanted to meet with Rob so
15 that-- He said that's not what's going on
16 and he wanted to meet with Rob so he could
17 smooth things out with Portland.

18 Q. And on the next page, page 2606, second paragraph, can you
19 read that? Erdman-- Detective Erdman's question?

20 MR. SIMEONE: Your Honor, is there a question?

21 THE COURT: Rather than having him read from his
22 statement, what are you trying to ask him?

23 MR. WETLE: Thank you, your Honor. It was a carryover
24 from that last statement.

25 Q. Was there anything else-- When did you learn from-- What
did you learn from Rob about the-- what the people in San
Francisco wanted?

A. I don't see that. Where are you talking about that? Are
you just asking me that as a question, or you want me to

- 1 find this on this piece of paper?
- 2 Q. Strike that, Mr. Cunningham. How did you find out that
3 people in San Francisco wanted him dead?
- 4 A. I think it was Rob that told me.
- 5 Q. Mr. Cunningham, you stated that you came back up from the
6 creek after the shots were fired, and do you remember
7 where Mr. Grange had the gun at that time? Remember what
8 you told the officers?
- 9 A. I don't.
- 10 Q. Would you look at page 2635, three-quarters of the way
11 down. I think Detective Erdman says:
- 12 When you get up there, tell me what you see
13 and where everybody's at.
- 14 How did you respond?
- 15 A. I said:
- 16 John was by the bottom of the stairs with
17 the gun in his hand, and Dane was pack--
18 pacing back and forth below the fireplace
19 near the truck, _____. I had a pan of
20 water in my hand.
- 21 Q. So in that statement you say that John did have the gun in
22 his hand?
- 23 A. I did.
- 24 Q. There was a lot of discussion about who got put where in
25 the truck, and I know it's confusing, but in the middle of
page 1808, what were you doing to Nick's face?
- A. I'm going to ask you the same question, man. Why you

1 got-- Why you got--

2 Q. Why do we have to ask these questions?

3 A. Yeah.

4 THE COURT: All right, now, let me just answer that,
5 Mr. Cunningham, by indicating that this is an issue that
6 may become important, so we do need your answer to it. So
7 you're asking him to look at page 1808, counsel?

8 MR. WETLE: Pardon, your Honor?

9 THE COURT: Page 1808, you wanted him to look at?

10 MR. WETLE: Yes, your Honor.

11 THE COURT: And then tell me what you want him to
12 testify about. What is it you're asking him?

13 MR. WETLE: Well--

14 THE COURT: What happened that he now remembers, or
15 what he said at the time, of the-- On page 1808?

16 MR. WETLE: I guess I'm asking what he's stated in the
17 record, your Honor.

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

19 THE COURT: On page 1808?

20 MR. SIMEONE: Excuse me, your Honor.

21 THE COURT: Yes.

22 MR. SIMEONE: I'm going to object to improper impeach-
23 ment. I don't know-- He's re-- He's re-hoeing old
24 ground here that we've gone over. I brought out this--
25 I discredited him on his examination, and he's going

Jeffrey Cunningham - Cross (by Mr. Wetle)

1812.

1 through more discrediting.

2 THE COURT: No. Evidence Rule 80-- This is a prior--
3 prior--

4 MR. SIMEONE: Consistent statement.

5 THE COURT: --consistent statement. He may bring that
6 up if you've attempted to impeach him on a prior inconsis-
7 tent statement. So, Mr. Wetle, you're directing the
8 witness to what page, please?

9 MR. WETLE: Your Honor, I'm going to withdraw the
10 question. Thank you.

11 Q. Mr. Cunningham, can you tell me when you were with Nick in
12 the fire pit and John Grange came over to you, what did he
13 do to Nick?

14 A. He grabbed him and carried him to the side of the house.

15 Q. And do you know why he carried him to the side of the
16 house?

17 A. No.

18 Q. About how far did he carry him to the side of the house?

19 A. Eight, ten feet.

20 Q. Mr. Cunningham, I'll ask you to think back, and you
21 testified Mr. Kaiser's Bronco was parked down below the
22 fire pit when they first came there.

23 A. It was parked up near--

24 Q. Near the fire pit?

25 A. Yeah.

Jeffrey Cunningham - Cross (by Mr. Wetle)

1813.

1 Q. Do you recall whether, after the victims were shot, that
2 that car ever got moved?

3 A. I don't.

4 Q. How did Nick Kaiser get carried to the car?

5 A. I don't remember.

6 Q. I'd ask you to--sorry--turn to page 2638.

7 MR. SIMEONE: Your Honor, I don't consider this to be
8 proper redirect.

9 THE COURT: Overruled.

10 Q. He's testified--

11 Okay, he grabs Nick under his arms, pulls
12 him up the hill a ways.

13 You said yes. And Loren Erdman says:

14 Then he picks him up? How did he pick him
up?

15 A. Over his shoulder.

16 Q. So just like a sack of potatoes?

17 A. (No response)

18 Q. Mr. Cunningham?

19 A. Yes.

20 Q. Mr. Cunningham, after you left Portland--

21 A. Yeah.

22 Q. After the _____, you went on a tour?

23 A. Uh-huh.

24 Q. Did you ever see Dane Williams?

25 A. No.

Jeffrey Cunningham - Cross (by Mr. Wetle)

1814.

1 Q. Did you ever talk to Dane Williams about this case?

2 A. No.

3 Q. Did you ever compare anything to be said to the officers
4 to Dane Williams-- with Dane Williams?

5 A. No.

6 Q. Have any idea what Dane Williams told the police?

7 A. No.

8 Q. When you were coming down from the top of the hill where
9 you abandoned the car, is there any time that you might
10 have got off the main traveled portion of that skid road?

11 MR. SIMEONE: Objection to the leading.

12 THE COURT: Sustained.

13 MR. WETLE: This is cross examination, your Honor.

14 MR. SIMEONE: It's not cross examination.

15 THE COURT: It's leading, Mr.--

16 MR. WETLE: That's true, but it's Mr. Simeone's
17 witness.

18 THE COURT: Well, he's an adverse witness to Mr.
19 Simeone, obviously, so you need to limit your questioning
20 to direct examination style, unless you're trying to
21 impeach at this point.

22 MR. WETLE: No, your Honor, just asking him to clarify.

23 THE COURT: All right, go ahead and rephrase your
24 question then, please.

25 Q. Did you stay on that portion of the traveled skid road all

1 the time?

2 A. I don't remember. I-- I think we did. I don't-- I
3 don't know.

4 Q. When you came back down from the hill, did you notice any
5 blood on Mr. Grange's clothes?

6 A. Just right here on his shirt.

7 Q. Could you describe, was the shirt tucked in, out or open
8 or--

9 A. Just hanging out.

10 Q. Did he have the gun with him when you guys-- when you
11 came back down from leaving the car on top of the hill?

12 A. No.

13 Q. Did you ever see that gun again?

14 A. No.

15 Q. Do you know what he did with it?

16 A. He said he buried it.

17 Q. Did he say where?

18 A. No.

19 Q. Did he say how he buried it?

20 A. Dug a hole with the gun.

21 Q. Did he say what part of the gun?

22 A. The butt of the gun.

23 Q. Do you remember when Dane Williams comes down and says
24 it's going to happen right now? Did you know what was
25 going to happen?

Jeffrey Cunningham - Cross (by Mr. Wetle)

1816.

1 A. I assumed.

2 Q. And what was it that you assumed?

3 A. They were going to get shot.

4 MR. SIMEONE: What was the answer?

5 THE COURT: You want to repeat it, please, Mr. Cunning-
6 ham?

7 A. That they were going to get shot.

8 MR. WETLE: No further questions, your Honor.

9 THE COURT: All right, Mr. Simeone, any redirect?

10 MR. SIMEONE: Just a little bit, your Honor.

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1 JEFFREY CUNNINGHAM

2 REDIRECT EXAMINATION

3 BY MR. SIMEONE:

4 Q. Mr. Cunningham, isn't it right that with regards to when
5 it was that you had heard that Nick was arrested that you
6 thought it was just immediately before or immediately
7 after Christmas? Didn't you say just before or just after
8 Christmas to Detective-- to the detectives when they
9 questioned you?

10 A. I don't-- I don't remember times of the year, man.

11 Q. Well, I mean would you use-- Why would you use the word
12 just before or just after Christmas, '99, if you didn't
13 think it was right immediately--

14 A. Maybe that's how I remembered it.

15 Q. By Christmas? Because that's how you think you remembered
16 it?

17 A. I don't know. I don't-- I don't know.

18 Q. To follow up the Prosecutor's questions regarding wanting
19 Nick dead, he addressed your attention to page 2607, and
20 I will too. You told that to Nick, that you thought the
21 people in San Francisco wanted him dead, didn't you?

22 A. Yeah.

23 Q. And what did he say to that?

24 THE COURT: He being?

25 MR. SIMEONE: That is Nick.

Jeffrey Cunningham - Redirect (by Mr. Simeone)

1818.

1 Q. Was it right that Loren Erdman said he did not believe
2 that they would go to that extent? And what did you say?

3 A. I don't see where you're talking about.

4 Q. Half way down the page, Mr. Cunningham.

5 MR. WETLE: Which page, your Honor?

6 MR. SIMEONE: That's 2607.

7 A. He just kinda looked at me.

8 Q. He looked at you and he said what?

9 A. He didn't say anything. Says he looked at me like I
10 should have known better and, you know, that kind of
11 stuff.

12 Q. Should have looked-- Looked at you as though I should
13 know better than that and-- Right?

14 A. Right, 'cause I've never known anybody to get killed, and
15 I don't think he has either.

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

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

18 MR. WETLE: No, your Honor.

19 WITNESS STEPS DOWN

20 COURT RECESSED FOR LUNCH

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COURT RECONVENED WITH JURY SEATED

THE COURT: Good afternoon. Mr. Simeone, you may call your next witness.

MR. SIMEONE: That would be Maija Soucie, your Honor.

WITNESS IS REMINDED SHE IS STILL UNDER OATH

MAIJA SOUCIE

Having been previously sworn,
on oath testified as follows:

DIRECT EXAMINATION

BY MR. SIMEONE:

Q. Good afternoon, Ms. Soucie.

A. Good afternoon.

Q. How are you?

A. Oh, it's been hard.

Q. I--

A. Having a hard day.

Q. I understand. I want to go back, without having to rehash the entirety of what you already said, just bring you forward to that point in time when you went over to the Crown Creek cabin. At that time you saw Jeff, is that right?

A. Yes.

Q. Okay, and at that time Jeff communicated to you what he said were the events that occurred previously, or-- well, I'll just say previously. Do you remember that?

A. Yes.

Maija Soucie - Direct (by Mr. Simeone)

1820.

1 Q. Okay, actually it would have been earlier that day, right?
2 A. Right.
3 Q. Okay.
4 A. I believe so.
5 Q. At that time, did he tell you-- Do you remember him
6 telling you that there were-- there was just one person
7 involved in the incident that he described?
8 A. Yes, he only said Nick.
9 Q. And you had no knowledge that there were two people, isn't
10 that correct?
11 A. No, not until the papers--
12 Q. And am I also correct that really, from what Jeff told
13 you, you weren't very clear about what had occurred?
14 A. I-- I know what he told me, yes. It-- It was clear. It
15 was very emotional.
16 Q. Okay.
17 A. I was in shock, but I know what he said.
18 Q. And then at that point you-- you found nothing at Lou's
19 cabin that looked like there was any evidence that a crime
20 had been committed, did you?
21 A. No. Things were always changing around there.
22 Q. Okay. When was the fire started up there? Was it when
23 you got there?
24 THE COURT: I'm sorry, what?
25 Q. When was the fire started at the cabin? When you got

Maija Soucie - Direct (by Mr. Simeone)

1821.

1 ~~there?~~

2 A. ~~I can't remember if it was already started.~~

3 ~~THE COURT: Which cabin? I'm sorry.~~

4 ~~MR. SIMEONE: That would be the Crown Creek cabin, your~~
5 ~~Honor.~~

6 Q. ~~That's what I-- Did you understand that question?~~

7 A. ~~Yes.~~

8 Q. Did you start a fire in the fire pit at the bottom of the
9 stairways from the cabin?

10 A. No. ___ was inside the cabin.

11 Q. In fact, your understanding-- What was your understand-
12 ing of where it was that the people who were killed were
13 killed? Meaning what was the place? Where was the place
14 described where these killings occurred?

15 A. The-- He didn't describe the place. He just said that
16 they took them way up in the woods and burned them in the
17 car. That's all he said.

18 Q. Did he say he was up there and they killed them up there?
19 Is that what you said to the Sheriff when you were inter-
20 viewed, that that was your understanding?

21 A. Yes.

22 Q. Okay. When Jeff told you that he was hoping to get taken
23 care of, was it your understanding that he was hoping to
24 be taken care of with money?

25 A. Yes.

Maija Soucie - Direct (by Mr. Simeone)

1822.

1 Q. And that would have been in Portland? Is that right?

2 A. I believe so.

3 Q. Okay. Bear with me for just a moment. I'm sorry. Do you
4 feel as though the detective in your interview was trying
5 to get you to say that Chewy shot both of them?

6 A. No.

7 Q. Was there ever any time when there was any mention about
8 Dane running to tell his mommy about this incident? Did
9 Jeff-- Did Jeff ever say that to you?

10 A. Yes.

11 Q. What did he say?

12 A. He explained how Dane was extremely freaked out, like he
13 was going to go running and tell his mommy about every-
14 thing. Said he was hysterical, running up down the road.
15 Didn't know what to do.

16 Q. What about the discussion you had with him, or about going
17 to Europe? Do you remember that?

18 A. He just-- _____ it was kinda something to say. Oh, you
19 know--

20 Q. You didn't talk--

21 A. Just--

22 Q. --in much detail about it?

23 A. No. It-- It was nothing.

24 Q. But was it your understanding that he wanted to do that,
25 to try to run away, to escape the area?

Maija Soucie - Direct (by Mr. Simeone)

1823.

1 A. Ah--

2 Q. How did you feel about it?

3 THE COURT: Well, one question at a time, if you would,
4 Mr. Simeone.

5 MR. SIMEONE: I'm sorry.

6 THE COURT: You wanted her to say how she felt about
7 it, or what it was he said?

8 MR. SIMEONE: I'm sorry. Let me ____ one at a time.
9 You're correct, your Honor.

10 A. It just seemed--

11 Q. What did he say about--

12 THE COURT: One second. Let's clarify which question.

13 A. Okay.

14 Q. Yeah. What did he say about the going to Europe, Ms.
15 Soucie?

16 A. He just said--

17 MR. WETLE: Objection as to hearsay, your Honor.

18 THE COURT: Overruled. You may answer.

19 A. He just asked me if I wanted to go to Europe with him.
20 I--

21 Q. Did he give you much in the way of detail regarding that?

22 A. No, not at all.

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

24 THE COURT: All right, Mr. Wetle?

25 MR. WETLE: May we approach the bench, your Honor?

Maija Soucie - Direct (by Mr. Simeone)

1824.

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THE COURT: Yes.

UNRECORDED SIDEBAR

Maija Soucie - Direct (by Mr. Simeone)

1825.

1 MAIJA SOUCIE

2 CROSS EXAMINATION

3 BY MR. WETLE:

4 Q. Good afternoon, Ms. Soucie. Can you describe the demeanor
5 of Jeff Cunningham when he's talking to you and disclosing
6 to you what happened?

7 A. Oh, just so much fear and pain. I never felt him so lost.
8 I-- I felt his heart hurting, so my heart hurt as well.

9 Q. What was his relationship to Nick? In terms of him
10 talking to you, how did you feel he related to Nick?

11 A. He was hurting for Nick. It's a friend of his. He just
12 was in total disbelief that it came to this.

13 Q. Did he tell you who shot Nick?

14 A. Yes.

15 Q. And who did he say shot Nick?

16 A. He said Chewy.

17 Q. Did he say what they had done to the car?

18 A. He said that they brought it way up in the woods and set
19 it afire.

20 Q. Could you describe what he told you about Dane Williams,
21 what he was doing at the scene? And did he tell you where
22 the scene was?

23 A. No.

24 Q. Didn't tell you where they were killed?

25 A. No. No, he didn't go in detail.

Maija Soucie - Cross (by Mr. Wetle)

1826.

1 Q. Did you ever find out? No, strike that. What did he tell
2 you that Dane Williams was doing?

3 A. He--

4 Q. In terms of after the shooting?

5 MR. SIMEONE: Your Honor, I'm going to object as
6 getting beyond the scope of whatever prior consistent
7 statement he is trying to establish here in this examina-
8 tion.

9 MR. WETLE: Your Honor, this is cross examination with
10 respect to what Dane did, and that was asked on direct.

11 THE COURT: Well, I'm going to overrule it on that
12 basis, but also because it is-- I'm allowing the scope to
13 be exceeded just to save some time, because of my previous
14 rulings on this issue. The statement's admissible for the
15 record under 801 (d)(1)(ii), so go ahead and restate your
16 question so the witness will know what you're asking
17 again.

18 MR. WETLE: Thank you, your Honor.

19 Q. Could you tell the jury what he said about Dane's actions
20 at the time of the shooting?

21 A. Just as I said earlier, he was in a state of panic,
22 running up and down the road. Just scared, freaked out.

23 Q. Scared? You say freaked out?

24 A. Yeah.

25 Q. Did he know what to do? Did Dane know what to do?

Maija Soucie - Cross (by Mr. Wetle)

1827.

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MR. SIMEONE: Your Honor, I'm going to object. I don't know how she can tell what Dane knew.

THE COURT: Sustained.

MR. WETLE: Just based on what she was told. I'm sorry.

THE COURT: Why don't you clarify what you're asking.

Q. Did Dane-- Did Jeff Cunningham tell you what Dane's attitude was with-- in respect to what to do? Did Dane tell you-- Did Jeff Cunningham tell you anything about what Dane was doing in terms of what he wanted to do?

A. What he wanted to do? I'm not quite sure--

MR. WETLE: It's a misleading question. Strike the question, your Honor.

THE COURT: All right.

A. Sorry.

Q. Did he tell you who was going to take care of them when they got back to Portland?

A. Yes. He said Rob.

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

THE COURT: Mr. Simeone, anything further?

MR. SIMEONE: Yeah.

1 MAIJA SOUCIE

2 REDIRECT EXAMINATION

3 BY MR. SIMEONE:

4 Q. Ms. Soucie, I was wondering if you were to-- If you were
5 to learn that there was a comment in the report-- First
6 of all, were you interviewed by Officer Webb in connection
7 with this?

8 A. Yes.

9 Q. And were Sergeant Caruso and Agent Cummings in-- in
10 attendance at that interview?

11 A. Yes.

12 Q. And isn't it correct that at that time Jeff-- It was your
13 statement to them that Jeff had said they took them up
14 there and then they were shot? Referring to the area
15 where the bodies had been located? Didn't you tell them
16 that at that time?

17 A. Wait, say-- Please repeat that.

18 Q. Didn't you believe, and wasn't it your statement to the
19 officers at that time, that they took them up there and
20 then they were shot. And you were referring to the area
21 where the bodies were finally located?

22 A. Ah-- I-- Just the general area.

23 Q. That they were-- But, I mean, that they were shot in that
24 general area, isn't that what you were led to believe?

25 A. Yeah, that's what I assumed, yes.

Maija Soucie - Redirect (by Mr. Simeone)

1829.

1 Q. Not at the Crown Creek cabin, but in the area where the
2 bodies were finally found, isn't that right?

3 A. I thought that's where they were found.

4 Q. Right. So you don't know where the bodies were located?

5 THE COURT: At what point, Mr. Simeone?

6 Q. When they were-- When they were found.

7 A. I believe it was just up the road from the Crown Creek
8 cabin.

9 Q. But wasn't-- Okay, but wasn't it true that you said they
10 took them up there? I mean some other place from the
11 cabin.

12 A. I-- I meant like from the barter fair up to that area
13 probably.

14 Q. But you're not sure where the bodies were located?

15 A. No.

16 Q. And it wasn't clear from what Jeff had told you where the
17 bodies had been located either, was it?

18 A. No. He just said way up in the woods.

19 Q. But you knew where the Crown Creek cabin was 'cause you
20 had spent time there?

21 A. Correct.

22 Q. Right, so he's probably meaning some place-- Is that your
23 understanding, that it probably meant some place other
24 than the Crown Creek cabin, where they were shot?

25 A. It just wasn't that specific. I--

1 Q. Wasn't specific?

2 A. Yeah. I--

3 MR. SIMEONE: No further questions.

4 A. Sorry.

5 THE COURT: Any recross, Mr. Wetle?

6 MR. WETLE: No, your Honor.

7 WITNESS IS EXCUSED

8 THE COURT: Mr. Simeone, you may call your next
9 witness.

10 MR. SIMEONE: I would call Deputy Caruso.

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WITNESS IS REMINDED HE IS STILL UNDER OATH

JAMES B. CARUSO

Having been previously sworn,
on oath testified as follows:

DIRECT EXAMINATION

BY MR. SIMEONE:

Q. Good afternoon, Detective. How are you?

A. Good.

Q. To your knowledge, were any arrests ever made in San Francisco as a result of information that was given by Nick Kaiser to authorities?

A. Not directly to my knowledge. I wasn't involved in any part of that investigation.

Q. But information that Josh Schaefer gave resulted in some arrests, isn't that correct?

A. Correct.

Q. And you have heard of no "hit" that was out on Josh Schaefer, have you?

A. No.

Q. Now, where in the cabin was Mr. Grange's I.D. found?

MR. SIMEONE: Could the bailiff please hand the witness the Exhibit with Mr. Grange's I.D.? Yes, please.

Q. Where in the cabin was that exhibit found, Detective?

A. I had originally thought that it was up the stairs on the main floor, west of the kitchen. It was up the next set of stairs in the same part of the house.

James B. Caruso - Direct (by Mr. Simeone)

1832.

1 Q. You go up the stairs--
2 A. Up the-- Up the stairs out of the kitchen.
3 Q. Right.
4 A. On the southwest part of the building.
5 Q. Southwest.
6 A. South-- south part of the building. North being the fire
7 pit, is the best that I can do.
8 Q. Okay.
9 A. As far as the direction goes.
10 Q. That's fine. Now, you had six recorded interviews with
11 Dane Williams, correct?
12 A. No.
13 Q. How many?
14 A. Four.
15 Q. Four all together?
16 A. Four all together that I participated in.
17 Q. But I mean to your knowledge, there are six recorded
18 interviews, isn't that right?
19 A. I believe there's five.
20 Q. If you consider the two on the 18th to be different ones,
21 would that then be six?
22 A. Yes.
23 Q. Okay. Now, is there at least one of them that's unrecord-
24 ed?
25 A. Not to my knowledge.

James B. Caruso - Direct (by Mr. Simeone)

1833.

1 Q. Okay, you don't know of another one.
2 A. No.
3 Q. You had reasons to doubt Mr. Williams' testimony, didn't
4 you?
5 A. There were some inconsistencies that we wanted to map out.
6 Q. And in large part that's why additional statements were
7 taken, isn't it?
8 A. No, not really. Well, that-- that is part of the reason,
9 yes.
10 Q. Stands to reason if you thought you had the full story, or
11 the correct story first, you would leave it go at one
12 story, wouldn't you?
13 A. No, we wouldn't.
14 Q. You would take more than one?
15 A. Yes.
16 Q. Isn't six-- Wouldn't six statements be an unusual amount
17 of statements to take from a given individual in a case?
18 A. Depending on the scope of the case. A more serious crime,
19 something like this, you've got to be sure that you get
20 everything covered, and that's what we were doing.
21 MR. SIMEONE: May I approach the witness, please, your
22 Honor?
23 THE COURT: Yes.
24 Q. Handing you what-- Well, you can see what they are for
25 yourself. Transcripts of various statements of Mr.

James B. Caruso - Direct (by Mr. Simeone)

1834.

1 Williams.

2 A. Correct.

3 Q. I'll leave them there for your reference while I talk to
4 you.

5 A. Okay.

6 Q. In Statement Two, that would be-- I guess that's the
7 October-- the first one on October 18th.

8 A. Yes, sir.

9 Q. Deputy Baskin asked a question there of Mr. Williams. He
10 said he want-- he said we want to clarify some points.
11 Or I should say he made a statement.
12 We want to clarify some points.
13 Is that correct?

14 A. What page are you on?

15 Q. That would be page 783, Bates' page, Detective, 783.

16 A. Okay.

17 Q. We want to clarify some points.

18 A. Correct.

19 Q. So there's some uncertainty there that's the inspiration
20 for that interview, isn't there?

21 A. That's correct.

22 Q. Okay, and you took Statement Number Five, did you not?

23 A. Yes, I did.

24 Q. Now, if you look on page 947, you made the same statement
25 to him at that time, didn't you?

James B. Caruso - Direct (by Mr. Simeone)

1835.

1 A. Yes, we did.

2 Q. You said:

3 We want to clarify some points.

4 A. Correct.

5 Q. Okay, and then page 960. At one time did you ask him
6 whether or not there were going to be any more surprises?

7 A. Yes, I did.

8 Q. Actually, your statement was:

9 Is there going to be anything else that we
10 found out that we have not-- that you've
not told us the truth about?

11 Isn't that right?

12 A. Yes, it is.

13 Q. So you felt that maybe he was deceiving you before?

14 A. I wanted to make sure that we were getting the whole truth
15 when we talked to Dane.

16 Q. Right. Now, there were some discrepancies in that fifth
17 statement on November 8th, weren't there?

18 A. The fifth statement, or the--

19 Q. Yeah, the fifth--

20 A. On November 8th?

21 Q. That'd be the fifth statement. I think it's the November
22 8th statement. Would that be the-- I think that's the
23 fifth one. They should be numbered there.

24 A. Okay, it's-- You've got it numbered here as Number 6,
25 that's why--

James B. Caruso - Direct (by Mr. Simeone)

1836.

1 Q. Oh, I'm sorry.

2 A. All right.

3 Q. Yeah, it's-- It's the fifth statement that's recorded,
4 but it's Number 6 because of the unrecorded one.

5 A. I've got that in front of me now.

6 Q. You stated to him at that time:

7 There are some discrepancies--

8 And I'm looking at page 1752, Bates' page, Detective
9 Caruso.

10 A. Okay.

11 Q. There are some discrepancies or possibly some
12 things that need to be smoothed out.

13 Is that what you told him?

14 A. Yes, I did.

15 Q. Okay, and there was a reference to the pickaxe and shovel
16 there on page 1752, and you had some problems with that
17 information, with regards to the pickaxe and shovel,
18 didn't you?

19 A. Let me try and find it here. One 1752, you said? That's
20 where-- I'm not finding that.

21 Q. Seventeen-fifty-six is the pickaxe and shovel reference.

22 A. Okay, let me get to that. Okay.

23 Q. Now, I want to go back, and how was it that this came
24 about? Didn't the detectives' office or the Sheriff's
25 office do some investigation into how the presumptive

James B. Caruso - Direct (by Mr. Simeone)

1837.

1 burial spots were dug?
2 A. Yes, we did.
3 Q. And you did a report on that, didn't you?
4 A. No, I didn't.
5 Q. Well, somebody in the office did though?
6 A. Another officer did, yes.
7 Q. And wasn't there a determination at that time that--
8 Well, what was the determination, as you know it?
9 A. You need to ask them to refer to their report. I'm not--
10 Q. You don't remember?
11 A. I'm not going to quote another officer's report up here
12 without having it.
13 Q. But from independent recollection, do you know whether or
14 not the investigation said anything about which implement
15 was used to dig which hole?
16 A. That-- I do recall that, that-- I was told in a state-
17 ment, myself, that Dane used the pick and Jeff used the
18 shovel.
19 Q. Right. Okay, and do you remember which boy was supposed
20 to be uphill and which boy was supposed to be downhill?
21 A. Dane was supposed to be uphill.
22 Q. And that was really part of the inspiration for your
23 asking Dane some more questions in this sixth statement,
24 wasn't it?
25 A. Part of it. That was one of two reasons.

James B. Caruso - Direct (by Mr. Simeone)

1838.

1 Q. Yeah, because you had that information and you needed to
2 clarify some points? Is that correct?

3 A. Part of it, yes. Part of the reason.

4 Q. And you asked him whether or not-- You're talking to him,
5 now:

6 Okay, when you and Jeff were digging the
7 holes, the grave, the potential grave holes,
8 what instrument did you use to dig?

8 And what did Mr. Williams respond at that time?

9 A. A pickaxe and a shove.

10 Q. And from what you can see there, and what you remember,
11 was there ever any equivocation in his mind as to what
12 instrument he used?

13 A. At this-- In this interview?

14 Q. Right.

15 A. I'm not-- Can you repeat the question again?

16 Q. Okay, I'm sorry.

17 A. I'm confused about what the question is here.

18 Q. He answered your question,

19 A pickaxe and shovel.

20 And at that time did you ask him,

21 You used both?

22 A. Correct.

23 Q. And what was his answer?

24 A. I used the pickaxe.

25 Q. Okay, so he was pretty clear there that he used the

1 pickaxe and Jeff used the shovel.

2 A. Yes.

3 Q. And they never crossed into one another's holes, so far as
4 you knew from that interview?

5 A. In the--

6 Q. Is that right?

7 A. In the interview I did ask him if they ever did, and he
8 said no, they did not.

9 Q. Okay. In the sixth statement, again, page 1750, you
10 wanted to clear up some more discrepancies. That's 1752.
11 Something else was on your mind there?

12 A. Okay, and we're on page 1752?

13 Q. Right.

14 A. Okay.

15 Q. You had interviewed Maija Soucie before, on October 6th,
16 and you got some info-- you needed some information about
17 what Jeff had told her about the incident, and that also
18 inspired you in this fifth interview of-- or should I say
19 sixth interview, of Dane. Is that true?

20 A. I'm not seeing where the reference to Maija Soucie is on
21 here.

22 Q. Well, you got some information from the Maija Soucie
23 interview about whether or not John Grange had shot
24 individuals. You spoke to her, didn't you? I'm sorry,
25 what's--

James B. Caruso - Direct (by Mr. Simeone)

1840.

1 A. In reference to this interview, or-- or at an earlier
2 time with Detective Baskin?
3 Q. The interview-- I'm sorry. Let's just go to the inter-
4 view you did with Maija Soucie.
5 A. Okay.
6 Q. Do you have that, by any chance?
7 A. No, I do not have a copy of that with me.
8 Q. Could I help you with a copy of that?
9 A. Yes.
10 Q. Because it was your understanding that in this homicide
11 two people had been killed, right? Was that your under-
12 standing?
13 A. From Maija's statement?
14 Q. From your investigation.
15 A. Oh, yes. Yes.
16 Q. And you wanted to ask her if you could clarify what it was
17 that Jeff had told her about what had happened.
18 A. Correct.
19 Q. And what did she tell you in answer to your question?
20 He said Chewy shot Nick, or both of them, or
21 was he not clear on that?
22 What did she say?
23 A. She said:
24 I had no knowledge there were two.
25 Q. Okay, and that's how-- as you remember it today, Detec-

James B. Caruso - Direct (by Mr. Simeone)

1841.

1 tive?

2 A. Correct.

3 Q. Did she tell you that it was-- Nick was the only one

4 there who had been the victim of this murder?

5 A. At that time she-- she only knew that there was one.

6 There was only reference by Jeff made of one person being

7 shot.

8 Q. Nick. Did she say Nick?

9 A. Without referring back to that, I'd have to--

10 Q. I'm sorry.

11 A. If you could--

12 Q. Sorry to _____.

13 A. That's fine. Okay. Right.

14 Q. Does that-- Now does that refresh--

15 A. Yes.

16 Q. --your memory ____ what she told you?

17 A. That Nick was the-- the one individual that had been

18 killed.

19 Q. Now, that was inconsistent with your investigation, right,

20 because you understood there to be two?

21 A. Correct.

22 Q. Would it be logical at that point for you to start

23 thinking that maybe Jeff's story to her was inaccurate?

24 A. It would depend. At that time the investigation was in

25 its infancy. We hadn't had any kind of positive identifi-

James B. Caruso - Direct (by Mr. Simeone)

1842.

1 cation on our victims. We were still in the infancy of
2 the investigation when we interviewed her.

3 Q. You had some knowledge to believe that maybe Cunningham
4 was involved with the plan to do away with Nick before it
5 even happened, didn't you?

6 A. Not in-- Not based on my interview with Maija Soucie.

7 Q. From any other source you had?

8 A. At that time, no.

9 Q. In any part of the investigation, did you at some point
10 get to a place in your investigation where you thought
11 maybe Cunningham had some previous plan to do away with
12 Nick?

13 A. No.

14 Q. Well, I want to go back to your investigation with-- your
15 interview, that is, with Maija. Didn't she tell you at
16 that time that Jeff was involved in a plan to do away with
17 the boys?

18 A. I'm going to need to refer to my-- to the interview. We
19 interviewed a lot of people on that, and I'm not-- I
20 don't want to speak without refreshing.

21 Q. I want to strike that and go on to something else. At
22 that time did you ask Ms. Soucie whether or not Jeff had
23 said anything to her that led her to believe that the
24 crime was committed on the property there, and do you
25 remember what she told you at that time?

1 A. No, I don't.

2 Q. Do you remember whether or not she led you to believe that
3 the crime had been committed someplace other than the
4 Crown Creek cabin? And I'll refer your attention to the
5 bottom of Bates' page 567 of that interview you did with
6 her, Detective.

7 A. She asked me if-- I asked her if Jeff said anything that
8 may lead her to believe that the crime was committed
9 either at the cabin or on the property there.

10 Q. And she said?

11 A. And she said no, he didn't.

12 Q. So your inference from that is that the crime was probably
13 committed some place besides the property, wasn't it?

14 A. Or that she didn't know.

15 Q. Were you-- Were you present at the interview that Captain
16 Webb took with Maija? I mean that's the same interview
17 we're talking about, isn't it?

18 A. Well, there were two interviews with Maija.

19 Q. Okay, how about the October 7th?

20 A. The interview with Captain Webb, I was there for. I
21 believe I was in the room for a good portion of it.

22 Q. Okay. Now, in your investigation, one of the things you
23 do, one of the things that's important in any police
24 officer's investigation, is the recovery of physical
25 evidence. Isn't that correct?

James B. Caruso - Direct (by Mr. Simeone)

1844.

1 A. That's correct.

2 Q. And you try to do that in almost every case you have where
3 a crime as serious as this has occurred?

4 A. That's correct.

5 Q. Now, among the physical evidence you can recover would be
6 fingerprints, isn't that right?

7 A. That's correct.

8 Q. Clothing samples? Is that right?

9 A. Yes.

10 Q. How about even burned clothing samples? Is that something
11 that might be important here too?

12 A. Yes.

13 Q. Okay, blood, that certainly would be something of interest
14 to you in an investigation like this, right?

15 A. Yes, it would.

16 Q. And now, do you have any physical evidence linking Mr.
17 Grange to this crime?

18 A. To the Crown Creek cabin, to the crime?

19 Q. Right.

20 A. No.

21 Q. And so it can't-- I will deduct from that that it can't
22 be said from any physical evidence that this man was
23 involved in this killing?

24 A. Not linked to physical evidence.

25 Q. Do you even have any physical evidence that can say that

James B. Caruso - Direct (by Mr. Simeone)

1845.

1 these two victims were killed at the Crown Creek cabin?
2 A. No.
3 Q. Now, no murder weapon was recovered there, is that right?
4 A. That's correct.
5 Q. Any bullet fragments?
6 A. There were bullet fragments that were recovered from the
7 fire pit area.
8 Q. That's where the target shooting would have occurred?
9 A. That's where we believe the crime occurred.
10 Q. Okay, how many fragments were there?
11 A. To my knowledge, there was one that was recovered.
12 Q. How many bullets were reported to have been fired at these
13 victims?
14 A. Anywhere from six to ten.
15 Q. Okay. Your understanding was that the weapon that's
16 alleged to have been used in the crime was buried at the
17 scene, right?
18 A. Yes.
19 Q. Do you have any information leading you to believe that it
20 was taken any place but the Crown Creek cabin?
21 A. We have no information to believe that it was taken from
22 the Crown Creek cabin area.
23 Q. Okay, now, the Sheriff's office uses metal detectors in
24 its attempt to look the place over for metallic evidence?
25 A. Yes.

James B. Caruso - Direct (by Mr. Simeone)

1846.

1 Q. And I assume that you did that on this occasion?
2 A. As much as we could, yes.
3 Q. You pretty much scanned the area for presence of metal?
4 A. As much as we could.
5 Q. A rifle would surely come up fast with a metal detector,
6 wouldn't it?
7 A. Yes, it would.
8 Q. And how far down do they detect?
9 A. I'm not a metal detector expert. I'm-- I'm not even
10 going to go there.
11 Q. Are they pretty sensitive instruments, so far as you know?
12 A. Like I said, I-- I'm sure it varies with the model that
13 you have and-- and the different settings that you can
14 put it on. They are a sensitive item.
15 Q. Okay. Not having any information from any of the people
16 who are reporting and accusing Mr. Grange of this crime,
17 having no other information that he did anything else with
18 the gun, you would have to rely on their statements to you
19 about what he did with it, right?
20 A. We were relying on the statements of what they are saying
21 he told them.
22 Q. Okay, did you have any-- Strike that. About how far
23 around the area did you-- did you search with the metal
24 detectors?
25 A. I wasn't up there. You'd need to ask a different detec-

1 tive who was involved in that.

2 Q. Okay.

3 A. When I was up there, I went probably 200 feet around the
4 cabin.

5 Q. Did any-- Did any of the other detectives in the office
6 go beyond that?

7 A. I'm not sure. You'd need to-- I believe Detective Baskin
8 may have been up there. I know we had metal detectors up
9 there. Maybe Detective Paramore. I was not physically up
10 there with a metal detector.

11 Q. Because the recovery of that gun would have been of
12 crucial importance to your case, wouldn't it?

13 A. Yes.

14 Q. Because the recovery of a gun there would certainly have
15 corroborated the accusers' story that Mr. Grange buried a
16 gun there.

17 A. That's correct.

18 Q. Without being able to corroborate, that casts a lot of
19 doubt on their account, doesn't it?

20 A. That's a very big area. You could hide a gun a lot of
21 places up by that cabin. It's very remote. It's up hill,
22 and you could bury something up there, if you didn't want
23 it to be found, and based on what we heard what Mr. Grange
24 had said, and the time frame that he had to bury that gun,
25 you could bury that gun and have it not be found.

1 Q. How far away did-- Is it so remote that you couldn't get
2 there with a team of investigators and thoroughly scan the
3 area?
4 A. It is a very remote area.
5 Q. I know it's--
6 A. It's basically the side of a mountain.
7 Q. Yeah, I know it's remote, but is there anything stopping
8 you from getting this very crucial bit of information by
9 combing the area with a team of investigators?
10 A. I'm not sure what your question is. I'm trying to answer
11 your question in the fact that it's a huge area.
12 Q. Understood.
13 A. It's a very huge area.
14 Q. Understood.
15 A. We did not find the weapon up there. Okay? It's a huge
16 area. Not to say it's not up there now. We didn't find
17 it.
18 Q. Not to say that that's an impossible task, either?
19 A. Nothing's impossible.
20 Q. It's what?
21 A. Nothing's impossible. I mean--
22 Q. Now, you knew that Mr. Dane Williams had a .22 rifle,
23 didn't you?
24 A. Yes.
25 Q. He told you about that in your interview with him?

James B. Caruso - Direct (by Mr. Simeone)

1849.

1 A. Yes.

2 Q. You never pursued that lead to see whether or not that was
3 the possible murder weapon, did you?

4 A. We had another detective working on that end of it.

5 Q. Is there any reason why that gun couldn't have fired the
6 bullets that killed these boys?

7 A. Is there any reason that gun couldn't have been used?

8 Q. Right.

9 A. Other than what our two people said that happened, no.

10 Q. But that-- that was never really pursued, was it, in so
11 far as I could tell in your interviews with them? You
12 never really pursued it. He mentioned that he had a .22
13 and the subject was dropped. Why?

14 A. Because at that time we had a good enough statement from
15 him on what the murder weapon was, where it was purchased,
16 and who had it.

17 Q. Which number of statement was that?

18 A. Without going-- Would you like me to go back through the
19 statements?

20 Q. I'm just wondering. You said you had a good enough
21 statement, but I know that six were taken.

22 A. I can look back through. It was very clear from-- from
23 both of the people that we talked to, Mr. Cunningham and
24 Mr. Williams, where the murder weapon was purchased, who
25 purchased it, and who used it.

James B. Caruso - Direct (by Mr. Simeone)

1850.

1 Q. What I'm getting to is not that-- not that you didn't
2 pursue that-- What I'm getting at is why didn't you
3 pursue the investigation of him further when you knew he
4 had a .22 and you knew a .22 was allegedly used in the
5 murder of these boys?

6 A. That was not part of my-- I was not involved in that part
7 of the investigation on Dane's .22.

8 Q. Okay, is it fair to say that your whole case is based upon
9 the statements of Cunningham and Williams?

10 A. Plus the evidence that we found.

11 Q. Of?

12 A. At the crime scene.

13 Q. Of what?

14 A. The burned out vehicle, forensic evidence, statements.

15 Q. But your-- Let me say this: Your case linking this crime
16 to Mr. Grange is based upon the statements of Cunningham
17 and Williams.

18 A. Correct.

19 MR. SIMEONE: No further questions. Thank you. Oh,
20 wait a minute. I want to ask you these questions.

21 Q. You have effects (sic) in the training (sic) of drugs on
22 a person, don't you?

23 A. Yes, I do.

24 Q. LSD is a psychotropic type of a drug?

25 A. I have never-- I'm not a drug recognition expert.

James B. Caruso - Direct (by Mr. Simeone)

1851.

1 Q. Okay, I won't pursue that. Did you ever-- Now, going
2 back to what we were saying about the case being based
3 upon Williams and Cunningham, a lot of what you believe
4 about a person, and a lot of your faith in their statement
5 to you is based upon consistency, isn't it?

6 A. Yes.

7 Q. Did you ever count how many inconsistencies there are
8 between Jeff Cunningham and Dane Williams' statements
9 here?

10 A. We counted the inconsistencies and the consistencies
11 between what both of them were saying happened.

12 Q. How many did it come up to?

13 A. I never-- I never came up with a total number of either
14 side.

15 Q. Let me review some of them with you and see if you agree
16 that these are inconsistencies. How about Jeff's walk
17 down to the creek alone, and Dane's statement that they
18 walked down together? Would you agree that's an inconsis-
19 tency?

20 A. Yes, I would.

21 Q. How about the head motion that Dane says he did, signaling
22 Dane over to the creek?

23 A. Yes.

24 Q. Versus Jeff's statement that he made none. That was an
25 inconsistency. And how about the pot that Jeff was

1 carrying down to the creek, that supposedly still had
2 water in it when he arrived back up to the top of the
3 hill, versus Dane's position that Jeff dropped the water
4 down-- Did you catch that one too?

5 A. Those are inconsistencies.

6 Q. How about the testimony of Jeff that there were no
7 separation between the shots that occurred and Dane's
8 testimony that the shots were rapid and then slow? Did
9 you catch that?

10 A. Yes, we did.

11 Q. And about the time? Now, there's a little bit of a
12 difference I noticed in the time--maybe you can corrob-
13 rate this--that it was said that it took to go down to the
14 creek, according to Jeff versus Dane. Do you remember
15 that?

16 A. Basically, they were different. They weren't exactly the
17 same.

18 Q. In fact, Dane at one time was talking about a five minute
19 conversation they had at the bottom of the hill to discuss
20 what was going on, isn't that right?

21 A. Correct.

22 Q. You picked up on that one. And Jeff never referred to
23 such a conversation, did he?

24 A. Right.

25 Q. In fact, if you were to count up the seconds that he gave

1 you in your interview with him, it was about a minute and
2 a half from the top to the bottom, wasn't it, including
3 the down time, the run back up, filling the water with the
4 pot (sic), et cetera.

5 A. Without referring to a report on that, I'm not going to--
6 I really don't remember exactly how long Jeff said it took
7 him to get down there and get back.

8 Q. Well, I want to refer you to that, if you would, and let
9 you review that, Detective.

10 A. Okay.

11 Q. Showing you-- This would be Jeff Cunningham's first
12 interview. I believe you-- Did you partake in that?

13 A. November 3rd?

14 Q. Yeah.

15 I'm Sergeant Jim Caruso,
16 et cetera. So you were there for that one.

17 A. Correct.

18 Q. He mentions to you that he went to the creek by himself,
19 at the bottom of page 1805. And then towards the middle
20 of the second page, you asked him:

21 So you went down. How long did it take you
22 to get from where they were standing down to
the creek?

23 And he said:

24 Thirty to 40 seconds.

25 A. Correct.

James B. Caruso - Direct (by Mr. Simeone)

1854.

1 Q. So we have 30 or 40 there. And then?

2 Okay, you were down there. How long were you
3 at the creek getting the water? How long do we
4 have there? A couple of seconds?

5 And he said?

6 A. A couple of moments.

7 Q. So we have a couple of seconds there. Then:

8 How far do you think you walked back to the
9 house before Dane had come down, or until
10 you were still-- you were standing there
11 with Dane?

12 He said:

13 Maybe 50 feet.

14 So how long would that take him, do you think, if you
15 wanted to give him walking time?

16 A. You're asking me the question there?

17 Q. Right.

18 A. Unknown. He had an injured leg at that time, so it was
19 unknown how long it would take him to cover that distance.

20 Q. You agree that Dane told you that he beat Jeff up to the
21 top of the hill?

22 A. Correct. Yes.

23 Q. So he's moving along okay, I guess, by his account anyway.
24 You want to give him 30 seconds to walk the 50 feet? You
25 think that's reasonable?

A. Sure, that's reasonable. It could be any number of time.
I can't really speculate on how long it would take.

James B. Caruso - Direct (by Mr. Simeone)

1855.

1 Q. You asked him how long after the time he stopped until he
2 heard the shots--that's at the bottom of page 1806--and he
3 said what? About ten seconds, on the top of the next
4 page?

5 A. Ten seconds.

6 Q. So if we add that up, we have-- Let's go to the generous
7 side. Forty seconds for the walk that he said, another
8 couple of seconds to fill up the pot, that's 42 seconds.

9 A. Well, it says a couple of moments.

10 Q. Okay.

11 A. Not a couple of seconds, but semantics.

12 Q. Okay. Would you agree with seconds? You want to give him
13 five there?

14 A. Sure, let's give him five.

15 Q. Forty-five seconds, then another 30 seconds for the walk
16 up the hill.

17 A. Okay.

18 Q. Okay, do you agree that there's probably less than a
19 minute and a half that he's talking about?

20 A. There-- There could be. Once again, we're speculating on
21 how long it takes him to cover the ground, but--

22 Q. Sure. But in any event-- In any event--

23 A. Sure.

24 Q. --he's talking about a lot less time than what Williams
25 was talking about when he reviewed the amount of time back

1 and forth, aren't we?

2 A. Correct.

3 Q. And besides that, we're never talking about the five
4 minute rest where they're having this discussion that
5 Williams talked about, are we?

6 A. That's correct.

7 Q. What about the difference in the story about who's telling
8 whom whether or not this is all about to happen? Wasn't
9 that something that stood out in your mind?

10 A. Yes, it was.

11 Q. Because at first it was Dane who was telling him that Jeff
12 told him:

13 We're going to scare the crap of them.

14 And that would have been Jeff talking, right, according to
15 Williams?

16 A. What interview are you on this time?

17 Q. That would have been Dane Williams' first interview, on
18 page 899.

19 A. All right, I'm there.

20 Q. Yeah, you see that big paragraph?

21 A. There's two big paragraphs.

22 Q. I'm sorry. The second one of those.

23 A. Okay.

24 Q. At that time I walked down to the creek with
25 him.

1 This is Dane referring to Jeff, I assume.

2 He said--

3 He's talking about Jeff,

4 --we're going to scare these guys. We're
5 just going to scare the crap out of them.

6 Is that what he told you?

7 A. Yes.

8 Q. So you have Dane saying that it's Jeff who has a guilty
9 knowledge there, don't we?

10 A. Correct.

11 Q. Versus what did Jeff say about that same subject matter?
12 Jeff said that Dane-- Dane said that-- What did he say
13 about it? That Chewy's under the cabin and it's all about
14 to happen?

15 A. Chewy's under the cabin, it's going to happen
16 now.

17 Q. So now you've got-- In that situation you've got Jeff
18 saying that it's Dane with the guilty knowledge.

19 A. Correct.

20 Q. That's a totally contrary position that those boys are
21 taking there, isn't it?

22 A. That's an inconsistency.

23 Q. By my count it's two, though, 'cause we've got the
24 inconsistency about-- that happened a couple of times
25 that they made those statements about one accusing the
other of the guilty knowledge, didn't--

James B. Caruso - Direct (by Mr. Simeone)

1858.

1 A. Correct.

2 Q. Now, what about the phone call? You remember in your
3 investigation you wanted to see-- Jeff told you that
4 there was this phone call made at the phone booth on
5 Saturday from Northport, and it was never clear to me
6 whether or not that was the Exxon phone station on the
7 side of the wall there, or whether or not it was the free-
8 standing booth. But is it correct that your investigation
9 disclosed that probably it was the free-standing booth at
10 the Clark's Motel?

11 A. Correct.

12 Q. And you did look to see whether or not that call ever
13 occurred, didn't you?

14 A. Yes, we did.

15 Q. And it never did, so far as your records show?

16 A. As far as the records show, it didn't.

17 Q. How about the order in which the bodies were alleged to
18 have been loaded by these boys? Jeff told you in the
19 first statement that Josh was loaded first. You remember?

20 A. If you'll give me just a second to pull that up. The way
21 we're jumping around here, I want to--

22 Q. I would refer you to page 1808, to speed it up for you,
23 Deputy Caruso.

24 A. All right, 1808.

25 Q. Yeah. He said, if I can quote it:

James B. Caruso - Direct (by Mr. Simeone)

1859.

1 "Josh was loaded first."
2 A. On page 1808?
3 Q. Right.
4 A. Okay, there was-- That's not a quote. It said--
5 Mr. Cunningham says:
6 Josh-- Josh got drug into the truck--
7 Q. Right.
8 A. And then I asked:
9 How'd that happen?
10 Q. Right.
11 A. And then he said:
12 Chewy picked him up and threw him in there.
13 Q. So from your understanding, isn't it-- isn't that Josh
14 who got thrown into the truck first?
15 A. No. All it says is Jeff says Josh got drug into the
16 truck. It doesn't say first, second. Not at that
17 particular point.
18 Q. Well, isn't it-- What was-- What was Jeff supposedly
19 doing with Nick's face?
20 A. He said he was trying to wash the blood off of Nicky's
21 face.
22 Q. So you're asking him,
23 What happened as you were washing Nicky's
24 face?
25 A. Correct.

1 Q. What was the answer?

2 A. Josh got drug into the truck.

3 Q. So isn't the inference from that that Josh is loaded into
4 the truck first?

5 A. Correct.

6 Q. But what did he say in the second statement about the
7 order of events? Didn't he say Nick was loaded into the
8 truck first? And to speed things up for you, I'll refer
9 you to pages 2636 through 38.

10 A. Okay, now, you're going to refer to something that I was
11 not a part of on this interview.

12 Q. Well, is that Loren Erdman's statement?

13 A. Correct. Yeah.

14 Q. I'm sorry, I'll take--

15 A. I wasn't there for that, so--

16 Q. I'll let you off the hook for that one.

17 A. All right.

18 Q. Now, how about Dane Williams, in his first five state-
19 ments, where he made no reference or mention to you
20 whatsoever that he went to the Crown Creek cabin first
21 from coming back from the fair? Did that-- Did that
22 catch your attention, and was that problematic for the
23 office?

24 A. That he went back to the Crown Creek cabin first?

25 Q. First, from the fair.

James B. Caruso - Direct (by Mr. Simeone)

1861.

1 A. We basically just based it on what we were-- what we were
2 told.

3 Q. Didn't he actually say that he went to the Hamlet Creek
4 cabin first, for a long time?

5 A. Are you referring to any one particular interview here,
6 or--

7 Q. No. You know, it's just the first five interviews that
8 were taken of him. Is it your recollection that those
9 first five interviews it was his position that he went to
10 that Hamlet Creek cabin first?

11 A. That he went to--

12 Q. That is, Dane's cabin?

13 A. --the Hamlet Creek cabin some time during that time frame.

14 Q. Then he shifted position almost entirely. I mean 180
15 degrees in his-- his last statement, and said that he
16 went to the Crown Creek cabin first, right?

17 A. If you want to refer to one of my-- If you want to refer
18 to the last interview with Dane.

19 Q. You know, I'm not trying to catch you or trip you up here.

20 A. Correct.

21 Q. And there's no particular place where you can find it,
22 it's just that there's no-- It's an absence of a refer-
23 ence, I guess is what I'm saying. He says he went to the
24 Crown Creek cabin. Are you aware of that from your
25 knowledge of the case?

James B. Caruso - Direct (by Mr. Simeone)

1862.

1 A. Correct.

2 Q. What about the disparity in the two boys' versions about
3 the White Bird Tavern? Jeff saying that he didn't, and
4 Dane saying that they did go to the White Bird Tavern.
5 Did you-- That also caused you some concern, I'm sure.

6 A. Correct.

7 Q. And Troy Phillips, you had no reason to doubt what he was
8 saying about it? Troy Phillips, the bartender?

9 A. No.

10 Q. Do you think it's just because-- Do you think they're
11 lying, or do you think it's because his memory's fouled,
12 or what do you think?

13 MR. WETLE: Objection, your Honor, to the form of the
14 question.

15 MR. SIMEONE: I'm sorry, your Honor.

16 THE COURT: It does call for speculation, I think.

17 Q. What about loading the bodies through the rear door of the
18 Bronco? You understand that that was alleged, right?

19 A. That-- Correct. At one point, yes.

20 Q. Yet you also interviewed Brian Murphy, or somebody in the
21 office did, who was Nick's-- Nicky's roommate?

22 A. I never talked to Brian Murphy.

23 Q. But you're aware of something that was discovered as a
24 result of that, right?

25 A. That was Detective Erdman that talked to him.

James B. Caruso - Direct (by Mr. Simeone)

1863.

1 Q. And Brian's testimony was pretty clear that the Bronco
2 door wasn't operative, right?

3 A. I never talked to Brian at all.

4 Q. Okay.

5 A. I never spoke with Brian at all.

6 Q. So that right there is at least eight major inconsisten-
7 cies, isn't it?

8 MR. WETLE: Your Honor, he answered that he hadn't
9 spoken to him, so he doesn't know, so I'd ask that the
10 comment by Mr. Simeone be stricken.

11 THE COURT: Sustained.

12 Q. Well, excluding that one, is that about eight inconsis-
13 tencies?

14 A. I haven't been counting them, Mr. Simeone.

15 Q. Do you think there are others?

16 A. I'll take your word for it, if you've been counting them
17 up.

18 Q. Okay. You think there might be some others, though, too?

19 A. There sure could be.

20 Q. In fact, it's these inconsistencies that you're talking
21 about, or the other officers are talking about, when they
22 say in their statements they want to smooth out some of
23 the rough spots, isn't that right?

24 A. That, plus you never get the right story or the whole
25 story on the first interview. It doesn't matter whether

1 it's a homicide, a burglary, a sexual assault. You do
2 not-- It's very, very, very rare that you get the whole
3 story the first time out of the chute. You always want to
4 interview at least-- at least twice to make sure what
5 you're getting is the truth.

6 Q. But consistency is one of the first things that you look
7 at to see whether or not they're telling the truth.

8 A. You bet.

9 Q. Well, as a result of all the inconsistencies we see here,
10 it's likely that one of these boys or both of them are
11 still lying, isn't it?

12 A. Or still scared.

13 Q. There are lot of the things that are said here that aren't
14 the result of scare. I mean they're telling stories about
15 things that aren't-- These aren't memory issues, are
16 they, I mean about whether or not you went to a creek
17 alone or whether or not you dragged the pan down with you,
18 or whether or not you had the pan on the way down-- from
19 the time you're walking down the stairs. Those aren't
20 really memory issues, are they? They're more deception
21 issues.

22 A. Well, if you're asking my opinion, it can also be shock
23 issues. I mean if someone's in a state of shock, if
24 someone is scared, if-- if they are fearful of what has
25 happened, they can forget details.

James B. Caruso - Direct (by Mr. Simeone)

1865.

1 Q. For Dane Williams to say on five statements originally
2 that he went to the Hamlet Creek cabin, that's not a
3 result of shock though, is it?

4 A. I'm not-- No, and I'm not an expert on shock, Mr.
5 Simeone.

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

8 THE COURT: All right, Mr. Wetle, anything?
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JAMES B. CARUSO

CROSS EXAMINATION

BY MR. WETLE:

Q. Good afternoon, Mr.-- Sergeant Caruso. What would you think that would be the motivation for Dane Williams to say he went to his own cabin for four statements?

MR. SIMEONE: I'm going to object to speculation.

THE COURT: Sustained.

Q. Why do people not tell you the truth the first time if they're involved?

MR. SIMEONE: Objection. We're not supposed to talk about people telling the truth here, your Honor.

THE COURT: Sustained.

Q. Why do people give you inconsistent stories when they're involved in cases?

A. One reason can be that they're involved in the case and they're afraid of getting in trouble, or they are afraid of retribution from other people finding out that they talked to the police. There's several different things that can happen that can make people not give us the whole story right off the bat.

Q. In your investigation, Sergeant Caruso, what was the first break that you got in the case that enabled you to focus on any individuals?

A. When we spoke with Maija Soucie.

1 Q. And was there any knowledge of any previous plans to kill
2 Nick at that time?
3 A. No, there weren't.
4 Q. So the first time you had any knowledge whatsoever was
5 when you talked to Maija?
6 A. Yes, it was.
7 Q. When you said as much as you could you looked for the
8 buried gun. What did you mean by as much as you could?
9 A. We had Search & Rescue up with metal detectors. We also
10 had detectives combing the area trying to look for any
11 loose ground. We-- In every interview that we did with
12 Dane and Jeff we hammered them on where they think--
13 anything they could think of where this weapon might be.
14 Not only if it's buried, but perhaps if it had been taken
15 back to Portland or tossed in the river, if it had been
16 disposed of some other way. We hit that very hard.
17 Q. And did you go three miles from the cabin?
18 A. Three miles from the cabin?
19 Q. Yes, to look for the gun.
20 A. We had Search & Rescue walk the roadway up to the cabin,
21 but just in the ditch. We didn't go three miles in a
22 diameter around the cabin, no.
23 Q. Did you go two miles around the cabin?
24 A. No, we didn't.
25 Q. Do you go one mile around the cabin?

1 MR. SIMEONE: Your Honor, I'm going to object, because
2 I asked this same thing and Sergeant Caruso was unable to
3 be very clear with me about just how far he went.

4 THE COURT: Overruled, it's a different question.

5 Q. Did you go one mile around the cabin?

6 A. I really don't know how far we went around the cabin.

7 Q. Other than to corroborate which gun killed the victims,
8 was there any value in finding the murder weapon?

9 A. Yes, there was.

10 Q. What would that be?

11 A. To get fingerprint evidence, to get ballistic evidence
12 from that weapon.

13 Q. There's no bullets recovered, were there?

14 A. One bullet fragment that was recovered from the fire pit.

15 Q. But was there any identifiable class marking on that--

16 A. No.

17 Q. --bullet fragment?

18 A. No, there weren't.

19 Q. So there would be no--

20 A. It would have been-- It would have not helped in that
21 manner.

22 Q. So you might be able to find fingerprints?

23 A. Correct.

24 Q. If it were buried?

25 A. Correct.

James B. Caruso - Cross (by Mr. Wetle)

1869.

1 Q. And still be finding fingerprints?

2 MR. SIMEONE: Your Honor, I'm going to object to
3 leading. He's got his answer and he's trying to get him
4 to change it.

5 THE COURT: Well, I do think that you're repeating your
6 questions.

7 MR. WETLE: Thank you.

8 Q. Sergeant Caruso, were you with Detective Baskin when Maija
9 Soucie was interviewed?

10 A. Yes, I was.

11 Q. And could I refer you to page 559?

12 A. I don't have a copy of that interview.

13 Q. Do you know what Maija said about where the body was taken
14 to end his life?

15 A. I'd really rather refer to the report, if I could, Mr.
16 Wetle.

17 MR. WETLE: Your Honor, may I approach the witness?

18 THE COURT: Yes.

19 Q. The bottom part starts with the word so. What does that--

20 A. This is Maija-- Okay.

21 So apparently they brought Nick up to this
22 area and somehow ended his life. I don't
23 know who did it exactly. And burned his car
24 up in the woods. Way up the road from the
25 old cabin. I asked him who did it, 'cause I
couldn't believe it, you know. He said, you
know-- And he said Chewy. I believe he
said Chewy had shot 'em.

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

THE COURT: And Mr. Simeone, anything further?

MR. SIMEONE: Yeah.

1 JAMES B. CARUSO

2 REDIRECT EXAMINATION

3 BY MR. SIMEONE:

4 Q. There's value to finding the gun, because that would also
5 corroborate their story that Mr. Grange threw the gun
6 there, isn't that right?

7 A. Correct.

8 Q. That in itself has enormous value to you as an--

9 A. Correct.

10 Q. --item of evidence. Now, you said that part of the
11 reasons for people giving you inaccurate accounts is
12 because of fear of retribution, scare. Is that what you
13 said?

14 A. That's happened before.

15 Q. But at the time you're giving-- you're getting them to
16 give their statement, they're already talking to you,
17 aren't they, about this?

18 A. Uh-huh. Yes.

19 Q. So the reasons for the fabricating become less in play at
20 that point because they're willing to tell you the story
21 anyway, correct?

22 A. No. No, that's not correct.

23 Q. Well, would they have any reason to, for example, misrep-
24 resent about the location of the gun?

25 A. Specific details, I don't know. Overall, the fear and the

James B. Caruso - Redirect (by Mr. Simeone)

1872.

1 reluctance to talk to us because of what they think, what
2 they perceive to be fear and danger, we don't know. I
3 don't know what details someone may change, may switch,
4 whether it may be a detail about a gun, how long it takes
5 to get to the creek, who drove the car, who did this, who
6 did that. At some point we-- we hope to get to the
7 bottom of things through interviewing to get the facts of
8 what actually happened.

9 Q. But you took two statements from Cunningham. Is that
10 correct?

11 A. I took one.

12 Q. I mean the office did.

13 A. Correct.

14 Q. All the investigators--

15 A. Correct.

16 Q. --together, combined. Two statements from him. Six of
17 them from Williams.

18 A. Correct.

19 Q. And even after all that, and spanning a period of over two
20 months in the case with Cunningham, and a period of over
21 three months in the case of-- I'm sorry. Two months in
22 the case of Williams and about three months in the case of
23 Cunningham, you still are left with stories that don't
24 exactly match. Isn't that correct?

25 A. Yes.

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

THE COURT: And any further questions, Mr. Wetle?

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JAMES B. CARUSO

RE CROSS EXAMINATION

BY MR. WETLE:

Q. Sergeant Caruso, would you expect that they match?

A. No.

Q. Have you ever placed either one, Mr. Williams or Mr. Cunningham, in a position where they could compare each other's statements?

A. No, we have not. And in talking to them, we have not told one what one person said and what the other one said.

Q. And why was that done?

A. We didn't want to taint the testimony of either one of the two. When two people are telling a story about a traumatic event, I would be very suspect if the stories matched exactly.

MR. WETLE: No further questions.

WITNESS IS EXCUSED

THE COURT: And you may call your next witness.

MR. SIMEONE: That would be Detective Erdman, your Honor.

1 WITNESS IS REMINDED HE IS STILL UNDER OATH

2 LOREN ERDMAN

Having been previously sworn,
on oath testified as follows:

3
4 DIRECT EXAMINATION

5 BY MR. SIMEONE:

6 Q. Thank you, Detective. Good afternoon.

7 A. Good afternoon.

8 Q. So far as you know, have there been any arrests in San
9 Francisco as a result of the information Nick Kaiser gave
10 to the authorities?

11 A. Not to my knowledge.

12 Q. Joshua Schaefer's information did result in an arrest
13 though, however, isn't that right?

14 A. That is my understanding.

15 Q. And you've heard of no hit, in the course of your investi-
16 gation into this case, on Josh Schaefer? Isn't that
17 right?

18 A. None specifically mentioned, no.

19 Q. Now, you were present for interviews with Mr. Cunningham
20 in the-- the second time he was interviewed, right?

21 A. Yes.

22 Q. And Mr. Williams for his Number 6 and Number 7 statements?
23 Is that correct?

24 A. I'm not sure what the numbers were placed on them, but for
25 two-- the two-- last two interviews, I believe.

Loren Erdman - Direct (by Mr. Simeone)

1876.

1 Q. Last two?
2 A. Yes.
3 Q. That's an easy way to think of it. Any others?
4 A. No.
5 Q. You investigated into the grave sites, didn't you?
6 A. Yes.
7 Q. And as a result of the investigation that was done, wasn't
8 it shown that the upper hole was dug with a shovel and
9 that the lower was dug with a pickaxe?
10 A. That was the appearance of it, yes.
11 Q. And that's what you reported, wasn't it?
12 A. Yes.
13 Q. And was it you who furnished that report?
14 A. Yes.
15 Q. That was prepared by you on 11/3, right? November 3rd of
16 2000?
17 A. That's sounds correct.
18 Q. We discussed this already in part, haven't we?
19 A. Yes, in part.
20 Q. Way back, whenever that was. That casts some doubt on the
21 accuracy of who dug what, doesn't it, when you talk about
22 the statements of Williams and Cunningham in that regard?
23 A. I believe Cunningham stated he couldn't remember which
24 tool he had used, but that he was at the lower grave site.
25 And I believe Dane Williams stated that he believed he'd

Loren Erdman - Direct (by Mr. Simeone)

1877.

1 used the pick at the upper grave site, so-- We didn't see
2 evidence of the pick at the upper grave site.

3 Q. Isn't it true that the one said that they never switched
4 holes?

5 A. Yes. Dane Williams stated that they never switched.

6 Q. Dane said they never switched holes. And he was the more
7 sober of the two, apparently, or supposed to be the more
8 sober of the two on the occasion, right?

9 A. From what he stated.

10 Q. Well, what about-- What are you aware of as a result of
11 your interviews with Brian Murphy? Wasn't that the rear
12 door of the Bronco that was owned by Nick wasn't function-
13 al?

14 A. That's what he believed.

15 Q. And he was a close friend of Nick?

16 A. He was-- He was providing him a residence to live at
17 after his arrest.

18 Q. Providing him some comfort and support there?

19 MR. WETLE: Objection, your Honor, as to what Brian
20 Murphy says. I mean that's hearsay for Detective Erdman.

21 THE COURT: Sustained.

22 MR. WETLE: And ask that the question be stricken.

23 THE COURT: Sustained. The jury will be instructed to
24 disregard.

25 MR. SIMEONE: Okay.

Loren Erdman - Direct (by Mr. Simeone)

1878.

1 Q. So far as you know, though, from your investigation, the
2 tailgate of that Bronco's not supposed to be functional,
3 right?

4 A. According to Brian Murphy.

5 MR. WETLE: Objection, your Honor. We'd-- We'd ask
6 the answer be stricken as not responsive--

7 MR. SIMEONE: I'll stipulate to the objection.

8 THE COURT: Sustained. The jury will strike-- The
9 answer will be stricken, the jury will be instructed to
10 disregard it.

11 Q. Cunningham and Williams were consistently telling you that
12 bodies were loaded from the back of the truck, or at times
13 were telling you the bodies were loaded from the back of
14 the truck.

15 A. Yes.

16 Q. And that caused you some concern with regards to the
17 accuracy of their accounts, didn't i?

18 A. As far as-- I'd initially been led to believe that that
19 was not operable.

20 Q. Okay, now, did you attempt to recover fingerprints?

21 A. From?

22 Q. From any place around the crime scene to try to solve this
23 crime?

24 A. I believe we attempted to around the vehicle, and-- I
25 specifically wasn't involved in that end of it, so I'm not

1 sure that--

2 Q. What's your understanding, though, of the results?

3 MR. WETLE: Objection, your Honor.

4 A. None were found.

5 THE COURT: Hold on. Pardon?

6 MR. WETLE: Objection.

7 THE COURT: And?

8 MR. WETLE: Hearsay.

9 THE COURT: Sustained.

10 Q. Do you know of any fingerprints that have been recovered?

11 MR. WETLE: Same objection.

12 THE COURT: Sustained.

13 Q. Okay, do you know of any clothing samples that were found?

14 A. In the fire pit.

15 Q. Yeah. Have you traced those to anybody in particular?

16 A. Not-- No.

17 Q. Okay, did you ever trace clothing samples that were found
18 there to Mr. Williams?

19 A. No.

20 Q. To Mr. Cunningham?

21 A. No, not specifically from the pieces found in the fire
22 pit. We were unable to.

23 Q. How about to Mr. Grange?

24 A. No.

25 Q. Okay. Ballistics reports were done?

Loren Erdman - Direct (by Mr. Simeone)

1880.

1 A. Ballistic--
2 Q. Well, were ballistic studies done?
3 A. I'm not sure what the crime lab did on that end.
4 Q. Okay. How about any hair? Did you search for any hair in
5 any of-- at any of the places where the crime's supposed
6 to be committed, or in any of the vehicles?
7 A. We looked.
8 Q. None found?
9 A. We had some-- some-- In the burnt vehicle we found some
10 things that looked like they possibly were hair. Also out
11 in the wooded area.
12 Q. Any of that linked to Mr. Grange?
13 A. Not that I'm aware of, no.
14 Q. Any physical evidence linking Mr. Grange to this crime
15 that's being investigated for which he's charged?
16 A. Physical evidence?
17 Q. Right.
18 A. Other than eyewitness?
19 Q. Any physical evidence. Hair samples--
20 A. At the crime scene?
21 Q. Anywhere.
22 A. Not that directly-- Not direct physical evidence.
23 Q. You never found the gun, is that correct?
24 A. No.
25 Q. Did you have any part in trying to search the area for

Loren Erdman - Direct (by Mr. Simeone)

1881.

1 the gun?

2 A. Yes.

3 Q. Did you use a metal detector?

4 A. Yes.

5 Q. Guns have metal barrels, of course, right?

6 A. Yes.

7 Q. A metal detector would pick that up quite readily,
8 wouldn't it?

9 A. Yes.

10 Q. And how thoroughly did you scour the area for metal?

11 A. Fairly thoroughly. It's a-- We're talking, you know,
12 hundreds of acres out behind the cabin that-- the
13 potential for it to be buried out there. We checked as
14 thoroughly as possible. It was fairly hard to do.

15 Q. From--

16 A. It was pretty time-consuming for what we were able to get,
17 not knowing exactly where it was possibly buried. We, you
18 know, we checked as thoroughly as we could and couldn't
19 find it.

20 Q. You can cover quite a bit of ground, though, with a metal
21 detector, can't you, in a team of detectives?

22 A. If you had good flat ground and didn't have to go around
23 bushes and trees and things like that. It was pretty
24 complicated going through all the bushes and--

25 Q. Sure.

Loren Erdman - Direct (by Mr. Simeone)

1882.

1 A. --everything up there.

2 Q. But you could also use visual, couldn't you, to see
3 whether or not there was disturbed ground?

4 A. Yes, but it was kind of in the fall time where there's a
5 lot of leaves and things that were covering up--

6 Q. It's your understanding, though, of how much time they
7 allege they were gone before they went to the top of the
8 hill the first time and walked back down to find Mr.
9 Grange. Isn't that about an hour and a half?

10 A. In that vicinity.

11 Q. So Mr. Grange would have to go out and back, plus dig a
12 hole for a gun, in an hour and a half. An hour and a
13 half's time, isn't that right?

14 A. Yes.

15 Q. And when they came back, it's your understanding that they
16 found Mr. Grange already at the bottom of the step?

17 A. Yes.

18 Q. So he's already there, apparently, and having done
19 whatever it is they said he'd done, so how far away could
20 he reasonably walk and dig a hole with either the tip of
21 a gun or the butt of a gun in that much time?

22 A. Well, Williams and Cunningham dug the graves and went up
23 to the top of the hill and then walked clear back down in
24 that amount of time, so he could have walked quite a
25 distance to do it, and--

Loren Erdman - Direct (by Mr. Simeone)

1883.

1 Q. They had tools though, didn't they?

2 A. Yes, but we were informed that he used the butt of the gun

3 to dig a hole. In soft dirt it wouldn't take much.

4 Q. Did you see much in the way of soft dirt around there?

5 A. Yes.

6 Q. And you can-- Do you think the butt of a gun is really a

7 very accommodating digging tool?

8 A. It wouldn't be my choice.

9 Q. In fact, it's probably going to be a shallower kind of a

10 hole if you're digging a hole with the butt of a gun?

11 MR. WETLE: Objection, your Honor. It calls for

12 speculation.

13 MR. SIMEONE: If he knows.

14 THE COURT: Sustained.

15 Q. Do you know whether or not the butt of a gun would be a

16 very-- Well, you said it's not a very useful instrument

17 for digging a hole, correct?

18 A. It wouldn't be my choice. I imagine you could dig a hole

19 with that or a stick or-- I mean it doesn't take much to

20 dig a hole, just how time consuming and how determined you

21 are.

22 Q. But according to the other testimony and the other

23 evidence you got from those two individuals, Mr. Grange is

24 also going about doing other things at that time, isn't

25 he? So now you have to subtract--

Loren Erdman - Direct (by Mr. Simeone)

1884.

1 A. That was--
2 Q. Is that right?
3 A. That was their belief.
4 Q. So now you have to subtract from that hour and a half
5 other time that they allege he's cleaning up a place or
6 doing other things around there, right?
7 A. Right.
8 Q. So now he really doesn't have an hour and a half to go out
9 and back to dig a hole, he's got less than that, plus he's
10 got to dig the hole as well.
11 A. Correct.
12 Q. Now, you can't say conclusively from the physical evidence
13 that you've obtained that these boys were even killed at
14 the Crown Creek cabin, isn't that right?
15 A. I think there's circumstantial evidence that shows that
16 that's likely.
17 Q. No, I'm talking about physical evidence.
18 A. Direct physical evidence?
19 Q. Right.
20 A. Well, there's indication that there was bullet impacts on
21 the fire pit, also in the wood in the fire pit, and a
22 shell was found in there, and we had no knowledge and have
23 received no statements that they target practiced in that
24 direction.
25 Q. Was that necessarily evidence of a crime, that you saw

Loren Erdman - Direct (by Mr. Simeone)

1885.

1 indentations on that--

2 A. Well, it was consistent with their statements though.

3 Q. But is it evidence of a crime that you see indentations
4 then in that cowl for the stove?

5 A. It could be.

6 Q. Do you even know that that indentation occurred there?

7 A. Positively?

8 Q. Right.

9 A. No. It's consistent with their statements.

10 Q. It could be that that indentation occurred while that
11 stove was out of the state, couldn't it?

12 A. Could have happened anywhere.

13 Q. And they were target practicing around that area quite a
14 bit, isn't that your understanding from your investiga-
15 tion?

16 A. Towards the other direction, yes.

17 Q. Those shells could go exactly where they landed, though,
18 couldn't they?

19 A. It's possible.

20 Q. And do you know whether or not over the course of a period
21 of years other people have target practiced and left
22 bullets right where they were found?

23 A. Yes. If it was over a period of years, though, they
24 wouldn't be in the condition that they were as far as
25 still shiny brass.

Loren Erdman - Direct (by Mr. Simeone)

1886.

1 Q. They could be pretty recent and still be target practice,
2 though, couldn't they?
3 A. Yes.
4 Q. Okay. You knew that Dane Williams had a .22, didn't you?
5 A. Yes.
6 Q. You never pursued that lead to see if that was the
7 possible murder weapon?
8 A. We attempted to, yes.
9 Q. What did you find?
10 A. We found that it was removed by his mother from the
11 residence and given to Josh and Stephanie. I can't recall
12 their last names at the moment. And they took it back
13 over to the Crown Creek cabin after they'd already left
14 and went to Oregon, and it disappeared from that point.
15 Q. Wait a minute. Dane Williams' parents weren't even there
16 that weekend, were they? Dane Williams' parents--
17 A. No, this is after they'd already gone to Oregon when his
18 mother went over to make sure and take valuable items out
19 of his cabin so they didn't get stolen.
20 Q. When did you obtain the evidence that that gun had been
21 taken away?
22 A. When did I obtain the evidence?
23 Q. Yeah.
24 A. We don't-- The statements?
25 Q. Right.

Loren Erdman - Direct (by Mr. Simeone)

1887.

1 A. I don't recall the date.

2 Q. Wasn't it-- Isn't it true that .22 was still in the area
3 when these shootings allegedly occurred?

4 A. It was over at Dane Williams' cabin.

5 Q. It was at his cabin, right?

6 A. Yeah, on Hamlet.

7 Q. It's still in the area.

8 A. Yes.

9 Q. Dane admitted that he owned a .22.

10 A. Yes.

11 Q. The .22 that was used in these killings or shootings could
12 have been that .22, couldn't it?

13 A. It can't be excluded.

14 Q. We can't exclude it because one .22 will fire .22 ammuni-
15 tion just like another .22 will, correct?

16 A. Correct.

17 Q. Now, you know about the phone call that Jeff described
18 took place in Northport, right?

19 A. Yes.

20 Q. You-- You have come across no evidence that proves that
21 that phone call was made, have you?

22 A. That proves it was made?

23 Q. Right.

24 A. Not from the information he gave us.

25 Q. Okay.

Loren Erdman - Direct (by Mr. Simeone)

1888.

1 A. I can't prove that it didn't occur in a different manner.
2 Q. Well, I want you to explain to the jury, you looked pretty
3 hard to find that evidence. Isn't that correct?
4 A. Yes.
5 Q. That was important evidence, wasn't it?
6 A. Taken (sic) from that portion of his statement, yes.
7 Q. Never materialized.
8 A. Not in the direct manner that he recalled.
9 Q. Okay. And in any other manner?
10 A. Well, we couldn't exclude that he used a separate calling
11 card.
12 Q. But he told you specifically that he used his mom's 800
13 number, didn't he?
14 A. Yes, he did.
15 Q. In fact, he went to great lengths in your interview with
16 him to explain how he did that, right?
17 A. Yes.
18 Q. And he explained to you that he calls his mother's 800
19 number, right?
20 A. Right.
21 Q. At that time she puts him on hold.
22 A. Right.
23 Q. She calls another number that he wants to call, right?
24 A. Right.
25 Q. And then she conferences them in, and then she leaves for

Loren Erdman - Direct (by Mr. Simeone)

1889.

1 awhile and puts the phone down and lets them talk.

2 A. Yes.

3 Q. And then she comes back and then she hangs up. So he was
4 pretty-- was pretty clear about that point, wasn't he?

5 A. At that point, yes.

6 Q. Okay. Did you do some investigation into calls that were
7 made off of Nick's cell phone?

8 A. Yes.

9 Q. There were some calls made that same day that Jeff was
10 talking about earlier that day, weren't there?

11 A. Right.

12 Q. But they happened at 11:35 A.M. and 1:39 P.M. in the
13 afternoon, correct?

14 A. That sounds correct.

15 Q. And Jeff was talking about a phone call that occurred
16 later in the afternoon.

17 A. Yes.

18 Q. Six-forty-five, or something like that?

19 A. He said he believed it was between 5:00 and 6:00.

20 Q. Five and 6:00. I'm sorry, you're right. Lance Hart did
21 a fire report in connection with his investigation, did he
22 not?

23 A. Yes, he did.

24 Q. And it was his opinion, and is it your understanding, that
25 the fire basically started on the driver's seat area?

Loren Erdman - Direct (by Mr. Simeone)

1890.

1 A. That was his initial indications to me, yeah, at the--

2 Q. And he made that--

3 A. --crime scene.

4 MR. SIMEONE: Can we hand the witness the exhibit,
5 please? Mr. Hart's investigation?

6 THE COURT: Do you have a number for that?

7 MR. SIMEONE: I'm looking for that.

8 THE COURT: Oh, I think I found it here. Ninety-one?

9 MR. SIMEONE: Right.

10 Q. Do you have that before you, Detective Erdman?

11 A. Yes, I do. Yes.

12 MR. WETLE: Your Honor, we're going to object-- I'm
13 going to object to any questions that Mr. Simeone would
14 have of Detective Erdman about Mr. Hart's report.

15 MR. SIMEONE: Your Honor, I'm--

16 THE COURT: What are you trying to verify--

17 MR. SIMEONE: Your Honor, I'm trying to--

18 THE COURT: --from this witness?

19 MR. SIMEONE: I'm sorry, your Honor. I'm trying to
20 verify in terms of time and date when it was that report
21 was given versus the statements that were given by some of
22 their witnesses, or two of their witnesses.

23 THE COURT: I see. All right, that'll be allowed. You
24 want to have him take a look at the date on this exhibit?

25 MR. SIMEONE: Yes, please.

Loren Erdman - Direct (by Mr. Simeone)

1891.

1 Q. The date of that report, Detective, what is that?
2 A. October 10th, 2000.
3 Q. Okay, and you remember the interviews of Jeffrey Cunning-
4 ham, don't you? Dane Williams?
5 A. Yes.
6 Q. The first one that was done of Dane Williams was October
7 13th, wasn't it?
8 A. That sounds correct.
9 Q. And the first one of Jeff Cunningham was actually even
10 later, wasn't it? In November some time?
11 A. Jeff Cunningham?
12 Q. Right.
13 A. Yes.
14 Q. So Mr. Hart's conclusions there regarding where the fire
15 started, those were all given before your witnesses had
16 ever told you where the fire started, weren't they?
17 A. Yes.
18 Q. Now, you made a report in connection with Jeff's interview
19 of January 4th. Do you have that with you?
20 A. I didn't bring it with me.
21 Q. You called it--
22 A. There's some here, though.
23 Q. You called it-- You called it a follow-up report.
24 A. Yes.
25 Q. Do you have that, sir?

Loren Erdman - Direct (by Mr. Simeone)

1892.

1 A. I don't have that report here.

2 Q. Can I give--

3 A. I believe I have his transcript.

4 Q. --you a copy of it to review?

5 A. Okay.

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

7 THE COURT: Yes.

8 Q. Here, Detective. Do you recall preparing that statement?

9 A. Yes.

10 Q. And that was in connection with your later interviewed
11 with him, wasn't it?

12 A. Yes, this was-- had to do with the--

13 Q. Now, you discussed--

14 A. With the interview that took place on the 4th.

15 Q. Now, you discussed with Jeff at that time-- This is Jeff
16 Cunningham's interview, right?

17 A. Right.

18 Q. Or a report you did on it. You discussed with him at that
19 time some details about discussions they had about Nick's
20 arrest. Do you remember that?

21 MR. WETLE: Objection, your Honor, as to anything in
22 the report that Mr. Cunningham said to Officer Erdman as
23 hearsay.

24 MR. SIMEONE: Strictly impeachment, your Honor.

25 THE COURT: Overruled.

Loren Erdman - Direct (by Mr. Simeone)

1893.

1 Q. Do you remember discussing with Mr. Cunningham at that
2 time the-- well, the fact of Nick's arrest?

3 A. Yes.

4 Q. I'll point you to page 4 of the report. It's about half
5 way down that page, as I recall. Have you found that
6 part?

7 A. Yes.

8 Q. Now, you discussed when it was that they-- what they were
9 discussing at the barter fair in April--is that right?--of
10 2000?

11 A. Right.

12 Q. And isn't it correct that at that time they said that they
13 were discussing the fact of Nick's Kaiser (sic) arrest?
14 There was a lot of Nick's-- Nick Kaiser's arrest? I'm
15 looking at the third paragraph from the bottom.

16 A. That was his recollection, yes.

17 Q. Okay, now you know when the barter fair in April, 2000
18 occurred?

19 A. Yes. It was around the 9th and 10th of April.

20 Q. Do you know when Nick Kaiser was arrested?

21 A. The 25th of April.

22 Q. Jeff has to be wrong about that fact, right?

23 A. Yes. He was not very specific about when exactly he had
24 heard about it. He just believed that that's when it took
25 place.

Loren Erdman - Direct (by Mr. Simeone)

1894.

1 Q. You agree that there are a lot of inconsistencies in the
2 way Jeff and Dane gave you the reports of this incident?

3 A. Their recollection of the events were different in
4 portions.

5 Q. Is that another way of saying that there were a lot of
6 inconsistencies in their recollection of the event?

7 A. That would be another way.

8 Q. You think there are more than eight inconsistencies in
9 their statements?

10 A. If you get down to small points, I suppose, yes.

11 Q. Maybe even more?

12 A. Very possibly.

13 Q. Some of them really can't be attributed to memory, can
14 they?

15 A. You'd have to be more specific.

16 Q. Let me give you a specific example. In Dane's first six
17 statements, or first five, I should say, he's consistently
18 said to you that he drove to the Hamlet Creek cabin from
19 the fair, didn't he?

20 A. I wasn't involved in all of those, but--

21 Q. Are you aware of what the content of it is?

22 MR. WETLE: Objection, your Honor. May I voir dire the
23 witness?

24 THE COURT: All right.

25

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LOREN ERDMAN

VOIR DIRE EXAMINATION

BY MR. WETLE:

Q. How many statements from Dane Williams were you involved with?

A. Just two.

Q. And which two were those?

A. The last two. The one in the jail in Multnomah County-- or, correction, in Vancouver, in Clark County, and then the last one on the 29th of December.

MR. WETLE: Your Honor, I'd ask that the questions be limited to those two times that Detective Erdman was involved.

THE COURT: Fair enough. Mr. Simeone?

MR. SIMEONE: I was thinking that he was-- he was-- or the common knowledge of the Department was attributed to each of its deputies, your Honor. But that's fine.

1 LOREN ERDMAN

2 CONTINUATION OF DIRECT EXAMINATION

3 BY MR. SIMEONE:

4 Q. Do you recall that there was a major shift in his position
5 regarding where it was that he first went from the fair in
6 that last statement?

7 A. Initially, he claimed he'd gone back to his cabin first.
8 In the last interview he said that he actually rode with
9 John Grange back to the cabin.

10 Q. Right.

11 A. And did not go to his cabin until after he'd already gone
12 to the Crown Creek cabin--

13 Q. That's a--

14 A. And then went to his cabin.

15 Q. That's a major shift in his story, isn't it?

16 A. It was a difference, yes.

17 Q. That's not a-- That's not a memory thing, is it?

18 A. I'm not aware if it was his memory or what his reason was
19 for changing it.

20 Q. Well, in your-- In your experience as an investigator
21 and as a detective, that's not the kind of thing that a
22 person says over and over again just because he's got a
23 memory lapse, and then suddenly on his last statement
24 makes a change, is it?

25 A. No. My guess as why he did it? I-- I mean I can tell

Loren Erdman - Direct (by Mr. Simeone)

1897.

1 you what my guess is.

2 Q. Well, I really don't want you to speculate. I'm just
3 asking you, there was a major change in what he did there,
4 wasn't there?

5 A. There-- There was a change, yes.

6 Q. No matter what, even in his last statement, he's saying
7 that he got to the Hamlet Creek cabin-- I'm sorry, the
8 Crown Creek cabin first of all at about 4:30 in the
9 afternoon, isn't that right?

10 A. On-- At 4:30?

11 Q. Right.

12 MR. WETLE: Which statement is that, your Honor?

13 A. I don't recall.

14 Q. Where he comes around-- Where he finally comes around.
15 Isn't that the position where he finally lands?

16 MR. WETLE: Objection, your Honor, as to which state-
17 ment he said that in.

18 MR. SIMEONE: Well--

19 THE COURT: Do you want to clarify which of the two
20 that this detective was involved in you're referring to?

21 Q. Well, an inconsistency like that, though, is something
22 that really comes to a detective's attention, isn't it?
23 I mean all your--

24 A. Well, it was definitely a change in what he'd said
25 previously.

Loren Erdman - Direct (by Mr. Simeone)

1898.

1 Q. Well, one of the things you try to do as an investigating
2 officer is to get statements that are consistent--right?--
3 so you can feel confident that what your-- what your
4 conclusion is is based in fact?

5 A. That's our attempt to get it, as close as possible.
6 However, if they were exactly the same, I'd have a concern
7 there too.

8 Q. Well, I understand about minor inconsistencies, but that's
9 not a minor inconsistency, is it?

10 A. No, it-- It was significant.

11 Q. And the fact that a phone call was made or wasn't made, I
12 mean that's not a deception thing-- or that's not a
13 memory thing either? A person would either know that he
14 made a phone call or not know that he made a phone call,
15 isn't that right?

16 A. They should. He didn't recall making the phone calls from
17 Kaiser's phone at all, but we have evidence that they took
18 place.

19 Q. That's right, and you think that's because he's lying?

20 A. No.

21 Q. Do you think he had a reason not to tell you that those
22 took place?

23 A. Not that I'm aware of.

24 Q. But I mean it's just as reasonable an inference, isn't it,
25 that he's just lying to you, isn't it?

1 A. It--

2 MR. WETLE: Objection, your Honor.

3 THE COURT: Sustained.

4 Q. I want to refer your attention to page 2546, Detective
5 Erdman.

6 A. In which?

7 Q. That would be Bate's page 2546. I guess that would be his
8 seventh statement. And you participated in--

9 A. I don't know if I have that one here.

10 Q. Yeah, it's Dane 7. I think you have it.

11 A. Okay, right here. What was the page number again?

12 Q. You participated in that, didn't you? That would be page
13 2546.

14 A. Yes, I participated in this one.

15 Q. You were actually the one who was asking the questions?

16 A. Yes.

17 Q. So now going back to the question I asked you earlier
18 about no matter how we end up here with all the different
19 variations he gave you in the story about whether he went
20 to the Hamlet Creek cabin first, whether he played Play
21 Station with his brother for two or three hours, all of
22 those jobs that he did back and forth, you come to a
23 bottom line in his last station (sic)-- his last state-
24 ment, that when he got to the cabin was about 4:30. Isn't
25 that right?

Loren Erdman - Direct (by Mr. Simeone)

1900.

1 A. After he'd gone back to Hamlet and come back, he--
2 Q. After he got to the--
3 A. He said--
4 Q. After he got to the Crown Creek cabin.
5 A. His statement said it had to be around 4:30, 4:00 o'clock,
6 something in there. And I asked him, late afternoon? And
7 he said yeah, late afternoon.
8 Q. And all along what he was trying to do is he was somehow
9 trying to get the times to jam together so that he's
10 closer to the time of the incident that occurred, isn't
11 he?

12 A. I'm-- I don't know.

13 Q. Okay.

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

16 THE COURT: All right, Mr. Wetle, any questions?

17 MR. WETLE: Just a couple, your Honor.
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1 LOREN ERDMAN

2 CROSS EXAMINATION

3 BY MR. WETLE:

4 Q. When did this homicide occur, according to your best
5 evidence?

6 A. June 11, 2000.

7 Q. And when did you-- When were you able to start your
8 investigation of the homicide?

9 A. September 24, 2000. Several months later.

10 Q. And what effect did that time from June 11th to September
11 24th have on your investigation?

12 A. As far as physical evidence?

13 Q. Yes.

14 A. Well, weather, sun, wind, rain, all those things can
15 affect it, eliminate it, cover it. That's definite
16 possibilities. And then also on memory and not, you know,
17 recalling a specific date three or four months earlier
18 is-- You know, specifics about an incident, you might
19 remember the incident but the specifics related to that
20 incident might be a little cloudy at that point. I mean
21 I know four months ago, you ask me specific details, if I
22 didn't, you know, write my reports and take my notes, it'd
23 be pretty complicated to get the specific thing. Who
24 stood exactly where, what time, what color of shirt they
25 were wearing, you know. Any of that kind of thing.

Loren Erdman - Cross (by Mr. Wetle)

1902.

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

THE COURT: Any redirect?

1 LOREN ERDMAN

2 REDIRECT EXAMINATION

3 BY MR. SIMEONE:

4 Q. You felt pretty confident with the physical evidence you
5 found regarding the burial sites, though, didn't you?

6 A. Felt-- I just reported what I had-- what I observed.

7 Q. Do you remember the other day when we had the same
8 discussion, I asked you what about the sloughing off of
9 ground into the holes, pine needles and things.

10 A. Right.

11 Q. You said you still could make a pretty clear determina-
12 tion. You felt confident with your results that the
13 implements used in the one ditch were thus and such, and--
14 Weren't you?

15 A. I believe what I said was that the indications around the
16 side of the graves were what-- used as tool marks, what
17 indicated what I believed was used on those. I couldn't
18 say that nothing else was used. That's just what I
19 observed and that was my observation of, you know, the
20 actual grave sites.

21 Q. That's what you put in your report, though, wasn't it,
22 that your--

23 A. That it appeared that it was the shovel on the upper grave
24 and the pick on the lower grave.

25 Q. You didn't really equivocate, did you, in the report?

Loren Erdman - Redirect (by Mr. Simeone)

1904.

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A. That I observed the tool marks on the edges of the--
around the edges of the--

Q. No, I mean you didn't equivocate at that time that you
thought maybe other things could have been dug. You
didn't say that it looks like--

A. I didn't say one way or the other.

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

THE COURT: All right, any recross?

MR. WETLE: No, your Honor.

WITNESS IS EXCUSED

THE COURT: Let's go ahead with one more witness, if
you would, Mr. Simeone, before we take a recess.

MR. SIMEONE: That would be Deputy Baskin, your Honor.